



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
13.02.2020	17.02.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN
W.A. (MD) No.1538 of 2019

N.Swaminathan

... Appellant/Petitioner

-vs-

1.The District Educational Officer
Thiruvarur, Thiruvarur District

2.The Headmaster
Government High School
Chandrasekara Puram
Valangaiman Taluk
Thiruvarur District

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.08.2019, passed in W.P.(MD) No.13179 of 2014, on the file of this Court.

Prayer in WP(MD). 13179/ 2014 :

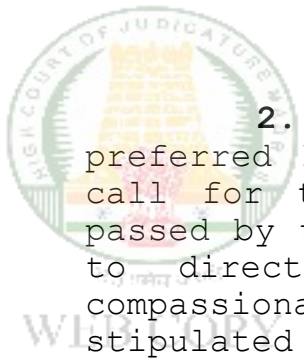
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondents in his proceedings in Mu.Mu. No. 7151/A 1/13 dated 6.5.2014 and quash the same and consequently direct the first respondent to appoint the petitioner under the compassionate grounds in any suitable post within the time stipulated by this Honble Court.

For Appellant : Mr.C.Jeganathan
for M/s.Veera Associates
For Respondents : Ms.S.Srimathy
Additional Government Pleader

J U D G M E N T

T.RAVINDRAN, J.

The appellant calls in question the order, dated 05.08.2019, dismissing his writ petition in W.P.(MD) No.13179 of 2014.

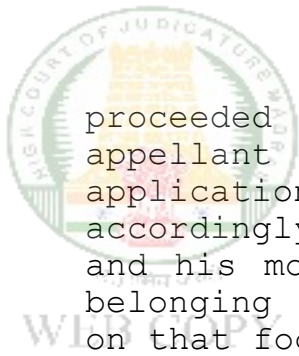


2. The writ petition in W.P.(MD) No.13179 of 2014 has been preferred by the appellant to issue a certiorarified mandamus to call for the records pertaining to the order, dated 06.05.2014, passed by the first respondent, to quash the same and consequently, to direct the first respondent to appoint him under the compassionate grounds in any suitable post, within the time stipulated by this Court.

3. According to the appellant, his father N.Nagarajan was employed as Sweeper in the second respondent's School and he died in harness on 24.11.2006. It is further stated that on the demise of his father, the appellant's family was in penurious circumstances. The appellant's mother submitted an application seeking appointment for him on compassionate grounds on 03.09.2007. Admittedly, it is found that on the date of the said application, the appellant was minor. It is also the case of the appellant that subsequent thereto, he had also submitted a detailed application on 03.12.2007 seeking for suitable employment on compassionate grounds. It is putforth that the first respondent, by order dated 06.05.2014, has rejected the application for appointment on compassionate grounds on the footing that at the time of the presentation of the application, the appellant was not a major and impugning the same, the appellant had preferred the writ petition.

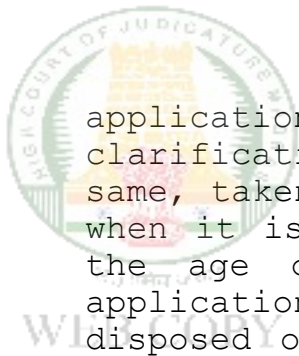
4. The first respondent has resisted the case putforth by the appellant contending that at the time of submitting the application for compassionate appointment, the appellant was seventeen years old and since as per G.O.Ms.No.112, Personnel and Administrative Reforms, dated 23.08.2005 and as per the Government Letter No.86/Q1/10-2, dated 04.05.2010, wherein it has been clarified that for compassionate appointment, the applicant should have completed eighteen years of age as on the date of submission of the application and as the appellant had not attained the age of majority, it is putforth that the order rejecting the appellant's request for compassionate appointment came to be passed and therefore, according to the first respondent, the order impugned in the writ petition had been passed only after careful consideration and in accordance with law.

5. The learned Single Judge, after considering the rival submissions putforth by the parties, noting that the appellant was a minor on the date of submission of the application for compassionate appointment, proceeded to hold that the clarification letter issued by the Government, dated 04.05.2010, prescribing that the applicant on the date of submission of the application for compassionate appointment should have completed eighteen years of age, had come into effect only from 04.05.2010 and accordingly, held that the reliance of the first respondent on the abovesaid clarification letter for rejecting the request of the appellant for compassionate appointment is incorrect. However, the learned Single Judge



proceeded to hold that as either the appellant's mother or the appellant had not pursued the matter other than submitting the applications for compassionate appointment during 2007-2014, accordingly, on the ground of laches on the part of the appellant and his mother, concluded that the appellant cannot be held to be belonging to the family in distress and indigent circumstances and on that footing, dismissed the writ petition. Challenging the same, the writ appeal has been laid.

