

(2012) 09 MAD CK 0059
In the Madras High Court
Case No : Writ Petition (MD) No. 5566 of 2010

S. Illanchelian

APPELLANT

Vs

The District Educational Officer, Sivagangai District,
Sivagangai

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2012) 09 MAD CK 0059

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Visvalingam, for the Appellant; T.S. Mohamed Mohideen,
Additional Government Pleader, for the Respondent

Judgement

Honourable Mr. Justice S. Manikumar

1. Challenge in this writ petition has been made to the letter of the respondent in L.Dis. No. 5747/A-1/08 dated 25.06.2009, rejecting the request

of the petitioner for employment assistance on compassionate grounds, as not feasible. It is the case of the petitioner that his father, a Post

Graduate Teacher in Government Higher Secondary School, Keeladi, Sivaganga District, expired on 05.01.2000, in harness. Seeking employment

assistance on compassionate grounds, he submitted a application on 30.11.2011, to the District Educational Officer, Sivagangai District, through

the Headmistress of the Government Higher Secondary School, Keeladi. At that time, he had passed +2 examination and aged 23 years and

enclosing copy of the death certificate, legal heir certificate, income certificate issued by the Tahsildhar, Madurai North Taluk, he made the said

application. But the Tahsildhar has rejected the said application on the following grounds:

(i) Since the third legal heir has sought for employment assistance, it could be deduced that the family of the Government Servant, is not in indigent circumstances.

(ii) From the perusal of the educational qualification of the second and third legal heirs of the deceased Government servant, there is a possibility that they can seek employment in private sector.

(iii) Upon a perusal of the details relating to the income and expenses and the service benefits, received on the death of the Government servant, it could be deduced that the family of the deceased servant is not in indigent circumstances and

(iv) As the family is not in indigent circumstances in terms of G.O. No. 560 Labour and Employment Department dated 03.08.1977, the request for employment assistance, cannot be considered.

2. Citing the above reasons, the District Educational Officer, Sivagangai, the sole respondent has returned the proposals to the Headmistress, Government Higher Secondary School, Keeladi, Sivagangai District.

3. Assailing the correctness of the order, and on the basis of the averments made in the supporting affidavit, Mr. S. Visvalingam, learned counsel for the petitioner submitted that the reasons assigned by the District Educational Officer, Sivagangai District is contrary to the scheme evolved by the Government in providing employment assistance to the family of a deceased Government Servant.

4. Inviting the attention of this Court to legal heir certificate dated 03.03.2000, issued by the Tahsildar, Madurai North Taluk, he further submitted that the deceased, is survived by his wife, a daughter and two sons. At the time of issuance of the legal heir certificate, mother of the petitioner and widow of the deceased Government Servant was aged 46 years, daughter of the deceased one Vanmathi was aged 25 years, and the sons, Ilanchelian was aged 23 years and another son Idhaya Chandran was aged 20 years respectively. In 2000, when the Government servant died, none of the children were married and employed.

5. He also submitted that though the petitioner's sister, one Vanmathi is a post graduate, she was suffering from mental depression and not capable of serving in any department. At the time when the application was submitted, for employment assistance, the petitioner's younger brother, Idhaya

Chandran has studied only upto 8th standard and that he was not employed anywhere. The petitioner's mother Susila, was also not capable of doing any work. The petitioner alone, was eligible to seek for employment assistance. In such circumstances, an application has been made duly enclosing copy of the legal heir certificate and income certificate issued by the Tahsildar, Madurai North Taluk.

6. Learned counsel for the petitioner further submitted that, every family of deceased Government Servants is entitled to family pension and other benefit Death-cum-retirement gratuity. Receipt of the above benefits does not disqualify any person from claiming employment assistance as per the scheme evolved by the Government. According to him, what is required is to be considered is, whether the application seeking employment assistance is made within three years from the date of death of the Government Servant and that the applicant should not exceed the maximum age prescribed in the Tamil Nadu Subordinate Service rules. He submitted that receipt of family pension of Rs. 5,968/- and other death-cum-retirement gratuity is no ground to arrive at a conclusion that the family is not in indigent circumstances. He stated that the conclusion reached by the District Educational Officer, Sivagangai District is contrary to the certificate issued by the Tahsildar, Madurai North Taluk, dated 18.09.2000.

7. Learned counsel for the petitioner also submitted that when no objection certificates of the other legal heirs of deceased Government Servant has been enclosed with the application to the District Educational Officer, Sivagangai District, the rejection of the same, on the ground that only the third heir has sought for employment, instead of the wife of the deceased and that therefore, the family is not in indigent circumstances is erroneous.

