



WEB COPY

W.A.(MD) No.699 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2021

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THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM

and

THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.699 of 2020

and C.M.P. (MD)No.4161 of 2020

- 1.The District Collector,
Office of the District collector,
Pudukkottai District.
- 2.The Chief Educational Officer,
Office of the Chief Educational Officer,
Pudukkottai District.
- 3.The District Educational Officer,
Office of the District Educational Officer,
Aranthangi, Pudukkottai District.
- 4.The Block Educational Officer,
Office of the Block Educational Officer,
Karambakudi, Pudukkottai District. ...Appellants

-Vs-

Sushma ...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 28.02.2020 made in W.P.(MD)No.25890 of 2019.

Prayer in WP(MD). 25890 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the impugned proceedings issued by the 2nd Respondent in his proceedings in Na.Ka.No.680/A1/2019 dated 25-04-2019 and quash the same and consequently directing the respondents herein to appoint the petitioner in any suitable job on the basis of communication issued by the 4th Respondent dated 09-01-2019 and by considering the petitioner application dated 03-12-2018 under the compassionate grounds.

For Appellants : Mr.A.K.Manikkam,
Standing Counsel for Government.

For Respondents : Mr.K.P.S.Palanivel Rajan,
for Mr.B.Jameel Arasu.



JUDGMENT

[Judgment of the Court was made by **T. S. SIVAGNANAM, J.,**]

Heard Mr.A.K.Manikkam, learned Standing Counsel for the Government appearing for the appellants and K.P.S.Palanivel Rajan, for Mr.B.Jameel Arasu, learned counsel appearing on behalf of the respondent.

2. This Writ Appeal, by the District Collector and three others, is directed against the order dated 28.02.2020 in W.P.(MD) No.25890 of 2019.

3. The said Writ Petition was filed by the respondent herein, challenging the order passed by the second appellant dated 25.04.2019, in and by which, the request made by the respondent for grant of appointment on compassionate ground was rejected on the ground that she has not completed 18 years of age on the date of submission of the application for grant of appointment on compassionate ground. The learned single Judge referred to a decision in the case of **M.Sathish Kumar Vs. the Director of School Education and others**, wherein reliance was placed on the decision of the Division Bench of this Court in W.P.No.3050 of 2003. After referring to the said decision, the Court held that the respondent cannot be faulted, as she has applied within three years of attaining majority.

4. In our considered view, the said finding of the learned Single Judge, would not be putting forth the correct legal position, since the decision in the case of W.P.No.3050 of 2003 was a case pertaining to a claim for compassionate appointment in the Tamil Nadu Electricity Board. Likewise, the other decision, which was referred to in *Sushma Gosain Vs. Union of India* also pertaining to the applications made to the Electricity Board. It cannot be disputed that at the relevant time, the Electricity Board had a regularization, which framed application to be submitted within a time frame, after attaining majority. However, there is no such paramateria guidelines in the State Government service. Therefore, the said decision does not render any support to the case of the respondent. However, on facts, we find that the appellant Department by their own conduct are estopped from taking a different stand and rejected the application taking a stand contrary to what was taken by then consistently ever since the application was submitted through her mother on 10.10.2014. Various communications received from the appellants' Department viz., during November 2014, 17.12.2014 and 05.01.2017, all go to show that applications were entertained. Added to that when the petitioner approached this Court by filing W.P.(MD)No.24335 of 2018, which was disposed of on 19.02.2019, by recording the communication given by the appellants' department in Na.Ka.No.1730/A1/2018, dated 09.01.2019, the



respondent was directed to submit necessary documents. Therefore, the Court directed the application to be considered on merits. Learned Writ Court taking note of all the factual circumstances construed the matter to be an unique case on facts and granted the relief. Thus, we are not inclined to interfere with the order passed in the Writ Petition, not only for one of the reason given by the learned Writ Court, but also for the reasons which we have given in the preceding paragraphs.

5. The learned Standing Counsel for the Government appearing for the appellants would contend that one of the sister of the petitioner has completed her B.E. Degree and other sister is a student, who was just completed her M.B.B.S. course. This can hardly be a reason to deny employment.

6. As rightly submitted by the learned counsel for the appellants, if the appellants had taken a stand that in 2014, the family was not in indigenious circumstances, it may be of some relevance. But, at this distant point of time, such indulgence cannot be granted. New ground canvassed before us for the first time in the Writ Appeal cannot be entertained. From the impugned order dated 28.02.2020, more particularly, in paragraph 8 of the order, we find that the learned Writ Court directed appointment to be given to the respondent to a post proportionate to her qualification. This cannot be done as the authority in terms of the guidelines issued by the Government, more particularly, G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020, which can be only an entry level post.

7. For the above reasons, this Writ Appeal is partly allowed and the direction issued by the learned Single Judge to direct appointment to be given to the respondent on compassionate ground is confirmed. The findings recorded in paragraph 4 are set aside, as such finding cannot be rendered based on the decision referred to in paragraph 3, because those decisions have been rendered interpreting the regularization of the Tamil Nadu Electricity Board, which is not in paramateria with the guidelines of the State Government. The appellants are directed to give appointment to the respondent on compassionate ground, within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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+1 CC to M/s.SPL GP (SR-21743[F] dated 08/07/2021)

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and C.M.P. (MD) No. 4161 of 2020
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