6. It is not in dispute that the appellant's father had died in harness in the year 2006. At that point of time, the appellant was a minor. It is also noted that on the date of submission of the application for compassionate appointment by the appellant's mother on 03.09.2007 and by the appellant on 03.12.2007, the appellant had not attained the age of majority and he was only aged about seventeen years at that point of time. However, it is found that the first respondent had not proceeded to dispose of the applications submitted by the appellant's mother or the appellant one way or the other and on the other hand, it is put forth by the appellant that all along, he had been pursuing the matter one way or the other before the first respondent and lastly, the order of rejection had come to be passed by the first respondent only on 06.05.2014 nearly seven years after the submission of the application on the part of the appellant. Further, in the order of rejection, it has not been held by the first respondent that the appellant's family was not in indigent circumstances and thereby, dis-entitled to seek compassionate appointment. On the other hand, the order of rejection recites that inasmuch as the clarification letter of the Government, dated 04.05.2010, prescribes that the applicant on the date of submission of the application for compassionate appointment should have attained the age of majority and the same would be the essential criteria for considering the request, on that premise, proceeded to reject the request of the appellant for compassionate appointment. However, as rightly pointed out by the appellant's counsel and also as held by the learned Single Judge himself, when it is found that the clarification letter issued by the Government vide letter dated 04.05.2010, has come into force only from 04.05.2010 and on the factual matrix, when it is noted that the application for compassionate appointment had been preferred by the appellant's mother and the appellant on 03.09.2007 and 03.12.2007 respectively and even though on the date of the said applications, the appellant had not attained the age of majority, however, when the first respondent has not chosen to pass any orders on the said applications immediately thereafter and on the other hand, proceeded to consider the same only in the year 2014 and on the date of consideration of the issue by the first respondent, admittedly, the appellant had attained the age of majority, in such view of the matter, the rejection of the appellant's application for compassionate appointment on the footing that he had not attained the age of majority on the date of the presentation of the



application, as such, cannot be countenanced, particularly, when the clarification letter issued by the Government, with reference to the same, taken effect only from 04.05.2010, in such view of the matter, when it is found that the appellant was on the verge of attaining the age of majority on the date of the presentation of the application, dated 03.12.2007 and when his application had not been disposed of by the first respondent one way or the other and the same had been kept in cold storage without any further action and only thereafter, the first respondent had chosen to dispose of the application on 06.05.2014 and when the case projected by the appellant that he had been all along pursuing the matter with the first respondent and other Authorities having not been controverted by the first respondent, in such view of the matter, we are of the considered opinion that the appellant cannot be faulted for any laches or inaction on his part in seeking compassionate appointment on the demise of his father.

7. In the light of the abovesaid discussions, when the application for compassionate appointment has been presented by the appellant within three years from the date of demise of his father and when the appellant had been all along pursuing the matter, however, the first respondent having failed to consider the same for several years and had proceeded to pass the order of rejection only in the year 2014, in such view of the matter, as rightly putforth by the appellant's counsel, no delay or laches could be attributed on the part of the appellant and in such view of the matter, the order of rejection passed by the first respondent is liable to be set aside.

8. For the reasons afore-stated, the impugned order, dated 05.08.2019, passed in W.P.(MD) No.13179 of 2014, is set aside; consequently, the writ petition in W.P.(MD) No.13179 of 2014 is allowed and the order, dated 06.05.2014, passed by the first respondent is quashed and the first respondent is directed to appoint the appellant on compassionate ground in any of the suitable posts within a period of eight weeks from the date of receipt of a copy of this Judgment.

9. Resultantly, the writ appeal is allowed. No costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To:

1.The District Educational Officer,
Thiruvarur, Thiruvarur District.

2.The Headmaster,
Government High School,
Chandrasekara Puram,
Valangaiman Taluk,
Thiruvarur District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-6683[F] dated
17/02/2020)

+1 CC to SPL.GP (SR-6790[F] dated 18/02/2020)

JUDGMENT IN
W.A. (MD) No.1538 of 2019
17.02.2020

MK (24.02.2020) 5P 5C