

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.03.2021

Judgement Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1624 of 2019

R.Poongodi,
D/o Late K.Ravichandran

...Appellant

Vs.

1. The Secretary to Government,
Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
 2. The Joint Director,
Directorate of School Education,
College Road,
Chennai-600 006.
 3. The District Education Officer,
District Education Officer,
Thiruvannamalai District.
 4. The District Elementary Education Officer,
District Elementary Education Officer,
Thiruvannamalai District.
 5. The Assistant Elementary Education Officer,
Assistant Elementary Education Office,
Thiruvannamalai District.
- ...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent read with under Article 227 of the Constitution of India, against the order dated 21.02.2019 passed by the learned Single Judge in Writ Petition in W.P.No.15083 of 2018 on the file of this Court.

WP Prayer:

Writ petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified Mandamus, to

call for the records pertaining to the impugned orders Na. Ka. Not appearing in person or by an Advocate 7197/A1/2016 dated 12/07/2017 passed by the 3rd respondent and quash the same and consequently direct the respondents to give appointment to the petitioner in a suitable post on the ground of compassionate immediately without any further delay.

For appellant : Mr.K.S.Ganesh Babu

For respondents : Mrs.P.Kavitha, Govt. Advocate

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed as against the order dated 21.02.2019 passed by the learned Single Judge in W.P.No.15083 of 2018.

2. The said Writ Petition was filed for issuance of a Writ of Certiorarified Mandamus to quash the order dated 12.07.2017 passed by the third respondent and consequently to direct the respondents to give appointment to the petitioner on compassionate grounds in a suitable post, immediately without any further delay. The learned Single Judge, by the said order dated 21.02.2019, dismissed the said Writ Petition, against which the writ petitioner has preferred this intra-Court appeal.

3. The case of the appellant/writ petitioner is as follows:

(a) The appellant's mother, i.e. Mrs. Parimalavalli died on 04.08.2009 in harness while she was working as a Secondary Grade Teacher in the Panchayat Union Middle School, Ayyampalayam Pudhur, Thiruvannamalai District. The appellant's father was unemployed, and he died on 17.09.2015. The appellant/writ petitioner is the only legal heir to her mother. The appellant is a B.Com Graduate. While she was minor, as per relevant Rule, on 05.03.2012, she submitted an application for appointment on compassionate grounds within three years from the date of death of her mother. Along with the said application, the appellant submitted all the relevant documents to the third respondent through the fourth and fifth respondents for consideration of her claim for appointment on compassionate grounds.

(b) The third respondent rejected the application for appointment on compassionate grounds, by the order dated 12.07.2017 on the ground that as per G.O.(Ms).No.155, Labour and Employment (Q1) Department, dated 10.12.2014, the application for appointment on compassionate grounds would be considered only for those who have attained 18 years of age and who have

applied from 04.05.2010 onwards. The applicant, who was born on 25.08.1996, did not fulfil the parameters indicated in the aforesaid Government Order and therefore she is not entitled for appointment on compassionate grounds.

(c) Challenging the said order of rejection dated 12.07.2017 of the third respondent, the appellant/writ petitioner has filed W.P.No.15083 of 2018, which was dismissed by the learned Single Judge by relying upon the judgment of a Division Bench of this Court reported in 2016 (5) CTC 125 (The Inspector General of Prisons Vs. P.Marimuthu). Assailing the said order of the learned Single Judge, dated 21.02.2019, the present Writ Appeal is filed by the appellant/writ petitioner.

4. It is the submission of the learned counsel appearing for the appellant/writ petitioner that the writ petitioner's mother died on 04.08.2009 in harness. At that time, the applicant was 13 years old. As per G.O.Ms.No.155, Labour and Employment Department dated 10.12.2014, the appellant/writ petitioner is entitled for compassionate appointment, since she submitted the application dated 25.06.2012, within three years from the date of death of her mother. But the third respondent had rejected the application on an erroneous ground that the appellant has not completed 18 years as on the date of submission of the application. The third respondent did not consider that the appellant was 13 years old at the time of death of her mother and she submitted the application seeking appointment on compassionate grounds within three years from the date of death of her mother. The learned Single Judge did not consider this aspect while dismissing the writ petition. Thus, the learned counsel for the appellant prayed for setting aside the order, dated 21.02.2019 passed by the learned Single Judge in W.P.No.15083 of 2018.

5. This Court also heard the submissions made by the learned Government Advocate for the respondents and perused the materials placed on record.

6. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

7. On a perusal of the order passed by the learned Single Judge, we find that the learned Single Judge dismissed the Writ Petition on the sole ground that the appellant/writ petitioner did not attain majority on the date of submission of application. The learned single Judge also relied upon the judgment of this Court reported in 2016 (5) CTC 125 (supra), in which it was held that the compassionate appointment is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the

employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority. It was further held in that decision relied on by the learned Single Judge that, under the scheme of compassionate appointment, the Department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. The scheme only enables those who are eligible and satisfy all the criteria including age, within three years from the date of death.

8. On perusal of G.O.Ms.No.155 (stated supra) it is clear says that on the date of application, the applicant should have completed the minimum prescribed age of 18 years. Admittedly, on the date of death of the appellant's mother, the appellant/writ petitioner was only 13 years old. The appellant submitted the application seeking appointment on compassionate grounds when she was 16 years old. Furthermore, we are of the opinion that, all along, the appellant/writ petitioner's family had managed the indigent circumstances and survived for long period and hence, the question of appointment on compassionate grounds, at this length of time, does not arise. The compassionate appointment is not a bounty and it is only a relief that will be given to the deceased family to relieve out of the financial strain.

9. In the above context, it is worthwhile to refer a judgment of a Full Bench of this Court in W.P.(MD).No.7016 of 2011, etc., dated 11.03.2020, in which, the Full Bench had had given a quietus to the matter by authoritative pronouncement with regard to the compassionate appointment, and the relevant portion of the judgment of the Full Bench reads as follows:

"32. In view of the above, the reference is answered as under:

a) 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.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the

correct proposition. Reference is answered accordingly."

10. In the above said Full Bench decision of this Court, ultimately, the Full Bench had come to the conclusion that the period of three years is rationale and reasonable period under the relevant Government order and the Rules. The Full Bench, by considering the relevant G.Os. on the subject, came to the conclusion that the application for compassionate appointment has to be made within three years from the date of death of the deceased Government employee.

11. In the instant case, the appellant/writ petitioner did not prove that her family was in indigent circumstances. Furthermore, the compassionate appointment is only a concession as stated above and not a hereditary right. Moreover, the employer cannot create any supernumerary post in the cases falling under the compassionate appointment. In view of the above said Full Bench judgment of this Court decided on 11.03.2020 in W.P.(MD).Nos.7016 of 2011, 582 of 2015, 4805 of 2014, 20028 of 2013, 34962 of 2005, etc., the issue is no more "res-integra". No doubt, the Full Bench of this Court had resolved the issue by framing guidelines for grant of appointment on compassionate grounds and answered the reference accordingly as stated above. Hence, following the above said decision of the Full Bench of this Court, we do not find any infirmity in the order passed by the learned Single Judge. The Writ Appeal is therefore dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Joint Director,
Directorate of School Education,
College Road, Chennai-600 006.

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Assistant Elementary Education Office,
Thiruvannamalai District.

+1cc to the Government Pleader, S.R.No.23363

W.A.No.1624 of 2019

AKII (CO)
RN (30/04/2021)



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