



W.A(MD)No.1093 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.04.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

W.A(MD) No.1093 of 2015
and
M.P(MD)No.2 of 2015

01.The Director of School Education,
School Education Directorate,
Chennai – 600 006.

02.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

03.The District Educational Officer,
Ramanathapuram.

04.The Assistant Elementary Education Officer,
Nainarkoil Union,
Nainarkoil,
Ramanathapuram District.

... Appellants/Respondents

Vs.

T.Sugantharaj

... Respondent / Writ Petitioner

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.12.2014 made in W.P(MD)No.9997 of 2012.



W.A(MD)No.1093 of 2015

For Appellants :Mr.D.Sadiq Raja,
Addl. Government Pleader
For Respondent :Mr.L.Rajiah

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JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This writ appeal is filed challenging the order of the learned Single Judge, dated 18.12.2014 in WP(MD) No.9997/2012.

2. The respondent herein has a double post graduation degrees, he having obtained M.A., M.P.Ed. His mother was working as a Headmistress in Gopalpattinam Panchayat Union Elementary Middle School and she died in harness due to certain illness on 21.03.2006. The respondent's father approached the authorities and sought compassionate appointment for the respondent. It was not considered. The respondent wanted himself to be appointed as a Temporary Physical Education Teacher. But this was not considered by the authorities and hence, he sent a reminder which also did not evoke any response from the authorities. It is in these circumstances, the respondent moved this Court seeking issuance of a writ of Mandamus directing the respondents to give him priority in appointment as Physical Education Teacher on compassionate ground.



3. A counter affidavit was filed, wherein, it was contended that the respondent could not be appointed as a Part Time Physical Education Teacher on compassionate ground as there is no such post as Part time Physical Education Teacher.

4. After considering the rival submissions, the learned Single Judge in order, has directed the authorities to give compassionate appointment to the respondent in any post having regard to his age, educational qualification within the stipulated period. This order of the learned Single Judge is now under challenge.

5. Heard both sides. The learned Additional Government Pleader submitted that compassionate appointments are governed by executive orders of the Government and one such order is G.O.No.42, Labour and Employment Department, dated 12.03.2007. He submitted that this Government order must be read along with alongside G.O.Ms.No.61 Labour and Employment dated 19.07.2006.

6. The first mentioned G.O. in Paragraph No.2.4 underscores as below:

“2.4.As regards indigent circumstances, the appointing



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authorities shall examine the financial condition of the family of the deceased Government servant and offer a 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. A certificate from the Tahsildar regarding the indigency of the family should be obtained. Issue of certificate by Tahsildar should be based on detailed inquiry. Ordres have already been issued in G.O.Ms.No.61 L&E dated 19.07.2006 to continue the existing guidelines related to indigent circumstances and these guidelines shall be continued. 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.”

7. There is a considerable merit in the submissions of the learned Additional Government Pleader.

8. It has to be borne in mind that the compassionate appointment is an initiative to avert indigency and destitution devolving on the family of the deceased. *Stricto sensu* the compassionate appointment will be an exception to the doctrine of equality envisaged under Article 16 of the Constitution of India. However, it becomes part of the service condition which may give assurance to those who joined public service that the eventuality of they dying, their family



will not be thrown to street and forced to seek succour for their existence from the society. Compassionate appointment is often termed as a concession, but this Court considers that even though it is a convenient term, yet the compassionate appointment cannot be considered as a concession.

9. Turning to Paragraph 2.4 of the government Order which is extracted above, it underscores that an appointment is to be made only on proof of once imminent indigency which contemplates enquiry by a Tahsildhar on this point. The compassionate appointment could be made only based on the proof of factum of imminent indigency of the family of the deceased Government servant.

10. Here is the case where the respondent/writ petitioner had obtained double graduation degrees, and is seeking appointment under compassionate grounds commensurating with his educational qualification. In particular, he seeks that he be appointed as Part time Physical Education Teacher. There are three misconceptions which the writ petitioner appears to have entertained.

- i. He has double graduation and this Court wonders why he could not seek employment with this qualification. Does not his qualification guarantee a minimum employment to secure him from indigency?



ii. He seeks an employment commensurated to his qualification which is an anathema to the very concept of compassionate appointment.

iii. He wants himself to be appointed only as a temporary Physical Education Teacher when there is no such temporary post.

11. This also raises an ancillary question as to what exactly the writ petitioner intended to do full time. There are too many loose end to the claim of the writ petitioner and this Court is not able to appreciate the same.

12. Turning to the impugned order of the learned Single Judge, there is a direction to consider the case of the writ petitioner for a Post commensurated to the educational qualifications of the writ petitioner. As already indicated, the compassionate appointment wherever it requires to be given is only to save the family of the Government servants from destitution and indigency. It is after all a process by which the family members do not become burden to the society for the existential compulsions.

13. For the reasons stated, this Court finds every reason to interfere with the order of the learned Single Judge. Accordingly, the order of the learned Single



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Judge dated 18.12.2014 made in W.P(MD)No.9997 of 2012, is hereby set aside.

This writ appeal is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S., J.) (P.V.M., J.)
23.04.2024

NCC : Yes/No

Index : Yes/No

PM

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