

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W.A.No. 1565 of 2015
and
M.P. No. 1 of 2015

- 1 The Secretary to Government
of Tamil Nadu
Labour and Employment (G1) Department
Fort St. George
Chennai - 600 009.
 - 2 The District Collector
Vellore District
Collectors Office
Vellore - 600 009.
 - 3 The Tahsildar
Taluk Office
Wallajah. ... Appellants
- Vs
- G. Parthiban ... Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent to set aside the order dated 26.03.2015 passed in W.P.No.4028 of 2015.

Prayer in WP 4028/15: To issue a writ of certiorarified Mandamus calling for the records of the 2nd respondent pertaining to his order cum proceedings N.O.R.C.(M5) 18578/14, dt.07/10/2014 and quash the same & to direct the respondents 2 & 3 to reconsider the request of the petitioner dt.18/09/2013 for any suitable job in any department on compassionate ground after giving relaxation of upper age limit.

For Appellants : Mr. T.N. Rajagopalan
Spl. Government Pleader

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.,)

Challenge in this Writ Appeal, by the Government, is to an order made in W.P. No.4028 of 2015 dated 26.03.2015, by which, a learned Single Judge, while setting aside the order dated 07.10.2014 impugned in the Writ Petition, remitted the matter to the District Collector, Vellore District, respondent No.2 in the writ petition, to consider the case of the writ petitioner, for employment assistance, on compassionate grounds, by giving necessary relaxation, in the light of the Government orders in G.O.(I) No.785 dated 30.12.1996, G.O. Ms. No. 42 Labour and Employment (Q1) Department dated 12.03.2007 and the decision of the Hon'ble Division Bench dated 23.08.2011. Learned Single Judge has further directed that such exercise of relaxation and consideration should be completed within a period of three months from the date of receipt of a copy of the order, impugned in this appeal.

2. Facts deduced from the material on record and the impugned order are, the writ petitioner, is the son of a Village Administrative Officer, who died in harness on 21.08.2013. He has obtained M.A. Degree in University of Madras and registered the same with the Employment Exchange, Vellore. He made an application for compassionate appointment on 18.09.2013 and the same has been rejected on the ground that he was over-aged by 2 months and 15 days.

3. Before the Writ Court, contentions have been made that the Government have relaxed the condition, regarding the age, and while considering a similar case in W.P. No. 744 of 2002 dated 27.10.2005, a Hon'ble Division Bench has issued a direction to the Government to extend the benefits to the petitioner therein. Submissions have been made that in yet another decision made in W.P. No.6082 dated 23.08.2011, this Court has issued similar directions to relax the age limit, in the case of Scheduled Caste candidates.

4. In the present case, the learned Single Judge of this Court, has also considered the case of one Mr. R. R. Chandrasekaran, aged about 38 years, wherein, the Government, by relaxing the age limit, have issued G.O.(I) No.785 dated 30.12.1996, and appointed the said Mr.R.R.Chandrasekaran, as Junior Assistant in Tamil Nadu Ministerial Services.

5. Taking note of the fact that the writ petitioner is also hailing from a downtrodden community and with that background has obtained a Master's Degree from Madras University

and of the earlier orders passed by the Hon'ble Division Bench, in W.P. No. 6082 of 2011 dated 23.08.2011 etc., and the government orders stated supra, set aside the order dated 07.10.2014 of the District Collector, Vellore and remitted the matter to him for fresh consideration, in the light of the Government orders in G.O.(I) No.785 dated 30.12.1996, G.O. Ms. No. 42 Labour and Employment (Q1) Department dated 12.03.2007 and the decision of the Hon'ble Division Bench of this Court dated 23.08.2011.

6. Though Mr. T.N. Rajagopalan, Learned Special Government Pleader assailed the correctness of the order impugned in this Appeal on the grounds, inter alia, that the learned Single Judge has failed to consider in G.O.Ms. No. 9 Labour and Employment (G1) Department dated 19.01.1998 the upper age limit prescribed for compassionate appointment is 35 years and nothing is mentioned about the relaxation of upper age limit, and therefore, the order of the Learned Single Judge is liable to be set aside, this Court is not inclined to accept the said contention, for the simple reason that Rule 48 of the Tamil Nadu State and Subordinate Service Rules, empowers, the Governor to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have, served as aforesaid or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable. Provided that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule. Therefore, the contention that nothing is mentioned in G.O.Ms.No.9 Labour and Employment (G1) Department dated 19.01.1998, about the relaxation of age cannot be countenanced, when statutory rules framed under Article 309 of the Constitution of India, have conferred power on the authority to grant relaxation of any Rule, for appointment to a service in such manner, as may appear to him to be just and equitable.

