



W.P.(MD).No.27964 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.27964 of 2023

N.Karthikeyan

... Petitioner

Vs

1. The Director of School Education,
DPI Campus, Chennai 6.
2. The Joint Director of School Education (Personnel),
DPI Campus, Chennai 6.
3. The Chief Educational Officer,
Madurai District.
4. The Block Educational Officer,
Madurai North, Madurai District.

... 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 impugned Order in Na.Ka.no.7921/A2/2020, dated 03.11.2023 on the file of the respondent no. 3 and quash the same as illegal and consequently for a direction, directing the respondent no. 3 to grant appointment to the petitioner in any suitable post under compassionate grounds



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in the light of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules 2023 within a period stipulated time by this Court.

For Petitioner : Mr. T.Aswin Raja
for M/s.Lajapathi Roy and Associates
For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the impugned Order in Na.Ka.no.7921/A2/2020, dated 03.11.2023 on the file of the respondent no. 3 and quash the same as illegal and consequently for a direction, directing the respondent no. 3 to grant appointment to the petitioner in any suitable post under compassionate grounds in the light of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 within a period stipulated by this Court.

2.(i).The petitioner's father was working as an Office Assistant at the 4th respondent Office. While in service, he passed away on 18.10.2015. He was survived by his wife, son (petitioner) and daughter. On 04.02.2016 the petitioner's mother submitted an application seeking appointment on compassionate grounds with all relevant documents along with No-Objection Certificate given by his sister viz., N.Sasikala. Further, the petitioner also



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submitted an application seeking appointment on compassionate ground. The same was duly forwarded by the fourth respondent to the erstwhile District Elementary Educational Officer vide proceedings, dated 23.06.2016 and forwarded to the District Educational Officer vide proceedings, dated 20.02.2017. The same was kept pending at the District Educational Officer without any consideration.

(ii).In the meanwhile, the petitioner's mother passed away on 21.03.2021, due to kidney disease. The petitioner is living without any support in an indigent condition. He has submitted two reminder representations on 25.05.2023 and 05.07.2023 seeking appointment on compassionate ground. On receipt of the same, the impugned order of rejection came to be passed by the third respondent on 03.11.2023. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that the rejection order came to be passed on the ground that the petitioner's mother was drawing yearly pension of Rs.2,02,548/- as on 30.07.2016. Hence in terms of G.O.Ms.No.18, dated 23.01.2020, the petitioner's family cannot be considered the one in indigent circumstances. However, assailing the said



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order, the learned counsel for the petitioner submitted that his mother passed away on 21.03.2021 and the pension of his mother was stopped from the date of her death and even his sister was married and living alone. He also further submitted that the monthly pension of his mother was Rs.16,346/- as on 04.04.2016, ie., on the date of application submitted by the petitioner. Instead of taking the same into account, the third respondent has taken the monthly salary of June, 2016 as Rs.16,879/-. If the monthly salary was taken into account as Rs.16,346/- as on 04.04.2016, then the annual income should be Rs. 1,96,152/-, which is less than Rs.2 lakhs. Therefore, the total income of the family is within Rs.2 lakhs and the rejection on that ground would not have arisen.

4.(i).Per contra, the learned Additional Government Pleader appearing for the respondents filed a counter and submitted that there is no infirmity in the impugned order of rejection, relying upon G.O.Ms.No.33, Labour Welfare and Skill Development Department, dated 08.03.2023 and the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023. He further submitted that Rule 3(3)(a)(b) mandates that a family of deceased to be considered for grant of compassionate appointment should be in



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indigent circumstances and that no member of the family shall be in regular employment in Government or any private enterprise. However, in the case in hand, the petitioner's mother was a retired Government employee and received monthly pension, apart from the monthly pension of the deceased employee. The yearly pension drawn by the petitioner's mother exceeded the sealing limit of Rs.2 lakhs, which automatically would disqualify the petitioner, seeking for appointment on compassionate grounds. That apart, a family, which seeks appointment on compassionate grounds should suffer in indigent circumstances. However, in this case, the family of the petitioner is concerned, it is a well placed one with sufficient money.

