



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:20.08.2018
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) .No.1077 of 2018
and
C.M.P. (MD) .No.7706 of 2018

Mukilan Raja Prabhu ... Appellant/Petitioner

Vs.

1.The District Elementary Educational Officer,
Virudhunagar District,
Virudhunagar.

2.The Assistant Elementary Educational Officer,
Rajapalayam,
Virudhunagar District.

....Respondents/Respondents

Prayer:Appeal filed under Clause 15 of the Letters Patent Act against the order of this Court, dated 15.02.2018 made in W.P. (MD).No.14659 of 2012.

Prayer in WP(MD)No. 14659/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, in the nature of writ, calling for the records of the 1st respondent in his proceedings O.Mu.No.5446/A1/2012 , dated 13.07.2012 and quash the same as illegal and consequently direct the respondents to provide a job to the petitioner herein on compassionate grounds for the sudden death caused to the petitioner s father while he was in service considering his application datd 19.09.2011 and pass such further or other orders.

For Appellants : Mr.D.Gandhiraj

For Respondents : Mrs.S.Srimathy
Special Govt. Pleader

**JUDGMENT****[Judgment of the Court was made by M.M.SUNDRESH, J.]**

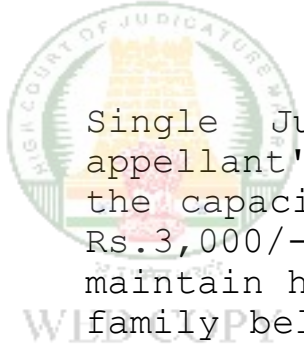
The appellant is the writ petitioner. The appellant's father died in harness, while in service as Record Clerk in the Educational Department. Within the time limit prescribed, the appellant made a request for compassionate appointment. By the impugned order dated 13.07.2012, it was accordingly rejected on the premise that the appellant's mother is working as a Noon Meal Organizer on part-time basis. The said order was put into challenge before the learned Single Judge. The writ petition filed was dismissed inter alia holding that there is no legal right vested in a person seeking compassionate appointment except in accordance with law. It was held that compassionate appointment being a concession, coupled with the fact that the appellant's mother is admittedly working as Noon Meal Organizer, the relief cannot be granted. Challenging the same, the present writ appeal has been filed.

2.The learned counsel appearing for the appellant would submit that the mother of the appellant was receiving as a part-time employee in the nature of Noon Meal Organizer at Rs.3,000/- per month. The fact that the retiral benefits would come to the family after the death of the employee cannot be a factor. Therefore, the order passed will have to be reversed.

3.The learned Special Government Pleader appearing for the respondents submitted that retirement benefits have been paid and received. The impugned order came to be passed, taking into consideration of the fact that after relevant point of time, the appellant's mother, who was working in part-time basis, might be regularized. Therefore, no interference is required.

4.The learned counsel appearing for the appellant has made reliance upon G.O.(Rt) No.40, Labour Employment (Q1) Department, dated 05.01.1990, wherein, it has been held that in a case, where one of the members of the family is working as a Noon Meal Organizer and helper at a very meagre salary, the General Rule governing compassionate appointment shall not be made applicable. In such cases, it might also involve daily rated employees, such as coolies, though working in a public employment, a request for compassionate appointment cannot be rejected on that basis.

5.We are of the view that the learned Single Judge did not consider the applicability of the aforesaid G.O and therefore, the appellant is entitled to succeed. The learned



Single Judge also did not consider the fact that the appellant's mother was working only as a part-time employee in the capacity of Noon Meal Organizer receiving a paltry sum of Rs.3,000/-. The sum of Rs.3,000/- cannot be sufficient to maintain her ownself. Now there are two younger members of the family belonging to the dependent, either member is also not gainfully employed. As admittedly the mother is receiving only a sum of Rs.3,000/-, the request made within the time cannot be rejected. What the applicant seeks is an employment in basic service. In much as G.O confers such benefits and coupled with the fact that the learned Single Judge did not consider the facts available on hands, we are inclined to set aside the order passed. Accordingly, the order passed by the learned Single Judge stands set aside.

6.In the result, this writ appeal stands allowed. Consequently, the first respondent is directed to consider the case of the appellant for compassionate appointment afresh on merits and in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1.The District Elementary Educational Officer,
Virudhunagar District,
Virudhunagar.

2.The Assistant Elementary Educational Officer,
Rajapalayam,
Virudhunagar District.

+1CC to Mr.D.Gandhiraj, Advocate, SR.No. 79731
+1CC to the Special Government Pleader SR.No. 79351

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