



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 14.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.427 of 2018

and

C.M.P.(MD) No.2525 of 2018

1.The Government of Tamil Nadu,  
rep. By its Secretary,  
H.R. & C.E. Department,  
Fort St. George,  
Chennai - 600 009.

2.The Commissioner,  
Hindu Religious & Charitable Endowments Dept.,  
Utthamar Gandhi Salai,  
Nungambakkam, Chennai - 600 006.

3.The Deputy Commissioner/Executive Officer,  
Arulmighu Subramaniaswamy Thirukoil,  
Thirupparangundram, Madurai - 625 005. ... Appellants  
Vs.

N.Manikandan ... Respondent

PRAYER:This appeal is filed under Clause 15 of the Letters Patent,  
to set aside the order dated 28.06.2017 and passed in W.P.(MD)  
No.5182 of 2014.

Prayer in WP(MD). 5182/ 2014 :

Writ Petition is filed under Article 226 of the  
Constitution of India, praying this Court To issue a Writ of  
Certiorarified Mandamus calling for the records of the third  
Respondent culminating in the order dated 27.11.2013 made in  
Na.Ka.NO. 3355/2013/A1 and quash the same and consequently direct  
the third respondent to grant compassionate appointment to the  
petitioner on consideration of the representation dt. 08.11.2013  
made on his behalf.

For Appellants : Mr.V.R.Shanmuganathan, Spl.G.P.

For Respondents : Mr.P.Balamurugan

JUDGMENT

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.V.R.Shanmugathan, learned Special Government Pleader  
appearing for the appellants and Mr.P.Balamurugan, learned counsel  
appearing for the respondent.

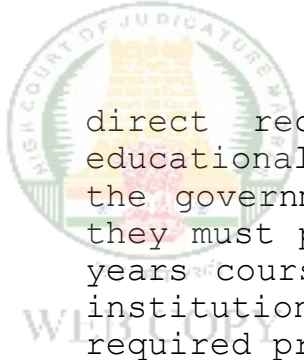


2.The respondents in the writ petition are the appellants in this appeal. The respondent herein filed the writ petition challenging the proceedings of the third appellant dated 27.11.2013, whereby the third appellant informed the respondent that his application for grant of appointment on compassionate ground will be considered in accordance with the rules and commensurate with his qualification.

3.The respondent's father was working as Nathaswara Vidhwan in the third appellant temple and died in harness in the year 2010. The respondent was also a Thavil Vidhwan and he had also underwent three years course in Nathaswara Vidhwan in a school run by the religious institution/government institution and he possesses the requisite proficiency in the art of playing the instrument. Since there were vacancies for the post of Nathaswara Vidhwan in the third appellant temple, the respondent made an application for considering him to be appointed to the said post on compassionate ground. The application was submitted through the fit person of the temple, who had stated that the respondent has not passed 6<sup>th</sup> standard and does not possess minimum general educational qualification prescribed under the Tamil Nadu Religious Institutions (Officers and Servants) Rules 1959. The Writ Court came to the conclusion that the stand taken by the appellant is incorrect as the post of Nathaswara Vidhwan or Thavil Vidhwan cannot be termed as an outdoor servant as defined under Rule 2(f) of the Rules and the minimum general educational qualification prescribed for outdoor servants cannot be applied and the reasons stated in the proceedings of the third appellant dated 27.11.2013 is incorrect. With the above reasoning, the writ petition was allowed and the third appellant was directed to appoint the respondent as Nathaswara Vidhwan.

4.The learned Special Government Pleader appearing for the appellants would contend that no person has got a vested right to seek for compassionate appointment and it can be considered only in accordance with the relevant rules. Further, it is submitted that the order dated 27.11.2013 passed by the third appellant is not an order rejecting the application of the respondent for compassionate appointment, but an information informing him that he would be considered for appointment to a post commensurate with his qualification. Further, it is contended that the relevant rules are applicable to both indoor and outdoor servants and the interpretation given by the Writ Court is incorrect.

5.So far as the first contention raised by the learned counsel is concerned, he is right in submitting that there is no vested right for a person to be granted an appointment of compassionate ground as it is governed by separate set of rules. Equally, the learned Special Government Pleader is right in contending that the relevant rules would apply both for outdoor and indoor servants and one of the post mentioned in Annexure 3 in Rule 5(C)(2), which lists out the category of posts in indoor servants and one such post is Nathaswara Vidhwan. The qualification for



direct recruitment to the post is possessing minimum general educational qualification prescribed for the post of Record Clerk in the government service as specified in Rule 13. Apart from that, they must possess a certificate issued for having undergone a three years course in Nathswaram/Thavil in a school run by the religious institutions or State Government institution and must possess the required proficiency in the art of playing the instrument.

6. There is no dispute to the fact that the respondent possess 2 of the 3 qualifications prescribed in the rules viz., he possess a certificate for having undergone three years course in Nathswaram and he is proficient in the art of playing Nathaswaram. The only embargo appears to be with regard to minimum general educational qualification prescribed under Rule 13 of the general rules, which stipulates pass in 8<sup>th</sup> standard. The petitioner has passed only 6<sup>th</sup> standard and does not possess minimum general educational qualification. However, we find that after the writ petition was disposed of, third appellant had sent proposal to the second respondent for the purpose of considering the case of the respondent.

7. The art of playing in Nathawaram is traditionally learnt by people belonging to a particular community and it is very rare, a third person, who is not hailing from such family would opt for getting trained as Nathaswara Vidhwan. Therefore, in our considered view, an exception can be drawn to the case of the respondent. Though it may be true that if applications are called for for direct recruitment, there is a likelihood that there may be other applicants as well. In any event, there is a post, which is vacant in the third appellant temple and considering the facts of the case and that the respondent's father was a Thavil Vidhwan in the very same temple, this is a case, where the second appellant can show compassion by relaxing the minimum general educational qualification prescribed under the relevant rules.

8. In the light of the proposal sent by the third appellant dated 05.03.2018 in resolution No.1,2 and 7, we direct the second appellant to consider the peculiar facts and circumstances of the case and grant relaxation of the minimum general educational qualification by exercising power to Rule 17 of the Rules so as to enable the respondent to be appointed as Nathaswara Vidhwan in the third appellant temple. The above direction be complied with, within a period of 12 weeks from the date of receipt of a copy of this judgment.

9. With the above observation and direction, this writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/  
Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar



To

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rep. By its Secretary,  
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Thirupparangundram, Madurai - 625 005.

+1cc to Mr.VR.SHANMUGANATHAN, Advocate, SR.No. 56007

+1cc to Mr.P.BALAMURUGAN, Advocate, SR.No. 55841

W.A. (MD) .No.427 of 2018

and

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ARUL

KK/KK/09.04.2018/SAR-2/4P-6C