

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

Reserved on	28.02.2020
Pronounced on	29.06.2020

WEB COPY

THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.(MD) No.256 of 2016

M.Bhavani Manimari

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600009.
2. The Director of Elementary Education,
College Road,
Chennai - 600006.
3. The Chief Educational Officer,
Ramanathapuram.
4. The District Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.
5. The Secretary,
Kshatriya Nadar Middle School,
Kannirajapuram.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent. The District Elementary Educational Officer in Na.Ka.No.1248/Aa1/2015 dated 27.04.2015 and quash the same and further direct the respondents herein to give appointment to the petitioner forthwith compassionate grounds.

For Petitioner : Mr.A.Gandiappan

For Respondents : Mr.Karuppasamy
Government Advocate
for R1 to R4
Mr.S.C.Herold Singh
for R5



O R D E R

The grievance of the petitioner is that her claim for appointment on compassionate ground has not been considered by the respondents. It is not in dispute that the petitioner herein is the legal heir of the deceased employee and as such, is entitled to seek for compassionate appointment, after the death of the said employee.

2. Heard Mr.A.Gandiappan, learned counsel for the petitioner and Mr.Karuppasamy, learned Government Advocate for the respondents 1 to 4 as well as Mr.S.C.Herold Singh, learned counsel appearing for the fifth respondent.

3. The petitioner's mother P.Tamilponmani, who was employed as a Teacher under the fifth respondent herein, died in harness on 26.09.1999. The petitioner herein is one of the legal heirs of Late P.Tamilponmani. Her application seeking for appointment on compassionate grounds came to be rejected through the impugned order dated 27.04.2015 on the ground that, as per G.O.Ms.No.2318, Education, Science and Technology dated 17.02.1983, the legal heir is entitled to seek for compassionate appointment in Aided Schools and that since the School Secretary is only empowered to make such appointments, the petitioner would be entitled to seek for such appointment from the concerned School as and when the vacancy arises. The said order is under challenge in the present Writ Petition.

4. The learned counsel for the petitioner would submit that as per G.O.Ms.No.986, Education, (D2) Department dated 22.10.1991, the petitioner is entitled to seek for compassionate appointment and that the reason adduced in the impugned order is illegal.

5. The learned Government Advocate, by reiterating the averments made in the counter affidavit as well as the impugned order submitted that in view of the G.O.Ms.No.2318 dated 17.02.1983, the petitioner can be accommodated only in the School where her mother was employed, subject to vacancies.

6. At the outset, it requires to be pointed out that the 4th respondent has misconstrued the Government Order in G.O.Ms.No.2318 dated 17.02.1983, by interpreting the same to mean that the legal heir of a deceased Teacher would be entitled to seek for compassionate appointment only in the School where the deceased teacher was employed. The relevant portion of the G.O.Ms.No.2318, Education, Science and Technology dated 17.02.1983, relied by the respondents, is extracted herein:

"The Government accordingly direct that sons/ "unmarried daughter" / wife / husband of staff of aided school who die in harness to give preference in appointment in aided schools, without reference to employment exchange subject to the following conditions:



7. The Government Order above does not, by any stretch of imagination indicate that the legal heir of the deceased Teacher would be entitled to seek compassionate appointment, only in the School in which the deceased Teacher was employed. On the other hand, the Government Order goes to state that such a legal heir would be entitled for compassionate appointment in Aided Schools, without reference to the procedure for appointment through Employment Exchange. I am unable to comprehend as to how the respondents could concede such an interpretation that the petitioner is entitled to employment only in the School where her mother was employed. The counter affidavit filed by the respondents is also to the effect that the petitioner can be accommodated only in the Aided School where her mother worked subject to the vacancies therein. When the Government Order in G.O.Ms.2318, dated 17.02.1983 itself does not contemplate such a condition, the reasoning adopted by the respondents in the impugned order by interpreting the said Government Order is misconceived and thereby, illegal. As such, the order itself is liable to be set aside. Since no other reasons has been assigned in the impugned order for rejecting the petitioner's candidature, it is implied that the petitioner would be otherwise entitled for appointment on compassionate grounds.

8. After the death of the petitioner's mother on 26.09.1998, her father had made an application for compassionate appointment on 10.04.2000, which was not acted upon. The petitioner had then made representations on her own from 20.02.2013 onwards and in view of the non consideration of the representations, she had filed a Writ Petition in W.P.(MD)No.2262 of 2015 and this Court by an order dated 23.02.2015, had directed the respondents to consider the representations on its merits within a period of 12 weeks. Since it is claimed that the respondents had not obeyed the order, a Contempt Petition was filed in Contempt Petition No.872 of 2015 and this Court, by an order dated 22.07.2015, had recorded the statements of the respondents that the petitioner's request was already rejected on 27.04.2015 and thereby closed the Contempt Petition. The fact remains from the date of the death of the petitioner's mother, more than 20 years have passed and the compassionate appointment is yet to see the light of the day.

9. 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.'

10. 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**.

11. In the light of the observations made in the present order to the effect that the impugned order itself is illegal and considering the delay that had occurred in extending compassionate appointment to the legal heir of the deceased Teacher, this Court is of the view that a positive direction for compassionate appointment in favour of the petitioner can be passed.

12. In the light of the above observations and findings, the impugned order passed by the fourth respondent dated 27.04.2015 is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of four weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP

To

1. The Secretary,
Department of School Education,
Fort St.George,
Chennai - 600009.



2. The Director of Elementary Education,
College Road,
Chennai - 600006.
3. The Chief Educational Officer,
Ramanathapuram.
4. The District Elementary Educational Officer,
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Ramanathapuram.
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order made in
W.P. (MD) No.256 of 2016
29.06.2020

VB (05.08.2020) 5P 6C