



W.A(MD)No.479 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.479 of 2024
and
C.M.P(MD)No.3875 of 2024**

- 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.
- ... Appellants/Respondents



W.A(MD)No.479 of 2024

WEB COPY

vs.

C.Arnold

... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 16.11.2023 made in W.P(MD)No.27247 of 2023 and W.M.P(MD)No.23395 of 2023 and allow the Writ Appeal.

For Appellants

: Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This Writ Appeal has been directed against the order passed by the Writ Court, dated 16.11.2023, made in W.P(MD)No.27247 of 2023, that, it is a case of compassionate appointment, where the respondent/writ petitioner's father, who was working as a B.T Assistant in a Government High School, passed away on 03.01.2016, while in service. The respondent/writ petitioner's father is survived by his wife and the writ petitioner. At the time of the death of his father, the writ petitioner was 15 years and 6 months old.



W.A(MD)No.479 of 2024

WEB COPY

2.On his behalf, his mother made an application seeking compassionate appointment by application, dated 02.01.2018. The said application was taken up for consideration by the Chief Educational Officer, who passed an order on 31.05.2023, rejecting the said application on the ground that on the date when the application was made, the respondent/writ petitioner was a minor. That rejection order was under challenged before the Writ Court.

3.The learned Judge, who heard the matter, has taken note of the Rule recently issued in this regard by the Tamil Nadu Government, namely, the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 (in short, hereinafter referred to as 'the Rule'). The Rule was notified by the issuance of G.O.(Ms)No.33, Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023. Therefore, from 08.03.2023, the said Rule is governing the field of compassionate appointment in State Government employment.

4.While that being so, at the time of consideration of the application submitted by the respondent/writ petitioner and it was rejected in May 2023 ie., by order, dated 31.05.2023, the said Rule has very well



W.A(MD)No.479 of 2024

WEB COPY

been in force. When that being so, making the application of the erstwhile Rule under G.O.Ms.No.155, Labour and Employment (Ku1) Department, dated 10.12.2014, was an erroneous approach on the part of the appellant employer, that was pointed out by the learned Judge in paragraph 4 of the order impugned, which reads thus:

'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, an 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 issuing a positive direction to the authorities to appoint the petitioner on compassionate grounds.'



W.A(MD)No.479 of 2024

WEB COPY

5.Heard Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the appellants, who would submit that, admittedly at the time of making the application seeking compassionate appointment to the respondent/writ petitioner, he was only minor, as he completed only 15 years and 6 months. Therefore, at the time when he attained majority, three years period was over from the date of death of the employee ie., his father. Therefore, beyond three years period, compassionate appointment would not be considered. Therefore, on that ground based on the erstwhile Rule, dated 10.12.2014, made in G.O.Ms.No.155, Labour and Employment (Ku1) Department, dated 10.12.2014, the case was considered and rejected. Therefore, the said order of rejection which was impugned before the Writ Court ought not to have been interfered with by the Writ Court, he contended.

6.We have considered the said submissions made by the learned Additional Government Pleader.

7.It is to be noted that, those compassionate appointments are being made contrary to the recruitment procedure and recruitment Rules in



W.A(MD)No.479 of 2024

WEB COPY

various Government organizations including the State and Central authorities however such an appointment is inevitably being made in order to bail out the families of the employee, whose sudden demise would put the family under penurious circumstances. In order to bail out such a family from such indigent and penurious circumstances, such a compassionate appointment is being made depending upon the education and other qualifications of the dependant of the deceased employee.

8.It is further to be noted that, no person can be employed in any organization, unless he attains majority ie., above 18 years.

9.However, practically, in most of the cases hitherto the position was that, when such an employee dies, the son or daughter or the dependants other than the spouse would be minor. Therefore, it will take some years to reach the majority within which three years period from the date of death of the employee would be over. Therefore, beyond three years period even though the dependant or legal heirs would become eligible to seek for compassionate appointment based on the educational qualification they acquired, those cases would not be considered by citing three years period that was prevailing hitherto.

