

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P.No.3960 of 2020
and
W.M.P.No.4700 & 4701 of 2020

C.Saravana Prabu

... Petitioner

Vs.

- 1.Chief Educational Officer,
Office of the Chief Educational Office,
Dharmapuri - 636 701.
- 2.Dharmapuri District Educational Office,
Dharmapuri District - 636 701.
- 3.District Educational Office,
Office of the District Educational Office,
Palacode,
Dharmapuri District - 636 808.
- 4.Government Higher Secondary School, Hanumanthapuram,
Represented by its Head Master,
Hanumanthapuram, Karimangalam Taluk,
Dharmapuri District - 636 802.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records from the 2nd Respondent relating to the proceedings dated 11.07.2017 bearing Reference No. Na.Ka.No.1915/A1/2017 read with the proceedings of the 1st Respondent dated 29.10.2019 bearing Reference No.O.M.No.6609/A1/2019 and quash the same as illegal, arbitrary, without jurisdiction and to consequently direct the Respondents 1 to 4 to provide permanent appointment to the Petitioner on compassionate grounds treating it with effect from August 2014 since when the petitioners have been approaching the Respondents, release the entire terminal benefits payable on account of death of petitioner's father S.Chandrasekaran on 24.02.2013 together with 18% interest per annum within a time frame fixed by this Court.

For Petitioner : Mr.K.Srinivasa Murthy

For Respondents : Mr.P.Raja Government Advocate

O R D E R

The petitioner has approached this Court challenging the order of the 2nd respondent dated 11.07.2017 together with the order of the 1st respondent dated 29.10.2019, rejecting the claim of the petitioner for appointment on compassionate grounds on the death of his father in harness.

2. According to the petitioner, his father had originally married one Smt.Jaya and from the first wedlock, no children were born and therefore, with the consent of the first wife, the petitioner's father married one Smt.A.Malliga, the mother of the petitioner, and from the said wedlock, three children were born, including the petitioner. His father, while working under the respondents as Junior Assistant, died on 24.02.2013, leaving behind his first wife, petitioner's mother and other children. According to the petitioner, there was no independent source of income other than the earnings of the petitioner's father and therefore, the family was put to extreme penury and hardship after the demise of his father in the year 2013.

3. After the death of his father, the petitioner appears to have submitted an application dated 18.08.2014 claiming appointment on compassionate grounds. The authorities processed his application, but after a considerable delay, passed an order on 11.07.2017 rejecting his request only on the ground that the petitioner happened to be the son of the second wife of his father and the rules do not permit for consideration of the second wife's son for compassionate appointment. The matter was thereafter escalated to the level of the 1st respondent, viz., the Chief Educational Officer, Dharmapuri, and the 1st respondent, in turn, has passed an order dated 29.10.2019 concurring with the views expressed by the 2nd respondent, viz., the District Educational Officer, Dharmapuri. The petitioner is therefore before this Court.

4. Learned counsel for the petitioner would submit that there is no bar in considering the son of the second wife for compassionate appointment, since the second wife alone is not eligible, and not the son(s) born out of the second marriage, who can be considered legitimate for all purposes including inheritance. The learned counsel straightaway referred to a decision of the Division Bench of this Court rendered in W.P. (MD).No.11641 of 2003 dated 12.08.2004. The Division Bench of

this Court has held in Paragraph No.6 as under :

"6.In the present case, the Tribunal has not at all considered the effect of Section 16 of the Act. In view of the provisions contained in Section 16 of the Act, there cannot be any doubt that the child born through the second wife, even though such marriage was void, shall be deemed as the legitimate child. Even there is nothing in the G.O. which says that only a child born in a lawful marriage would be considered as beneficiaries. In the absence of any specific provision and particularly, keeping in view the intention of Parliament, as reflected in Section 16 of the Act, we have no doubt in our mind that the benefit of G.O. is also available to the children born out of the void marriage. Our aforesaid view also receives support from the decision of the Apex Court in RAMESHWARI DEVI v. STATE OF BIHAR (2000 (2) SCC 431)."

In view of the categorical view as above, there is no legal bar for consideration of the second wife's son for compassionate appointment. The learned counsel would also submit that, except the said reason, no other reason has been made out in the rejection order.

5.Learned Government Advocate appearing on behalf of the respondents would submit that the petitioner is not entitled for consideration for compassionate appointment, since he was not born from the valid marriage between his father and his mother, since the second marriage contracted during the subsistence of the first marriage is null and void and the son born out of the void marriage cannot make a claim for compassionate appointment. He would therefore submit that the rejection orders passed by the authorities are on the basis of valid consideration and in pursuance of the Government Orders and guidelines and the same do not call for interference.

6.Considered the submissions of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

7.As held by the Division Bench of this Court in Paragraph No.6 extracted supra, there cannot be any automatic exclusion of the claim made by the second wife's son for compassionate appointment, only because of the fact that he was born from the second marriage. It is needless to state that the sons born out of void marriage are also eligible for all benefits and they are deemed to be legitimate in the eye of law. In such consideration, the reason as cited by the respondents for rejecting the claim of the petitioner appears to be absolutely illegal and unacceptable and the same is liable to be interfered

with. This Court also does not find any other reason stated in the impugned orders with regard to the disentitlement of the petitioner.

8. In view of the same, the impugned orders dated 11.07.2017 passed by the 2nd respondent and 29.10.2019 passed by the 1st respondent are hereby set aside and it is held that the petitioner is eligible to be considered for compassionate appointment. The respondents/competent authorities are directed to consider the claim of the petitioner, if he is otherwise entitled for consideration for compassionate appointment, on the basis of the guidelines/schemes formulated by the Government in this regard. The authorities are directed to consider and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

mkn

To

1. The Chief Educational Officer,
Office of the Chief Educational Officer,
Dharmapuri - 636 701.
2. Dharmapuri District Educational Officer,
Dharmapuri District - 636 701.
3. The District Educational Officer,
Office of the District Educational Officer,
Palacode,
Dharmapuri District - 636 808.

4.The Head Master,
Government Higher Secondary School,
Hanumanthapuram, Karimangalam Taluk,
Dharmapuri District - 636 802.

+1cc to M/s Row & Reddy, Advocates, Sr.No.19163
+1cc to Government Pleader, Sr.No.19768

W.P.No.3960 of 2020

PM (CO)
GS (26/05/2020)



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