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W.P.No.3261 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2023

PRONOUNCED ON : 21.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.3261 of 2021

S.Archana

... Petitioner

-Vs-

1.The Secretary to Government
School Education Department
Fort St.George, Chennai – 9.

2.The Director of School Education,
DPI Campus, College Road, Chennai – 6.

3.The Chief Educational Officer,
Chennai – 8.

4.The District Educational Officer,
Chennai North, Villivakkam, Chennai – 49.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.9734/A2/2020 dated 16.12.2020 and quash the same and consequently direct the respondents to appoint the petitioner in any suitable job according to her qualification and to pass such suitable orders.



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For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr.V.Ramesh, Govt Advocate for R1 to R3.

ORDER

This writ petition has been filed seeking to quash the order passed by the 3rd respondent in Pro.Na.Ka.No.9734/A2/2020 dated 16.12.2020 and for a consequential direction to the respondents to appoint the petitioner in any suitable job, according to her qualification.

2. The case of the petitioner is that her mother namely K.Vijayalakshmi who is working as B.T.Assistant (Tamil) in the Government Higher Secondary School, GKM Colony, Chennai passed away on 27.12.2012 due to her ill health, while in service. The petitioner made an application through proper channel on 13.05.2013, requesting for compassionate appointment. The said application is made within the time limit of three years, which was also forwarded by the school authority on 13.05.2013. But the second respondent rejected her application on the ground that the petitioner was married vide his proceedings dated 05.05.2014. Subsequently, the Government has issued GO.Ms.No.78, Labour and Employment (Q-1) department dated 21.04.2017, stating that the married



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daughters are eligible for compassionate appointment. The petitioner made an application on 19.07.2017, the said application was kept pending for four years and the same was rejected by the 3rd respondent in Pro.Na.Ka.No.9734/A2/2020 dated 16.12.2020. Aggrieved by the action of the 3rd respondent, rejecting the request of the petitioner, the petitioner was constrained to file this writ petition.

3. On behalf of the respondents, the 4th respondent filed counter affidavit.

4. In the said counter affidavit, it is averred that the Government has formulated a scheme for deceased Government Servant who died while in service to provide employment on compassionate grounds, considering the diligent nature of the family of the deceased Government servant. As per the said scheme, the legal heirs are eligible to apply on condition that he or she should attained the age of 18years and the time limit for applying the same is three years from the date of death of Government Servant. The petitioner's mother was working as B.T.Assistant (Tamil) GHSS, GKM Colony, Chennai who died in harness on 27.12.2012, while in service. It is accepted by the



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respondents that the petitioner submitted application seeking employment on compassionate grounds due to the demise of her mother, alongwith the death certificate, legal heir certificate of the deceased Government servant. The petitioner has also submitted no objection certificate from the other legal heirs to the effect that they will not claim for appointment and they have no objection in considering the compassionate appointment to the petitioner. The said application was forwarded to the first respondent through the 4th respondent. On receipt of the proposal, the 3rd respondent forwarded the proposal to the 1st respondent on 20.01.2014. The 1st respondent on 05.05.2014 returned the proposal for the reason that as per GO.Ms.No.96 (Labour and Employment) department dated 18.06.2012, the women Government Servants are entitled to claim for compassionate ground appointment only when they are unmarried at applying for the post and got married at the time of appointment. The respondents also accepted that the petitioner has submitted application to reconsider her claim in terms of GO.Ms.No.78 Labour and Employment department dated 21.04.2017.

5. It is stated in the counter affidavit that the 4th respondent conducted enquiry with the legal heirs of the deceased Government servant and in the



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said enquiry, it was found that the son of the deceased and the brother of the petitioner (i.e,) one S.Tamil Selvan was working in private firm and he is in receipt of permanent income through the employment. It is stated that the Government issued GO.Ms.No.18 (P & AR) department dated 23.01.2020 in supersession of all existing G.O. enlisting elaborate guidelines to be followed in compassionate ground appointment. As per the said G.O. “in case of any person of the deceased Government Servant's family is in regular employment in Government / Private enterprises the compassionate ground appointment will not be considered”. Accordingly, the 3rd respondent rejected the proposal for compassionate ground appointment of the petitioner vide Proceedings in RC.No.9734/A2/2020 dated 16.12.2020. Since, the brother of the petitioner / son of the deceased Government servant is in regular employment in private company and is in receipt of permanent income. As such, the rejection of application of the petitioner seeking compassionate ground appointment by the 3rd respondent vide order dated 16.12.2020 is legally sustainable and valid and requested to dismiss the writ petition.



