

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 /11/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No. 4062 of 2019
against
Writ Petition No.18764 of 2014

M.Namadeva ... Appellant/Petitioner

Vs

1. The Director of School Education,
College Road, Chennai.
 2. The District Elementary Education Officer,
Dharmapuri District, Dharmapuri.
 3. The Assistant Elementary Education Officer,
Nallampalli, Dharmapuri District.
- ...Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letter Patent against the order, dated 30/10/2018, passed in W.P.No.18764 of 2014.

Prayer in WP.18764 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for records in O.MU.NU.1844/A2/2013 dated 3/9/2013 on the file of 2nd respondent and quash the same and direct the respondent to give compassionate, appointment to the petitioner.

For appellant ... Mr.Balan Haridas

For respondents ... Mr.C.Munusamy,
Spl. Government Pleader

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J U D G M E N T

(Judgment of the Court was delivered by
Subramonium Prasad, J)

Challenge in the writ petition is to the order dated 30.10.2018, passed in WP.No.18764 of 2014.

2. The list of dates which are relevant for deciding the controversy are under:-

i) 28.02.2005 - The father of the writ petitioner Late.M.Munusamy, who joined as Secondary Grade Teacher in Mittaredddyhalli Panchayat School, Nallampalli, Dharmapuri district, passed away in harness.

ii) 20.12.2006 - The elder son namely M.Sangusamy filed an application seeking compassionate appointment.

iii) 16.12.2009 - M.Sangusamy also passed away.

iv) 21.12.2012 - The petitioner filed an application seeking compassionate appointment.

v) 03.09.2013 - The application was rejected by the Authority on the ground that there are no provisions in the scheme of compassionate appointment for alternative legal heir, who submitted the second application.

3. The order dated 03.09.2013 has been challenged in the instant writ petition being WP.No.18764 of 2014. The learned Single Judge came to a conclusion that the application filed by the writ petitioner after about 13 years from the date of death of the deceased employee cannot be considered. The learned Single Judge after quoting a number of judgments came to a conclusion that the District Elementary Educational Officer, Dharmapuri was correct in rejecting the application on the ground that there is no provision to entertain the second application for compassionate appointment. This order has been now challenged by the instant writ petitioner who is the appellant before us.

4. The brother of the writ petitioner i.e., elder son M.Munusamy had given his application for appointment on compassionate basis on 20.12.2006 itself. The said application was not disposed of and was kept pending. The brother passed away. Nobody in the family has therefore availed the benefit of compassionate appointment.

5. It is well settled that the purpose and object of the scheme to give compassionate appointment is to mitigate hardship arising out of the demise of the government employee. The elder son in the present case had given an application for compassionate appointment which was pending before the Government. There is no reason forthcoming from the Government as to why the application was kept pending for almost 3 years. It has been held by Courts that two applications for

compassionate appointment can be entertained if the first of these has not been considered and has been kept pending. In the present instance, the application filed by the brother was kept pending and on his death, the second application was filed by the appellant. The same can therefore be considered a continuation of the previous application. As stated earlier, the principle of compassionate appointment is to ensure that the penurious circumstances in which the family is placed are redressed by the sympathetic hand of the Government.

6. This Hon'ble court in P. Sathiarman Vs. The Secretary to Government, Department of Electricity & Ors, 2013 Lab IC 3881, has observed as under:-

"12. By relying upon various decisions of Division Bench and the Hon'ble Supreme Court, the very same issue has been dealt with elaborately by one of us (N. Paul Vasanthakumar, J.) in the following cases:

1. MOHANAMBAL v. DIRECTOR, LAND AND SURVEY DEPARTMENT [2011 (2) MLJ 47]

2. J. JEBA MARY v. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD [2011 (3) LLN 405]

3. G. SARAVANAKUMAR v. THE CHAIRMAN TAMIL NADU ELECTRICITY BOARD, CHENNAI [2011 (2) CWC 83]

4. R. PRASATH v. THE SECRETARY, LABOUR AND EMPLOYMENT DEPT., CHENNAI (W.P. No. 3078 of 2006, dated 17.06.2010)

5. M. UMA v. THE CHIEF ENGINEER (PERSONNEL) CHENNAI (W.P. (MD). No. 4050 of 2006, dated 29.06.2010)

After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today."

