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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.08.2018

CORAM :
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
W.P. (MD) .No.83 of 2014
and
M.P. (MD) .Nos.1 and 2 of 2014

C.Saravanan

...Petitioner

Vs.

1. The Director of School Education,
O/o. The Director of School Education,
College Road, Nungambakkam, Chennai-600 006.
2. The District Educational Officer,
Pudukottai District, Pudukottai.
3. The District Elementary Educational Officer,
Pudukottai District, Pudukottai.
4. The Additional Assistant Elementary Educational Officer,
Ponamaravathi, Pudukottai District. ... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of rejection passed in proceedings in Na.No.5492/A1/2012 dated 20.03.2013 and quash the same and consequently direct the second respondent to consider the petitioner's case for appointment under compassionate ground based on qualification in an appropriate post like Junior Assistant / Record Clerk etc, within the time limit that may be stipulated by this Court.

For Petitioner	: Mr.G.Thalaimutharasu
For Respondents	: Mrs.S.Srimathy Special Government Pleader

ORDER

This Writ Petition has been filed to quash the the impugned order of rejection passed in proceedings in Na.No.5492/A1/2012 dated 20.03.2013 and consequently direct the second respondent to consider the petitioner's case for appointment under compassionate ground based on the qualification in an appropriate post like Junior Assistant / Record Clerk.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.



3. The case of the petitioner is as follows:-

The petitioner's father died on 26.01.1998 when he was 14 years old. He has made an application for compassionate appointment on 02.08.2000 to the third respondent. But at that time, the petitioner was a minor. On 28.12.1998, the petitioner's mother made an application for compassionate appointment, for which the third respondent sent a proceedings in Na.Ka.No.78/A1/99, dated 03.01.2000, directing to apply for compassionate appointment within a period of three years through the fourth respondent herein. In this regard, the petitioner made a representation to the third and fourth respondents. Thereafter, the third respondent vide his proceedings in Na.Ka.No.3384/A1/06, dated 08.03.2011, directed the petitioner herein to rectify the defects stated in the proceedings and the same was complied with by the petitioner and forwarded by the fourth respondent vide proceedings in Na.Ka.No.217/A1/11 dated 20.06.2011. But the second respondent passed the impugned order in Na.Ka.No.5492/A1/2012 dated 20.03.2013 and rejected the petitioner's application on the ground that he did not possess SSLC qualification at the time of the submission of application dated 29.06.2000 and also he was a minor.

4. According to the petitioner, the mother and his two sisters have given no objection to the petitioner to get employment. The petitioner has already completed B.Com., degree. He further stated that he has produced necessary documents and the respondents have taken more than a decade time to pass an order of rejection and that the petitioner is entitled to get compassionate appointment which has got to be considered in accordance with the rules and regulations and that the order rejecting the request of the petitioner that he has not completed SSLC the time of the submission of application is totally a non application of mind.

5. Per contra, the learned Special Government Pleader appearing for the respondents has filed a counter affidavit contending that the deceased had three children and the petitioner was the younger one. The petitioner has an elder sister who was aged about 17 years old at the time of the death of his father. She could have applied for compassionate appointment immediately after attaining the age of 18 or thereafter, but for the reasons best known, she did not apply.

6. The contention of the petitioner is that they are going to get married and hence the petitioner awaited till he become major to get the appointment. There was no indigenous circumstances for the petitioner to get employment under compassionate ground. That apart the wife of the deceased was also eligible to be appointed as Class IV employee. But she was not ready to take up the job.



7. The learned Special Government Pleader appearing for the respondents stated that when the legal heir is a minor, there is no need for the Government to keep a job vacant till the person becomes major. It is stated that the petitioner would have completed B.Com,. This issue has got to be decided on the date of application, whether the petitioner has completed SSLC, for the purpose of considering the request of the petitioner and not on the subsequent date based on which the petitioner has qualified. She reiterated that there is no immediate financial crisis for employment and that is the reason why the sisters did not claim employment. It is no doubt true that the petitioner has made an application on 29.06.2000. Though he applied for compassionate appointment two years from the date of death of the petitioner's father, his sisters were there, they could have applied and submitted an application for compassionate appointment.

8. The contention of the respondents clearly shows that there is no indigenous circumstances for compassionate appointment. That apart when the person dies, it is not necessary for the Government to keep one post vacant until the minor gets major.

9. At this juncture, it is relevant to point out paragraph No.20 of a decision reported in **(2011) 4 SCC 209, Bhawani Prasad Sonkar vs. Union of India and others**, wherein the Hon'ble Apex Court has held as follows:-

"20.Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i)Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

(ii)An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii)An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.



(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

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10. This Court, while dealing with the scope of compassionate appointment in the case of **L.Mohanasundaram .vs. The Joint Director of School Education(Services), College Road, Nungambakkam, Chennai-6 and another made in W.P(MD)No.16402 of 2012, dated 03.1.2018** has categorically held that compassionate appointment cannot be claimed as a matter of right and in the event of applicability of rules, then the concerned person should apply for the same within the reasonable time.

11. In view of the above, I find no merit in the Writ Petition and accordingly, the same stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Director of School Education,
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College Road, Nungambakkam, Chennai-600 006.
2. The District Educational Officer,
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3. The District Elementary Educational Officer,
Pudukottai District, Pudukottai.
4. The Additional Assistant Elementary Educational Officer,
Ponamaravathi, Pudukottai District.

+1cc to Spl.Government Pleader Sr.No.79698

TSG

VB/SKN/SAR4/04.10.2018/4P/6C

**W.P. (MD) .No.83 of 2014
21.08.2018**