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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.32749 of 2016

T.Aruljothi

...Petitioner

Vs

1. The Director of School Education,
D.P.I.Campus, College Road,
Chennai - 600 006.
2. The Joint Director of School Education,
D.P.I.Campus, College Road,
Chennai - 600 006.
3. The District Educational Officer,
Tiruppur,
Tiruppur District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the third respondent dated 27.07.2016 in Na.Ka.293/A1/2010, and quash the same and consequently direct the respondents to forthwith appoint the petitioner on compassionate grounds in the Educational department of the respondents.

For Petitioner	: Mr.K.Selvaraj
For Respondents	: Mrs.V.Annalakshmi, GA

ORDER

The writ petition has been filed to quash the proceedings in Na.Ka.No.293/A1/2010, dated 27.07.2016 passed by the third respondent and direct the respondents to forthwith appoint the petitioner on compassionate ground in the respondent department.

2.The brief facts of the case are that the petitioner's father viz., M.Tamilarasu, died on 02.02.1998, while he was working as a PG Assistant in the Government Higher Secondary School, Kumaralingam, leaving behind him, his wife and two daughters and one son. On 27.02.1998, the petitioner's mother made an application seeking compassionate ground appointment to



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her son, well within the period of limitation, which was rejected by the District Educational Officer, Pollachi by order dated 11.12.2000 stating that the first legal heir should have made such application. Subsequently, the petitioner's mother made another application on 29.01.2001 stating that she was suffering from illness and her first daughter already got married and hence, she requested to provide appointment on compassionate ground to the petitioner, who is the second daughter of the deceased government servant. Finding no response on the same, the petitioner submitted a representation dated 21.11.2003 to the Chief Minister's Special Cell, Chennai, to which, she received a reply on 13.03.2004 from the District Educational Officer, Pollachi that due to ban order, her application was pending for consideration. Thereafter, by order dated 27.07.2016, the third respondent rejected the petitioner's application on the wrong premises that during the process of the application submitted by her brother, alternative application was made by the petitioner seeking compassionate ground appointment, which could not be considered. Whereas, the fact remains that the first application made the petitioner's brother was already rejected. Feeling aggrieved, the petitioner has filed this writ petition for the aforesaid relief.

3. Upon notice, the respondents filed a detailed counter affidavit, wherein, it is stated that the third respondent disposed of the application of the petitioner's mother seeking appointment on compassionate ground to her youngest son negatively, because as per the rules in force, which permits the spouse alone for compassionate appointment, when she is alive. It is further stated therein that the proceedings of the Government in Lr.No.3845/Pani 9(11) 2007 dated 27.12.2007 and the orders and rules in force, do not permit alternative legal heirs for consideration to be appointed on compassionate ground and hence, the respondents have no other option to reject the application of the petitioner, who is the second daughter of the deceased government servant, stating that she is not eligible for such appointment because she is an alternative legal heir, when her mother is alive.

4. The learned counsel for the petitioner submitted that when the first application seeking appointment on compassionate appointment to the petitioner's brother was rejected, the petitioner being an alternative legal heir, is eligible to be considered for appointment on compassionate ground, whereas the second application filed by her, was also rejected stating that the alternative application could not be considered, which is arbitrary, illegal and against the provisions of the Scheme. Stating so, the learned counsel prayed to allow this writ petition, by setting aside the order impugned herein.



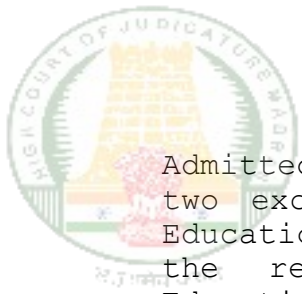
5. Per contra, the learned Government Advocate appearing for the respondents submitted that after analysing the facts and circumstances of the case, in the light of the prevailing rules, the third respondent has rightly passed the impugned order, thereby rejecting the claim of the petitioner seeking appointment on compassionate ground and hence, the same does not call for any interference at the hands of this Court.

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

7. It is evident from the materials that the petitioner's father died on 02.02.1998 in harness. His wife / mother of the petitioner made an application on 27.02.1998 well within the period of limitation seeking appointment on compassionate ground to her son, which was rejected by order dated 11.12.2000 passed by the District Educational Officer, Pollachi, stating that the first legal heir should have made an application. On 29.01.2001, the petitioner's mother submitted another application within the limitation period of three years, stating that she was suffering from illness and her first daughter already got married and hence, her second daughter / petitioner may be considered for appointment on compassionate ground, which was also rejected by order dated 27.07.2016, on the ground that the alternative application could not be considered.

