

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.13601 of 2020
and
W.M.P.No.16888 of 2020

K.Vishwa
aged 20,
S/o Kamalanathan
46, L.P.K.Nagar, 97/39,
Arni Town,
Tiruvanamalai District.Petitioner

Vs.

1. The Joint Director of School Education
(Personnel) College Road,
Chennai - 600 006.
2. Chief Educational Officer,
Ranipettai,
Ranipettai T.K.
Ranipettai District.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Certiorarified Mandamus to call for the entire records connected with the impugned order of the 2nd respondent passed in Na.Ka.No.479/a1/2020 dated 14.08.2020, quash the same and direct the respondents to consider the petitioner for appointment on compassionate ground by considering the representation dated 30.01.2015. and to pass orders thereon on merits and in accordance with law within a time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.P.Raja,
Government Advocate.

O R D E R

This matter is taken up for hearing through Video Conferencing mode.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order of the 2nd respondent passed in Na.Ka.No.479/a1/2020 dated 14.08.2020, quash the same and direct the respondents to consider the petitioner for appointment on compassionate ground by considering the representation dated 30.01.2015 and to pass orders thereon on merits and in accordance with law within a time to be stipulated by this Hon'ble Court.

3. Th petitioner's father was working as a Teacher (Vocational Instructor) in the Government Girls Higher Secondary School, Arcot, While in service, he died on 28.04.2012, leaving behind the petitioner, who was minor at that time, his mother and brother.

4. According to the petitioner, his mother had immediately submitted a representation seeking compassionate appointment on 30.01.2015. In the representation seeking compassionate appointment, the petitioner's mother had mentioned that due to her old age and sickness, she was not willing to take up any employment assistance and further, her first son/elder brother of the petitioner, was suffering from mental disorder. She sought appointment for the petitioner. At that time, the petitioner was minor and studying 10th standard.

5. Thereafter, the petitioner continued his studies and completed Higher Secondary School in 2017. After completion of 18 years of age on 06.07.2018, the petitioner claims to have approached the authority concerned in 2019, requesting to consider his claim for compassionate appointment. Thereafter, according to the petitioner, he is being approaching the authority concerned periodically, but there was no response forthcoming. While so, finally on 14.08.2020, the claim of the petitioner was rejected by the 2nd respondent stating that when the first application made for compassionate appointment on 31.01.2015, the petitioner was only a minor and not completed 18 years of age, therefore, his request was not entertained and only on that ground, the claim came to be rejected. The proceedings of the 1st respondent dated 14.08.2020 is put to challenge in this writ petition.

6. Mr.P.Ganesan, learned counsel appearing for the petitioner would submit that the scheme of compassionate appointment which is enclosed in the typed set of documents has provided that any application seeking compassionate ground appointment has to be submitted within three years from the date of death of the government servant. However, the same scheme also provided that minimum age is 18 years for submission of application. Learned counsel for the petitioner would submit that both the provisions in the scheme as provided under G.O.Ms.No.18 dated 23.01.2020 suffer from contradiction in terms.

7. When the petitioner was not eligible to be considered for appointment within three years from the date of death of his

father, the question of maintaining an application within three years did not rise at all. When the petitioner became major, he applied and unfortunately, the same came to be rejected by the impugned proceedings on the ground that the petitioner was originally not eligible for appointment in 2015. Therefore, the order suffers from non-application of mind.

8. This Court is entirely in agreement with the submission made by the learned counsel for the petitioner.

9. On behalf of the respondents, Mr.P.Raja, learned Government Advocate appeared and reiterated the reason stated in the impugned proceedings.

10. This Court finds that the reasons stated in the impugned proceedings cannot be countenanced both in law and on facts. When the application was rightly made within 3 years, as per the stipulation in the scheme, the authority ought to have considered such application as and when the petitioner, on whose behalf the application was submitted, attained majority. Unfortunately, the 2nd respondent on a specious ground that the petitioner was not eligible for appointment in 2015 as he being the minor, rejected the petitioner's claim in 2020, when he attained the age of majority.

