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Writ Appeal No.1253 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1253 of 2023

M.Parameshwari
Appellant

..

Versus

1. The Director,
The Directorate of School Education,
College Road, Chennai - 600 006.
 2. The District Educational Officer,
Tiruvallur - 602 001.
 3. The District Elementary Educational Officer,
Tiruvallur District,
Tiruvallur - 602 001.
- Respondents

..

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 28.07.2022 made in WP.No.3909 of 2015.

For Appellant : M/s. Karthikaa Ashok

For Respondents : Mrs. Mythreye Chandru,
Special Government Pleader



JUDGMENT

WEB COPY (Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is filed against the order of dismissal passed by the learned Judge in W.P.No.3909 of 2015 on 28.07.2022.

2.The appellant herein is the writ petitioner in the aforesaid writ petition. According to the appellant, her father late Mr.T.C.Marimuthu, who was employed as Headmaster in Panchayat Union Elementary School, died on 02.06.1988 while he was in service. The mother of the appellant also died within a period of six days therefrom, ie., on 08.06.1988. She was brought up by her grandparents thereafter. When her father died in the year 1988, she was a minor and therefore, she had not filed any application seeking appointment on compassionate grounds. On attaining the age of majority, she filed an application on 03.10.2001 before the authorities and the same was rejected only on 30.09.2013 after a lapse of about 12 years from the date of application. With this background, she filed the writ petition in W.P.No.3909 of 2015 praying for issuance of certiorarified mandamus, calling for the records pertaining to the order dated 30.09.2013 passed by the second respondent, quash the same and consequently, direct the respondents to appoint her in a suitable post on compassionate grounds.



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3. Before the writ court, it was put forth on the side of the appellant that there was a dispute between the family as regards the legal heirship of the deceased and it came to an end by declaring the appellant herein as the only legal heir in the year 2006 and thereafter, the appellant got the retirement benefits of her father and the same were spent towards various dues kept by the deceased father. It was further submitted that the appeal suit with regard to legal heirship, filed by the rival party was disposed of only on 25.08.2011. It was specifically submitted that in the said proceedings, the second respondent herein was made as a party and hence, all these facts are well known to them, but, in spite of the same, the application for compassionate appointment was rejected on the ground that even though the deceased government servant died on 02.06.1988, the application for compassionate appointment was made only on 03.10.2001.

4. By the order impugned herein, the learned Judge rejected the writ petition by observing that the application for compassionate appointment was made after a period of 13 years from the date of death of the deceased employee and that, indigency must be relatable to the death of the deceased employee. It has also been held by the learned Judge that penurious circumstances aroused on account of sudden death has to be established for seeking appointment on compassionate ground and



that, the lapse of time is also a ground to draw an inference that penurious circumstances became vanished. Challenging the said order of the learned Judge, the present writ appeal came to be filed by the writ petitioner before this court.

5.The learned counsel appearing for the appellant submitted that the appellant had applied for compassionate appointment on 03.10.2001 before the respondent authorities, but the same was kept pending without any consideration for 12 years and it was rejected only on 30.09.2013. However, without considering these aspects, it has been observed by the learned Judge in the impugned order that already 34 years lapsed. Adding further, the learned counsel submitted that the respondent authorities had rejected the appellant's application only on 30.09.2013 after 12 years, stating that she had not applied within three years after the death of her father, but the fact remains that the appellant was minor at the time of the death of the deceased father and immediately, after attaining majority, she filed the application on 03.10.2001 and hence, there is no delay on the part of the appellant in making application for compassionate appointment. Finally submitting that the appellant is under indigent circumstances, the learned counsel prayed for setting aside the order passed by the learned Judge and to direct the authorities to grant compassionate appointment to the appellant.



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6.The learned Special Government Pleader for the respondents submitted that at the time of making application by the appellant for compassionate appointment, there was a dispute with respect to legal heirship of the deceased and the same attained finality only after dismissal of the appeal suits in AS Nos.9 and 10 of 2011 by the Sub Judge, Tiruttani, confirming the order passed by the District Munsif Court, in O.S.No.1152 of 1998 on 20.01.2006. Based on the same, the Tahsildar, Tiruttani issued legal heir certificate to the appellant vide order dated 14.02.2012 and thereafter, the appellant submitted the full particulars seeking appointment on compassionate grounds only on 22.07.2013 i.e., after a lapse of 34 years and hence, her application was rejected by the respondent authorities on 30.09.2013. Taking note of all these facts and the rules governing thereto, the learned Judge has passed the impugned order, which does not require any interference in the hands of this Court. It is also submitted that the compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceedings. Therefore, the learned counsel prayed for dismissal of this writ appeal.

7.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

8.Admittedly, the appellant's father late Mr.T.C.Marimuthu who was



employed as Headmaster in Panchayat Union Elementary School, died on 02.06.1988 while he was in service. Thereafter, the mother of the appellant also died within a period of six days. At that time, the appellant was a minor. On attaining the age of majority, she filed an application on 03.10.2001 before the authorities for compassionate appointment and the said application was rejected only on 30.09.2013 after a lapse of about 12 years from the date of application. Challenging the said order, the appellant preferred the instant writ petition in the year 2015, which was dismissed by the learned Judge, on the ground of delay and laches, by the order impugned herein.

9.It is evident from the documents enclosed in the typed set of papers that the appellant filed the application for compassionate appointment on 03.10.2001 in view of the fact that she was a minor at the time of death of her father. On the other hand, the learned Judge observed that the application for compassionate appointment was made after a period of 13 years from the date of death of the deceased employee and that, indigency must be relatable to the death of the deceased employee. But, the fact remained that the authorities have kept the application made for compassionate appointment, without passing any order and they have rejected the application only in the year 2013, which delay is not attributable on the part of the appellant. Thus, there was no delay on the part of the appellant, rather the Department has kept it for more than a decade and passed the rejection order. At this juncture, it may be relevant to



refer to the decision of the Hon'ble Supreme Court in *Malaya Nanda Sethy v. State of Orissa and others* [2022 LiveLaw (SC) 522], wherein, it was categorically held that the authorities must consider and decide the applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such applications.

10.It is not in dispute that the father and mother of the appellant had passed away and the appellant was taken care of by her relatives. There was a family dispute with regard to legal heirship and due to the same, the claims on account of the death of her father, were settled to the appellant only in the year 2012. Further, the issue relating to the legal heirship also came to be settled and the appellant is the only legal heir of the deceased. That apart, the appellant lived a poor life and though she got married, since her husband is working as a labourer on daily wage basis, she finds it hard for her livelihood, even today. Thus, the case of the appellant for compassionate appointment deserves sympathetic consideration by the respondent authorities.

11.In view of the above, the order of the learned Judge is set aside and the respondents are directed to consider the application of the appellant for compassionate appointment, keep her name in the waiting list, and grant appointment in any one of the eligible posts in the respondent Department, as and when her turn



comes up.

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12. The writ appeal is disposed of accordingly. No costs.

[R.M.D., J.] [M.S.Q., J.]

15.11.2023

Index : Yes / No
Internet : Yes / No
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To

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2. The District Educational Officer,
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and
MOHAMMED SHAFFIQ, J



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