



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.44424 of 2016
and
W.M.P.No.38271 of 2016

(Through Video Conferencing)

N.Kalaiyarasan

...Petitioner

Vs

1. The Secretary,
Government of Tamil Nadu,
Labour and Employment,
Fort St.George, Chennai - 600 009.

2. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai - 600 009.

3. The District Educational Officer,
Nagapattinam.

4. The District Elementary Education Officer,
Nagapattinam.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records with proceedings Mu.Mu.No.579/A1/2015 dated 30.11.2016 on the file of the third respondent and quash the same as unconstitutional and against the policy of Government and consequently direct the respondents to appoint the petitioner as Junior Assistant or in any other post to which he is eligible on compassionate grounds.

For Petitioner : Ms.T.Aananthi

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate



ORDER

The petitioner has filed this writ petition for a certiorarified mandamus, to call for the records with proceedings Mu.Mu.No.579/A1/2015 dated 30.11.2016 on the file of the third respondent and quash the same as unconstitutional and against the policy of Government and consequently direct the respondents to appoint the petitioner as Junior Assistant or in any other post to which he is eligible on compassionate grounds.

2. This is a second round of litigation in this High Court.

3. Earlier, the petitioner filed a writ petition in W.P.No.1623 of 2015. After noting the circumstances of the case, by an order dated 18.08.2016 this Court ordered as follows:-

"6. On a careful perusal of the entire materials, as rightly pointed out by the learned counsel for the Petitioner, the application for compassionate appointment cannot be rejected merely on the ground that there are other senior members in the family, who have not opted to the post. Whereas in this case, the other members of the family have also given no objection certificate to the Petitioner. Further, at the time of applying, no doubt, he was a minor. However, by the above said G.O.Ms.No.155, dated 10.12.2014, the said position was clarified. In view of the same, the impugned order is set aside. But, however, as rightly pointed out by the learned Additional Government Pleader for the Respondents, the Petitioner cannot seek the post of Secondary Grade Teacher without completing TET. The Petitioner can only be appointed in any other post if any available on compassionate grounds on his qualification and other requirements and if he is otherwise eligible. Accordingly, the matter is remitted back to the Respondents for consideration afresh, who shall consider the same and pass appropriate orders, within three months from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed."

4. The third respondent thereafter passed the impugned order dated 30.11.2016. The only reason for not giving the petitioner appointment on compassionate ground was on account of the fact



that after the death of the petitioner's father R.Natarajan, the petitioner's elder sister Sudha was there and therefore the petitioner being a younger sibling was not entitled to be appointed and since the petitioner's mother or sister did apply to appointment on compassionate ground, it cannot said the family was in an indigent circumstance.

5. The case of the petitioner is that the petitioner's father passed away on 19.02.2004. During the relevant period, G.O.Ms.No.225, Labour and Employment Department, dated 15.02.1972 was in force which was adopted by the Education Department also. At that point of time, the notification did not permit employment of a married daughter.

6. The learned counsel for the petitioner further submits that the fortuitous circumstances of the petitioner's sister got employed later in the year 2008 and it cannot be to the disadvantage of the petitioner as an application for appointment on compassionate ground was made as early as 29.09.2006.

7. The question to be addressed in this writ petition is whether the petitioner would be entitled to appointment on compassionate ground. The case of the petitioner is that the petitioner's sister though got employed on 29.02.2008 never supported her family and later eloped and got married to one Kalaimani.

8. According to the petitioner, the family is still continues to be in indigent circumstances and therefore the benefit of employment on compassionate ground cannot be denied to the petitioner.

9. The learned Government Advocate for the respondents reiterates the reasons given in the impugned order and submits that the writ petition was liable to be dismissed.

10. I have heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the order passed by the third respondent and the order passed by this Court on 18.08.2016 in W.P.No.1623 of 2015.

11. The facts are not in dispute. The petitioner's sister Sudha though employed as a teacher only from 29.02.2008 was not employed on compassionate ground. The applications for appointment of petitioner on compassionate ground was made as early as 29.09.2006. There was no justification in keeping the application pending merely because there was also an elder sibling of the petitioner at that point of time.



12. The facts remains that the family has not got benefit out of the Government Order which allow appointment on compassionate ground. The fact that the petitioner's sister got appointed at a later point of time is of no consequences as the family of the petitioner would have still continued to be indigent circumstances considering the nature of nuclear families which have come into existence. As a matter of fact, the Government of Tamil Nadu has also now issued a comprehensive notification in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020.

13. Considering the overall facts and circumstances of the case, this Court is of the view that the denial of the appointment on compassionate ground to the petitioner for the reasons stated in the impugned order and counter is not sustainable.

14. This Writ Petition stands allowed with a consequential direction to the respondents to take steps to appoint the petitioner as a Junior Assistant or in any other post to which he may be eligible to be appointed based on his qualification on compassionate ground, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Labour and Employment,
Fort St.George,
Chennai - 600 009.
2. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai - 600 009.



3. The District Educational Officer,
Nagapattinam.

4. The District Elementary Education Officer,
Nagapattinam.

+1cc to M/s.T.Ananthi Advocate, Sr.39810
+1cc to the Government Pleader, Sr.40060

W.P.No.44424 of 2016
and
W.M.P.No.38271 of 2016

PL[co]
NSK 06/09/2021