

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.19814 of 2013

M.Shandramohan

... Petitioner

Vs

1. The Director of Elementary,  
School Education, DPI Compound,  
College Road,  
Chennai - 6.

2. The District Elementary School,  
Educational Officer,  
Erode, Erode district.

3. The District Educational Officer,  
Erode, Erode District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.2417/A1/2013, dated 10.06.2013 and quash the same and consequently directing the respondents to appoint the petitioner on compassionate ground in the respondents department.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.S.Suresh Kumar,  
Government Advocate.

ORDER

(This case has been heard through video conference)

This writ petition has been filed to quash the order dated 10.06.2013 passed by the 2nd respondent in his proceedings Na.Ka.No.2417/A1/2013, and for a consequential direction to the respondents to appoint the petitioner on compassionate grounds.

2. It is the case of the petitioner that his father was working as Head Master in Elementary School and died on 27.01.1996. Due to demise of his father, he submitted an application to the respondents seeking compassionate appointment after a period of three years of attaining the age of majority. As the said application was rejected by the second respondent, earlier he filed writ petition seeking for the relief and as per the directions of this Court, subsequently, he made a fresh application enclosing necessary documents including the No Objection letter given by his sisters to the respondents. That being so, his application was once again rejected by the second respondent by issuing the order, which is impugned herein. Hence, he filed this writ petition for the appropriate relief.

3. Learned counsel appearing for the petitioner submits that as per the directions of this Court, though the petitioner has submitted application afresh including no objection letter issued by the petitioner's sisters, the said application was rejected by the second respondent stating that the petitioner is not entitled for appointment on compassionate grounds.

4. Learned Government Advocate appearing for the respondents fairly submitted that the rejection order was issued on the ground that the petitioner was the son through the second wife. He further reiterated the averments made in the counter affidavit that earlier an application was submitted by the daughter born through the first wife, who is the step-sister of the petitioner, which was under consideration, but due to her marriage, the same was dropped. In the above backdrop, after passage of time, the plea of the petitioner for compassionate appointment could not be considered, which was rightly rejected by the respondent. It is further submitted that once the earlier representation for compassionate appointment reached a logical end, the case of the petitioner for reopening the same cannot be considered more so, when a period of three years has already passed by and, therefore, his case cannot be considered. In view of the delay and laches, learned Special Government Pleader prays for dismissing the present writ petition.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials placed on record.

6. A Full Bench of this Court, in WP MD Nos.7016 of 2011 etc. batch, dated 11.03.2020 has held that compassionate appointment beyond the period of three years from the date of death of the employee is per se impermissible, as the scheme of granting of compassionate appointment is only for the purpose of uplifting the family from financial crisis on the death of the

sole breadwinner. Any appointment, on compassionate grounds, beyond the said period of three years, would wholly be legally unjustified and not within the framework of providing the relief to the family.

7. Admittedly, the petitioner was a minor at the time of his father's demise. Though it is an admitted fact that the petitioner was minor, he submitted his application seeking compassionate appointment after a lapse of three years and only on attaining majority. The object is compassionate appointment is only for the purpose of addressing the immediate necessities of the bereaved family. Compassionate appointment is not a matter of right and it is always subject to just exceptions. The provision of compassionate appointment should be within the framework of the scheme within which the said appointment is sought to be given to a member of the family, on the death of the employee. In the case on hand, the petitioner, being the son through the 2<sup>nd</sup> wife and being a minor during the crucial period, cannot come before this Court at this point of time and claim appointment on compassionate grounds as a matter of right. It has been time and again held by the Courts that providing of compassionate appointment is not a matter of right, but it should be within the scheme formulated by the employer. In the case on hand, the case of the petitioner for compassionate appointment was considered by the employer not on the basis of the belated submission of application, but only to be considered on the basis of the documents, which were not placed before the employer at the first instance. Therefore, for all purposes, the directions of this Court was only for the limited purpose of submitting all the requisite documents to the respondents based on which the respondents were directed to consider the application for compassionate appointment and pass appropriate orders in accordance with law.

