



W.P(MD)No.27247 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.27247 of 2023

and

W.M.P(MD)No.23395 of 2023

C.Arnold

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Joint Commissioner of School Education (Personnel),
DPI Campus, College Road, Chennai-600 028.

3.The Chief Educational Officer,
Kanyakumari,
Kanyakumari District.

4.The District Educational Officer (Secondary),
Nagercoil, Kanyakumari District.

5.The Headmaster,
Government High School,
Ananthapuram, Kadukkarai,
Kanyakumari.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,



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calling for the records relating to the impugned proceedings issued by the 3rd respondent Chief Educational Officer vide Na.Ka.No.5137/A1/2021, dated 31.05.2023 quash the same and further direct the respondents herein to provide any employment to the petitioner herein on compassionate grounds commensurate with his qualification.

For Petitioner : M/s.A.Amala

For Respondents : Mr.N.Ga.Natraj
Government Advocate

ORDER

The present writ petition has been filed to quash an order passed by the 3rd respondent herein rejecting the request of the petitioner for compassionate appointment.

2. According to the learned counsel appearing for the petitioner, the petitioner's father who was working as a B.T Assistant in a Government High School, had passed away on 03.01.2016 while in service. He is survived by his wife S. Mary Sobana Bhai and the writ petitioner. At the time when the writ petitioner's father passed away, he was 15 years and 6 months old.



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3. On behalf of the writ petitioner, his mother made an application seeking compassionate application on 02.01.2018. The said application was taken up for consideration by the 3rd respondent herein on 31.05.2023 and rejected the same on the ground that on the date when application was presented, the petitioner was a minor. This order is under challenge in the present writ petition.

4. According to the learned counsel appearing for the writ petitioner, the Government of Tamil Nadu had framed rules for appointment on compassionate grounds under Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023. The said rule was notified on 08.03.2023. As per Rule 6, there is no minimum age limit for making an application. However, appointment order could be issued only on completion of 18 years of age. The Rules that were prevailing on the date of consideration of the application alone would prevail and therefore, the 3rd respondent herein was not right in relying upon G.O.Ms.No.155 Labour and Employment (Ku1) Department, dated 10.12.2014. Hence, she prayed for setting aside the order and issue a positive direction to the authorities to appoint the petitioner on compassionate grounds.



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5. Per contra, the learned Government Advocate appearing for the respondents contended that if the petitioner contended that the petitioner is aggrieved over the impugned order, he has to invoke the appellate remedy as contemplated under Rule 14 (5) and a further second appeal remedy is also provided under the said rule.

6. I have carefully considered the submissions made on either side and perused the material records.

7. A perusal of the order impugned in the writ petition clearly indicates that the request of the petitioner for compassionate appointment has been rejected on the sole ground that when his mother had made an application on his behalf, the petitioner was a minor on the date of application. The Hon'ble Supreme Court in a judgment reported in **2020 7SCC 617 (N.C.Santhosh Vs. State of Karnataka & Others)**. In paragraph no.19 as held as follows:

“19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the



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basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

8. In view of the judgment of the Hon'ble Supreme Court, it is clear that the norms that are prevailing on the date of death of the Government employee cannot be made applicable, but only the norms that are prevailing on the date of consideration of the application should be the basis for considering the claim for compassionate appointment. When the claim of the petitioner was considered on 31.05.2023 and rejected, Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 has already come into force with effect from 08.03.2023. Therefore, as per the new rules, there is no minimum age limit for filing an application seeking compassionate appointment. The minimum age limit is prescribed only for issuing an order of appointment.



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9. In view of the said legal position, this Court is of the view that the 3rd respondent has erroneously relied upon G.O.Ms.No.155 Labour and Employment (Ku1) Department, dated 10.12.2014 for rejecting the request of the writ petitioner. In view of the above said facts, the order impugned in the writ petition is set aside and the matter is remitted back to the file of the 3rd respondent. The petitioner is directed to file a fresh application citing the previous application, dated 02.01.2018 along with all relevant documents that are enumerated under Rule 8. On submission of all the documents, the 3rd respondent is directed to consider the request of the petitioner for compassionate appointment on the new rules which came into force on 08.03.2023 considering the seniority of the writ petitioner within a period of 8 weeks from the date of receipt of document from the petitioner.

10. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR,J.

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Order made in
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Dated:
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