



W.A.(MD)No.1319 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1319 of 2013

K.Bossco

...Appellant

/Vs./

1.The Director of School Education,
College Road, Chennai.

2.The District Educational Officer,
O/o.District Educational Office,
Perambalur.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to allow the writ appeal and set aside the order dated 17.09.2007 passed by this Court in W.P.No.11577 of 2006.

For Appellant : Mr.T.Aswin Rajasimman

For R1 & R2 : Mr.V.Om Prakash
Government Advocate



W.A.(MD)No.1319 of 2013

WEB COPY

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

This appeal has been filed by the legal heir of one A.Josephin, who had been employed as Secondary Grade Teacher in the Panchayat Union Elementary School, Kambai. She had passed away in harness on 01.12.1991. Her husband, appellant's father, is said to have passed away even prior thereto. The writ petitioner, who is the appellant before us, had sought compassionate appointment in her place within the time stipulated under the relevant Government Order i.e., on 16.02.1993.

2. There was an enquiry caused upon his application and correspondence exchanged inter se parties conveying to the petitioner that he was in the waiting list and that his list number as on 21.07.1998 is 727. Though this communication was relied upon by the appellant, we are of the view that mere placement in the list would not grant any vested right to the appellant in relation to the job sought. Evidently, though the



W.A.(MD)No.1319 of 2013

WEB COPY

applications were processed prima facie, the eligibility of the applicants was tested only at the relevant point in time. The application of the appellant came to be rejected on 05.02.1999 and the appellant preferred an appeal before the appellate authority. The matter was remanded by order dated 23.03.2000 and the first respondent was directed to pass orders afresh. No consequence has been given to this direction.

3. On account of inaction on the part of the authorities, the appellant filed W.P.No.13654 of 2003 seeking a Mandamus for return of the petitioner's original documents. The Writ Petition was ordered on 29.04.2003 directing the respondents to consider the request for return of documents alone and documents were returned on 07.12.2006.

4. While this is so, the appellant filed yet another application on 19.09.2006 enclosing a certificate of the Tashildar to the effect that the family was in indigent circumstances and reiterating the request for compassionate appointment. That application has come to be rejected on 03.10.2006. The petitioner states in the affidavit that an appeal has been



W.A.(MD)No.1319 of 2013

filed as against that order and thus, he has chosen to ride two horses by filing a Writ Petition as well.

5.The Writ Petition came to be rejected on 17.09.2007 after consideration of a slew of relevant cases by the Writ Court holding that the petitioner had not satisfied the conditions under the applicable Government Order relating to indigence. Since compassionate appointment could not be sought as a matter of right, but only by an applicant who satisfied all relevant conditions, the learned Single Judge declined to intervene.

6.Having heard the learned counsel, we are not persuaded to take a different view in the Appeal. The *raison d'etre* for compassionate appointments is to help the family of the deceased government employee who died in harness, to tide over the circumstances arising from such demise. True, this situation may have existed in the family around 1991, when the petitioner's mother expired. Undoubtedly, the application has also been filed within the stipulated time.



W.A.(MD)No.1319 of 2013

WEB COPY

7.However, with the elapse of time between 1991 and now, we find that such adverse circumstances have been successfully navigated by the petitioner. This is a relevant circumstance to be factored into our decision. The petitioner is, as on date, employed and with a family. The entitlement for compassionate employment would be tested in the context of the relevant Government Order.

8.That apart, the question of indigence or otherwise is one of fact. The applicable Government Order is G.O.Ms.No.255 dated 15.02.1972, where the term 'indigent' is not defined. However, hearing the matter in 2023, this Court can take a cue from the definition of 'indigent circumstances' as set out in subsequent Government Orders relating to compassionate appointment.

9.Both G.O.Ms.No.18, dated 23.01.2020 and G.O.Ms.No.33 dated 08.03.2023 exhaustively define what indigence would connote in the following terms:



W.A.(MD)No.1319 of 2013

“G.O.Ms.No.18, dated 23.01.2020:

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FAMILY TO BE IN INDIGENT CIRCUMSTANCES TO BE ELIGIBLE UNDER COMPASSIONATE GROUND APPOINTMENT

- (i) *The appointing authorities shall examine the financial condition of the family of the deceased Government servant and offer job to an eligible member of the family only after satisfying themselves that, but for the provision of employment, the family will not be able to meet the crisis.*
- (ii) *A family having annual income of less than Rupees 2 lakhs only will be treated to be in indigent circumstances.*
- (iii) *The family pension of the deceased employee and the immovable property like living house of the employee need not be taken into account while assessing the income of the family. However income received from the movable / immovable properties in the name of the Government Servant's family members should be taken into account. Certificate is to be issued by the jurisdiction Tahsildar.*

G.O.Ms.No.33, dated 08.03.2023:

(3) The eligibility of the family of a deceased or medically invalidated Government servant, for appointment on compassionate grounds, are subject to the following conditions, namely:-

(a) The family must be in indigent circumstance.

....

Explanation.— For the purpose of this rule, “a family is in indigent circumstance” means, a family having an income of not more than rupees three lakh per annum from all sources: Provided that the family pension of the deceased Government servant or the pension of the medically invalidated Government servant, as the case may be, shall be excluded”



W.A.(MD)No.1319 of 2013

WEB COPY

10.We hasten to add that we have not merely applied the conditions in the above paragraphs to the case of the petitioner but have referred to the same only to set the circumstances in context. The sum and substance of the Government Orders, in relation to indigence is that the family must be in difficult circumstances and the family income must be insufficient / inadequate to cater to basic needs. Admittedly, these are not the petitioner's circumstances now.

11.If one were to test the eligibility of the petitioner in the light of the above stipulations, we find the petitioner wanting. Thus, as the petitioner is, today admittedly, not in indigent circumstances and is aged 53 years old, we find that we are unable to accept his case for compassionate appointment.

12.Incidentally, one of the reasons for rejection is that the petitioner was not the senior most legal heir of the deceased and hence, the application was not liable to be entertained. We disagree on this score for the reason that it is always open to the members of the deceased



W.A.(MD)No.1319 of 2013

WEB COPY

government employee's family to choose the most appropriate person to claim compassionate appointment, subject to the individual holding the necessary qualifications and subject to other family members having no objection to that person putting forth his candidature.

13.In the light of the above discussion, this Writ Appeal is dismissed. No costs.

[A.S.M.J.] & [R.V.J.,]
12.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

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Order made in
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