



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

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THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD) No.2501 of 2017

and

W.M.P. (MD) No.2101 of 2017

WEB COPY

T.Murugan

... Petitioner

Vs

1.The Director of School Education,
Office of the Directorate of Elementary Education,
School Education Department,
Chennai-600 006.

2.The District Educational Officer,
Office of the District Educational Office,
Thenkasi, Thirunelveli District.

3.The Additional Assistant Elementary Educational Officer,
Office of the Additional Assistant Elementary
Educational Office,
Vasudevanallur, Thirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings in மு.மு.எண்.9876/அ1/2010, dated 29.04.2014 and quash the same as illegal and consequently to direct the respondents to appoint the petitioner as Junior Assistant or any other post commensurate to the qualification of the petitioner on compassionate ground within the period that may be stipulated by this Court.

For Petitioner : Mr.Suhail
for M/s.Ajmal Associates

For Respondents : Mrs.S.Srimathy
Special Government Pleader

O R D E R

This writ petition is filed to quash the impugned order passed by the second respondent, dated 29.04.2014, in proceedings in மு.மு.எண்.9876/அ1/2010, and consequently, direct the respondents to appoint the petitioner as Junior Assistant or in any other post commensurate to the qualification of the petitioner on compassionate grounds, within the period stipulated by this Court.



2.It is the case of the petitioner that the petitioner's mother, Saraswathi was appointed as a Secondary Grade Teacher in Puliankudi Shri.Sundara Seeniammal Municipality Primary School. The petitioner's mother passed away, while she was in service on 01.02.2006 in harness, leaving behind the petitioner and other legal heirs. Even before the demise of the petitioner's mother, one of her elder daughters, namely, Shanthi got married and her brother, namely, Muthukumar also got married and they were separately residing along with their family. After the demise of the petitioner's mother, his family was in penury. In view of the indigent circumstances, the petitioner filed an application seeking for compassionate appointment on 30.11.2006 along with the required documents and the same was also forwarded by the third respondent to the second respondent, vide proceedings, dated 23.11.2009 and directed the third respondent to consider the penury condition of the petitioner's family and filed a report along with all other documents. Thereafter, the third respondent submitted a report on 06.12.2010. However, the second respondent not convincing with the report filed by the third respondent, rejected the petitioner's application on 29.04.2014 on the ground that his brother Muthukumar was working as Assistant Agricultural Officer in the Agricultural Department and further, the petitioner's father is a retired employee and is receiving two pensions. Since the other family members are in employment and are earning salaries, they are not in indigent circumstances and accordingly, the said application was rejected. Challenging the same, the present writ petition has been filed with the above said prayer.

3.The learned counsel appearing for the petitioner would submit that the petitioner and his sister are not married. Already the elder brother and his elder sister got married and they are living separately and further, the petitioner's father is not a Government servant and is an employee in a private concern and is earning only a meagre income, which is not sufficient to run the day-to-day life. Considering the indigent circumstances faced by the petitioner's family, the petitioner filed an application seeking for compassionate appointment. However, the said application was rejected on the ground that her brother is in employment in the Government Department, which is unsustainable one in law. The elder brother and the elder sister are living separately and they are not assisting the petitioner's family and further, the petitioner's father also passed away in the year 2016. Hence, the petitioner is entitled for compassionate appointment. Further, the application was made in the year 2006, immediately, after the death of the petitioner's mother. However, the said application was rejected in the year 2015 after a lapse of nine years and there is no proper explanation for the delay in rejecting the application. Hence, he prayed for allowing this petition.



4.The learned Special Government Pleader appearing for the respondents would submit that as per the Government Orders in G.O.Ms.No.155, dated 16.07.1993 and G.O.Ms.No.225, dated 15.02.1972, one of the conditions prescribed under the scheme of appointment on compassionate grounds formulated in the above said G.O., is that all the members of the family of the deceased Government Servants should be in indigent circumstances and another condition introduced in the Government Order is that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased Government servant will not be eligible for compassionate appointment. In the present case, the petitioner's father is a retired employee and is receiving pension and further, his elder brother is a Government servant working as Assistant Agricultural Officer in the Agriculture Department and when the other family members are in employment, they are not entitled for compassionate appointment. Accordingly, the order impugned in the writ petition is perfectly valid. Hence, she prayed for the dismissal of the writ petition.

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

6.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.

7.The issue arises in the present case is whether the petitioner is entitled for compassionate appointment. It is relevant to mention that as rightly pointed out by the learned Special Government Pleader for the respondents that already the Government issued orders in G.O.Ms.No.225, dated 15.07.1972 and G.O.Ms.No.155, dated 16.07.1993, which imposed a condition that the request for the compassionate appointment has to be considered as to whether the family of the deceased Government servant was in indigent circumstances and another condition introduced in the said G.O., if there is already any earning member in the family of the Government servant who died in harness, the other dependents of the deceased Government servant will not be eligible for compassionate



appointment. However, this Court cannot issue a direction to consider her appointment, if the person was employed even before the death of the Government servant and was living separately without extending any help to the family, then, the case of other eligible dependents will have to be considered. However, in the present case, the petitioner's mother passed away in the year 2006 and the petitioner made an application in the year 2006. At that time, the elder brother is not in employment and he secured employment in the year 2010. However, the fact remains that the petitioner's father is a retired employee and is receiving the pension and is taking care of the family. Further, the petitioner's father is an earning member and he passed away in the year 2016. In the said circumstances, the grounds raised in the writ petition cannot be considered.

8. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

To

1. The Director of School Education,
Office of the Directorate of Elementary Education,
School Education Department,
Chennai-600 006.
2. The District Educational Officer,
Office of the District Educational Office,
Thenkasi, Thirunelveli District.
3. The Additional Assistant Elementary Educational Officer,
Office of the Additional Assistant Elementary
Educational Office,
Vasudevanallur, Thirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1302[F] dated 20/01/2021)

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