For the above said reasons, he submitted that the impugned order is reflection of non-application of mind, on the part of the District Educational Officer, Sivagangai District and it is against the object of the scheme, there is a failure on the part of the respondent, in adhering to the Scheme and the reasons assigned in the impugned order are purely based on surmises and conjectures.

8. To sustain the order of refusal to consider the proposal forwarded by the Headmistress of the Government Higher Secondary School, Keeladi, the District Educational Officer, Sivagangai District has submitted that after the demise of the petitioner's father, all the legal heirs are eligible to

seek for employment assistance. But perusal of the application, submitted by the petitioner revealed that certain particulars were required, such as the petitioner had not obtained "no objection certificates", from other legal heirs and also failed to give evidence that the family was in indigent circumstances. Subsequently, the petitioner has produced necessary documents to prove that petitioner's mother, who is on the first line of succession could not be considered, as she had crossed the maximum age, provided for, in seeking employment assistance and that the petitioner had also produced a medical certificate in the year 2010, showing that the second legal heir was medically unfit for appointment. The District Educational Officer, Sivagangai has also stated that the petitioner is fully qualified to be appointed on compassionate ground in a suitable post, according to his educational qualification and that there is no impediment in his application. He has also stated that he is ready to consider the claim of the petitioner and take steps to appoint him in a suitable post, as per his educational qualification, as per seniority.

9. Heard the learned counsel for the parties and perused the materials available on records.

10. First of all the District Educational Officer, Sivagangai District, has not understood the scheme evolved by the Government in providing employment assistance to an eligible member of a family of the Government servant, who died in harness. He has also relied on G.O.Ms. No. 560

Labour and Employment Department dated 03.08.1977, which has undergone many changes. In G.O.Ms. No. 120 Labour and Employment

Department dated 26.06.1995, the Government issued the following guidelines:

A. The application for appointment on compassionate grounds should be made within three years of the death of Government Servants.

B. The maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government Servants.

11. The Government have issued orders in G.O.Ms. No. 155 Labour and Employment Department dated 16.07.1993. The said G.O. is extracted hereunder:

One of the conditions prescribed under the scheme of appointment on compassionate grounds formulated in the G.O. first read above is that the family of the deceased Government servant should be in "indigent circumstances".

Another condition introduced in the G.O. third read above is that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased

Government will not be eligible for compassionate appointment.

2. The Government have re-examined the above mentioned conditions. The expression ""indigent circumstances"" has not been precisely defined. It

has been left mostly to the subjective satisfaction of the appointing authorities. Therefore, the Service Associations have represented that this

condition be deleted. The family of a deceased Government Servant is entitled to provident Fund accumulations, family benefit fund, Death-cum-

retirement Gratuity, Encashment of leave at credit at the time of death, etc. The Government consider that these amounts or the interest earnings

that will accrue on depositing these amount; need not be taken into consideration. It is therefore necessary to ascertain whether the family is having

immovable property like houses, lands, etc., the income from which is insufficient to sustain the family without extra help. The Government

therefore direct that the criteria for indigent circumstances that the family income from which is insufficient to sustain the family. A Certificate from

the Tahsildar to this effect will have to be produced.

12. The District Educational Officer has also erroneously approved the issue that only the first line of legal heir could be considered for

employment assistance. None of the Government Order stipulates any condition that only the first line of legal heir is eligible to seek for

employment assistance. The scheme contemplates that any legal heir, who is eligible to seek for employment assistance can seek for employment

assistance and that if there are more than one legal heirs, the said applicant has to produce ""no objection certificates"" from the other legal heirs.

Employment assistance is to tide over the financial constraint faced by the family of the Government Servant, who died in harness. Therefore, the

ground to be considered by the employer is whether such family of the Government Servant is in indigent circumstances, in terms of G.O.Ms. No.

155 Labour and Employment Department dated 16.07.1993.

13. Receipt of pension or death cum retirement gratuity is not a ground to reach any conclusion that the family of the deceased Government

Servant, is economically sound and it is not in indigent circumstance. In this

context, it is also worthwhile to extract paragraph 7 of a Division

Bench Judgment of the Madurai Bench of this Court in W.A.(MD) No. 46 of 2008 dated 15.12.2009.