(ii).Moreover, the learned Additional Government Pleader insisted that question of laches will come into play, since the petitioner has submitted his representation after a period of seven years from the date of death of his father, ie., 25.05.2023 and 05.07.2023 and the same should have been made within a period of three years from the date of death of the employee. Hence, prayed to dismiss the writ petition.



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5.Heard, the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. Carefully perused the materials on record.

6.The petitioner's father, who worked as Office Assistant died on 18.10.2015 and within a period of three years, both the petitioner's mother and the petitioner submitted their applications seeking appointment on compassionate grounds with all documents. The application submitted by the petitioner was duly forwarded by the fourth respondent to the erstwhile District Elementary Educational Officer vide proceedings, dated 23.06.2016 and then, forwarded to the District Educational Officer vide proceedings, dated 20.02.2017. Both the proceedings, dated 23.06.2016 and 20.02.2017 would fairly reveal that the application submitted by the petitioner is within a period of three years.

7.In the meanwhile, the petitioner's mother passed away on 21.03.2021. The same was kept pending before the District Educational Officer without any consideration for more than 6 years. Therefore, the petitioner submitted two reminders on 25.05.2023 and 05.07.2023. Thereafter,



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the petitioner's application was rejected vide impugned order, dated 03.11.2023 relying upon G.O.Ms.No.18, dated 23.01.2020. The date of consideration of the petitioner's application seeking appointment under compassionate grounds by the third respondent was on 03.11.2023, the date on which, the impugned order came to be passed. The 3rd respondent without relying upon the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 implemented by the Government in G.O.Ms.No.33, dated 08.03.2023, has passed the impugned order on the ground that the yearly pension of petitioner's mother was Rs.2,02,548/- as on 30.07.2016 and concluded that as per G.O.Ms.No.18, dated 23.01.2020, the petitioner is not entitled for appointment on compassionate ground.

8.The mandates of Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 is in favour of the petitioner. The explanation/proviso of Rule 3 reads as follows:

“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 of the pension of the medically



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invalidated Government service, as the case may be shall be excluded.”

In terms of the said proviso, the family to be defined as in indigent circumstance should not have income more than Rs.3 lakhs per annum from all sources and that apart, the family pension of the deceased Government servant has to be excluded. It is pertinent to record that from the date of death of petitioner's mother, her pension and his father's family pension were stopped. The date of consideration of the petitioner's application by the 3rd respondent is 03.11.2023. The date of G.O.Ms.No.33 is 08.03.2023. Hence, necessarily the 3rd respondent ought to have dealt with petitioner's case relying upon the later G.O.

9.In view of the same on carefully going through the impugned order, I can understand that for rejecting the application of the petitioner, the third respondent has taken into account the family pension, not only the pension received by the petitioner's mother, but also the family pension received for the deceased petitioner's father and calculated the total income of the family as Rs.3,66,168/-. If the third respondent has taken only the pension received by petitioner's mother, then the annual income will arrive at



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Rs.2,02,548. In that case, the family income as per Rule 3 of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds), 2023, did not exceed Rs.3 lakhs.

10.As far as the question of latches, which is strongly put forth by the learned Additional Government Pleader, the petitioner and his mother had made applications seeking appointment on compassionate grounds within a period of three years, as early as on 04.02.2016. However, the respondents have callously kept the application endlessly without any disposal. Seeking appointment on compassionate grounds is not a vested right. That does not preclude the respondents obligation to consider the cases of compassionate grounds appointments instantly and with utmost urgency, on considering the plight of the deceased's family. However, in this case, the third respondent had kept the application of the petitioner without consideration endlessly and passed the impugned order after a period of six years. Therefore, it is clear that the latches can be attributed only on the part of the third respondent not on the petitioner.



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11.In view of the above discussion, the impugned order is quashed and the respondents are directed to appoint the petitioner on considering his application seeking appointment on compassionate grounds within a period of six weeks, from the date of receipt of copy of this order.

12.Accordingly, this petition stands allowed. There shall be no order as to costs.

15.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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L.VICTORIA GOWRI, J.

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ORDER IN
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