



W.P.No.19294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19294 of 2023

Mrs.S. Sujitha

... Petitioner

Vs.

- 1.The Director,
Directorate of Elementary Education DPI Complex,
College Road, Nungambakkam,
Chennai – 600 006.
- 2.The District Collector,
District Collector Office,
Tiruvannamalai.
- 3.The District Educational Officer,
District Education Office,
Tiruvannamalai – 606 604.
- 4.The District Education Officer,
Arni, Tiruvannamalai District – 632 301.
- 5.The District Elementary Education Officer,
District Education Office,
Tiruvannamalai – 606 604.
- 6.The Regional Education Officer,
Arni, Tiruvannamalai District – 632 301.



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7.The Additional Assistant Elementary Education Officer,
Arni, Tiruvannamalai District – 632 301.

8.The Assistant Elementary Education Officer,
Arni, Tiruvannamalai District – 632 301.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for all the records pertaining to Na.Ka.No.1043/A3/2020, dated 02.11.2021 and quash the same and to direct the 3rd respondent to issue a job to the petitioner on the compassionate ground within a time frame fixed by this Court.

For Petitioner : Mrs.G. Arul Selvi

For Respondents : Mr.M. Alagu Gowtham,
Government Advocate

ORDER

Heard the learned counsel for the petitioner, as well as the learned Government Advocate appearing for the respondents.



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2. The petitioner's mother Mrs.A.Jinamala, who was appointed as a Teacher in Panchayat Union Middle School, Aryipadi on 06.10.1988, died on 04.11.2004, while she was in service. She was survived by her husband and the petitioner. It is stated that after the death of the petitioner's mother, her father has remarried and is living separately. The petitioner is now under the care and custody of her grandmother.

3. The petitioner, after the death of her mother, had given an application on 05.02.2007 to the first respondent herein, seeking for an appointment on compassionate grounds. The application though was originally returned on 22.11.2007, seeking for certain supporting enclosures, which was also represented on 26.12.2007, was ultimately rejected only on 02.11.2021, on the only ground that the application seeking for compassionate appointment has been made after the expiry of 3 years period, as contemplated under G.O.Ms.No.202, Labour Employment Department dated 08.10.2007. Challenging the said order, the present Writ Petition has been filed.



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4. According to the learned counsel for the petitioner, the reason assigned in the impugned order of rejection, cannot be sustained since the petitioner had made an application within the period of 3 years on 05.02.2007 and therefore, the impugned order has to be quashed.

5. On the contrary, the learned Government Advocate appearing for the respondents, placed reliance on the averments made in the counter-affidavit and submitted that when the petitioner had originally made an application on 05.02.2007, she was a minor, aged about 15 years and therefore, she cannot maintain the application. This apart, he also submitted that the supporting documents have not been supplied by the petitioner and therefore, there is no infirmity in the order of rejection. He would further submit that the petitioner is now married and therefore, she is not qualified for consideration of appointment on compassionate grounds.

6. It is not disputed by the respondents that the petitioner had originally made an application seeking for compassionate appointment on 05.02.2007, which apparently is within the period of 3 years from the date



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of the death of her mother i.e. on 04.11.2004. The consideration of the application was ultimately made only on 02.11.2021 and rejected on the ground that the claim for compassionate appointment is after a period of 3 years, which is against the time stipulated in G.O.Ms.No.202 dated 08.10.2007.

7. I am not in agreement with the reasoning adopted in the impugned order. The period of limitation stipulated in G.O.Ms.No.202 dated 08.10.2007, requires to be calculated from the date on which the application for compassionate appointment is made and not on the date of consideration of such an application. When admittedly, the petitioner had given an application on 05.02.2007, which is within the period of 3 years, the only basis on which her application has now been rejected through the impugned order, cannot be sustained. In other words, the petitioner's original application dated 05.02.2007, is well within the period of 3 years and therefore, such an application requires to be considered positively.

8. The learned Government Advocate further made a submission that the petitioner was a minor at the time when the application was made



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in the year 2007. Such a submission cannot be sustained on two grounds.

Firstly, this is not a reason assigned in the impugned order. It is a settled proposition of law that the respondents cannot improve the case beyond what is stated in the impugned order, either by way of counter-affidavit or by oral submissions. Secondly, there is absolutely no material placed before this Court to substantiate, as to how the respondents have come to such a conclusion also. Even otherwise, it is now seen that the petitioner is aged about 29 years as on the date of consideration of her application and as such, the age of the petitioner as on the date of application, cannot be an impediment for such consideration and on this ground also, the submission of the learned Government Advocate stands rejected.

9. With regard to the objection raised by the learned Government Advocate that the petitioner is now married, also does not deserve any consideration. As on the date of the application, she was unmarried and had the respondent considered such an application within the reasonable time, these developments may not have happened. Thus, quoting her marital status as an impediment, cannot be sustained.



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10. The issue as to whether an application seeking for compassionate appointment made when the claimant was a minor at the relevant point of time, has come up for consideration in the case of '**Syed Khadim Hussain Vs. State of Bihar and others**' reported in '**(2006) 9 SCC 195**', wherein, it was held that though the applicant was a minor at the time of filing the application, the rejection of the application on that ground cannot be justified since the applicant had attained the age of 18 years as on the date of consideration of the application. The relevant portion of the order reads as follows:

..... *“5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State*



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there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6. As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months.”

11. The aforesaid extract is self-explanatory and would squarely cover the case in hand. Thus, the rejection of the impugned order on the ground that the application has been delayed, cannot be sustained.



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12. In the counter-affidavit filed by the respondents, it is stated that the petitioner is yet to submit certain relevant documents. In normal circumstances, this Court would have directed the respondents to strictly apply the requirements of all the testimonials which are to be accompanied along with the application. However, in the instant case, the respondents have inordinately caused a delay in considering the application for over a period of more than 14 years. In this background, this Court is of the view that if the petitioner is called upon to produce the bare minimum supporting documents for her appointment on compassionate ground before the respondents, the ends of justice could be secured.

13. In the light of the above observations and findings, the impugned order dated 02.11.2021 passed in Na.Ka.No.1043/A3/2020 by the sixth respondent, is hereby quashed. Consequently, there shall be a direction to the first and second respondents, to forthwith pass orders, appointing the petitioner on compassionate grounds, to any suitable job for which she may be qualified to hold, without reference to her marital



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status or any other document in support of her application, except the documents namely the Death Certificate, Legal Heirship Certificate and the Educational Testimonials alone. It is made clear that the respondents shall not insist for any other supporting documents in view of their lapse in considering the application within a reasonable time. Such orders of appointment shall be passed, at least within a period of eight (8) weeks from the date of receipt of a copy of this order.

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

16.11.2023

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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Note: Issue Order Copy on 24/11/2023



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M.S.RAMESH,J.

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