

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	03/12/2018
Orders pronounced on	01/02/2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.2232 of 2011

M.Tanzim Roshan

...Petitioner

Vs.

- 1 The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
- 2 The Director,
Directorate of Collegiate Education,
Chennai 600 006.
- 3 The Officer on Special Duty,
Directorate of Collegiate Education
(Chennai Region),
Chennai 600 015.
- 4 The Secretary,
Dharmamurthy Rao Bahadur Calavala
Cunnam Chetty's Hindu College,
Dharmamurthi Nagar,
Pattabiram, Chennai 600 072. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records in respect of the order in Na.Ka.No.3574/A3/2010 dated 19.5.2010 issued by the third respondent and to quash the same and to direct the respondent to appoint the petitioner in service to any post on compassionate ground.

For Petitioner : Mr.C.A.Theagarajan
For Respondents 1 to 3 : Mr.A.Rajaperumal, A.G.P.(Edn.)
For Respondent No.4 : No appearance

O R D E R

According to the petitioner, petitioner's father late Dr.Mohammed Zaheer Hussain was working in the fourth respondent College as Reader in the Department of Corporate Secretaryship. Petitioner's father while in service died in harness on 10.5.2002 leaving his wife and two daughters in lurch. He was the only breadwinner of the family and his death in harness left his family in penury and without any means of livelihood. When the petitioner's mother approached the Principal of the fourth respondent College, for a job on compassionate ground, it was informed that there was a ban for appointment on compassionate grounds from 29.11.2001, which may be lifted at a later stage. Thereafter, on 13.3.2007, the petitioner's mother submitted an application for appointment on compassionate ground, to the fourth respondent to consider the petitioner for the post of Junior Assistant under compassionate ground citing her ill health. The Principal of the fourth respondent College vide his officer letter R.C.No.59/2008-2009, dated 17.4.2008 has stated that the petitioner's mother should obtain consolidated certificate from the Tahsildar concerned and submit the same to the College for taking further action. Accordingly, the petitioner's mother submitted an application on 7.8.2009 along with the necessary certificates required by the fourth respondent College. However, the third respondent rejected the application by stating that application for appointment on compassionate ground cannot be considered for the reason that the existing time limit for submitting the application is three years from the date of death of the Government servant. Challenging the said order, the petitioner has filed the present writ petition.

2. In the counter affidavit filed by the fourth respondent, it is stated that during the month of August, 2007, the petitioner's mother approached the fourth respondent to consider the application of the petitioner for the post of Junior Assistant by virtue of G.O.(Ms) No.42, Labour and Employment Department, dated 12.3.2007 and the fourth respondent assured her to take necessary action on her representation, dated 13.3.2007. It is further submitted that he never called her and advised her to keep all the related documents necessary for appointment on compassionate ground as stated in the affidavit filed in support of the writ petition. Thereafter, on 25.3.2008, she submitted an application enclosing

the copies of death certificate, legal heirship certificate and mark sheet of the petitioner, claiming appointment on compassionate ground. On receipt of letter, dated 17.4.2008 from the Principal of the College, the petitioner had submitted an application on 7.8.2009 along with necessary documents including consolidated certificate. The fourth respondent had submitted a representation on 18.7.2007 to the Joint Director of Collegiate Education, Chennai Region, Chennai with a request to send the guidelines in respect of the G.O., dated 21.2.2006 to consider the representation of the petitioner's mother for appointment on compassionate ground. Again, the fourth respondent had sent representations on 29.7.2009 and 12.8.2009 for clarification to fill up the permitted non-teaching posts. However, the third respondent had passed an order, dated 19.5.2010 rejected the request of the petitioner's mother for appointment of the petitioner on compassionate ground.

3. In the counter affidavit filed by the third respondent, it is stated that the petitioner's father who served in the fourth respondent College died on 10.5.2002 while in service. On 27.8.2007, his wife submitted an application for employment on compassionate ground to the Regional Joint Director of Collegiate Education through the fourth respondent College. Subsequently, on 10.8.2009, again she submitted an application to the third respondent along with necessary documents for appointment to her elder daughter on compassionate ground. The third respondent vide letter, dated 19.5.2010, rejected the application on the ground that the same was not submitted within three years from the date of death of his husband.

4. Heard the learned counsel for the petitioner, learned Additional Government Pleader (Edn.) appearing for the respondents 1 to 3, and perused the materials available on record.

5. The case of the petitioner is that the deceased father died in harness on 10.5.2002 leaving his wife and two daughters. He was the sole breadwinner of the family. On 13.3.2007, the petitioner's mother submitted an application to the fourth respondent for appointment to the petitioner for the post of Junior Assistant under compassionate ground citing her ill health. The fourth respondent instructed the petitioner's mother to obtain consolidated certificate from the Tahsildar concerned. Accordingly, she obtained consolidated certificate and submitted an application on 7.8.2009 along with necessary documents including the consolidated certificate. The third respondent rejected the application by stating that the application for appointment on compassionate ground cannot be considered for the reason that the application for appointment on compassionate ground is not submitted within the time limit of three years.

