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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 20.10.2021

C O R A M

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.21923 of 2021

(Through Video Conferencing)

V.Bharanidharan

... Petitioner

Vs.

The General Manager,
Erode District Co-operative Milk
Producers Union Limited,
Vasavi College Post,
Erode- 638 316.

... Respondent

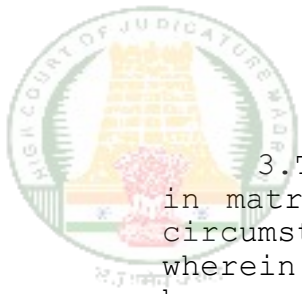
Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for records on the file of Na.Ka.No.01040/Nirvagam/E3/2019 dated 22.09.2021 quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to consider the name of the petitioner for appointment on compassionate ground in any suitable post.

For Petitioner : Ms.R.Poornima
For Respondent : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner has challenged the impugned order dated 22.09.2021 in Na.Ka.No.01040/Nirvagam/E3/2019, wherein the request of the petitioner for being appointed on compassionate grounds on account of the petitioner's father death has been rejected on the ground that there is no scope for accepting an alternate application after the first application was filed.

2. The facts of the case are that the petitioner's father Thiru K.S.Velusamy, who was working as a driver in the office of the respondent died on 01.03.2009, leaving behind the petitioner's mother, petitioner's elder brother namely Poongodi, Arun Karthik as the other legal heirs apart from the petitioner. Earlier an application was filed in the name of the petitioner's elder brother Arun Karthik for being appointed on compassionate grounds.



3. Thereafter, the petitioner's elder brother has settled in matrimony and is not supporting the family. Under these circumstances a fresh application was filed by the petitioner wherein the petitioner's mother and petitioner's elder brother have consented for appointment of the petitioner on compassionate grounds on account of the death of the petitioner's father.

4. The Government of Tamil Nadu in G.O(Ms).No.18, Labour and Employment (Q1) Department dated 23.01.2020 has now issued a comprehensive guide lines for considering the case of the parties where an employee dies leaving behind the legal heirs. Though the said Government Order does not specifically deal with the situation like the one under consideration that is the application being originally filed by the elder brother and thereafter substituted by the younger brother, the Hon'ble Division Bench of this court by its order dated 12.06.2008 in W.A.No.526 of 2008 has interpreted the guidelines of the Government with the following observations:-

"3. We find that in the instant case, a choice is given to make an application both to the senior most eligible person or a qualified person. The word 'or' has to be treated as disjunctive in the facts and circumstances of this case. We are adopting this interpretation in keeping in view the fact that the Scheme of compassionate appointment is one made for social benefit to the poor and indigent families. So, while considering the same, whenever it is possible, a construction should be adopted which preserves the benefit and any construction which frustrates the benefit must be eschewed. In the facts of this case, we are of the view that the word 'or' must be construed disjunctively and we are of the opinion that the choice to apply for compassionate appointment is qualified person in the family since the appointment which is sought is to the post of an Assistant Teacher.

4. Considering all these facts, we do not find there is any reason for us to interfere with the order passed by the learned single Judge. We, therefore, reiterate the direction given by the learned Judge and direct that the appellants must offer appointment to the first respondent to a suitable post as per the rules, regulations and administrative instructions of the department and since this appointment has already been delayed, we direct that such appointment be offered within a period of four weeks from date.



5. The writ appeal is thus dismissed summarily at the admission stage. Consequently, M.P.No.1 of 2008 is closed."

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5. The interpretation placed by the Hon'ble Division Bench of this Court is to further the cause of persons like the petitioner who approach the Department for appointment on compassionate grounds. This is a fit case for considering the petitioner for being appointed on compassionate grounds as admittedly the petitioner's elder brother, whose application was earlier filed has also not been appointed. Ultimately, the only criteria to be considered is whether the family is in indigent circumstances and whether the beneficial scheme for appointment on compassionate grounds can be extended in the given facts and circumstances of the case.

6. Considering the above decision of the Hon'ble Division Bench of this Court, this writ petition is allowed by quashing the impugned order by directing the respondent to consider the petitioner's case for appointment on compassionate grounds if the petitioner otherwise satisfies the other criteria prescribed in the said Government Order. This exercise shall be carried out by the respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgm/arb
To

The General Manager,
Erode District Co-operative Milk
Producers Union Limited,
Vasavi College Post,
Erode - 638 316.

+1 cc to Ms.R.Poornima, Advocate Sr.NO. 53749

W.P.No.21923 of 2021

KK(CO)
A.SK(12.11.2021)