7. Learned Special Government Pleader further contended that the learned Single Judge has failed to note that at the time of receipt of the application from the respondent for appointment on compassionate grounds, it was informed that assistance would be extended to the respondent's younger brother, but the respondent who had crossed the upper age limit of 35 years, wantonly submitted his application seeking appointment on compassionate grounds. Merely because there is another member in the family, younger in age, who can also claim employment under compassionate ground, that cannot be a ground to deny employment assistance to the respondent. He is a post graduate. If employment assistance is given, he has prospects. There is nothing wrong, if the elder member of the family with

higher educational qualification, seeking employment assistance. Moreover, it is well known that, as per the scheme, if there are more than one eligible member in the family, no objection certificate has to be given by others.

8. In the case on hand, the writ petitioner's father was a Village Administrative Officer. Writ Petitioner is a member of a downtrodden community. When the Government have considered a similar case and issued orders in G.O.(I) No.785, dated 30.12.1996, by relaxing the age limit for one Mr. R.R. Chandrasekaran, though he had exceeded the age limit prescribed, by three years, on the ground that he belongs to Scheduled Caste community, the same yardstick should be applied to the case of the writ petitioner also, who is also similarly placed.

9. Compassionate appointment is to tide over the financial constraints of the family of a Government servant and the post to which an applicant can aspire, under the existing rules and government orders issued from time to time, is only upto the level of Junior Assistant. Considering the background of the writ petitioner, number of dependents in the family, he is also entitled to seek for the benefit of the orders passed in similar circumstances, and the appellants are expected to extend compassion to him. When power is conferred on the authority in the rules to grant relaxation, having regard to the intention of the scheme to tide over the financial constraints, caused to the family, relaxation should be made, to achieve the laudable object of the scheme, instead of harping on technicalities, that nothing is mentioned in the G.O. relating to compassionate employment. Needless to state that G.O. does not prevail over the rules. It is also to be noted that the submission now advanced by the Learned Special Government Pleader is not even the reason assigned in the order rejecting the request of the respondent for employment assistance. It is a well settled principle of law, that order impugned is sustained or set aside, for the reasons contained in it, and it cannot be improved by new reasons. Father, who was just a VAO, had provided education to his son, but his untimely death has made his son to request the authorities to show compassion to him.

There is no merit in the appeal. For the other reasons stated supra, the Writ Appeal is dismissed, at the admission stage. Consequently, the appellants are directed to comply with

the order within a period of one month from the date of receipt of a copy of this order. Consequently, the Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

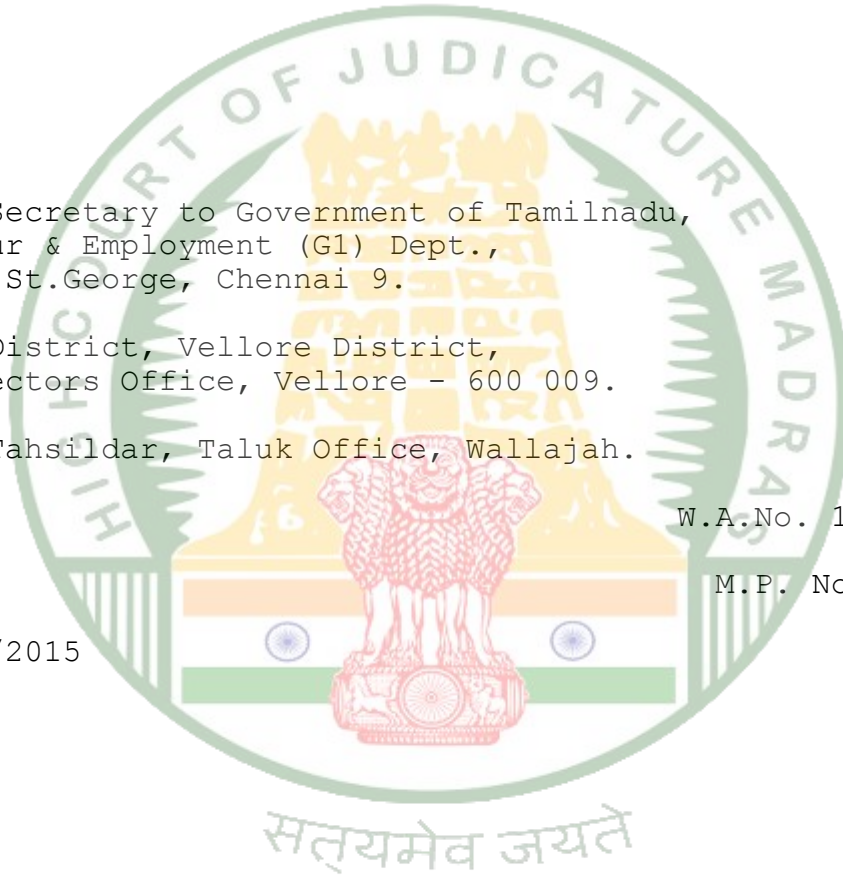
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To

1. The Secretary to Government of Tamilnadu,
Labour & Employment (G1) Dept.,
Fort St.George, Chennai 9.
2. The District, Vellore District,
Collectors Office, Vellore - 600 009.
3. The Tahsildar, Taluk Office, Wallajah.

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