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WEB COPY 6. Heard Smt.Dakshayani Reddy, the learned counsel for the petitioner and Shri.V.Ramesh, the learned Government Pleader for the respondents and perused the materials available on record.

7. The learned counsel for the petitioner would submit that the order of the 3rd respondent dated 16.12.2020 rejecting the application of the petitioner for compassionate ground appointment is illegal and contrary to the G.O.Ms.No.18 (Labour and Employment) Department dated 23.01.2020. The learned counsel submits that the petitioner has fulfilled the qualification and eligibilities to be considered for appointments on compassionate ground for the sudden demise of her mother in harness, while in service.

8. The learned counsel further submits that the reasons assigned in the impugned order to reject the claim of the petitioner is against to the aim and object of the compassionate appointment scheme formulated by the State Government. The action of the respondents in rejecting the case of the petitioner is unsustainable and liable to be quashed.



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9. The learned counsel for the petitioner placed reliance on the following judgments :-

(i) Order of this Court dated **26.08.2014** in **WP.No.10842 of 2008** in the case of **M.Ramadoss v. State of Tamil Nadu, rep by its Secretary to Government Department of Revenue, Fort St.George, Chennai – 9 and others.**

(ii) Order of this Court dated **26.11.2020** in **WP.(MD).No.12143 of 2015** in the case of **P.Balasubramanian V. The Manager (P & IR) LIC, Divisional Office, Polayamcottai, Tirunelveli.**

(iii) Order of this Court reported in **2020 SCC Online Mad 7543** in the case of **K.Ilayarani v. The District Collector, Madurai District, Madurai.**

(iv) Order of Andhra Pradesh High Court reported in **2021 SCC Online AP 382** in the case of **Ch.Damayanthi v. APSRTC.**

10. The learned Government Pleader appearing for the respondents submits that the appointment on compassionate grounds will be made considering the indigent condition of the deceased Government servant family who died in harness, while in service. In the present case, as the brother of the petitioner, who is one of the legal heirs of the deceased



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Government servant is working in a private company and having income and as such it cannot be construed that the family of the deceased Government Servant is in indigent condition. The order of the 3rd respondent rejecting the claim of the petitioner is in accordance with law and in terms of the GO.Ms.No.18 (P and AR) department dated 23.01.2020 and as such there is no illegality or irregularity in passing the impugned order and sought for dismissal of the writ petition.

11. This Court gave anxious consideration to the submissions of the learned counsel appearing on both sides and the materials placed on record.

12. It is an admitted fact, that the mother of the petitioner, who was working as B.T.Assistant (Tamil) in Government Higher Secondary School, GKM Colony, Chennai died in harness on 27.12.2012 leaving behind her husband, one married son, one married daughter and one unmarried daughter. The deceased employee is the only bread winner of the family. It is also an admitted fact that the petitioner submitted application seeking appointment in any suitable post on compassionate grounds by enclosing all necessary certificates, including no objection certificate of other legal heirs of the



deceased employee. But the claim of the petitioner is rejected at the first instance, on the ground that the petitioner is the married daughter of the deceased employee and the married daughters are not eligible for compassionate appointment, as per GO.Ms.96 (Labour and Employment) Department dated 18.06.2012. It appears, subsequently, the Government has issued GO.Ms.No.78 Labour and Employment department dated 21.04.2017, wherein it is declared that the married daughters are also eligible for compassionate ground appointment.

13. Accordingly, the petitioner submitted another application requesting to reconsider her claim. It is an admitted fact that the said application is kept pending for about four years with the respondents without taking any decision. In the meanwhile, the State Government has issued GO.Ms.No.18 Labour and Employment (Q1) department dated 23.01.2020. A copy of the aforesaid Government Order is placed before this Court. It is stated in the said Government Order that the scheme of Compassionate Ground appointment was introduced by the Government in the year 1972, and the salient features of the scheme is extracted hereunder :-

“Employment is to be provided by relaxing the



normal procedure of recruitment through employment exchanges to the legal heirs of the Government Servants who dies in harness leaving his family in indigent circumstances.

It is a welfare measure of the Government to help the legal heirs of the deceased Government Servants appreciating their service rendered by them for the Government.

Compassionate Ground appointment cannot be claimed as a matter of right. It is a scheme devised by the Government to help the needy legal heirs whose lives are at distress after the Government Servants dies in harness.”

