

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	28.02.2020
Pronounced on	29.06.2020

CORAM:**THE HONOURABLE MR. JUSTICE M.S.RAMESH****W.P. (MD) No.11097 of 2016**

M.Thavamadurai

...Petitioner

Vs.

1.The Director of School Education,
College Road,
Nungampakkam,
Chennai-600 006.

2.The District Educational Officer,
O/o.The District Educational Officer,
Melur,
Madurai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned communication in O.Mu.No.4094/A1/2013, dated 13.01.2015 on the file of the respondent No.2 and to quash the same as illegal and consequently to direct the respondents to provide compassionate ground appointment to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Karuppasamy, GA

O R D E R

The petitioner's father, who was employed as a Watchman in a Government High School under the second respondent herein, died in harness, on 04.7.2001. The petitioner was aged about 11 years at the time of the death of his father. Initially, her sister Manimegalai applied for compassionate appointment on 28.05.2002. Since there was prolonged inaction on her application, she withdrew her claim and sought for appointment of the petitioner herein for the said post, by executing a no objection affidavit dated 20.10.2014. On 13.01.2015, through the impugned communication, the respondents intimated the petitioner that there is no scheme for appointment for the seventh legal heir in the place of the original application made by some other legal heir. The said communication is under challenge in the present Writ Petition.

2. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.M.Karuppasamy, learned Government Advocate appearing on

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behalf of the respondents.

3. When the petitioner's father died on 04.07.2001, the petitioner was 11 years old, since he was born on 15.06.1990. Her sister had made an application on 28.05.2002 seeking for compassionate appointment and for more than 13 years, the application was kept pending without any action. Thereafter, the petitioner's sister got married and therefore, she thought it fit to have the claim transferred in favour of her brother, who is the petitioner herein. I do not find any infirmity in the request for altering the claimant from one legal heir to another legal heir. There are no regulations prohibiting such transferable claim. Instead of looking from this point of view, the respondents had chosen to state that there is no Government Order enabling them to consider the transferable claim. As a matter of fact, when there are no Government Orders prohibiting such transferable claim, it goes without saying that the request by one legal heir to have the claim for compassionate appointment transferred in favour of another legal heir, will be permissible.

4. In the impugned communication, the respondents have also attempted to state that there is no Government Order to enable the "Seventh Legal Heir" from claiming compassionate appointment. When G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, enables a legal heir to claim compassionate appointment, it goes without saying that any one of the legal heirs will be entitled to make the claim. As such, the petitioner being the seventh legal heir cannot be discriminated among the legal heirs. The respondents have filed a counter affidavit dated 31.08.2016 in which the reason assigned for the rejection has not been addressed. As a matter of fact, the counter affidavit itself is vague and has not assigned any valid reason, the petitioner would be entitled for compassionate appointment.

5. It would not be out of place to mention that when the petitioner's father died, he was survived by his wife and five children (one child having pre deceased). The certificate of the Tahsildar evidences that the widow was earning less than Rs.4000/- per month and maintaining a family of six members. The application for compassionate appointment was made very shortly after the death of the employee. Disappointingly, the respondents had chosen to keep it pending for more than 12 years.

6. It would be pertinent to point out that in all cases where claim is made for compassionate appointment, the concerned authorities are required to act efficaciously and speedily, since the very purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family and that there should not be any delay in such appointments. This proposition was held by the Hon'ble Apex Court in the case of **Sushma Gosain vs. Union of India** reported in **1989 (4) SCC 468** had



held as follows:

'It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

7. The same ratio was reiterated by the Hon'ble Apex Court in the case of **Canara Bank vs. M.Mahesh Kumar** reported in **2015 (7) SCC 412**.

8. In the light of the above discussions, the impugned communication of the second respondent dated 13.01.2015 is set aside. Consequently, the petitioner is granted liberty to make a fresh application along with the necessary enclosures and on receipt of the same, the first respondent therein shall consider it favourably and issue a suitable appointment order to the petitioner, atleast within period of eight weeks from the date of such application. The Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP

To

1.The Director of School Education,
College Road,Nungampakkam,
Chennai-600 006.

2.The District Educational Officer,
O/o.The District Educational Officer,
Melur, Madurai District.

Order made in
W.P. (MD) No.11097 of 2016
29.06.2020

SMA/17/07/2020/3P/3C

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