11. The reason therefore, disclose complete non-application of mind on the part of the 2nd respondent. When the petitioner has approached the authority after he attained the age of majority, it is incumbent on the part of the authority to consider the indigent circumstance of the family and other parameters and criteria that are provided in the Scheme for compassionate appointment and orders to be passed on such consideration.

12. On the other hand, it is certainly not open to the authority to summarily reject the application on an erroneous understanding of the Scheme or the Act. The order, in the opinion of this Court, suffers from grave illegality and cannot be upheld at all.

13. In the above circumstances, the order passed by the 2nd respondent in Na.K.No.479/a1/2020 dated 14.08.2020 is hereby set aside and the respondents are directed to consider the claim of the petitioner for compassionate appointment on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

14. It is clarified that the respondents shall take into consideration the indigent circumstances of the family and also the criteria laid down in the scheme for compassionate appointment, while taking a decision in the matter. On such consideration, if the petitioner is eligible for appointment on compassionate ground, the competent authority is directed to issue suitable order.

15. Accordingly, the Writ Petition is allowed. No costs.
Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

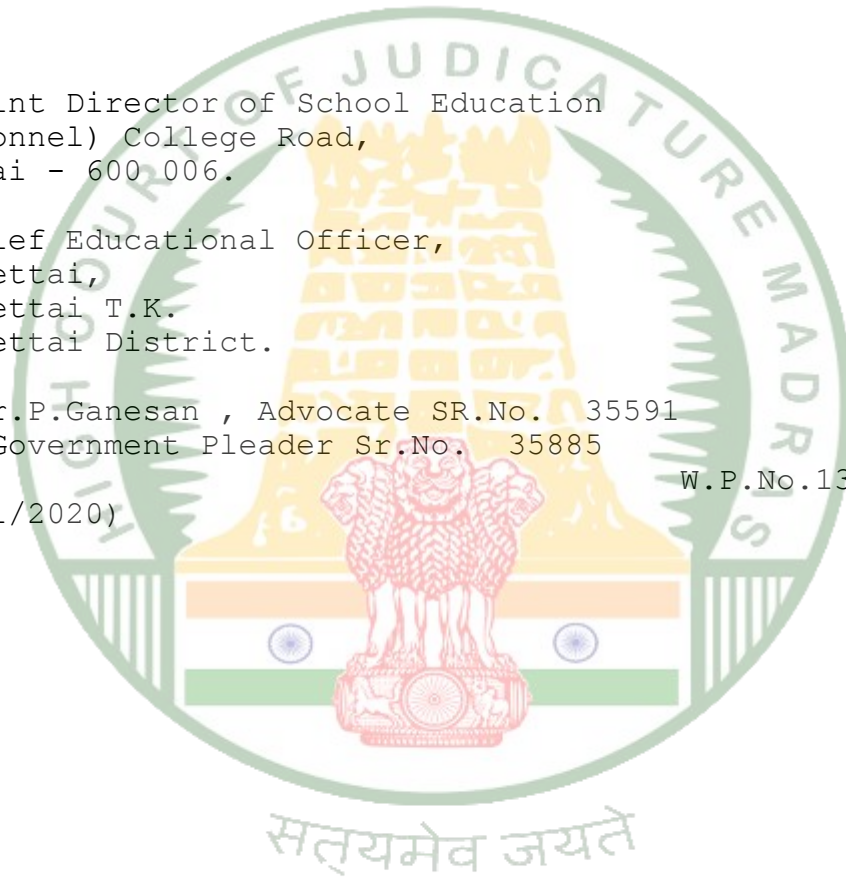
vsi
To

1. The Joint Director of School Education
(Personnel) College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Ranipettai,
Ranipettai T.K.
Ranipettai District.

+1cc to Mr.P.Ganesan , Advocate SR.No. 35591
+1 cc to Government Pleader Sr.No. 35885

W.P.No.13601 of 2020

A.SK(09/11/2020)



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