

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.21514 of 2017

C.Thilagavathi

... Petitioner

Vs

1. The District Education Officer,
District Education Office,
Salem.
2. The District Elementary Education Officer,
Salem - 1.
3. The Assistant Elementary Education Officer,
Vazhappadi - 636 115.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in proceedings No.O.Mu.No.5792/A1/2014 dated 05.12.2014 on the file of the first respondent and quash the same as illegal and further direct the respondents to appoint the petitioner in any post commensurate with her qualifications.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mrs.V.Annalakshmi, GA

ORDER

The writ petition has been filed to quash the order of the first respondent vide proceedings in O.Mu.No.5792/A1/2014 dated 05.12.2014 and consequently, direct the respondents to appoint the petitioner in any post commensurate with her qualifications.

2.It is the case of the petitioner that her father by name P.Chinnusami, died on 01.06.2011, while he was working as Secondary Grade Teacher in Panchayat Union Elementary School, Palanipuram. Seeking compassionate appointment, the petitioner being second daughter, submitted a representation dated 28.05.2014 to the first respondent through the respondents 2 and

3, enclosing the required documents. By order dated 05.12.2014, which is impugned herein, the said representation was rejected by the first respondent, stating that the petitioner was a minor and on the date of application, she was only 17 years, 11 months and 8 days old. Feeling aggrieved, she has come up with this writ petition for the aforesaid relief.

3. Assailing the order passed by the first respondent, the learned counsel for the petitioner submitted that the rejection of the petitioner's application seeking compassionate appointment is arbitrary and illegal. According to him, having regard to the fact that the compassionate appointment is only to save the family of the deceased employee from distress, the respondents ought to have considered the said application generously, instead of searching a ground for rejecting the same. He further submitted that the respondents should have appreciated the object of the scheme that is to provide employment to the dependants on the death of the bread winner and provided any suitable job to the petitioner. Stating so, he prayed for appropriate direction to the respondents to reconsider the issue involved herein.

4. Reiterating the averments made in the counter affidavit, the learned Government Advocate appearing for the respondents submitted that as per the Government Order, the petitioner has to apply for compassionate appointment within three years from the date of death of her father with all the required documents in complete shape i.e., from 01.06.2011 to 31.05.2014 and accordingly, the petitioner made the application within the time limit on 28.05.2014, however, her date of birth is 21.06.1996 and she completed the age of 18 years only on 20.06.2014 and therefore, she is not eligible to get appointment on compassionate ground. Thus, according to learned Government Advocate, the order of the first respondent rejecting the petitioner's application seeking compassionate appointment is perfectly right and valid in law and the same warrants no interference at the hands of this Court.

5. Heard both sides and perused the documents produced in the form of typed set of papers.

6. Concededly, the petitioner's father died on 01.06.2011, while he was in service. The petitioner made application seeking compassionate appointment to the respondent authorities within a period of three years from the date of death of her father i.e., on 28.05.2014. However, her application was rejected by the order impugned herein, on the ground that she is not eligible for appointment on compassionate ground as she had not completed 18 years of age on the date of application and she completed the age of 17 years, 11 months and 6 days only. Therefore, this writ

petition.

7. Undoubtedly, the compassionate appointment is an exception to a regular appointment as it is being made under exceptional circumstances, unwanted and unpredicted by any beneficiary. It is not only just and reasonable, but also noble as its object is to save a family of an employee who was in employment, from the sudden financial crisis. Hence, the compassionate appointment which is intended to provide livelihood to the family of the deceased employee, with human dignity, cannot be treated as a casual concession, but an exceptional concession and should be constitutionally protected. That is why, the Supreme Court in *Bhavani Prasad Sanhar v. Union of India* [(2011) 4 SCC 209], in paragraph 15, it was observed as follows:

"...Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general Rules, carved out in the interest of justice, in certain emergencies, by way of a policy of an employer which partakes the character of the service Rules..."

8. In another decision in *National Hydroelectric Power Corporation v. Nanak Chand* [(2004) 12 SCC 487], it was held by the Supreme Court 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. Direction was issued in that case to consider the case of the candidate sympathetically."

9. In a judgment in *Mukesh v. State of Bihar* [(2017) 5 SCC 383], the Supreme Court held that "the compassionate appointment is meant to provide succour to the family of the deceased employee died in harness".

10. As far as the present case is concerned, which is pathetic, the petitioner's application seeking a job on compassionate ground was rejected, due to shortage of 25 days to attain majority as on the date of application, as per the prevailing Government Order. Technically, the decision so taken by the respondents is correct. However, on humanitarian grounds, the petitioner's application has to be reconsidered by the respondents, taking note of the object behind the framing of such Scheme, in the opinion of this Court. At this juncture, it is noteworthy to mention the observation of the Full Bench of this Court in paragraph 13 of its order dated 11.03.2020 rendered in WP(MD)No.7016 of 2011, which was passed with respect to the compassionate ground appointment and the same reads as follows:

"13...In view of what has been indicated above, we are also of the view that the period of three years is

a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

11.Thus, in the ultimate analysis, this Court, in the interest of justice, is inclined to set aside the order impugned herein and accordingly, set aside and the matter is remanded to the respondents for passing orders afresh after reconsidering the claim of the petitioner. Such an exercise shall be done, within a period of eight weeks from the date of receipt of a copy of this order.

12.This writ petition stands allowed in the above terms. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The District Education Officer,
District Education Office,
Salem.
2. The District Elementary Education Officer,
Salem - 1.
3. The Assistant Elementary Education Officer,
Vazhappadi - 636 115.

+1cc to Mr.V.Raghavachari, Advocate SR.No.20598

+1cc to Government Pleader SR.No.20550

W.P.No.21514 of 2017

PMK (CO)
GMY (23/04/2021)