7. The order dated 03.09.2013 by which the application of the writ petitioner has been rejected reads as under:-

"DISTRICT ELEMENTARY EDUCATIONAL OFFICER,
DHARMAPURI

O.M.NO.1844/A2/2013, dated 23.09.2013

Subject: Elementary Education - seeking appointment on compassionate grounds - returning the request for compassionate ground for the legal heir of deceased M.Munusamy, who died on 28.02.2005, who worked as Secondary Grade Teacher in the Mittareddyhalli Panchayat Union Primary School, Nallampalli, Dharmapuri District - reg.

Ref: Letter bearing 3844/A1/2000 dated 04.07.2013 of the Assistant Elementary Educational Officer, Nallampalli.

Late M.Munusamy, who was working as a Secondary Grade Teacher in Mittareddyhalli Panchayat Union Primary School, Nallampalli, and he died on 28.02.2005. In such circumstances his son Mr.M.Sangusamy, sought for compassionate appointment and he also died on 16.12.2009. Thereafter his brother M.Namadevan had sought for appointment on compassionate grounds and the same was received along with the letter cited in the reference.

There is no provision in the rule for the alternative legal heir to submit alternative application and therefore the application could not be considered and the same is informed. In such circumstances the recommendations of the Assistant Elementary Educational Officer is returned.

District Elementary Educational Officer
Dharmapuri (incharge)"

8. This Court is of an opinion that the incumbent on the respondent to consider as to whether the penurious circumstances of the petitioner's family continued or not. We are therefore inclined to allow the appeal setting aside the order dated 30.10.2018 and send the matter back to the District Elementary Educational Officer, Dharmapuri District, to consider as to whether the penurious circumstances in which the family was placed on the death of M.Munusamy continued or not and pass orders within 6 weeks from the date of receipt of a copy of this order.

9. Writ Appeal is disposed of on the above terms. No Costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

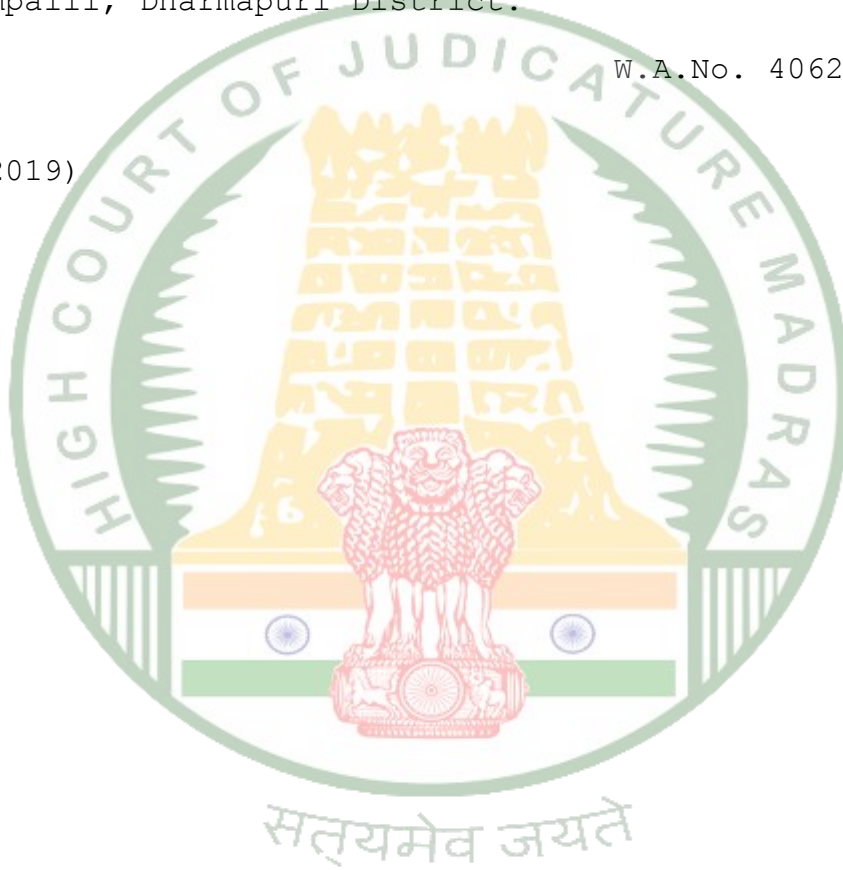
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To

1. The Director of School Education,
College Road, Chennai.
2. The District Elementary Education Officer,
Dharmapuri District, Dharmapuri.
3. The Assistant Elementary Education Officer,
Nallampalli, Dharmapuri District.

W.A.No. 4062 of 2019

PP (CO)
CB(20/12/2019)



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