

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.25963 of 2014

R.Karthikeyani

..Petitioner

Vs

1.The Government of Tamil Nadu
Rep. by its Secretary
Department of School Education
Fort St.George, Chennai-600 009

2.The Director of School Education
College Road, Chennai-600 006

3.District Educational Officer
Cheranmahadevi Educational District
Office at Tirunelveli Town

4.Headmaster
Government Higher Secondary School
Panagodi-627 109
Tirunelveli District

..Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order of 3rd respondent made in O.M.6044/A1 04 dated 04.02.2008 and the order of the 2nd respondent made in Mu.Mu.No.37409/I3 2009 dated 10.09.2009 and quash the same consequent to direct the 1st and 2nd respondents to appoint the petitioner on compassionate grounds in anyone of the post in the Department of School Education with all benefits.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mrs.P.Kavitha, Govt.Advocate

ORDER

The Petitioner has come forward with the above writ petition challenging the order of 3rd respondent dated 04.02.2008 and the

order of the 2nd respondent dated 10.09.2009 and seeks to quash the same and consequently to direct the 1st and 2nd respondents to appoint the petitioner on compassionate grounds in anyone of the post in the Department of School Education with all benefits.

2. The case of the petitioner is that her father K.Ramalingam was employed as a P.G.Assistant in the 4th respondent school and he died while in service on 18.12.1993. The petitioner was stated to be 9 years old at that time. On attaining majority, she made an application for appointment on compassionate ground. The said application was recommended by the 4th respondent. Since there was no reply, the petitioner sent a reminder. Unfortunately, the 3rd respondent has taken a stand that no such application was made available before them and that the petitioner may apply afresh. Based on that, the petitioner once again sent an application and the 3rd respondent has rejected the request by order dated 05.02.2008. The Petitioner also filed appeal to the 2nd respondent which was also rejected by order dated 10.09.2009.

3. According to the learned counsel for the petitioner, the order of rejection and the dismissal of the appeal by the 2nd respondent, rejecting the claim of the petitioner, cannot stand in the eye of law.

4. A close reading of the affidavit filed in support of the Writ Petition shows that after the death of petitioner's father, the petitioner has not made any application for appointment under compassionate ground, within three years from the date of death of her father and in fact, the petitioner's mother wanted to apply for the post and that she was asked to make an application for her children when they attain majority. As such, when the petitioner attained majority, she made an application, but the same has been rejected on the ground that there is no need to reserve any post or to consider the case of the petitioner under compassionate ground.

5. A counter affidavit has been filed by the 3rd respondent. The sum and substance of the contention of the respondents is that the petitioner's mother was eligible to apply for a post under compassionate ground but she did not apply and the other family members could not make application at that point of time and for the next ten years, therefore, the question of reservation of post and keeping it vacant does not arise at all. That apart the petitioner's family is not living in indigent circumstances and therefore they could not produce certificate to that effect.

6. Even assuming for the sake of argument that the petitioner's family was living in indigent circumstances, they

could have approached this court at that point of time and the petitioner's mother could have stated that she is eligible for appointment and the attendant facts and circumstances of the family, so as to get directions from this court. Now, the attempts made by the petitioner to get the job through back door entry is seriously criticised by the Supreme Court and therefore, the relief sought for by the petitioner is liable to be rejected.

7. It is not in dispute that the petitioner's father was employed in the 4th respondent school and while in service, he died on 19.12.1993. The petitioner's request for compassionate appointment was rejected by a detailed order dated 05.02.2008. There is no iota of evidence that the petitioner's mother has made an application for appointment under compassionate ground. Further, if she could have really made application and her request was rejected, she could have very well approached this court immediately for further relief. There is no need to keep the post vacant till a minor child of the said family becomes major. The petitioner did not apply within three years of the death of her father, as such, her application is barred by time whose father died in harness and that is the reason, the respondents rejected the request.

8. The Hon'ble Apex Court, while elaborately dealing with the issue of Compassionate Appointment in the case of Bhawani Prasad Sonkar vs. Union of India and others, reported in (2011) 4 SCC 209, had categorically 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 dehors 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 breadwinner 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."

9. In a batch of cases having similar set of facts and circumstances in W.P.(MD)Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD)Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and others] decided on 24.09.2018, I have considered all the aspects and passed a detailed order by extending few suggestions to the Government, which read as under:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be considered only for Class-IV employment and that age can be relaxed and the qualifications can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019.

i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether persons to be appointed to the post of Sweeper on compassionate ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore, it is clear that the request for appointment on compassionate ground for the child in the womb, by seeking reservation of one post till the child's majority cannot be entertained;

iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of representation is not a conclusive one for litigants, but a starting point of litigation;

v) the documents sought by the concerned

authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be reduced;

vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that 25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

x) the compassionate appointment shall not be considered as a back door entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to the age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case."

10. The petitioner herein has approached this court belatedly and that the application for appointment on compassionate ground was not made within three years of the death of employee. Therefore, the relief sought for by the petitioner cannot be granted.

11. In view of what is stated herein-above, I find no merit in this writ petition. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Secretary
Department of School Education
Fort St.George, Chennai-600 009
- 2.The Director of School Education
College Road, Chennai-600 006
- 3.District Educational Officer
Cheranmahadevi Educational District
Office at Tirunelveli Town
- 4.The Headmaster
Government Higher Secondary School
Panagodi-627 109
Tirunelveli District

+lcc to Mr.R.Malaichamy, Advocate, S.R.No. 48293

+lcc to the Special Government Pleader, S.R.No.48593

WP.25963 of 2014

NR(CO)

GN(22/08/2019)