14. It appears in compliance of the order dated 19.06.2019, in writ petition in WP.(MD).No.20900 of 2015 of the Madurai Bench of Madras High Court and some other orders passed by the High Court Madras, the State Government has examined the whole issue of Compassionate Ground Appointment in detail and issued comprehensive guidelines in supersession of the orders issued earlier and issued GO.Ms.No.18 Labour and Employment department dated 23.01.2020, the relevant guidelines are extracted hereunder for adjudication of the issue involved in the present writ petition :-



“(i) Son / Unmarried Daughter / Wife / Husband / legally adopted son / legally Unmarried adopted daughter / widowed daughter / divorced daughter / deserted daughter of the deceased Government servant.

(ii) Father / Mother and unmarried brothers and unmarried sisters of the unmarried deceased Government Servants.

(iii) Married daughter of the deceased Government Servant who is otherwise eligible.

(iv) If any person, in the deceased Government Servant's family was employed even before the death of the Government servant but was living separately without extending any help to the family, then the case of other eligible dependant will be considered.

(v) If any dependant / dependants of deceased Government Servant is / are employed in Military Service, one of the other dependants is eligible for appointment under compassionate ground.

(vi) If any member of the deceased Government Servant's family is working on Temporary / part time basis as noon-meal organizer and helpers, and those who work on daily wages, the other dependants of the family may be considered for providing appointment.”



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15. On perusal of the above guidelines, it appears that the guideline No.IV is considered by the respondents to reject the claim of the petitioner.

On careful examination of the said guideline No.IV. It appears that if any person in the deceased Government Servant family was employed even before the death of the Government servant, but was living separately without extending any help to the family, then the case of the other eligible person will be considered.

16. On careful examination of the guideline No.IV, this Court has no hesitation to observe that the respondents without understanding the guideline No.IV in proper manner and misinterpreting the same, rejected the claim of the petitioner. There is no dispute that the brother of the petitioner who is the son of the deceased Government servant i.e, one S.Tamil Selvan aged about 30years, married long back and living separately. There is no material placed by the respondents to substantiate their contention that the brother of the petitioner is living with the petitioner / deceased Government servant family and he is extending any help to the family by supporting financially. In the absence of placing such material before the Court by the respondents, it has to accepted that the brother of the petitioner is living



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separately as already he got married and with the meagre income he derives from the private employment, he is not in a position to extend any help or financial support to the family of the deceased Government Servant.

17. Under these circumstances, it has to be held that the respondents rejected the claim of the petitioner without considering the guidelines issued by the State Government in GO.Ms.No.18 Labour and Employment department dated 23.01.2020 in proper manner. As such, the action of the respondents in rejecting the claim of the petitioner for compassionate appointment is held as illegal, arbitrary and unjust and contrary to the aims and object of the GO.Ms.No.18 Labour and Employment (Q1) department dated 23.01.2020.

18. The opinion of this Court has fortified by the reported judgment of this Court in **2020 SCC Online Mad 7543** in the case of **K.Ilayarani v. The District Collector, Madurai District, Madurai**. The relevant paragraphs in the said order is extracted hereunder :-

“11. The paragraph 3 of G.O.Ms.No.155 and Clause 4 of G.O.Ms.No. 18 were sought to be given an interpretation by the



respondent to state that, since the said clauses enabling the employer to consider the other legal heir for the purpose of compassionate appointment, if the family of the deceased Government servant is not looked after by other legal heir, who is already in service and getting a permanent salary even prior to the death of the Government servant. Therefore, the respondent has come to the conclusion that, here in the case in hand, it is not the case, where, one of the legal heir of the deceased Government servant, who not got a job prior to the death of the Government servant, but only after the death of the Government servant. Therefore, even though the said legal heir, who, after getting a Government job permanently, is not able to look after the family of the deceased Government servant, the other legal heir cannot be considered for the compassionate appointment, as such kind of situation is not supported either under paragraph No.3 of the G.O.Ms.No.155 or under Clause 4 of the G.O.Ms.No.18. This interpretation, in the considered opinion of this Court, as has been given by the respondent through the impugned order, is thoroughly detrimental to the intention of the Government, where the Government issued these two G.Os., as illustratively given a situation, where, even if already a legal heir of the deceased Government servant is in a permanent job or a Government job well prior to the death of the Government servant, the other legal heir of the deceased Government servant can be considered for compassionate appointment, provided the other legal heir, who is already in Government job or permanent job, is not looking after the family of the deceased Government servant. The said position or situation is noway inferior than the present situation faced by the writ petitioner and her rest of the family, where, the widow and two children of the deceased Government servant, have been left in lurch without any support and they have been in continuous indigent circumstances or penurious situation, where no one is there in their family to look after or bail out their family.