7. As far as the ground relating to the receipt of pension is concerned, we may refer to paragraph-2 of the very same Government Order, which reads as follows:

2. The Government have re-examined the above mentioned conditions. The expression ""indigent circumstances"" has not been precisely defined. It

has been left mostly to the subjective satisfaction of the appointing authorities. Therefore, the Service Associations have represented that this

condition be deleted. The family of a deceased Government Servant is entitled to provident Fund accumulations, family benefit fund, Death-cum-

retirement Gratuity, Encashment of leave at credit at the time of death, etc. The Government consider that these amounts or the interest earnings

that will accrue on depositing these amount; need not be taken into consideration. It is therefore necessary to ascertain whether the family is having

immovable property like houses, lands, etc., the income from which is insufficient to sustain the family without extra help. The Government

therefore direct that the criteria for indigent circumstances that the family income from which is insufficient to sustain the family. A Certificate from

the Tahsildar to this effect will have to be produced.

While considering the expression ""indigent circumstances"", the Government have specifically directed that certain incomes received by the family in

respect of a deceased Government servant, to which they are otherwise entitled to, can be excluded. The pension is also one of the incomes that

has been specifically included in the Government Order. If that be so, the reason that the family is receiving monthly pension and therefore the

appointment made on compassionate ground should be set aside cannot be accepted.

14. As regards indigent circumstances the same has already been clarified by the Government of Tamil Nadu in G.O.Ms. No. 155 Labour and

Employment Department dated 16.07.1993 and that receipt of family pension and other death cum retirement gratuity ought not to have been

taken into consideration, for arriving at a conclusion of indigent circumstance.

15. Material on record discloses that Tahsildar, Madurai North Taluk has also

given, certificates to the legal heirs of the deceased Government

Servant stating that none of them were employed in Government or private sector and that, the family of the Government Servant is in indigent

circumstances. The individual certificates issued by the Tahsildar, Madurai North Taluk dated 18.09.2000, are extracted hereunder:

16. Material on record further discloses that when the petitioner made an application to the District Educational Officer, Sivagangai District and

Director of School Education, Chennai, along with the and in the said application dated 30.11.2001, he had enclosed the following documents:

1. Application for employment assistance on compassionate ground.
2. Application for employment assistance on compassionate ground by the wife of the deceased Government Servant, to his son.
3. Transfer Certificate.
4. Mark Statement.
5. Conduct Certificate.
6. Community Certificate.
7. Income Certificate.
8. Death Certificate.
9. Legal Heirship Certificate.
10. Certificate regarding movable and immovable properties.
11. Certificate showing the family is in indigent circumstances.
12. Certificate showing that none of them in the family are Government Servants.
13. No Objection Certificates from other legal heirs.
14. Certificate showing the wife of the deceased Government Servant was not remarried.
17. Material on record shows that necessary ""no-objection certificates"" from other legal heirs, namely, mother, daughter and another son Idhaya

Chandran have been enclosed along with the application. Without considering the documents in proper perspective, the Government Orders issued

from time to time, and the object of the scheme, in providing employment assistance, the District Educational Officer, Sivagangai District, has

arrived at an erroneous conclusion.

18. As regards the financial status of the petitioner, in the impugned order it is

stated the deceased Government servant's family has been accorded family pension and death-cum-retirement gratuity and therefore, the family is not in indigent circumstances. The impugned order reflects total non-application of mind, on the part of the District Educational Officer, Sivagangai. In the light of the G.O.Ms. No. 155 Labour and Employment Department dated 16.07.1993 and the decision of the Madurai Bench of this Court in W.A.(MD) No. 46 of 2008 dated 15.12.2009 and for the reasons stated above, the impugned order is liable to be set aside.

19. The submission of the District Educational Officer, Sivagangai in his counter affidavit that the petitioner fully qualified to be appointed in a suitable post according to his educational qualification and that he would take steps to appoint him in the suitable post as per the educational qualification is placed on record.

20. In the above said circumstances, while setting aside the impugned order, a direction is issued to the District Educational Officer, Sivagangai to consider the case of the petitioner for employment assistance, on the basis of his educational qualification.

21. At this juncture, this Court deems it fit to extract the G.O. (Ms.) No. 216 Labour and Welfare (Q1) Department dated 15.11.2007 issued by the Government of Tamil Nadu, in the matter of employment assistance on compassionate grounds:

In the Government Order first read above, the following consolidated instructions have already issued by the Government to all the Heads of

Departments, all Collectors, Departments of Secretariat, the Registrar of High Court of Madras and to the Secretary, Tamil Nadu Public Service

Commission:-

(1) normally the dependant of a deceased Government servant should apply for appointment on compassionate grounds only to that Office, where

the Government servant was in service at the time of his death.

(2) The Head of the Office should then verify the facts in the petition like the date of death, the indigent circumstances of the family, the eligibility of

the applicant for employment on compassionate grounds with reference to his educational qualifications, etc.

