

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7468 of 2021

S.Aravindan

... Petitioner

Vs.

1. The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
 2. The Director of Elementary Education,
College Road, DPI Compound,
Chennai - 600 006.
 3. The Chief Educational Officer,
Ranipet, Ranipet District.
 4. The Block Education Officer,
Block Education Office,
Nemili - 631 051, Ranipet District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining in proceedings vide Na.Ka.No.01029/A1/2020, dated 29.01.2021 on the file of the third respondent and quash the same and consequently direct the first respondent to appoint petitioner in the available post in the respondents department.

For Petitioner : Mr.S.Patrick

For Respondents: Mr.P.Raja
Government Advocate

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 29.01.2021 passed by the 3rd Respondent and for a consequential direction to the 1st respondent to provide him appointment on compassionate ground.

2. According to the Petitioner, his father P.Sambandan, who was working as a Headmaster in the Thennal panchayat Union Elementary School, Nemili Union, Arakkonam Education District, Ranipet, passed away on 24.09.2003, leaving behind him, the Petitioner, his mother, and two brothers, as his legal heirs. Initially, the Petitioner's mother made an application seeking compassionate appointment for the petitioner, within the prescribed period. The 4th respondent has returned the application vide proceedings Athi.Mu.No.410/A3/2006, dated 20.07.2006, on the ground that the petitioner was not attained the age of 18 years. Thereafter, after attaining the age of 18 years, the petitioner made an application before the 4th respondent on 04.06.2012, seeking compassionate appointment on account of death of his father.

3. Pursuant thereto, the 4th respondent vide proceeding dated 19.06.2012, issued a direction to produce all the documents. But, as he could not produce all the required certificates forthwith, he approached the 4th respondent in the year 2020 with explanation for the delay in submitting the required documents. However, after receipt of his documents, the 3rd respondent has rejecting the application vide the impugned proceedings, dated 29.01.2021 citing the reason that at the time of filing application as on 14.07.2006, the petitioner has not completed 18 years. Hence, having no other alternative, the Petitioner is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Admittedly, the Petitioner has not completed 18 years at the time of submitting application, seeking compassionate appointment. While considering the claim for employment on compassionate ground, the Apex Court, in the case of Bhawani Prasad Sonkar vs. Union of India and others reported in (2011 (4) SCC 209), has discussed about the factors that have to be borne in mind. Relevant portion of the said judgment is extracted hereunder:

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

6. In a similar circumstance, the First Bench of this Court in W.P. (MD) Nos.7016 of 2011, batch of cases, by an order dated 11.03.2020, has held as under:

"13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above.

14. Where there is a contest between legal heirs, priority should be given to the one who is befitting enough to shoulder the

responsibility of destitution of the family. In the event there is a Court intervention, the orders passed or final verdict should be adhered to. In the event of mere pendency, appointment may be given subject to the outcome of the litigation or any orders passed by the Court to that effect."

7. Compassionate appointment shall not be considered as a backdoor entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case.

8. As the Petitioner herein has not completed 18 years at the time of submitting Application within the stipulated period, he is not eligible to the relief sought for in this Writ Petition. Hence, this Writ Petition stands dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vum

To:

1. The Principal Secretary to Government,
School Education Department,
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2. The Director Elementary Education,
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3. The Chief Educational Officer,
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4. The Block Education Officer,
Block Education Office,
Nemili - 631 051, Ranipet District.

+1cc to Mr.K.R.Gunasekar, Advocate, S.R.No.18699
+1cc to the Government Pleader, S.R.No.19169

W.P.No.7468 of 2021

SS (CO)
CB(12/07/2021)



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