



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.290 of 2021

A.Kayal Vizhi

... Petitioner

Vs.

The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni, Theni District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in O.Moo.No.4377/Aa5/2020, dated 19.11.2020 on the file of the respondent and quash the same as illegal and consequently, to direct the respondent to provide compassionate ground appointment to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.Louis.S

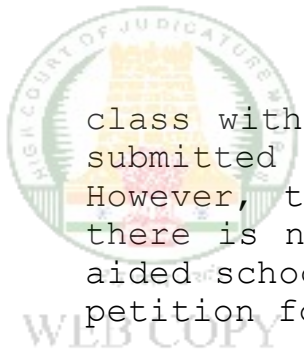
For Respondent : Mr.N.Shanmugaselvam,
Additional Government Pleader

O R D E R

This writ petition is filed challenging the impugned order passed by the respondent in O.Moo.No.4377/Aa5/2020, dated 19.11.2020 and to quash the same and consequently, to direct the respondent to provide compassionate appointment to the petitioner.

2. Mr.Shanmugaselvan, learned Addl. Government Pleader takes notice for the respondents and by consent of both parties, the writ petition is taken up for final disposal.

3.The case of the petitioner is that the petitioner's mother, who was working as Secondary Grade Teacher at V.O.C Middle School at Koodalur, died in harness on 05.11.2004. At the time of the death of the petitioner's mother, the petitioner was aged 12 years. It is the averment of the petitioner that since the petitioner had not attained majority and not in possession of the requisite qualification, the school authorities informed the petitioner to approach for compassionate appointment after attaining the age of majority and acquiring the necessary educational qualification. It is the further case of the petitioner that pursuing her education, she completed B.Sc., (Mathematics) and also studied B.Ed degree from Tamil Nadu Teachers Education University and came out successful in first



class with distinction. Thereafter, on 16.10.2020, the petitioner submitted a representation seeking compassionate appointment. However, the said representation was rejected on the ground that there is no scheme for providing compassionate appointment in the aided school. Therefore, the petitioner has filed the present writ petition for the aforesaid relief.

4. The learned counsel appearing for the petitioner submits that the impugned order passed by the respondent reveals total non-application of mind wherein, in respect of the aided school, already the State Government passed G.O.Ms.No.18, Labour & Employment Dept., dated 23.01.2020, a scheme has been provided for compassionate appointment and that the petitioner should be considered in consonance with the guidelines framed in the said Government Order. However, without adverting to the Government Order in proper perspective, the petitioner's representation has been rejected mechanically, which requires interference at the hands of this Court.

5. Per contra, learned Additional Government Pleader appearing for the respondents submit that though the petitioner's mother died while in service on 05.11.2004, at which time the petitioner was a minor, aged about 12 years. The petitioner, after completion of her education and attaining majority has submitted her application, which is beyond the period of three years mandated under G.O. Ms. No.18, which Government Order was issued in consonance with the decisions of this Court, as could be seen from the Government Orders. Further, it is submitted by the learned Addl. Government Pleader that the Full Bench of this Court in ***W.P. (MD) Nos.7016 of 2011, etc. Batch***, vide order dated 11.3.2020 has held that the outer limit for consideration of a candidature for compassionate appointment is only three years and that too subject to the scheme that is in existence. The petitioner having given her application beyond the period of three years and there being no scheme for compassionate appointment in aided schools, the representation was rejected, which requires no interference.

6. This Court, while dealing with a similar case in ***M.Vigneswaran - Vs - Govt. of Tamil Nadu (W.P. No.25231 of 2014)***, vide order dated 09.12.2020, considering the decision of the Hon'ble Full Bench on the issue of compassionate appointment, held as under :-

"13. In ***W.P. (MD) Nos.7016 of 2011, etc. Batch***, vide order dated 11.3.2020, on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, the matter was placed before the Full



Bench. The reference made to the Full Bench is as under :-

"Whether the view taken in A.Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the judgment of the Division Bench in N.Renugadevi's case, where a contradictory view has been taken, is the correct law?"

Tracing the lineage on the advent of compassionate appointment and the factors that are to be had in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment and for better understanding the same is extracted hereunder :-

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (Refer **Umesh Kumar Nagpal Vs. State of Haryana** (1994) 4 SCC 138).

15. From the above, it is unambiguously clear that application for compassionate appointment should be made without undue delay and it should be considered strictly in accordance with the



governing scheme and no discretion is vested with the authority and that the concept of compassionate appointment is only to meet the sudden crisis that has befallen the family on the death of the breadwinner.

16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate appointment, at any point of time, ought to be given as a matter of right.

17. The Full Bench, in the above said decision, after discussing the various Government Orders and also the laws propounded on the subject by the High Court as well as by the Hon'ble Apex Court, answered the reference in the following terms :-

"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."

7. From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

8. On the above proposition of law, it is evident that the very concept of giving a compassionate appointment is for the bereaved family to tide over the financial difficulties faced by it due to the untimely death of the breadwinner.

9. It should not be lost sight of that appointments to public



offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment.

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10. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground for claiming compassionate appointment. Indigency is the need that needs to be established, even within the threshold limit of three years, as is also evident from G.O. Ms. No.18 to decide on providing compassionate appointment. Holistically considering, the period of three years for moving an application for compassionate appointment is provided, which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority. However, the lower the age of the dependent would not be an attributing factor to extend the period, as such elasticity would have no ends to meet. Further, it should also not be out of context to state that the longer the period, the sustenance of the members of the family would by itself be an attributing factor to deny compassionate appointment.

11. In the case on hand, it is not in dispute that on the date of death of the petitioner's father, the petitioner was aged about 12 years and on acquiring the requisite educational qualifications and also on attaining the age of majority, viz., 18 years, the petitioner submitted an application for compassionate appointment, which has been rejected. It is evident that the petitioner had applied beyond the prescribed period of three years. The ground on which the petitioner claims an appointment on compassionate grounds is that her mother died in harness and, therefore, as her surviving legal heir, she is entitled to compassionate appointment.

12. As pointed out above, the intent and purpose for which the benevolent act is intended is to alleviate the poverty of the distressed family at the crucial hour and to provide it with financial stability. In the case on hand, the mother of the petitioner died while the petitioner was aged about 12 years of age. Even in the calamitous situation, the petitioner has been brought up and has completed her education upto graduation and had also obtained teacher training education, which clearly shows that the family definitely had means to sustain itself even during the



distressed situation. Therefore, the plea of the petitioner to direct the respondents to provide the relief of compassionate appointment to the petitioner by issuing appropriate directions would be an exercise, beyond the scope and ambit of compassionate appointment and issuing such a direction would defeat the very purpose for which the said benevolence has been granted to deserving individuals.

13. Further, it is to be pointed out that G.O. Ms. No.18, on which reliance has been placed by the learned counsel for the petitioner that the petitioner would be entitled for compassionate appointment even in aided school, does not deserve acceptance for the simple reason that such a clause is not found in the said Government Order. Further, the Government Order itself stipulates framing of scheme for providing compassionate appointment and in the absence of any scheme being pointed out by the petitioner, the case of the petitioner that she is eligible to be considered on the basis of the above Government Order does not merit acceptance.

14. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the respondents as no case has been made out by the petitioner to substantiate her grievance. Accordingly, this writ petition, being devoid of merits, is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To
The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni, Theni District.

+1 CC to SGP (SR-1266[F] dated 19/01/2021)

+1 CC to M/s.S.LOUIS, Advocate (SR-853[F] dated 11/01/2021)

W.P. (MD)No.290 of 2021
11.01.2021

KM (09.02.2021) 6P 4C