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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.2377 of 2021
and
CMP No.15173 of 2021

1. Chief Educational Officer,
Office of the Chief Educational Office,
Dharmapuri-636 701.
2. Dharmapuri District Educational Office,
Dharmapuri District - 636 701.
3. District Educational Officer,
Office of the District Educational Office,
Palacode, Dharmapuri District - 636 808.
4. Government Higher Secondary School,
Hanumanthapuram,
represented by its Head Master,
Hanumanthapuram,
Karimangalam Taluk,
Dharmapuri District - 636 802.

... Appellants/Respondents

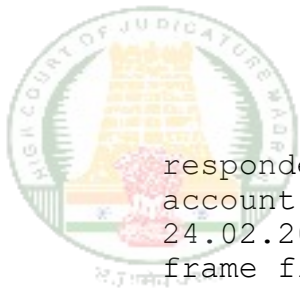
vs.

C.Saravana Prabu

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 04.03.2020 passed by this Court in W.P.No.3960 of 2020.

Prayer in W.P.No.3960 of 2020: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus Calling for the records from the 2nd Respondent relating to the proceedings dated 11.07.2017 bearing reference No.Na.Ka.No.1915/A1/2017 read with the bearing reference No.O.M.No.6609/A1/2019 and quash the same as illegal, arbitrary, without jurisdiction and to consequently direct the respondents 1 to 4 to provide permanent appointment to the petitioner on compassionate grounds treating it with effect from August 2014 since when the petitioners have been approaching the



respondents, release the entire terminal benefits payable on account of death of petitioner's father S.Chandrasekaran on 24.02.2013 together with 18% interest per annum within a time frame fixed by this Court.

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For Appellants : Mr.K.Tippu Sultan,
Government Advocate

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

The present Writ Appeal has been preferred against the order, dated 04.03.2020 passed by the learned Single Judge in W.P.No.3960 of 2020.

2. The case of the Appellants is that the respondent sought for appointment on compassionate ground, on the death of his father viz., S.Chandrasekaran, who was working as a Junior Assistant in the Appellant Department. It is averred that the deceased employee S.Chandrasekaran married the respondent's mother, A.Malliga, when his first wife viz., Jaya was alive, on the ground that, the first wife had no issues. Hence, according to the Appellants, as per G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, only the children of the legitimate spouse are entitled to compassionate appointment and thereby, the claim of the petitioner for compassionate appointment was rejected. Aggrieved by the said rejection, the respondent herein preferred a Writ Petition in W.P.No.3960 of 2020 before this Court.

3. The learned Single Judge on accepting the contentions raised by the Writ petitioner, allowed the Writ Petition by setting aside the orders, dated 11.07.2017 and 29.10.2019 passed by the appellants and directed them to consider the claim of the Writ Petitioner for compassionate appointment. Challenging the same, the Appellants are before this Court.

4. According to the learned counsel for the Appellants, the learned Single Judge ought not to have interfered with the orders, dated 11.07.2017 and 29.10.2019, and granted the relief of appointment on compassionate ground. Even the averment of the respondent before the learned Single Judge was that his mother Malliga entered into a second marriage with the deceased employee, late S.Chandrasekaran, as there was no children born out of the first wedlock with one Jaya and three children including the Writ Petitioner were born to his mother.



Thereafter, the respondent's father died leaving behind the 1st wife Jaya, the 2nd wife Mallika, who is the mother of the Writ Petitioner and her children. As there is no independent source of income after the demise of his father, the Writ Petitioner has approached this Court, seeking compassionate appointment. The application for appointment, dated 18.08.2014 is made within the stipulated time. However, the same was rejected on the ground that the Writ Petitioner happens to be the son of the 2nd wife and that, he is not eligible for consideration for compassionate appointment.

5. The learned Single Judge has rightly held that there is no legal bar for consideration of the 2nd wife's son for compassionate appointment. The learned Judge also referred to the decision of the Division Bench of this Court made in W.P. (MD).No.11641 of 2003, dated 12.08.2004 while granting relief in favour of the respondent / petitioner. The relevant paragraph is extracted hereunder:

"6. In the present case, the tribunal has not at all considered the effect of Section 16 of the Act. In view of the provisions contained in section 16 of the Act, there cannot be any doubt that the child born through the second wife, even though such marriage was void, shall be deemed as the legitimate child. Even there is nothing in the G.O. which says that only a child born in a lawful marriage would be considered as beneficiaries. In the absence of any specific provision and particularly, keeping in view the intention of Parliament, as reflected in Section 16 of the Act, we have no doubt in our mind that the benefit of G.O. is also available to the children born out of the void marriage. Our aforesaid view also receives support from the decision of the Apex Court in RAMESWARI DEVI Vs. STATE OF BIHAR (2000 (2) SCC 431)."

6. Hence, we are of the view that there cannot be any exclusion of the claim made by the son of the second wife of the deceased employee for compassionate appointment, merely because he was born out of the second marriage, as the children born out of void marriage, are also entitled to the benefits, and they have to be treated as legitimate children under law. Hence, we find that the order of the learned single Judge is perfectly in order and that, the case of the Writ Petitioner will have to be considered for compassionate appointment in the light of G.O.Ms.No.18, Labour and employment (Q1) Department, dated 23.01.2020.



In the result, this Writ Appeal stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Chief Educational Officer,
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3. The District Educational Officer,
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Palacode, Dharmapuri District - 636 808.
4. The Head Master,
Government Higher Secondary School,
Hanumanthapuram,
Karimangalam Taluk,
Dharmapuri District - 636 802.

+1cc to M/s.Rao & Reddy, Advocate, S.R.No.47460

+1cc to the Government Pleader, S.R.No.48227

Writ Appeal No.2377 of 2021
and CMP No.15173 of 2021

RLD(CO)
SU(30/11/2021)