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Writ Appeal No.647 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.647 of 2019

R.Thirumaran

... Appellant

Vs

The District Educational Officer,
Cuddalore District,
Cuddalore.

.. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the impugned order dated 04.03.2014 in W.P.No.4381 of 2014.

For Appellant	: Mr.D.Sreenivasan
For Respondents	: Mr.K.V.Sajeev Kumar Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal had been directed against the order passed by the learned single Judge in W.P.No.4381 of 2014 dated 04.03.2014.



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2. The appellant was one of the son of the deceased employee one Ramalingam, who was working as Assistant at the respondent office and he died suddenly on 09.05.2001 during employment leaving behind the widow, two sons and two daughters.

3. After his death on 09.05.2001, within a three years period, the widow of the deceased employee made an application on 02.12.2003 seeking compassionate appointment to the appellant, who is the second son of the deceased employee.

4. The said application submitted by the widow on behalf of the appellant was rejected by the order of the respondent dated 12.02.2008, where the reason stated by the respondent was that, since the first legal heir was the widow, the second legal heir was the first son and the person for whom the compassionate appointment is sought for is the third legal heir, therefore, why atleast the second legal heir i.e., the first son of the deceased employee, even though was qualified to hold the post, did not make any application seeking for such compassionate appointment has not been explained. Therefore, the application was rejected.

5. In order to rectify the same, a further application had been given



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by the widow of the deceased on 05.07.2010 and the said application also has been rejected through the subsequent order dated 20.08.2010, which was the order impugned before the Writ Court.

6. The learned Judge, who heard the writ petition rejected the same on the ground that, already a rejection order has been made on 12.02.2008, which was not under challenge and only the subsequent rejection order, which was made pursuant to the second application made in this regard by the petitioner's mother on 05.07.2010 was under challenge, it shows that the family was not in indigent or penurious circumstances and moreover, belatedly after four years, the writ petition was filed that shows that the family was already in a position to meet out their needs and for these reasons, the learned Judge rejected the writ petition as against which, the present appeal has been directed.

7. Heard Mr.D.Sreenivasan, learned counsel appearing for the appellant and Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondent.



8. The learned Special Government Pleader appearing for the respondent would contend that, the compassionate appointment is a violation of the regular recruitment rules or procedure to be adopted in any public employment. However, such compassionate appointment is being adopted by every employer only to bail out the family, who have been suddenly left by the sole breadwinner or the head of the family.

9. Therefore, the learned Government Pleader would submit that, in the case in hand, the elder son of the deceased was an employee and since he had been working in a shipping company, definitely he would have earned more, which would be enough to meet the expenses of the family including the widow as well as the appellant, who is the second son of the deceased. Therefore, it cannot be construed that the family was in indigent circumstances. Therefore, that was mainly considered by the respondent in rejecting these applications by passing orders especially the order, which was challenged before the Writ Court.

10. Heard the learned counsel appearing for the appellant, who would submit that, in both the orders i.e., order dated 12.02.2008 as well as the order dated 20.08.2010, the reason now stated on behalf of the



respondent has not been stated, the only reason that was stated by them was that, only the third legal heir had made an application and not the first one or the second one even though the second legal heir was eligible to hold the post by way of compassionate appointment.

11. The said reason cannot be a reason to be sustained because, if any compassionate appointment is to be given and while considering the application, the penury circumstances or indigent character of the family of the deceased employee alone should be taken into account, for which, they can very much rely upon the certification issued in this regard by the revenue authorities like Thasildar.

12. In this case, since such a formality has been completed and the Revenue Tahsildar had given a certification and that should have been considered. Without considering the same, the respondent cannot give their own conclusion cryptically without having any supporting documents and that has been erroneously accepted by the learned single Judge through the impugned order. Therefore, the learned counsel appearing for the appellant seeks indulgence of this Court.

13. We have considered all these aspects including the arguments



advanced by the learned counsel appearing for the parties.

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14. As has been rightly pointed out by the learned counsel appearing for the appellant that, in both the orders i.e., rejection order dated 12.02.2008 as well as the order dated 20.08.2010, the said reason now given by the respondent through the learned Government Pleader has not been stated.

15. The Tahsildar has given a certification as to the status of the family of the appellant, therefore that should have been taken into account and there is no reference in both the orders that those certification has been considered.

16. Moreover, merely because one of the legal heir of the deceased employee had been in employment, it cannot be stated that entire family is not in penury circumstances.

17. In this context, it is further to be noted that in the application that has been made on 05.07.2010, the widow of the deceased has stated specifically that their elder son Vasan already left the family and has



been residing separately. This position also has not been considered in the order impugned before the Writ Court.

18. However, these aspects have not been considered in proper perspective by the learned single Judge while rejecting the writ petition through the impugned order. Hence, we are inclined to interfere with the same. In the result, the following orders are passed in this writ appeal:

- ◆ That the impugned order is set aside. Consequently, the order impugned before the Writ Court dated 20.08.2010 also is set aside.
- ◆ Since the employee was died on 09.05.2001 and 22 years have already gone, therefore at this stage whether still the family of the deceased employee is in penury or indigent circumstances is a question. Therefore, in this regard, it is open to the respondent to consider the application after having a field inspection of the family concerned with the help of the revenue officials, based on which, a decision can be taken on merits.



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With these observations and directions, this writ appeal to the

extent indicated above is ordered. No costs.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

mp

To

The District Educational Officer,
Cuddalore District,
Cuddalore.



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and
K.KUMARESH BABU.,J.

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