



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.345 of 2017

WEB COPY

S.Karuppasamy

... Petitioner

Vs.

The District Educational Officer,
Thoothukudi District,
Thoothukudi.

... Respondent

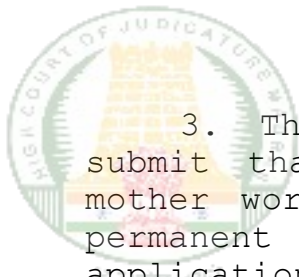
Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order bearing Muu.Mu.No.3213/A1/12, dated 15.06.2016 passed by the respondent and quash the same and consequently direct the respondent to grant appointment to the petitioner under compassionate ground.

For Petitioner	:	Mr.T.Antony Arulraj
For Respondent	:	Mr.M.Muthu Geethayan Special Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order passed by the respondent in Muu.Mu.No.3213/A1/12, dated 15.06.2016 and quash the same and consequently direct the respondent to grant appointment to the petitioner under compassionate ground.

2. The case of the petitioner is that his father was working as Record Clerk in C.P.Aathithanar Government Higher Secondary School Kaayamozhi, Thoothukudi District and died in harness on 28.10.2011, leaving behind the petitioner, his elder sister and his mother as legal heirs. The petitioner is a professional heavy transport vehicle driver and at the time of death of the petitioner's father, he is working as a driver in a private concern. Therefore, he made an application before the respondent for compassionate appointment on 04.05.2016 ie., within a period of three years from the date of death of his father. However, the respondent, vide order dated 15.06.2016, has rejected the request made by the petitioner, without proper appreciation of the facts and circumstances of the case, on the ground that the mother of the petitioner is working as a Sweeper in Government Higher Secondary School, Muduvaithanenthall, Thoothukudi District. Challenging the same, the present writ petition has been filed.



3. The learned counsel appearing for the petitioner would submit that when the petitioner submitted his application, his mother worked as temporary employee and thereafter, she was made permanent in the said post. Though the petitioner has made an application for compassionate appointment in the year 2012, the said application was rejected after a delay of four years. Further, the reason assigned in the impugned order is non est in the eye of law and hence, he prayed for allowing this writ petition.

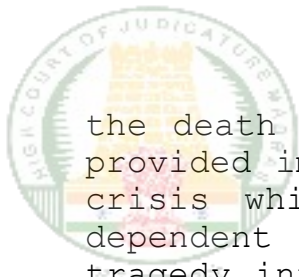
4. Mr.M.Muthu Geethayan, learned Special Government Pleader appearing for the respondent would submit that as per G.O.(Ms.) No.40, Labour and Employment Department, dated 05.01.1990, when the family member is working in the permanent employment, the other family member not entitled for compassionate appointment and the G.O.(Ms.)No.155, Labour and Employment Department, dated 16.07.1993 and another G.O.(Ms.)No.225, Labour Department, dated 15.02.1972, issued guidelines for compassionate appointment and the said G.Os. have also explained the criteria for indigent circumstances. In the present case, the petitioner's mother employed as a Sweeper in a permanent post and as per the Scheme, the petitioner is not entitled for compassionate appointment. Hence, the order impugned in the writ petition warrants no interference.

5. In support of his contentions, the learned Special Government Pleader appearing for the respondent relied on a decision of the Hon'ble Apex Court in the case of **State of Himachal Pradesh and another vs. Shashi Kumar** reported in **2019 (3) SCC 653**, which has been relied by this Court in W.P.(MD).No.16577 of 2014, dated 05.08.2019.

6. Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondent and perused the materials available on record.

7. In the present case, the respondent has rejected the petitioner's application for compassionate appointment on the ground that the petitioner's mother was already in employment as a Sweeper in Government Higher Secondary School, Muduvaithanenthal, Thoothukudi District. When the petitioner's mother is supporting the family by earning considerable amount from permanent employment, there is no question of indigent circumstances in the petitioner's family. In this regard, useful reference can be had to the decision of the **Division Bench of this Court** in **W.A.No.3899 of 2019 (P.Poongodi vs. The Chairman)** on which reliance has been placed by the respondents, wherein it has been categorically held that the claim for appointment on compassionate basis must be made without any delay.

8. The purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to



the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly.

9. In the light of the decision of the **Division Bench of this Court** in **W.A.No.3899 of 2019 (P.Poongodi vs. The Chairman)**, there is no merit in this writ petition and it deserves dismissal and accordingly, the Writ Petition is dismissed. However, in the circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

The District Educational Officer,
Thoothukudi District,
Thoothukudi.

Writ Petition (MD)No.345 of 2017

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(CO)

KV(09.02.2021) 3P 2C