(3) After verification, the Head of the Office should, within a month from the date of receipt of application from the dependant, submit the

application along with his report to the Head of the Department indicating also whether any vacancy exists in his office for providing employment to the applicant.

(4) After considering the request, if any vacancy exists either in the Office in which the deceased Government servant was working at the time of his death or in his office, the Head of the Office should issue orders of appointments immediately and in any case within 15 days from the date of receipt of the report from the Head of the Office, provided the applicant satisfies all conditions relating to age, educational qualification etc. If any relaxation is necessary, he should send necessary proposals within 15 days to the Government in Administrative Department for orders.

(5) If no vacancy exists either in his office or in the office in which the deceased Government servant was working, then he should ascertain from the various Heads of Offices under his control whether any vacancy exists in any one of these office to provide employment to the dependant with reference to his educational qualifications etc. This exercise should be completed within a period of 60 days. Vacancies that may arise in the near future, that is to say for the next 12 months should also be taken into consideration for the purpose, if vacancy is likely to arise in the near future, the applicant may be informed of the fact and advised to wait till then and as soon as a vacancy arises, he should be given appointment.

(6) In case the Head of the Department finds that there is no vacancy in any of his offices or in the near future or where the dependant of the deceased Government servant possesses qualifications which do not permit his or her appointment to any post in that Department also where the dependant possesses better qualification for appointment in other Departments, then, the Head of the Department should send the name and all relevant particulars to the Collector of the District in which the deceased Government servant last worked.

(7) The Collector of each District should maintain a Special Register for this purpose and enter therein the name and other details of such dependants. This Register will be maintained separately.

(8) Whenever a vacancy in the category of Office Assistant/Record Clerk/Junior Assistant/Typist etc. arises in any Department including the Head of the Department, referred to in instructions above, the Head of the Department

should first address the Collector of the District in which the vacancy has arisen and find out whether any dependant of a deceased Government servant is available for consideration for appointment to that post.

(9) On receipt of such enquiry from a Head of Department, the Collector shall send the name or names and details of dependant from the Special

Register, depending upon the number of vacancies and as per the seniority, for consideration for appointment in that Department.

(10) Before notifying any such vacancy to the Tamil Nadu Public Service Commission or Employment Exchanges, each Head of the Department

should first address the Collectors and only after obtaining from them a certificate of non-availability of the candidate in the Special Register

maintained by them with reference to instruction (7) above, the Tamil Nadu Public Service Commission/ Employment Exchange should be

addressed.

(11) If any person are already available with the Collectors as per G.O.Ms. No. 1179, P & A.R. dt. 17.10.1979, for providing employment

assistance under compassionate grounds, such cases should be re-examined by the Head of the Departments concerned on the lines of instructions

(1) to (10) above.

(12) The District Collectors should send a quarterly report to the Government in Labour and Employment Department to watch the progress of the

Special Register"" proposed for dependants of the deceased Government servant. The report should be send by 15th of the month following the

quarter.

2. In the Government order third read above, based on the recommendations of the Staff Committee and decision taken by the Cabinet on

03.03.2007, certain guidelines were issued among other for appointments on compassionate grounds in item No. 8 as detailed below:-

The Government decided to examine the issue of inter-departmental compassionate appointments in ""C"" and ""D"" category posts, where adequate vacancy is not available in a department to which the deceased Government Servant belonged.

3. The Government have decided to reiterate its earlier instructions issued in Government order first read above and accordingly direct that the

District Collectors, Head of Departments and all other appointing authorities have to follow the instructions issued in the above Government order

whenever vacancies are not available in their departments for providing of compassionate ground appointment as per the requisite qualifications to

the dependants of the deceased Government servants who died in harness while in service in their department by fixing the seniority of such

appointees from the date of their appointment in that departments without affecting the service rights of the existing persons in that departments,

and also to follow the orders issued in G.O.Ms. No. 154, P & A.R. Dept. dt. 19.09.2006 (i.e.) 25% of the vacancies in the post of Junior

Assistant be reserved for appointment on compassionate ground.

4. The Government also direct that the above instructions shall be followed while marking compassionate ground appointments in respect of ""C

and ""D"" category in the Departments of Secretariat also.

22. The District Educational Officer, Sivagangai District is also directed to take note of Government Order in G.O. (Ms.) No. 216 Labour and

Welfare (Q1) Department dated 15.11.2007, while considering the case of appointment of the petitioner under the compassionate appointment

scheme and complete the exercise within 3 months from the date of receipt of a copy of this order. Accordingly, this Writ Petition is ordered. No

costs.