



W.P.(MD).No.26845 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.26845 of 2022

P.Praveena

... Petitioner

Vs.

1.The Joint Commissioner,
Tamil Nadu Educational Department,
Chennai.

2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in N.M.No. 4979/A1/2021, dated 05.04.2022 and quash the same as illegal and consequently direct the second respondent to appoint the petitioner under compassionate ground in the office of the second respondent.

For Petitioner : Mr.D.Selvanayagam
for Mr.M.P.Balamurugan



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For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in N.M.No.4979/A1/2021, dated 05.04.2022 and quash the same as illegal and consequently direct the second respondent to appoint the petitioner under compassionate ground in the office of the second respondent.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.

3. The petitioner's father was working as a Physical Education Teacher at Virudhunagar under the second respondent. While in service, on 31.03.2014, he passed away. He was survived by the petitioner's mother, the petitioner and her sister. The petitioner's elder sister Pradeepa's husband passed away and along with her two minor children she is residing with the petitioner and her mother



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as of now from the date of death of her husband. The petitioner's mother submitted an application for compassionate appointment for the petitioner on 15.12.2014 to the second respondent. The petitioner's mother was serving as a Teacher for a period of 6 years and 8 months and on attaining her age of superannuation, she retired from service on 30.06.2014, (i.e.,) within three months from the date of death of the petitioner's father. At the time of submitting the application seeking appointment on compassionate ground, the petitioner's mother had retired from service and no other person from the family of the petitioner are working either in Government or private sectors. While so, the impugned order, dated 05.04.2022, rejecting the petitioner's application seeking compassionate appointment, on the ground that on the date of death of her father, the petitioner's mother had been in service. Assailing the same, this writ petition came to be filed.

4. The learned Government Advocate for the respondents have filed counter and he submitted that since the petitioner's mother was working on the date of death of the employee, in terms of G.O(Ms)No.998 of the Labour and Service, dated 02.05.1981, the petitioner's request for granting appointment on



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compassionate ground could not be positively considered and hence, the same was rejected and on that basis, sought for dismissal of this writ petition.

5. However, in the facts and circumstances of the instant case, the same in no more *res integra* and this Court in a similar case in W.P.No.3261 of 2021 (**S.Archana Vs. The Secretary to Government, School Education Department, Fort St. George, Chennai-9**), dated 21.06.2023 has passed favorable order to the petitioner thereat and the relevant portion of which is extracted as follows:

"13.In the meanwhile, the State Government has issued G.O(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.



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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 W.P(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 G.O(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.”*

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 30 years, married long back and living separately. There is no material



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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 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 G.O(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 G.O(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 Vs. 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



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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



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penurious situation, where no one is there in their family to look after or bail out their family.

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 Vs. The Manager (P & IR) LIC, Divisional Office, Palayamcottai, Tirunelveli in



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W.P(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 family cultivates the filed. This statement is said to have been contradicted when it is said that the elder



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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.”

6. I am fully in consonance to the order passed by this Court in the case referred *supra*. This case is squarely covered by the said order and the condition of the petitioner's family that she is the sole legal heir, who has to take care of the entire family survived by the petitioner's father cannot be



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doubted, in view of the fact that already her elder sister has attained widowhood due to the death of her husband. That apart, the petitioner's mother has retired even before making the application seeking compassionate appointment. That apart, in terms of G.O(Ms)No.18 of the Labour and Employment (Q1) Department, dated 23.01.2020, it has been mandated that even if one of the family members is employed, that will not be a bar for grant of compassionate appointment to the one of the dependants of the employee, who is not working.

7. In view of the same, this Court hereby quash the impugned order, dated 05.04.2022 and thereafter, direct the second respondent to appoint the petitioner forthwith in a suitable post, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. This writ petition stands allowed, accordingly. There shall be no order as to costs.

20.09.2023



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NCC : Yes
Index : Yes
Internet : Yes
BTR

To

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Tamil Nadu Educational Department,
Chennai.
- 2.The Chief Educational Officer,
Virudhunagar District,
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L.VICTORIA GOWRI, J.

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