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**(2014) 09 MAD CK 0297**

**In the Madras High Court**

**Case No :** Writ Petition No. 20430 of 2013 and M.P. No. 3 of 2013

M. Balasubramanian

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

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**Date of Decision :** 08-09-2014

**Acts Referred:**

**Citation :** (2014) 09 MAD CK 0297

**Hon'ble Judges :** R.S. Ramanathan, J

**Bench :** Single Bench

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## **Judgement**

R.S. Ramanathan, J.—The petitioner's father died on 22.09.1997 in harness leaving behind his widow Jothi, daughter Navaneethan three sons namely Gomatheeswaran, Umamaheswaran and the petitioner.

2. The petitioner was a graduate when his father died and therefore submitted an application on 30.03.1999 seeking appointment on compassionate grounds and the 3rd respondent duly forwarded the application to the 2nd respondent on 29.08.2000. The 2nd respondent called for further clarification on 05.06.2002 and the petitioner also complied with those requirements. Thereafter, on 01.10.2012, 3rd respondent sought for some more details and that was also complied with by the petitioner. While so, the impugned order was passed by the 3rd respondent rejecting the claim of the petitioner on the ground that the younger brother of the petitioner has got appointment as secondary grade teacher and the family is not in indigent circumstances and therefore the petitioner is not entitled to seek appointment on compassionate ground relying upon the G.O.(Ms) No. 998 Labour and Employment Department, dated 02.05.1981. The said order is challenged in this writ petition.

3. It is submitted by the learned counsel appearing for the petitioner that the 3rd respondent, without considering G.O. Ms. No. 155, Labour and Employment Department, dated 16.07.1993 had rejected the petitioner's application on the ground that the petitioner's younger brother got employment, without considering the fact that the petitioner's brother was not supporting the family.

4. The learned Additional Govt. Pleader appearing for the respondents submitted that as per G.O. Ms. No. 998 Labour and Employment Department, dated 02.05.1981, if any one of the dependents in the family is employed, the other members are not entitled to seek employment on compassionate ground and in this case, the petitioner's younger brother is employed as secondary grade teacher and therefore, the petitioner was not entitled for appointment on compassionate ground.

5. I am unable to accept the contention of the learned Additional Govt. Pleader. It is seen from G.O. Ms. No. 155, Labour & Employment dated 16.07.1993, that if a member of the family is already in employment and supports the family, then it has to be ascertained whether he is regularly employed and he is actually supporting the family. It is further stated that if that person was employed even before the death of the Government servant and was living separately without extending any help to the family, then the case of other eligible dependents request can be considered.

6. In this case, the petitioner's request was rejected on the ground that his younger brother Gomatheeswaran was employed as a secondary grade teacher. It is not stated in the order whether the said Gomatheeswaran was supporting the family of the petitioner or the family of his deceased father. As per G.O. Ms. No. 155, Labour and Employment Department, dated 16.07.1993 referred to above, only when any one of the legal heirs is an earning member and supporting the family, the other members are not eligible for compassionate appointment. In this case, in the impugned order, it has not been stated that the petitioner's brother was supporting the family. Therefore, even assuming that the petitioner's brother was employed, that cannot be a ground to reject the case of the petitioner, in the absence of any proof that the petitioner's brother was supporting the petitioner's family.

7. Admittedly, the application for compassionate appointment was made by the petitioner within time and the same was forwarded and details were called for from the petitioner from the year 1997 and the same cannot be rejected on the ground that one of the petitioner's brother was employed subsequently, without stating that such person was supporting the family.

8. In view of the above said circumstances, the impugned order is liable to be set aside and it is accordingly set aside. The respondents are directed to consider the case of the petitioner on merits, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.