



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)No.2123 of 2021

and

C.M.P(MD)No.9895 of 2021

WEB COPY

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
 - 2.The Director of School Education,
College Road, Chennai - 600 006.
 - 3.The Joint Director of School Education,
Department of School Education,
College Road, Chennai - 600 006.
 - 4.The Chief Educational Officer,
Virudhunagar District.
 - 5.The District Educational Officer,
Virudhunagar District.
 - 6.The Headmistress,
Government Higher Secondary School,
Naduvapatti,
Virudhunagar District.
- ... Appellant / Respondents

Vs.

S.Sheeba Priyadharsini ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 06.07.2021 passed in W.P(MD)No.8058 of 2021.

Prayer in WP(MD). 8058/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 4th respondent Chief Educational Officer in Mu.Mu.No.5586/A1/2018 dated 20.11.2020 and quash the same and further direct the respondents to provide a suitable employment to the petitioner on compassionate grounds.



For Appellants

: Mr.M.Siddharthan,
Additional Government Pleader

For Respondents

: Mr.K.Ragadeeshkumar for
M/s.Isaac Chambers

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by

PUSHPA SATHYANARAYANA, J.)

The Writ Appeal is preferred, challenging the order dated 06.07.2021 passed in W.P(MD)No.8058 of 2021.

2. This is an unfortunate case of a legal heir of the deceased Government employee who died in harness and sought for appointment on compassionate grounds. When the writ Court had allowed the writ petition, this appeal is preferred by the Government.

3. The writ petitioner is the daughter of one Mrs.John Britto, who died on 21.11.2009 while serving as a Teacher. She had left behind her husband, son and the petitioner as legal heirs. After her death, on 02.03.2012, the petitioner had applied seeking an appointment on compassionate ground and the sixth appellant school had sent a proposal to the fifth appellant for appointment of the writ petitioner, which was rejected on 27.12.2012 seeking certain particulars. After these particulars were furnished, the fifth appellant was satisfied with the same and forwarded the proposal to the fourth appellant on 19.02.2013 recommending the petitioner for appointment. However, there was no response and no action was taken. Meanwhile, the writ petitioner/respondent was married in the year 2014 and became a widow when she lost her husband in an accident in 2016. She also has a child. While so, the fourth appellant on 16.05.2019 forwarded the proposal to the third appellant along with recommendation for appointment of the writ petitioner on compassionate grounds. However, the fourth appellant rejected the request of the petitioner on 20.11.2020 which was assailed in the writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The appellants failed to see that on the date when the mother of the writ petitioner died what was the financial position of the family and whether they were entitled for compassionate appointment. The delay and the time taken by the appellants cannot be counted to their advantage to reject the claim of the writ petitioner.

6. The writ Court had specifically found that on the date of death of the mother, the brother of the petitioner was not employed



and he had given consent for the petitioner to take up the appointment on compassionate ground. The G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, enables a widowed daughter of the deceased also to apply for appointment on compassionate ground. In this case, the District Educational Officer, the fifth respondent herein had earlier recommended the petitioner for compassionate appointment. It is after 11 years, they find that the brother of the petitioner was employed. Therefore, she may not be eligible for compassionate appointment, which is totally wrong defeating the concept of compassionate appointment itself. When it is admitted by the appellants that compassionate appointment is to meet the sudden crisis in the family on account of the death of the breadwinner while in service, without considering the financial position on the date of death of the employee rejecting the claim after 11 years is very unfortunate. Citing the employment of the brother after 10 years from the date of death of the mother, cannot be a ground for rejection of employment of the petitioner.

7.In fact, in one of the writ appeals **W.A(MD)No.695 of 2017 (the District Educational Officer, Cheranmahadevi, Tirunelveli District and another vs. P.Suresh)** wherein one of us is a party (Justice P.VELMURUGAN) has held as follows:

"3.The employment of the brother or the father receiving pension is no ground to deny Compassionate Ground appointment to the petitioner, which he claims on account of demise of his mother who died in harness while functioning as a Head Mistress of a Middle School. With regard to the allegation that the respondent was running a medical shop, the learned Single Judge, found that there is no record to substantiate the same and in the counter affidavit, a specific denial of the said allegation has not been made. The learned single Judge, took into consideration the decision in the case of B.Jayakumar vs. Bharat Sanchar Nigam Ltd., BSNL reported in 2007(6) MLJ 1293 for allowing the writ petition."

8.It would be relevant to advert to the Judgment of the Honourable Supreme Court in **Indian Bank and Others vs. Promila and Another** reported in **(2020) 2 SCC 729**, wherein while holding that the Scheme for compassionate appointment must be decided only on the basis of prevalent Scheme vis-a-vis the subsequent Scheme and held as follows:

"18. The question of applicability of any subsequent Scheme really does not apply in view of judgment of this Court in Canara Bank. Thus, it would not be appropriate to examine the case of the respondents in the context of subsequent Schemes, but only in the context of Scheme of



4-4-1979, the terms of which continued to be applicable even as per the new Scheme of 5-11-1986 i.e. the Scheme applicable to the respondents. There is no provision in this Scheme for any ex gratia payment. The option of compassionate appointment was available only if the full amount of gratuity was not taken, something which was done. Thus, having taken the full amount of gratuity, the option of compassionate appointment really was not available to the respondents.

19. We may also notice that though the subsequent Schemes were not applicable, even if benefit was sought to be given of those Schemes, initial non-disclosure and subsequent disclosure by Respondent 1, of her employment and her emoluments would disentitle her under those Schemes, too. Thus, when the appellant was calling upon the respondents to apply under the subsequent Schemes, that could have been beneficial to the respondents only if they were entitled to any of the benefits under that Scheme. That could not happen because the benchmark provided in those subsequent Schemes took the emoluments of respondents beyond the prescribed limit, so as to disentitle them from both, compassionate employment and ex gratia payment."

9. In a recent judgment, a Three-Judge Bench of the Hon'ble Supreme Court in **N.C.Santhosh V. State of Karnataka, 2020 (7) SCC 617**, held as follows :

"19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

10. The writ Court after elaborately discussing the facts in detail, has set aside the order impugned in the writ petition and directed the appellants to consider the representation of the petitioner for appointment on compassionate ground and appoint her in a suitable post within four weeks.



11. In the light of the above discussion and in the given facts, when there is no explanation on the side of the appellants for the delay taken for more than a decade in considering the application of the writ petitioner, we also find no reason to interfere with the order of the learned Single Judge.

12. In view of the same, the order of the learned Single Judge is confirmed and four weeks time is granted to the appellants to issue an order of appointment to the respondent/writ petitioner to any suitable post that she may be eligible for.

13. In fine, the writ appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

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:

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
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Virudhunagar District.
- 5.The District Educational Officer,
Virudhunagar District.

<https://hcservices.ecourts.gov.in/hcservices/>



6.The Headmistress,
Government Higher Secondary School,
Naduvapatti, Virudhunagar District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-37454[F]
dated 06/12/2021)

+1 CC to M/s.SPL GP (SR-37415[F] dated 06/12/2021)

JUDGMENT MADE IN
W.A(MD)No.2123 of 2021
03.12.2021

NSN (CO)
GC(31.12.2021) 6P 9C