6/12



W.A(MD)No.479 of 2024

WEB COPY

10.However, these difficulties having been considered and realized by the State Government, they have come forward to issue the said Rule with effect from 08.03.2023.

11.Rule 6 of the said Rule reads thus:

'6.Age limit.- (1) Notwithstanding anything contained in these rules governing the post for which appointment on compassionate grounds is to be made, on the date of application for appointment.-

(a) the spouse of the deceased or medically invalidated Government servant or the parent of the deceased Government servant, must have completed fifty years of age; and

(b) the son, daughter, brother or sister of the deceased or medically invalidated Government servant must not have completed forty years of age.

(2) Notwithstanding anything contained in these rules governing the post for which appointment on compassionate grounds is to be made, there shall be no minimum age limit for the applicant on the date of application for appointment.

Provided that appointment shall not be provided unless the applicant completes eighteen years of age.'



W.A(MD)No.479 of 2024

WEB COPY

12.In Rule 6 under the heading age limit, the maximum age has been prescribed, whereas insofar as the minimum age is concerned, the Rule making authority has consciously made sub-Rule (2) of Rule (6), where they have stated that there shall be no minimum age limit for the applicant on the date of application for appointment, provided that, appointment shall not be provided unless the applicant completes eighteen years of age.

13.Therefore, it is not mandatory that at the time of making the application seeking compassionate appointment, the applicant or for whom such an application has been made seeking compassionate appointment to have a minimum years of age, that means on behalf of a minor also the application can be made, however, such application even if it is considered, the appointment can be given to the dependant or legal heir only after he or she attains majority.

14.Therefore, the intention of the Rule making authority is clear, unambiguous and explicit to state that under no circumstances compassionate appointment should be denied to a family which is in penurious circumstances where for want of attaining the majority of the



W.A(MD)No.479 of 2024

WEB COPY

legal heir or dependant of the deceased employees family, if compassionate appointment could not be given immediately, the employer can consider such application and grant the same or extend the benefit of compassionate appointment to such a dependant or legal heir of the deceased employee of the family on his attaining the majority.

15. When this intention of the Government has been made very clear under the Rule and the Rule has also been given to force with effect from 08.03.2023, thereafter, if the consideration is made in May 2023, in the case in hand, the Rule should have been applied and had it been applied, the application filed on behalf of the respondent/writ petitioner ought not to have been rejected by the employer. Therefore, the learned Judge since has interfered with the said order and given direction in the order impugned to consider the application for extending the benefit of compassionate appointment to the respondent/writ petitioner, in our considered view it is flawless and hence, the same is to be sustained. Accordingly, the impugned order is sustained. Hence, the Writ Appeal fails.



W.A(MD)No.479 of 2024

WEB COPY

16.Resultantly, there shall be a direction to the appellants to consider the application submitted by the respondent/writ petitioner for compassionate appointment and pass necessary orders thereon, for such an appointment, within a period of two months from the date of receipt of a copy of this order.

17.When such consideration is made for passing order, if any similarly placed persons are in the queue seeking such compassionate appointment, seniority is to be followed.

18.However, in the name of following the seniority, endlessly the plea of the respondent/writ petitioner cannot be deferred or rejected and if there is no vacancy available in the particular Department, where he has sought for compassionate appointment, as per the existing procedure, the request of the respondent/writ petitioner be forwarded to the Department, where similar vacancy is available for considering such compassionate appointment, where his case can be considered and necessary orders to be passed.



W.A(MD)No.479 of 2024

WEB COPY

19. With these directions, this Writ Appeal is disposed of.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
01.04.2024

NCC : Yes
Index : Yes
ps

To

1. The Secretary,
Represented by the State of Tamil Nadu,
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.

11/12



WEB COPY



W.A(MD)No.479 of 2024

R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.A(MD)No.479 of 2024

DATED : 01.04.2024

12/12