



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 28.02.2020
PRONOUNCED ON : 28.05.2020
CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.(MD) No.5552 of 2016

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G.Mariraja

... Petitioner

Vs.

1.The Director of School Education,
Chennai-6.

2.The District Elementary Educational Officer,
Thoothukudi,
Thoothukudi District.

3.The District Educational Officer,
Kovilpatti,
Thoothukudi District.

4.The Additional Asst. Elementary Educational Officer,
Assistant Elementary Educational Office,
Kayathar,
Thoothukudi District.

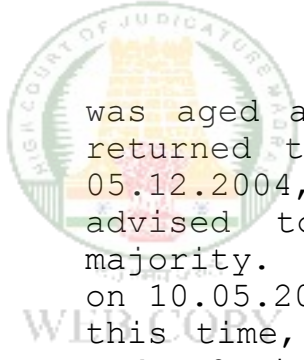
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in Mu.Mu.No.4328/A1/2013 dated 30.06.2014 passed by the third respondent and the first respondent through his impugned proceedings in O.Mu.No.38229/J3/2015 dated 12.11.2015 and to quash the same and consequently, direct the respondents to consider the claim for appointment on compassionate ground on account of the death of the petitioner's father P.Gopal, who was working as Headmaster at South Kalugumalai Panchayat Union Elementary School, Thoothukudi District.

For Petitioner : Mr.J.Ashok
For Respondents : Mr.A.Thiyagarajan
Government Pleader

O R D E R

The petitioner's father, while working as Headmaster in a Panchayat Union Elementary School, Thoothukudi District, died in harness on 15.09.2002. The petitioner herein, who is one of the legal heirs of the deceased employee, was a minor undergoing school education, at the time of his father's death. The petitioner's mother had given a representation on 27.11.2004 seeking for appointment on compassionate ground to the petitioner herein, who



was aged about 14 years then. The fourth respondent herein, had returned the application through proceedings No.520/A3/2004 dated 05.12.2004, stating that the petitioner was a minor and thereby, advised to make an application after the petitioner attains majority. The petitioner's mother had given another representation on 10.05.2007, which came to be acknowledged by the respondents. By this time, the petitioner had completed his SSLC in the year 2005 and +2 in the year 2007. After prolonged lapse, the third respondent herein had passed the impugned order dated 30.06.2014, rejecting the petitioner's mother's request on the ground that the petitioner had not completed his 10th std as on the date of the first application namely, 27.11.2004. This order of the third respondent came to be confirmed by the first respondent on 12.11.2015, which orders are under challenge in the present Writ Petition.

2. It is not in dispute that petitioner's father died while he was in service on 15.09.2002 and that the petitioner was a minor at that point of time. As per the petitioner's school records, he was born on 08.08.1988. The representation given by the petitioner's mother on 27.11.2004 and her subsequent representation on 10.05.2007 are also not in dispute. The only reason on which the respondents have rejected the petitioner's claim is that he did not possess the required qualification for the post of Office Assistant at the time when the first application was made by his mother on 27.11.2004.

3. It is no doubt true that as on 27.11.2004, the petitioner was yet to take up his SSLC course, which he had passed only in June 2005. When the petitioner's mother had sought for compassionate appointment for her son, the same came to be returned advising the petitioner's mother to make an application after her son attains majority. However, when the petitioner had attained majority and made an application within a reasonable time, the third respondent herein had chosen to quote the original application dated 27.11.2004 and rejected his claim that he did not possess the required qualification as on 27.11.2004.

4. I am unable to comprehend the manner in which the third respondent herein had dealt with the petitioner's case, particularly, when the family of the deceased employee would have been suffering at the loss. Had the original application dated 27.11.2004 been considered on merits, there would have been some justification on the reasonings cited in the present impugned order. However, such application was returned with an advise to her to make a fresh representation after the petitioner attains majority, which was also promptly done by the petitioner.

5. Accordingly, when the petitioner attained his majority on 08.08.2006, his mother had given an application on 10.05.2007, in accordance with the remarks made by the fourth respondent in his proceedings dated 05.12.2004.



6. The point for consideration in the subsequent application dated 10.05.2007 arises from the date of this application alone since the original request made on 27.11.2004 was returned with an observation to give a representation after attaining majority. While that being so, by no stretch of imagination, can the conduct of the third respondent be justified by taking the crucial date as 27.11.2004 for consideration. The appropriate course would have been to consider the petitioner's qualification as on 10.05.2007 and not thereafter.

7. There is yet another aspect to the entire case. The respondents seem to rely upon G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977 and had rejected the petitioner's request on the ground that he must have held the minimum education qualification of X std as on the date of the application. In the light of the said Government Order, there is no reference with regard to the period within which the application should be considered. Consequently, there would be a duty cast on the respondents to consider the application within a reasonable time.

8. In the instant case, the application that was made in the year 2004, came to be considered in the year 2014 and the third respondent has taken into account the qualification that the petitioner held in the year 2004. The Government Order referred by the third respondent does not intend to give way for such misuse, when there are laches on the part of the respondent. I am unable to comprehend as to how the respondents can expect the petitioner's to forego his further education from 2004 onwards and wait 10 long years for them to pass orders on his application for compassionate appointment to the post of an Office Assistant. Incidentally, the petitioner had completed his M.A. B.Ed., by 2013 and would definitely not opt for office assistant post, which he would have been otherwise entitled to, if his application had been considered within a reasonable time.

9. It would be pertinent to point out here 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.'

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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 fine, the logic adopted by the third respondent in taking the first application dated 27.11.2004 into consideration is baseless, unfounded and unlawful. Likewise, in view of the delay of on the part of the respondents in considering the application that was made on 10.05.2007, would entitle the petitioner to seek for appointment on compassionate grounds based on the qualification he possess and experience as on date. As such the petitioner's case could be termed as a special case, whereby his claim for compassionate appointment requires to be considered to such a post in consonance with his present qualifications.

12. In the light of the above observations, the impugned order passed by the third and first respondents dated 30.06.2014 & 12.11.2015 respectively are set aside. Consequently, the concerned respondent is directed to issue an appropriate appointment order, based on the petitioner's present qualification and experience. Such an exercise shall be made atleast within a period of 12 weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (Cr1.Side)

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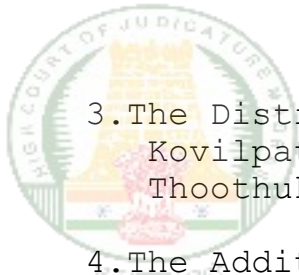
Sub Assistant Registrar(CS)

DP

To

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3.The District Educational Officer,
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4.The Additional Asst. Elementary Educational Officer,
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Order made in
W.P. (MD) No.5552 of 2016
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AP(17/06/2020) 5P 5C