6. The learned counsel for the petitioner would submit that at the time of death of the petitioner's father, ban order of recruitment was in force from 29.11.2001 to 21.02.2006, and therefore, after lifting the ban, on 13.3.2007, the petitioner's mother approached the fourth respondent and submitted an application. A perusal of record shows that even as on 13.3.2007, the petitioner is not eligible for appointment, for the reason that she was a minor, aged about 16 years. As per the G.O.Ms.No.42 issued by the Labour and Employment, dated 12.3.2007, the application ought to have been filed within a period three years from the date of death of the deceased Government servant. The said G.O. also indicates that since ban order of recruitment was in force during the relevant period, the Government extended the period for receiving application for appointment on compassionate grounds for three months from the date of issue of the said G.O. As per the said G.O., last date for submitting the application for appointment under compassionate ground is 12.6.2007. As on 12.6.2007 also, the petitioner is not eligible for appointment since the age of the petitioner as on 12.6.2007 is about 16 years. Therefore, as on the last date for submitting the application, the petitioner is not eligible for appointment on compassionate ground since the minimum age fixed for Government service is 18 years. The application had been submitted along with necessary documents including the consolidated certificate only on 7.8.2009, i.e. after the stipulated period of three years and also beyond the time extended by the Government vide G.O.Ms.No.42, dated 12.3.2007.

7. In Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}, wherein the Hon'ble Supreme Court, in paragraph-3 of its judgment, held as under:-

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and

was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

8. In Umesh Kumar Nagpal vs. State of Haryana and Others {(1994) 4 SCC 138}, the Hon'ble Supreme Court, in paragraph 6 of its judgment, held as under:-

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

9. For the reasons stated above and by applying the ratio laid down by the Hon'ble Supreme Court in the judgment cited supra, the petitioner is not entitled for grant of appointment on compassionate ground. Therefore, the writ petition deserves to be dismissed.

10. Accordingly, the writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai 600 009.
- 2 The Director,
Directorate of Collegiate Education,
Chennai 600 006.

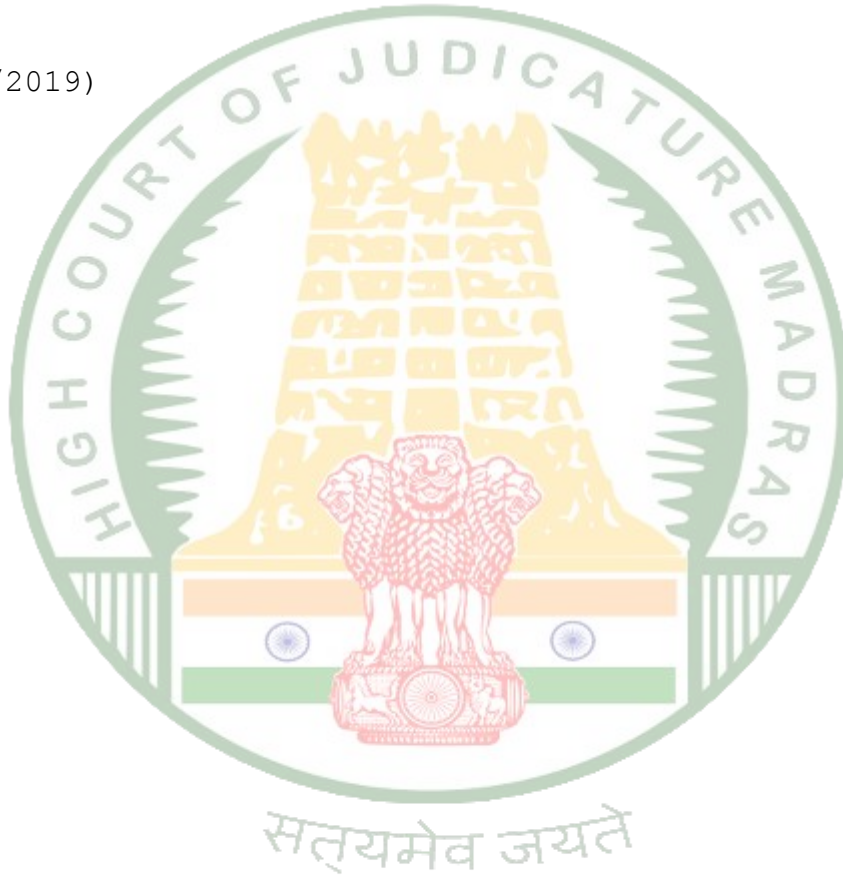
3 The Officer on Special Duty,
Directorate of Collegiate Education (Chennai Region),
Chennai 600 015.

+lcc to Mr.B.Dayaalan, Advocate, S.R.No.8574

+lcc to the Government Pleader, S.R.No.9746

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VSII(CO)
GSP(12/03/2019)



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