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12. *In such circumstances, one legal heir of the deceased Government servant, though got a job in 2013 ie., two years after the death of the Government servant, admittedly, he is not looking after the family of the deceased Government servant. This position has been accepted by the respondent. Therefore, the import of Paragraph No.3 of G.O.Ms.No.155 and Clause 4 of G.O.Ms.No.18 shall be put in with purposive interpretation, where, the Government thought if fit to extend the benefit of compassionate appointment to the other legal heir of a deceased Government servant, even though already a legal heir of the deceased Government servant is in a permanent job, provided, that legal heir, who was already in a permanent job, is not looking after the family or living separately without taking care of the other family members of the deceased Government servant.*

13. *Exactly the situation now prevail in the family of the petitioner can very well be fit in either under Paragraph No.3 of G.O.Ms.No.155 or under clause 4 of G.O.Ms.No.18. Therefore, a negative interpretation sought to be given by the respondent through the impugned order for those clauses of the respective G.Os., by thus, denying the request of the petitioner for consideration of the request of compassionate appointment, cannot be accepted, as such interpretation would destroy the very purpose for which, the G.Os., especially the relevant clauses were issued by the Government."*

19. In the case of **P.Balasubramanian V. The Manager (P & IR) LIC, Divisional Office, Polayamcottai, Tirunelveli**, in **WP.(MD).No.12143 of 2015** dated **26.11.2020** when an identical issue raised before this Court, it is held as extracted hereinunder :-



"7.The only ground on which the respondent has denied the appointment on compassionate grounds is that the petitioner's elder brother is working in a private company and therefore, as per the rules, if a family member is gainfully employed, then the other family member is not entitled for compassionate appointment. It is equally admitted fact that the elder brother of the petitioner is married even before the death of the petitioner's father and settled separately in Chennai which had been disclosed by the petitioner by producing salary certificate and he has not been financially supporting the family of the petitioner. This aspect has not been considered by the authorities. The petitioner would rely on the judgment in Govind Prakash Verma vs. Life Insurance Corporation of India and others reported in (2005) 10 SCC 289, wherein, the Hon'ble Supreme Court at paragraph 6 has held as follows:-

'The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the



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family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.'

8.The petitioner would also rely on the decision of this Court in W.P(MD)No.1278 of 2018 decided on 21.02.2018 (M.Suresh vs. The Additional Director General of Police, Prison Department, Chennai and Superintendent of Police, Chennai), wherein at paragraphs 4 to 6, it has been held as follows:-

'4.The learned counsel appearing for the petitioner drew the attention of this Court to G.O.(Ms).No.155, Labour and Employment Department, dated 16.07.1998, wherein



the paragraph No.3, it has been stated as follows:- "3.In regard to the second condition mentioned in Para 1 above, it is considered that if a member of the family is already in employment and supports the family then the restriction may be applied. When a dependant of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family and is actually supporting the family. If that 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 dependants will be considered."

5.In this case, it has been demonstrated that the petitioner's brother got employment even before the death of the petitioner's father. Therefore, the ground on which the impugned order of rejection rests is clearly unsustainable in law. The order impugned in the Writ Petition stands quashed.

6.Therefore, the respondents are directed to consider the case of the petitioner on compassionate grounds and pass appropriate orders afresh in accordance with law within a period of eight weeks from the date of receipt of a copy of this order."

9.In my considered opinion, the above judgments are squarely applicable to the present facts and circumstances of the case and therefore, I am inclined to interfere with the impugned



order. Accordingly, the impugned order dated 09.08.2014 issued by the respondent is set aside and the respondent is directed to provide appointment to the petitioner on compassionate basis within a period of eight weeks from the date of receipt of a copy of this order”.

20. In our considered opinion, the above orders are squarely applicable to the facts and circumstances of the present case.

21. For the above mentioned reasons, this Court pass the following orders:-

(i) This writ petition is allowed.

(ii) Proceedings in Na.Ka.No.9734/A2/2020 dated 16.12.2020 issued by the 3rd respondent is hereby set aside.

(iii) The respondents are directed to consider the claim of the petitioner for appointment on compassionate grounds in any suitable post by following the GO.Ms.No.18 Labour and Employment (Q1) department dated 23.01.2020 within a period of six (6) weeks from the date of receipt of a copy of this order.

(iv) There is no order as to costs.



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WEB COPY 22. Consequently, connected miscellaneous petitions pending, if any, shall stand closed.

21.06.2023

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Index: Yes/No

Speaking order/Non Speaking order

Neutral Citation: Yes/No

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BATTU DEVANAND, J.

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Pre-Delivery Order in

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