



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.02.2022

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.19252 of 2015

J.Babu

...Petitioner

Vs.

1. The Director,
School Education,
College Road,
Chennai - 600 006.

2. The District Educational Officer,
Salem District,
Salem.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records made in impugned order in O.Mu.No.8619/A5/2014 dated 13.01.2015 on the file of the second respondent herein and quash the same as illegal and direct the respondents to provide suitable employment as compassionate ground to secure the ends of justice.

For Petitioner .. Mr.R.Sankarasubbu

For Respondents .. Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The case of the petitioner is that his father was working as Office Assistant in the Educational Department. He died on 25.04.2006 while working at Government High School, Navalur, Attur, Salem District. At the time of his death, he left behind his wife, two sons and one daughter. The petitioner herein is the second son.

2.Since, the father of the petitioner was the only bread winner of the family and on his death, the family was reduced to penury. An application was made requesting for compassionate appointment for the petitioner as the elder brother and sister were pursuing their studies and they were not inclined to apply



for consideration. The petitioner was under graduate in commerce and therefore, he made a request for compassionate ground appointment.

3. The second respondent, however, rejected the request of the petitioner by order dated 15.12.2010. The rejection was on the ground that the petitioner happened to be a third legal heir to the deceased employee. According to the respondent, there is a bar in the consideration of the third legal heir in terms of the policy decision of the Government.

4. Challenging the reasons as set forth for rejection of his request, the petitioner approached this Court in W.P.No.11162 of 2013. This Court disposed of the said Writ Petition on 18.04.2013 by setting aside the rejection order on the basis of the proposals sent by the Headmistress and directed to pass orders within a period of 12 weeks. The Court felt that the reason for rejection was untenable and therefore, directed for fresh consideration.

5. Thereafter, the matter was once again considered and rejected on the ground that his brother was employed in a private concern and the sister was working in a Government School and they were all qualified and the petitioner was not entitled to be considered for compassionate appointment. The said rejection was again put to challenge by the petitioner in W.P.No.24606 of 2014. This Court vide order dated 22.09.2014, considered the rival submissions and held in paragraphs 5 & 6 hereunder;

5. I am unable to accept the contention of the learned Special Government Pleader. A reading of the Government order in G.O.Ms.No.155, dated 16.07.1993, makes it clear that when any one of the legal heirs of the deceased employee is employed and living separately without extending any help to the family, then the other eligible person will be considered for compassionate appointment. In the case on hand, it has not been stated in the order passed by the first respondent dated 10.01.2013, as to whether the younger brother is employed in Government service and supporting the family and elder brother of the petitioner namely, Prabu, is employed in a private concern, but that does not mean that they are supporting the family. Similarly, the sister of the petitioner though employed in a Government School as a Teacher it is stated that she is married and she is living separately with her husband and she is not extending any help to the petitioner's family. The receipt of the pension by the widow cannot be a ground for disqualification to other legal heirs to apply for compassionate appointment.



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6. In the result, the Writ Petition is allowed and the order passed by the first and second respondents are set aside. The first respondent is directed to consider the case of the petitioner and pass orders on merits and in accordance with law, if the family is in indigent circumstances, within a period of eight weeks from the date of receipt of copy of this order."

6. This Court has once again directed the authorities to consider the case on merits and in accordance with law, as it was not satisfied with the reasons stated in the rejection order.

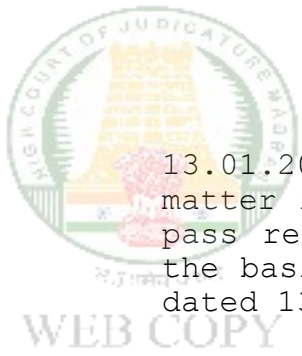
7. Thereafter, the matter was once again considered and rejected by the present impugned order dated 13.01.2015 citing the very same reasons. Being aggrieved by the present rejection, the petitioner again back before this Court with this Writ Petition.

8. Mr. R. Sankara Subbu, the learned counsel for the petitioner stated that earlier, in W.P.No.24606/2014, this Court was not satisfied with the reasons and felt that the reasons were untenable and set aside the impugned order and remanded the matter for fresh consideration. Unfortunately, on remand, the second respondent for the very same reasons rejected the claim of the petitioner.

9. On notice, counter affidavit was filed on behalf of the respondents. The sum and substance of the averments in the counter affidavit is that petitioner's brother and sister were employed and their family cannot be said to be in indigent circumstance. The averments in the counter or the reasons that are set forth in the impugned order cannot be countenanced both in law and on facts for the simple reason that earlier this Court intervened and set aside the rejection order which contained the very same reason in W.P.No.24606/2014 dated 22.09.2014.

10. In the above circumstances, it is not open to the authority to cite the very same reasons for not considering the claim of the petitioner for compassionate appointment. When this Court considered the earlier reasons for rejection as invalid and incorrect, the authority cannot stick to the same reasons for rejecting the request, once again. The present rejection order therefore, suffers from not only non application of mind but also misapplication of mind. Therefore, the impugned order is liable to be set aside as it is illegal and wholly unjust, contrary to the specific direction of this Court.

11. In the said circumstances, the impugned order dated



13.01.2015 in O.Mu.No.8619/A5/2014 is hereby set aside and the matter is once again remitted to the second respondent herein to pass reasoned order without reference to the reasons which were the basis of the earlier rejection as conveyed in impugned order dated 13.01.2015.

12.While passing the orders, the second respondent is directed to take into consideration the employment status of the family otherwise, without any reference to the employment of the petitioner's elder brother and sister and also without reference to the pension payable to the widow mother.

13.The second respondent is directed to pass appropriate order in this regard within a period of four weeks from the date of receipt of copy of this order.

14. With the above directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi/mrm

To

1. The Director,
School Education,
College Road,
Chennai - 600 006.

2. The District Educational Officer,
Salem District,
Salem.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.10114
+1cc to the Government Pleader, S.R.No.10742

W.P.No.19252 of 2015

MT (CO)
CT 25/03/2022