8. In the aforesaid backdrop, the 2<sup>nd</sup> respondent also considered the application of the petitioner for the relief of compassionate appointment and rejected the same on the grounds specified in the impugned order. On perusal of rejection order, it is clear that his father married his mother after the death of his first wife. It further reveals that his step-sister submitted application for compassionate appointment prior to his application and before letter of appointment could be offered, her marriage was solemnised, which led to her case not being considered. Further, the petitioner's father has not recorded his second marriage in the service register for which purpose Original application was filed before the competent court after his demise by his legal heirs. While so, the petitioner submitted the application for compassionate appointment as alternative legal heir only in the year 2006, whereas judgment in the said original application was delivered

in the year 1996. Thus, it is evident from the materials available on record that there are laches and lapses committed by the petitioner, which has been pointed out by the learned Government Advocate in his counter, the relevant portion of which is as follows :

8. With regard to the averments contained in para No.3 of the affidavit it is submitted that since his father married to the petitioner's mother after the demise of his first wife, but the same was not recorded in the Service Register, hence there was a dispute in getting the terminal and the same was contested in the subordinate judicial forum by filing an original application to that effect. The judgment was delivered in the year 1997. The deceased Government servant's first wife's daughter has applied for the compassionate appointment. She could not succeed because she got married. However, the writ petitioner could have applied well before in the year 1997 itself, but failed and applied in the year 2006. However based on the Government orders the Writ petitioner is an alternative legal heir and hence the respondents herein could not extend the benefit of the compassionate appointment with reference to the Government orders in force.

9. In the above backdrop, this Court is of the considered view that the case of the petitioner for compassionate appointment after the lapse of the mandatory period cannot be considered, more so, in view of the lapses and laches on the part of the petitioner, which cannot be put against the respondent to consider his case for compassionate appointment. For the reasons aforesaid, this Court is of the view that due to laches on the part of the petitioner disentitles him to the relief sought for. Accordingly, the relief sought for in this writ petition for compassionate appointment cannot be granted.

10. For the foregoing reason, this writ petition fails and the same is dismissed. There shall be no order as to costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

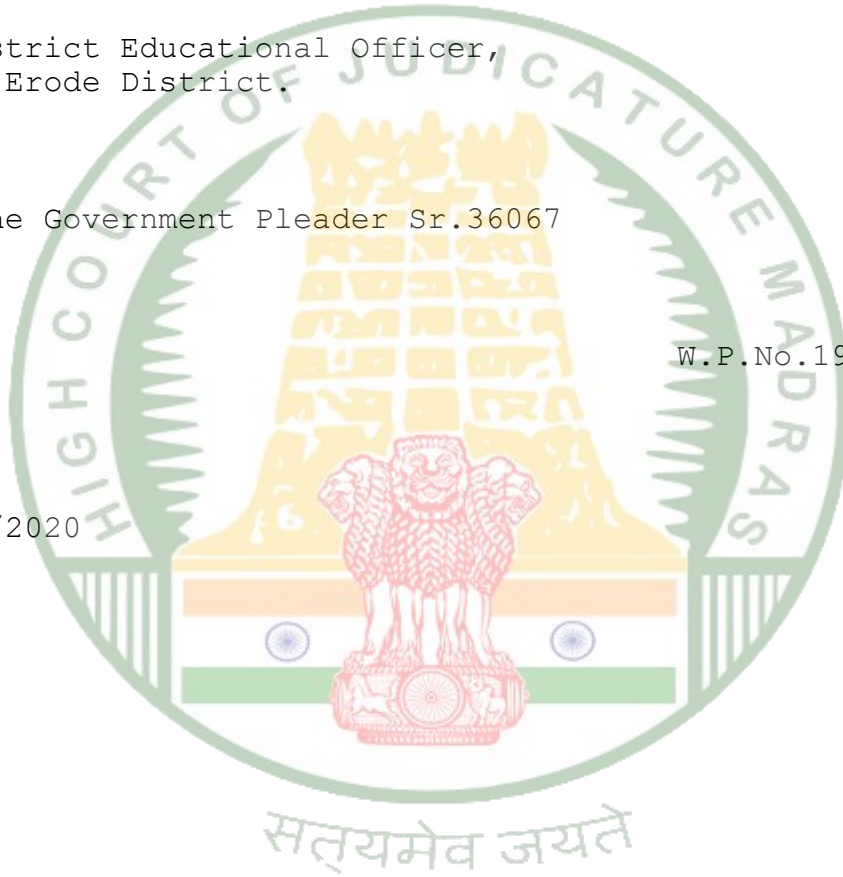
vsi2  
To

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+lcc to the Government Pleader Sr.36067

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