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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.8849 of 2022

and

WMP No.8676, 8677 of 2022

V.Prasanna Venkatesh

... Petitioner

vs.

1. The District Educational Officer,
District Education Office,
Mayiladuthurai - 609 001.
2. The District Educational Officer,
District Education Office,
Nagapattinam - 611 003.
3. The District Elementary Educational Officer,
District Elementary Education Office,
Nagapattinam- 611 001.
4. The Assistant Elementary
Educational Officer,
Mayiladuthurai,
Nagapattinam District - 609 001.
5. The Head Master,
Panchayat Union School,
Athur, Mayiladuthurai Union,
Nagapattinam District - 609 204.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records vide Na.Ka.no.39/a1/2021 dated 21.02.2022 on the file of 1st respondent and quash the same as incompetent, arbitrary and without jurisdiction and further direct the 1st respondent to appoint the petitioner on compassionate ground appointment.



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For Petitioner : Mr.M.Aravind Subramaniam

For Respondents: Mr.V.Manoharan
Additional Government Pleader

O R D E R

By consent of both the parties, this writ petition has been taken up for final disposal.

2. This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, to quash the impugned order dated 21.02.2022 passed by the 1st respondent and further direct the 1st respondent to appoint the petitioner on compassionate ground appointment.

3. The case of the petitioner in brief:

The petitioner's father late R.Vivekanandan had worked in the fifth respondent school as Headmaster and while in service, he died on 05.02.2012, leaving behind the petitioner and his wife as legal heirs. At the time of death, the petitioner was minor and his mother gave representation to the respondents seeking employment to her son under compassionate ground. The third respondent vide letter dated 20.07.2015, suggested to make application after attaining the of 18 years by the petitioner. After attaining majority, the petitioner made several representations seeking employment. The 4th respondent vide proceedings dated 09.08.2016, had forwarded his representation to the third respondent to consider the request of compassionate appointment. The petitioner has also submitted all the documents, as sought by the respondents 2 to 4. But there was no fruitful remedy from the respondents. Hence, the petitioner filed W.P.No.24343 of 2019 before this court, and vide order dated 07.01.2021, this court has directed the first respondent to consider the representation of the petitioner and to pass orders on merits. Pursuant to the direction of this court, the first respondent issued order, refusing to grant appointment on compassionate ground, stating that on the date of receipt of representation, the petitioner had not attained the age of 18 years. Hence this writ petition.

4. The learned counsel appearing for the petitioner submitted that immediately after death of late R.Vivekanandan, the petitioner's mother gave application seeking employment to the petitioner. But the third respondent vide order dated 27.07.2015 has advised to make application after attaining the age of 18 years by the petitioner. He further submitted that, after attaining majority, the petitioner gave representation and the same was entertained and duly recommended by the fourth



respondent and forwarded to the third respondent. Though the representation was proceeded by the authorities concerned and the petitioner was asked to submit necessary documents, and were received, now, the first respondent rejected the claim of the petitioner stating that on the date of receipt of representation, the petitioner was minor and hence, he is not eligible to get employment under compassionate appointment. Therefore, the above impugned order may be quashed and the respondents may be directed to give employment to the petitioner.

5. Admittedly, when the representation was given by the petitioner's mother, the petitioner was a minor and hence he is not eligible for compassionate appointment. In this regard, it is worthwhile to refer a decision of this Court in Venkatesan versus The Chairman, TNEB, Chennai and others " in W.P.No.33500 of 2014, dated 11.10.2018, wherein, it has been observed as under:

"4. This Court is of an opinion that the compassionate appointment is a special scheme and the scheme of compassionate appointment was introduced to mitigate the penurious circumstances arising on account of the sudden death of the Government employee. Thus, the scheme of compassionate appointment must be extended to the legal heirs of the deceased employee to protect their livelihood, immediately after the death of the deceased employee. Thus, the appointment to be granted on compassionate grounds within a reasonable period of three years or atleast within a period of five years. Beyond that, legal presumption would be that the penurious circumstances arising on account of the sudden death of the Government employee became vanished. It is not as if the compassionate appointment can be claimed as a matter of right to provide one appointment to one family of the deceased Government employee. Such a scheme can never be accepted, in view of the fact that the scheme of appointment itself, is in violation of Article 14 and 16 of the Constitution of India. The scheme being a special one was introduced in violation of the constitutional principles. Therefore, the same must be implemented strictly in accordance with the terms and conditions."

6. In fact, there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. In this regard, it is worthwhile to refer to a



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decision reported in State of Manipur Vs. Md.Rajaodin reported in (2003) 7 SCC 511, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689) and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."

7. The identical issue came up before the Honourable Division Bench of this Court in W.A.No.1749 of 2019 (Sudhanthira Devi vs. The State of Tamil Nadu and others) [in the said



Judgment, myself (DKKJ) is one of the member] and the Division Bench, by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

8. Therefore, the scheme of providing compassionate appointment can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

9. In the light of the above decisions supra, no relief can be granted, as there is no illegality in the impugned rejection order dated 21.02.2022. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mst

To

1. The District Educational Officer,
District Education Office,
Mayiladuthurai - 609 001.
2. The District Educational Officer,
District Education Office,
Nagapattinam - 611 003.
3. The District Elementary Educational Officer,
District Elementary Education Office,
Nagapattinam - 611 001.
4. The Assistant Elementary Educational Officer,
Mayiladuthurai, Nagapattinam District - 609 001.



5. The Head Master,
Panchayat Union School,
Athur, Mayiladuthurai Union,
Nagapattinam District - 609 204.

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+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.24877
+1cc to the Government Pleader, S.R.No.25291

W.P.No.8849 of 2022

PM[co]
NSK 05/05/2022