

**(2008) 06 MAD CK 0143****Madras High Court****Case No:** Writ Appeal No. 526 of 2008

The State of Tamil Nadu

APPELLANT

Vs

R. Nagamani and R. Jayalakshmi

RESPONDENT

**Date of Decision:** June 12, 2008**Hon'ble Judges:** A.K. Ganguly, C.J; F.M. Ibrahim Kalifulla, J**Bench:** Division Bench**Advocate:** G. Sankaran, Special Government Pleader Education, for the Appellant;**Final Decision:** Dismissed**Judgement**

A.K. Ganguly, C.J.

Heard the learned Special Government Pleader for the appellants. This writ appeal has been filed challenging the order dated 11.4.2007 passed by a learned Judge of the writ court, whereby the learned Judge has directed compassionate appointment to be given to the first respondent, viz., writ petitioner No.1. In passing the said order, the learned Judge has considered various aspects of the matter and also the fact that within two years of the death of the father of the first respondent who was working as Assistant Teacher in a Government Elementary School, both the petitioners, viz., the sixth son of the deceased employee and the mother made an application for appointment on compassionate ground. On that application, recommendations were made for appointment of the first respondent from time to time. Reminders were also sent. The matter was kept pending with the authorities. Ultimately, by an order dated 25.2.2002, the fourth respondent, viz., the fourth appellant in the present appeal, rejected the same, *inter alia*, on the ground that when a qualified elder son is available, the request of the petitioner, who is the sixth son, cannot be considered. The learned Judge has rejected the said reasoning, *inter alia*, on the ground the penurious condition of the petitioners' family is not in dispute. The learned Judge has also taken note that the application for appointment was made in time, but it was kept pending with the authorities for a fairly long time. The learned Judge further noted that before the writ court, the Scheme framed by

the Government of Tamil Nadu vide its letter dated 11.2.1988 was not produced. However, the same is produced before us and the learned Special Government Pleader is relying on the same, *inter alia*, by contending that the application is to be made by the seniormost eligible person or a qualified person of the family of the deceased.

2. We find that in the instant case, a choice is given to make an application both to the seniormost 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 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 seniormost 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.

3. Considering all these facts, we do not find there is any reason for us to interfere with the order passed by the learned single Judge. We, therefore, reiterate the direction given by the learned Judge and direct that the appellants must offer appointment to the first respondent to a suitable post as per the rules, regulations and administrative instructions of the department and since this appointment has already been delayed, we direct that such appointment be offered within a period of four weeks from date. The writ appeal is thus dismissed summarily at the admission stage. Consequently, M.P.No.1 of 2008 is closed.