8. The provisions of the Scheme are very clear that if the first legal heir of the Government servant is not willing / not eligible for appointment on compassionate ground on account of not possessing the required educational qualification or ill-health, etc., another legal heir of the deceased Government servant can apply for such appointment, subject to conditions prescribed for compassionate ground appointment. Whereas, in the present case, the mother of the petitioner made two applications one after another seeking appointment on compassionate ground for her son and then daughter, well within the limitation period of three years, but the same were rejected by the respondent authorities for the reason that the first legal heir should have made such application and that, the alternative application could not be considered. In the opinion of this Court, this course adopted by the respondent authorities cannot be countenanced and hence, the order impugned herein requires interference.

9. Another important point to be noted herein is that the petitioner's mother had submitted an application seeking appointment on compassionate ground to the petitioner on 29.01.2001 i.e., within the limitation period of three years, but the third respondent rejected the said application leisurely, on 27.07.2016, after a long delay of 15 years.



Admittedly, between 29.01.2001 till 27.07.2016, there were only two exchanges viz., (i) proceedings of the Director of School Education, Chennai, dated 28.02.2003 with respect to calling for the required documents; and (ii) letter of the District Educational Officer, Pollachi, dated 13.03.2004 to the petitioner indicating the status of her application as pending. Apart from that, there was absolutely no progress with regard to the claim of the petitioner. Only on 27.07.2016, the third respondent sent a communication to the petitioner, rejecting her claim stating that the alternative application could not be considered.

10. There can be no doubt that the compassionate appointment is intended to protect the family of the deceased from the sudden financial crisis and provide for livelihood thereby enabling the family to move on from the indigent circumstances. In *National Hydroelectric Power Corporation v. Nanak Chand* (2004) 12 SCC 487, the Supreme Court has held that "the appointment is meant to mitigate financial hardship caused due to the death of the bread earner of the family and hence, it should not be delayed". However, in the present case, though the petitioner's mother made the second application seeking compassionate appointment to the petitioner, even after the rejection of the first representation, within the period of limitation period of three years, the authorities have acted in a clandestine manner and rejected the same after a long period of 15 years. This Court is of the view that such a cavalier approach of the officials concerned in discharging their statutory duties, would dent the societal interest and the same has to be seriously viewed.

11. At this juncture, it is pertinent to refer to the observation of this Court in W.P.No.40702 of 2015 dated 18.09.2017 [*G.Srinivasan v. Deputy Inspector General Police and others*], wherein, the significance of the role of the Government servants in the Country has been discussed at length. The relevant portion of the said order reads as follows:

"13. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some



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kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated."

12. In Re : Vinay Chandra Mishra [(1995) 2 SCC 584], the Supreme Court explained the duty of the judiciary in the following words:

"Judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society".

13. In the light of the aforesaid legal proposition, taking note of the factual matrix, wherein the respondent authorities have miserably failed to discharge their duties within a reasonable time, thereby causing undue mental agony to the petitioner, this Court is inclined to impose costs on the officials, who were responsible for such lapses in dealing with the application of the petitioner seeking compassionate ground appointment in a callous manner.

14. In such view of the matter, this writ petition stands disposed of in the following terms:

(i) The order dated 27.07.2016 passed by the third respondent is set aside and the matter is remanded back to the respondent authorities for fresh consideration, on merits and in accordance with law and also in the light of recent G.O.(Ms)No.18 Labour and Employment (Q1) Department, dated 23.01.2020, which supersedes all the earlier orders issued from 1972. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

(ii) A sum of Rs.1,00,000/- (Rupees One Lac Only) towards costs shall be recovered from the salaries of the officials concerned and be paid to the petitioner. Such recovery proceedings shall be concluded within a period of six months, from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar



To

1. The Director of School Education,
D.P.I.Campus, College Road, Chennai - 600 006.

2. The Joint Director of School Education,
D.P.I.Campus, College Road,
Chennai - 600 006.

3. The District Educational Officer,
Tiruppur, Tiruppur District.

+1 CC to Mr.K.Selvaraj, Advocate sr 21106.

+1 CC to The Government Pleader sr 20549.

WP.No.32749 of 2016

PL(CO)

SP(23/07/2021)