



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2021

Delivered on : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.10510 of 2015

V.Sumathi

...Petitioner

..vs..

1. The Secretary to the Government,
School Education Department,
Fort St.George,
Chennai - 9.
2. The Director of Elementary Education,
College Road,
Nungambakkam,
Chennai - 6.
3. The District Elementary Educational Officer,
Nagapattinam,
Nagapattinam District.
4. The Additional Assistant Elementary Educational Officer,
Vedaranyam,
Vedaranyam Taluk,
Nagapattinam District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the rejection order passed by the Fourth Respondent in Na.Ka.No.1690/Aa3/2014 dated 02.09.2014 and quash the same and consequently issue directions to the respondents to provide employment to the petitioner based on the Compassionate grounds.

Petitioner : M/s V.Kasinatha Bharathi

For R1 to R4 : Mrs.V.Annalakshmi GA



ORDER

The relief sought in this writ petition is to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the fourth respondent in Na.Ka.No.1690/Aa3/2014 dated 02.09.2014 and quash the same and consequently issue direction to the respondents to provide employment to the petitioner on compassionate grounds.

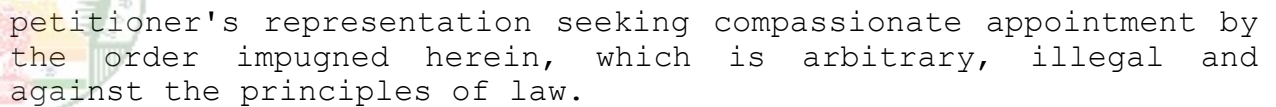
2.The facts leading to the filing of this writ petition, in brief, may be set out as under:

2.1 The Petitioner's father by name, Vedaiyan worked as a Secondary Grade Teacher in Panchayat Union Elementary School in Panchanathikulam East Village. While he was in service, he was mentally affected and unable to continue his service, due to which, he was relieved from service in the year 2004. Subsequently, he was admitted in the private home viz., Oxford Home at Urappakkam, wherein, he died on 10.09.2011 due to the cardiac arrest.

2.2 After the demise of her father, the Petitioner made application dated 28.07.2014 to the fourth respondent seeking compassionate appointment. Subsequently, as per the order of this Court passed in WP.No.22395 of 2014, the said representation was taken up for consideration, but was rejected by the fourth respondent by order dated 02.09.2014. Hence, this writ petition.

3.Denying the averments made in the writ petition, the respondents filed a detailed counter affidavit, wherein it is inter alia stated that the petitioner is not in indigent circumstances; there is no provision in the rule for providing compassionate appointment for a professional graduate; and the petitioner's father voluntarily retired from service and hence, the question of providing compassionate appointment to the petitioner does not arise.

4.The main contention of the learned counsel for the petitioner is that as per G.O.Ms.No.168 Labour and Employment (Q1) Department, dated 19.10.2000, the family members of the Government servants, who are medically invalidated before completion of 53 years of age, are entitled for the compassionate appointment. In support of the same, he placed reliance on the decision of the Supreme Court in Prabhudhayal Sesma v. State of Rajasthan [(1986) 4 SCC 59] and the order of this Court in R.Jayabalan and another v. the Additional Director of Survey and Land Records, Chepauk, Chennai and another [WP.No.4262 of 2006 dated 05.10.2009]. Without considering the same in a proper perspective, the fourth respondent rejected the



6. Heard both sides and perused the materials placed before this Court.

8.The learned counsel for the petitioner, placing reliance on the decision of the Supreme Court in Prabhudhayal Sesma v. State of Rajasthan [(1986) 4 SCC 59] and the order of this Court in R.Jayabalan and another v. the Additional Director of Survey and Land Records, Chempauk, Chennai and another [WP.No.4262 of 2006 dated 05.10.2009], vehemently argued that though the petitioner made application seeking compassionate appointment within three years from the date of death of her father, the same was rejected on the ground of limitation, which is arbitrary, illegal and against the law. Whereas, according to the respondents, the claim of the petitioner was not considered, as it was made beyond the limited period of 3 years from the date of relieving her father from service.

9. On a cursory glance at the materials placed before this Court would reveal that the father of the petitioner was relieved in the year 2004 on medical grounds at the age of 50 years and he died on 10.09.2011; the petitioner made application seeking compassionate appointment within three years from the date of death of her father, but it was rejected by the fourth respondent stating that the limitation arises from the date of relieving the Government servant from service and accordingly,



the claim of the petitioner was time barred. In the opinion of this Court, as per G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which supersedes all the earlier orders passed from 1972, the limitation of three years for making application for compassionate appointment starts from the date of relieving the Government Servant from service on medical invalidation within the age of 53 years and hence, the application submitted by the petitioner though within three years from the date of death of her father, was time barred, as it was made after a lapse of 10 years from the date of relieving her father from service. Further, the decisions relied on the side of the petitioner, which deal with the issue relating to the age of the Government servant, who retire on medical re-validation, cannot be applicable to the facts of the present case. Therefore, the order passed by the fourth respondent does not require any interference by this Court.

10.Be it noted, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. However, it cannot be claimed as a matter of right and it is traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. In State of Haryana v. Rani Devi [1996 (5) SCC 308], the Supreme Court was of the view that the appointment on compassionate grounds cannot be made after a lapse of the period specified in the rules as it is not a vested right to exercise at any time in future. That apart, in Chief Commissioner, Central Excise and Customs and others v. Prabhat Singh [(2012) 13 SCC 412], it was held by the Supreme Court that "the Court should not fall prey to any sympathy syndrome of issue direction for compassionate appointment dehors prescribed norms".

11.It is also apropos to point out that the issue involved herein came up for consideration in WP.(MD)No.7016 of 2011 by way of reference to the Full Bench of this Court, which answered the same by order dated 11.03.2020, paragraph 32(a) of which is profitably extracted hereunder:

"Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the Scheme that has been framed by the employer. Any deviation from the Scheme is not permissible."

12.Therefore, this Court cannot take a different stand contrary to the recent G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well the decision of the Full Bench of this Court in WP.(MD).N0.7016 of 2011 dated 11.03.2020.



WEB COPY

13. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rk

To

1. The Secretary to the Government,
School Education Department,
Fort St.George, Chennai - 9.
2. The Director of Elementary Education,
College Road,
Nungambakkam, Chennai - 6.
3. The District Elementary Educational Officer,
Nagapattinam,
Nagapattinam District.
4. The Additional Assistant Elementary Educational Officer,
Vedaranyam,
Vedaranyam Taluk, Nagapattinam District.

+1cc to Mr.Ln. V. Kasinatha Bharathi, Advocate, S.R.No.20262

W.P.No.10510 of 2015

AD(CO)
PM(15/07/2021)