

(2011) 08 MAD CK 0306

In the Madras High Court

Case No : Writ Petition No. 8402 of 2007

C. Muthusaravanan

APPELLANT

Vs

District Educational officer, Director of School Education and
Government of Tamil Nadu

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0306

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : A.V. Bharathi, for E. Martin Jeyakumar, for the Appellant; P. Karthikeyan, G.A. for M.C. Swamy, Spl.G.P., for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner's father died on 11.9.2001, while he was working as B.T.Assistant in Government Higher Secondary School, Kovilpatti and he left behind him the following legal heirs:

1.C.Saradha

Wife

Age 51

2.C.Kavitha

Unmarried Daughter

Age 25

3.C.Anitha

Unmarried Daughter

Age 23

4.C.Muthu Saravanan

Son

Age 21

5..Arun Kumar

Son

Age 19

The family sought for compassionate appointment to the Petitioner who is the third child of the deceased Government Servant. However, the first Respondent passed the impugned order dated 3.6.2002, stating that while the Petitioner's mother and two of the elder sisters of the Petitioner were also eligible to seek for compassionate appointment, the Petitioner could not seek for compassionate appointment. Challenging the said order, the Petitioner has filed Original Application/Writ Petition for quashing the order dated 3.6.2002.

2. The Respondents have filed a counter affidavit refuting the allegations and sought for dismissal of the Writ Petition.

3. Heard both sides.

4. The learned Counsel for the Petitioner submits that it is the discretion of the family to decide as to whom they should seek for compassionate appointment and the Department could only insist for "no objection" from the other legal heirs. In support of the said contention, the learned Counsel for the Petitioner has also relied upon the Division Bench judgment of this Court in STATE of TAMIL NADU v. R.NAGAMANI reported in (2008) 5 MLJ 1 and submits that the family was willing to provide "no objection" from the other legal heirs. Therefore, the learned Counsel contends that the order impugned in the Writ Petition is contrary to the judgment cited supra.

5. On the other hand, the learned Government Advocate has sought for dismissal of the Writ Petition based on the averments made in the counter affidavit.

6. I have considered the submissions made on either side.

7. The first Respondent has passed the impugned order rejected the application seeking compassionate appointment to the Petitioner on the ground that the family could not seek for compassionate appointment, if the other legal heirs of the family who are elders to the Petitioner also eligible for seeking compassionate appointment.

8. In my view, it is not for the Respondents to decide as to which legal heir could seek for compassionate appointment and they could not prescribe seniority in the family in the matter of compassionate appointment, when all other legal heir are willing to give "no objection" for giving compassionate appointment to the Petitioner. In this regard, it would be useful to refer to paragraph No. 3 of the

above referred Division Bench judgment of this Court, which reads as follows:

3. We find that in the instant case, a choice is given to make an application both to the senior most eligible person or a qualified person. The word "or" has to be treated as disjunctive in the facts and circumstances of this case. We are adopting this interpretation in keeping in view the fact that the scheme of compassionate appointment is one made for social benefit to the poor and indigent families. So, while considering the same, whenever it is possible, a construction should be adopted which preserves the benefit and any construction which frustrates the benefit must be eschewed. In the facts of this case, we are of the view that the word "or" must be construed disjunctively and we are of the opinion that the choice to apply for compassionate appointment is given either to the senior most eligible person or any qualified person in the family of the deceased. It cannot be disputed that the first Respondent is a qualified person in the family since the appointment which is sought is to the post of an Assistant Teacher.

8. Under such circumstances, the Writ Petition is allowed and the impugned order passed by the first Respondent dated 3.6.2002, is quashed. The first Respondent is directed to consider the claim of the Petitioner for compassionate appointment taking into account the aforesaid observations, if there is No. other impediment and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No. costs.