



WEB COPY

W.A. (MD) No.1050 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

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THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.A. (MD) No.1050 of 2019

Gayathri Devi

... Appellant

Vs.

1.The Director of School Education,
DPI Campus,
College Road,
Chennai-06.

2.The District Educational Officer,
Kanyakumari District,
Nagercoil.

... Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against the order passed by this Court in W.P.(MD)No.15781 of 2017 dated 31.07.2019.

Prayer in WP(MD). 15781 of 2017 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in Ne.Mu.No.7366/A1/2016, dated 08.06.2017 and quash the same and consequently direct the respondents to consider the petitioners claim for compassionate appointment in the place of the petitioners father late Shanmugavel, who died in harness on 12.08.2009 and appoint the petitioner in any suitable post by considering the petitioners application dated 28.12.2011.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

* * * * *



JUDGMENT

[Judgment of the Court was delivered by **M.DURAISWAMY, J.**]

Challenging the order passed in W.P.(MD)No.15781 of 2017, the writ petitioner has filed the above writ appeal.

2. The Writ Petition was filed by the appellant to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the second respondent dated 08.06.2017 and quash the same and consequently directing the respondents to consider the petitioner's claim for compassionate appointment in the place of petitioner's father Late.Shanmugavel who died in harness on 12.08.2009 and appoint the petitioner in any suitable post by considering the petitioner's application dated 28.12.2011.

3. It is the case of the writ petitioner that his father was working as School Assistant at Government Higher Secondary School, Kottaram, Kanyakumari District and he died in harness on 12.08.2009 leaving behind his wife, three sons and three daughters as his legal heirs. On 28.12.2011 the petitioner made a representation for providing employment under compassionate grounds and the same was rejected on 08.06.2017 on the ground that the petitioner's family members are educated and her elder brother has already worked as a Professor in Anna University and other brothers have also acquired high qualification. The petitioner contended that though her family members are educated, they are unemployed, therefore could not maintain her family.

4. The learned Single Judge dismissed the writ petition, finding that the petitioner has claimed an employment on compassionate ground after a lapse of ten years and the petitioner failed to establish that the other members of the family are not in a position to manage their livelihood without financial support of the petitioner.

5. Challenging the order passed in the writ petition, the appellant has filed the above writ appeal.

6. The learned Counsel appearing for the appellant submitted that as per G.O.Ms.No.155, dated 16.07.1993, even though any other member of the family is already on employment, even then, the other member who wants employment on compassionate ground can be considered, provided the conditions therein are satisfied. As per G.O.Ms.No.155, when a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family. If a family member was employed even before the death of the Government Servant and was living separately without extending any help to the family, then the case



of other eligible dependants will be considered.

7. The learned Counsel for the appellant also relied upon an unreported judgment dated 17.02.2017 made by the Honourable Division Bench of this Court in W.A.(MD)No.1366 of 2016, wherein the Honourable Division Bench held as follows:

"4. Countering the said submission, the learned Special Government Pleader submitted that as on date, the appellant's family is receiving a sum of Rs.1,28,640/- per annum by way of pensionary benefits. The younger son of the deceased is a B.E. Graduate and is employed in a mobile service centre and he is also earning income. As per G.O.Ms.No.998, dated 02.05.1981, if any member of the family is employed and is earning, then, the other legal heirs are not entitled for appointment on compassionate ground. Similarly, as per G.O.Ms.No.560, dated 03.08.1977, the appointing authority shall satisfy himself as to the indigent circumstances of the members of the family of the deceased. But, in the case on hand, the family of the deceased is not in indigent circumstances. Hence, the second respondent has confirmed the order of the fifth respondent and thereby, rejected the claim of the appellant for appointment on compassionate ground.

5. In reply, the learned counsel for the appellant submitted that it is incorrect to state that the other legal heir of the deceased Government servant is in job. The appellant's brother, by name Ranjith is working as a Technician in a mobile shop on daily wage basis and he is receiving only a paltry sum as salary and it is not sufficient to run the family. Since the family of the deceased is receiving a sum of Rs.1,28,640/- per annum towards pensionary benefits, it does not mean that the appellant's family is in affluent status. Thus, he sought for appropriate relief.

6. On a careful consideration of the materials available on record and also considering the facts and circumstances of the case, without going into the rival contentions put forth by either side, we are of the view that instead of giving a positive direction in this matter, it would be appropriate to set aside the impugned orders and remit the matter to the respondents for fresh consideration.



7. In the result, the order of the learned Single Judge dated 19.08.2013 is set aside and consequently, the impugned orders dated 10.05.2013 and 28.06.2013 are set aside and the matter is remitted to the respondents for fresh consideration. The respondents are directed to consider the matter afresh with regard to the granting of appointment on compassionate ground, by taking note of the present condition of the family and pass appropriate orders, on merits and in accordance with law, if there is no other legal impediment to do so. The said exercise has to be done within a period of six weeks from the date of receipt of a copy of this judgment."

8. In the case on hand, the second respondent has not stated that the other family members of the deceased Government employee are also helping the family monetarily. Further the second respondent has not stated that the family is in indigent circumstances. That apart, the Government employee had died on 12.08.2009 and the petitioner has submitted his application seeking for employment under compassionate grounds on 28.12.2011 and after a lapse of nearly six years, the second respondent rejected the application on 08.06.2017. Therefore, it cannot be stated that the petitioner had made the application after a lapse of ten years.

9. In these circumstances, we are of the view that the impugned order dated 08.06.2017 passed by the second respondent is liable to be set aside and the matter may be remitted back to the second respondent for fresh consideration. Accordingly, the order passed in W.P.(MD)No.15781 of 2017 is set aside and the impugned order dated 08.06.2017 passed by the second respondent is also set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to decide the matter afresh in the light of G.O.Ms.No.155, dated 16.07.1993, with reference to the conditions stated in paragraph No.3 of the G.O., as expeditiously as possible, in any event not later than twelve (12) weeks from the date of receipt of a copy of this order.

10. With these observations, the Writ Appeal is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Director of School Education,
DPI Campus,
College Road,
Chennai-06.

2.The District Educational Officer,
Kanyakumari District,
Nagercoil.

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-105455[F] dated
17/12/2019)

+1 CC to M/s.SPL.GP (SR-105594[F] dated 18/12/2019)

W.A. (MD) No.1050 of 2019
16.12.2019

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