



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16025 of 2015

and

M.P. (MD) No.1 of 2015

K.Karthikkumar

... Petitioner

-Vs-

1. The Secretary to Government,
Education Department,
Secretariat, Chennai-600 009.

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

3. The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second and third respondents relating to the orders of the Director of School Education, Chennai issued in R.C.No.20015/J3/2013, dated 28.03.2014 and Endorsement அ.த.ப.உ.No.1961/A1/2015, dated 11.06.2015 of the District Educational Officer, Ramanathapuram and quash the same and consequently, direct the respondents to reappoint the petitioner as Junior Assistant as per the provisions contained in the G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 within a specified time frame under Pension Rules that may be fixed by this Court.

For Petitioner

: Mr.S.Visvalingam

For Respondents

: Mrs.S.Srimathy,

Special Government Pleader.

ORDER

The order of rejection, rejecting the claim of the writ petitioner to provide higher post of Junior Assistant on the ground of compassionate appointment, is under challenge in the present writ petition.



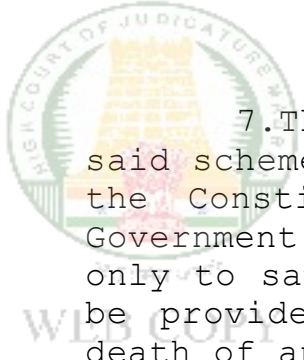
2. The writ petitioner admittedly was appointed as Night Watchman on compassionate ground on 11.07.2014. The writ petitioner joined as Night Watchman on 14.07.2014. The father of the writ petitioner died on 24.03.2003. The compassionate appointment itself was given to the writ petitioner after a lapse of 11 years from the date of the death of the deceased employee. The scheme of the compassionate appointment was provided to the writ petitioner after attaining the age of majority. Thus, the very appointment on compassionate ground itself is a concession extended to the writ petitioner.

3. The Hon'ble Supreme Court of India held that the scheme of compassionate appointment cannot be granted after a lapse of many years. Despite the fact that the legal principles regarding the appointment on compassionate ground have settled by the Hon'ble Apex Court, the scheme was provided to the writ petitioner during the year 2014, after a lapse of 11 years from the date of death of his father.

4. Undoubtedly, the appointment itself is a concession and the very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arose on account of the sudden death of an employee. Though the penurious circumstances became vanished, the appointment was provided to the writ petitioner by way of concession. After accepting the post of Night Watchman and after serving in the post for about 5 years, now, the writ petitioner claims that he must have been appointed in the post of Junior Assistant on the initial date of appointment.

5. Such a claim is not only impermissible, certainly, beyond the scope of the scheme of compassionate appointment. Once an employee accepted the appointment in a particular post on compassionate ground, he cannot turn around and claim that he is eligible for higher post and therefore, he must have been given an appointment to the higher post. In the event of an opinion that he is interested in working in higher post, the writ petitioner ought not to have accepted the post of Night Watchman, when it was offered by the competent authorities. It is the attitude of the writ petitioner, where he accepted one post, thereafter, claiming another post without participating in the process of selection. Such a conduct of the candidates appointed on compassionate ground, can never be encouraged nor to be accepted.

6. The scheme of compassionate appointment itself is a concession. The same cannot be claimed as a legal right. Appointments are to be made by following the recruitment rules in force. Admittedly, the writ petitioner was not selected on merit <https://hccvscs.courts.madras.gov.in/services/> but the rule of reservation was followed. He was appointed merely on the ground that his father was employed in the department and died while in service.



7.This being the consideration for public appointment, the said scheme no doubt, is in violation of the Articles 14 and 16 of the Constitution of India. Even in such circumstances, the Government introduced a policy of the compassionate appointment only to save the family in distress. Thus, the appointment is to be provided only in genuine cases, where on account of sudden death of an employee, the family is in distress and not otherwise. Thus, the assessment of penurious circumstances is mandatory. Even the Hon'ble Supreme Court of India says that the amount of pensionary and terminal benefits as well as monthly pension are to be taken into account for the purpose of ascertaining the indigent circumstances of the family.

8.This being the scope of the compassionate appointment, once a person is appointed on compassionate ground, his application is closed and he cannot seek any further appointment on compassionate ground at all. The appointment on compassionate ground can be provided once and further appointment to the higher post cannot be given on compassionate ground. For appointment or promotion, the candidate has to participate in the process of selection and he should secure the post only by participating in the process of selection on merits.

9.This being the scope of the compassionate appointment, the very claim set out in the present Writ Petition for appointment to the higher post of Junior Assistant, is unsustainable and cannot be granted.

10.With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

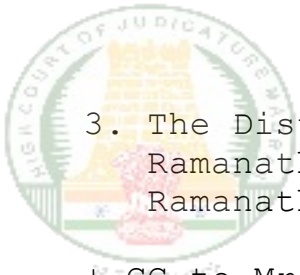
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To

1. The Secretary to Government,
Education Department,
Secretariat, Chennai-600 009.

2. The Director of School Education Department,
DPI Complex, College Road,

Chennai-600 006.
<https://hcservices.chennai.gov.in/hcservices>



3. The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

+ CC to Mr.S.Visvalingam, Advocate in SR.No.72271

+ 1 CC to The Special Government Pleader SR.No.72431

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28.06.2019

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