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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.01.2021
CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.19554 of 2017
and
W.M.P.(MD).Nos.15844 and 15845 of 2017

G.Karthik Raj ... Petitioner

Vs.

1.The Director of School Education,
O/o.Directorate of School Education,
Chepauk,
Chennai 600 005.

2.The Chief Educational Officer,
O/o. The Chief Education Office,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Officer,
O/o. The District Education Office,
Paramakudi,
Ramanathapuram District.

4.The District Elementary Educational Officer,
O/o. The District Elementary Education Office,
Paramakudi,
Ramanathapuram District. ... Respondents

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 passed by the third respondent in his proceedings in Na.Ka.No.422/A1/2013, dated 05.06.2017 and quash the same as illegal and consequently direct the respondents to appoint the petitioner as Junior Assistant on compassionate ground within the period that may be stipulated by this Court.

For Petitioner : Mr.Nawaz Khan
for M/s. Ajmal Associates
For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent in his proceedings in

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Na.Ka.No.422/A1/2013, dated 05.06.2017 and quash the same as illegal and consequently direct the respondents to appoint the petitioner as Junior Assistant on compassionate ground.

2. The case of the petitioner is that his father had worked as Assistant Elementary Education Officer, Kamuthi, Ramnad District and he died in harness on 03.12.2007, leaving behind the petitioner, mother and his younger brother as legal heirs. Immediately thereafter, the petitioner's mother made an application for the petitioner's younger brother, on 24.05.2010 and the same was returned by the proceedings of the fourth respondent, dated 04.10.2010, seeking certain documents. Thereafter, another application was submitted on 03.10.2011, in the prescribed format and the same was forwarded to the first respondent. The first respondent, by his proceedings dated 01.03.2012, returned the proposal on the ground that the younger brother is not entitled for compassionate appointment, while the elder brother is eligible for the said post. Therefore, the petitioner has submitted the second application and on 03.09.2012, the same was forwarded to the fourth respondent and the fourth respondent has forwarded the same to the third respondent on 23.01.2013 and thereafter, the third respondent has forwarded the same to the first respondent on 19.03.2013. However, the said application was rejected by the third respondent on 05.06.2017, on the ground that there is no Government Order regarding the appointment on compassionate ground to alternative legal heir of the deceased employee. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner's mother initially made an application in the year 2010 ie., within a period of three years. However, the said application was returned and subsequently, the petitioner has made an application on 03.09.2012 and the same was also rejected and the reasons assigned in the impugned order is unsustainable one. As per the Scheme, anyone of the family member is entitled for compassionate appointment. However, the earlier application submitted by the petitioner's mother for his younger brother and the subsequent application submitted by the petitioner were returned. Hence, he prayed for allowing this writ petition.

4. The learned Special Government Pleader appearing for the respondents would submit that the compassionate appointment is an exception to the general Rule and that appointment to any public post in the service of the State has to be made on the basis of the Schemes provided by the Department. In the present case, the petitioner's father passed away in the year 2007 and the initial application was made in the year 2010 and the said application was returned on the ground that when the elder brother is alive, making application by younger brother is a defective one. Hence, the application was returned. He would further submit that when there

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was an application by the co-member of the family, making another application by another member is not maintainable and hence, he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. It is an admitted fact that the petitioner's father passed away in the year 2007 and the petitioner's mother made an application in the year 2010 for providing compassionate appointment to her younger son and there is no averments to the effect that whether the elder brother has given no objection certificate for providing compassionate appointment to his younger brother. In the absence of any such document, this Court can presume that the earlier application was filed without the consent of the petitioner. Further, that proceeding was not challenged in the manner known to law, by his younger brother and thereafter, the petitioner has made another application in the year 2012. However, on perusal of the entire affidavit, the petitioner has not mentioned anything about the no objection certificate and the financial crisis faced by the petitioner's family.

7. 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. 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.

8. In the light of the above, there is no merit in this writ petition. Accordingly, this Writ Petition is dismissed. However, in the circumstances of the case, there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// 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.

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+1 CC to GP (SR-1659[F] dated 21/01/2021)

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