



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD) No.10494 of 2020

R. Jaya Suruthi

... Petitioner

Vs.

1. The State of Tamil Nadu
Represented by the Secretary to Government,
Education Department,
Fort. St. George,
Chennai - 600 009.

2. The Director of School Education,
College Road,
Chennai - 600 009.

3. The Co-Director of School Education,
Staff Block,
School Education Movement,
Chennai.

4. The District Educational Officer,
Kanyakumari District.

5. The Additional Assistant Elementary
Educational Officer,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent proceedings in M.M.No.12548/J/E4/2020 dated 14.07.2020 and quash the same as illegal and consequently direct the respondents to provide compassionate appointment to the petitioner on the basis of his educational qualification within a time limit as stipulated by this Hon'ble Court

For Petitioner : M/S.M. Murugan

For Respondents : Mr.A.K Manickam,
learned counsel for State



ORDER

This Writ Petition has been filed for the issue of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent vide proceedings in M.M.No.12548/J/E4/2020 dated 14.07.2020 and quash the same as illegal and consequently direct the respondents to provide compassionate appointment to the petitioner on the basis of his educational qualification within a time limit as stipulated by this Hon'ble Court

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. According to the petitioner, her mother was working as a Teacher in Marayapuram Government School, Kanyakumari District and died on 09.10.2011, while she was in service. The petitioner submitted a representation in the month of April 2014, to the third respondent along with relevant documents requesting to consider her for compassionate appointment. According to the petitioner, the petitioner's father and brother have given consent letters for providing compassionate appointment to her and they have also made a similar request to the first respondent. But the third respondent has returned the petitioner's representation vide proceedings dated 11.07.2014, on the ground that at the time of application, the petitioner has not completed 18 years of age. Challenging the aforesaid order, the present writ petition has been filed by the petitioner before this Court.

4. An identical issue came up before the Honourable Division Bench of this Court in W.A.No.1749 of 2019 (***Sudhanthira Devi vs. The State of Tamil Nadu and others***). by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

5. The Honourable Full Bench in Paragraph No.13 of the Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011 has held as follows:

"13. In the light of the above we find that the judgment in the case of A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. 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



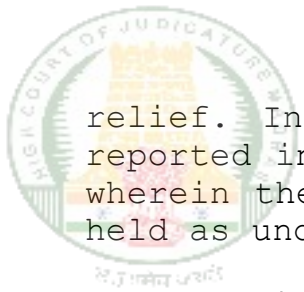
to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

6. Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed the time limit to prefer application for compassionate appointment as three years from the date of death of the Government servants.

7. Admittedly, when the petitioner's mother died on 09.10.2011, the petitioner was a minor and was not eligible for appointment. After a period of nearly 9 years, the petitioner claims appointment on compassionate grounds. It is beyond the prescribed time limit of 3 years. In this regard, it is worthwhile to refer a decision of this Court in "*A.Venkatesan versus The Chairman, TNEB, Chennai and another*" in W.P.No.33500 of 2014, dated 11.10.2018, wherein, it has been observed as under:

"4. This Court is of an opinion that the compassionate appointment is a special scheme and the scheme of compassionate appointment was introduced to mitigate the penurious circumstances arising on account of the sudden death of the Government employee. Thus, the scheme of compassionate appointment must be extended to the legal heirs of the deceased employee to protect their livelihood, immediately after the death of the deceased employee. **Thus, the appointment to be granted on compassionate grounds within a reasonable period of three years or atleast within a period of five years. Beyond that, legal presumption would be that the penurious circumstances arising on account of the sudden death of the Government employee became vanished. It is not as if the compassionate appointment can be claimed as a matter of right to provide one appointment to one family of the deceased Government employee.** Such a scheme can never be accepted, in view of the fact that the scheme of appointment itself, is in violation of Article 14 and 16 of the Constitution of India. The scheme being a special one was introduced in violation of the constitutional principles. Therefore, the same must be implemented strictly in accordance with the terms and conditions.

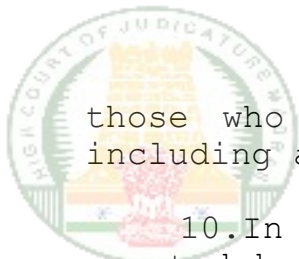
8. In fact, there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate



relief. In this regard, it is worthwhile to refer to a decision reported in "**State of Manipur vs. Md. Rajaodin**" {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689) and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullify the main provision by taking away completely the right conferred by the main provision."

9. Therefore, the scheme of providing compassionate appointment can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables



those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

10. In the light of the above decisions supra, no relief can be granted as there is no illegality in the impugned order of the third respondent in M.M.No.12548/J/E4/2020 dated 14.07.2020. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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Education Department,
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+1 CC to M/s.GP (SR-28057[F] dated 03/09/2021)

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RD(22.09.2021) 5P 7C