

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.356 of 2015
and
M.P.No.1 of 2015

The Deputy Director of Public Health
and Preventive Medicine,
Institute of Public Health,
Poonamallee,
Chennai-600 056.

...Appellant/Respondent

Vs.

N.Guruvaiah

...Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order dated 5.9.2014 passed in W.P.No.20016 of 2008.

W.P.No.20016 of 2008:

Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the respondent culminated in the impugned Termination order in Rc.No. 10319/P1/85 dated 04.08.2008 quash the said order and entire proceeding thereunder against the petitioner and reinstate the petitioner in service as a Sweeper (Mazdoor) in the Respondent-Department forthwith along with all attendant and monetary benefits and continuity of service.

For Appellant : Mr.N.Sakthivel, GA

For Respondent : Mr.N.Guruvaiah, Party-in-person

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 05.09.2014 passed in W.P.No.20016 of 2008, wherein and whereunder, the learned Single Judge disposed of the writ petition filed by the writ petitioner / respondent herein (hereinafter referred to as "respondent"), giving direction to the appellant herein to reinstate the respondent in service with 25% of backwages and continuity of service and to pay all consequential reliefs with arrears.

2. The indisputable facts in brief are that pursuant to the application dated 29.10.1985 made by the respondent, the Assistant Director of Public Health and Preventive Medicine, appointed the respondent as temporary Mazdoor in the pay scale of Rs.450-10-570-15-420 plus admissible allowances, subject to finding him physically fit by order dated 31.10.1985. The respondent continued in service till he received a communication dated 11.7.2008, calling upon him to explain as to why he should not be terminated from service on the ground that he obtained the appointment on compassionate basis suppressing the fact that her mother was in Government service. The respondent submitted his explanation on 28.7.2008, stating therein that the respondent had not sought appointment on compassionate ground as is evident from his application. The respondent had made the application stating his indigent condition for granting appointment on temporary basis, to which the authorities have acceded to and appointment order was issued. It was further explained that the respondent has not suppressed any relevant fact as the appointment was not sought on compassionate basis. Being dissatisfied, the respondent's service was terminated vide order dated 4.8.2008.

3. Being aggrieved, the respondent has come up with the instant writ petition, seeking the relief of quashment of the termination order, consequential reinstatement with all attendant and monetary benefits and continuity of service. The learned Single Judge disposed of the writ petition directing the appellant to reinstate the respondent with 25% of backwages and continuity of service with other consequential benefits.

4. The State authorities are before us in this appeal. In support of the termination order, it was stated that the appointment of the respondent was made on compassionate basis in lieu of the death of his father in harness. The respondent has suppressed the

material relevant fact of employment of his mother, which disentitled him to seek employment on compassionate basis. Thus, the termination of the respondent was legal, justified and in accordance with the statutory provisions.

5. We have heard the learned Government Advocate as well as Mr.Guruvaiah, the respondent, appearing in person and also perused the pleadings and documents appended thereto.

6. The application dated 29.10.1985 reads as under :

"I submit to inform you that I was working as Sweeper in this institute. Then I have been ousted from duty. Since my father expired while in service my family is suffering lot without bread. Hence I request you to kindly issue me sweeper post. I enclose herewith education certificate for your kind perusal."

7. The contents of the appointment order dated 31.10.1985 reads as under :

"Under the powers delegated in G.O. first cited and under Rule 10(a)(1) of the general rules for the Tamil Nadu State and Subordinate Services, Thiru.N.Guruviah, S/o.(late) Naraiah, Mazdoor is temporarily appointed as Mazdoor and posted to Poonamallee Range vice Thiru K.Nagaiah, Retired from service.

He should report for duty as a temporary Mazdoor, before the S.G. Health Inspector, Poonamallee. He should produce a physical fitness certificate at the time of joining duty.

He will be paid pay at Rs.450/- per mensem in the scale of pay of Rs.450-10-570-15-420 plus usual allowances admissible to the post from time to time.

He is also informed that is made on a temporary basis and subject to the condition that the appointment shall be cancelled if he is found physically not fit."

8. On perusal of the application, it is crystal clear that the respondent has not sought appointment on compassionate basis in lieu of the death of his father in harness. The respondent expressed his indigent condition on account of the death of his father, but has not indicated the post of the father, where he was working and also the date of the death of his father, which is required for consideration of dependent member on compassionate appointment. In the order dated 31.10.1985 also, there is no reference to the appointment on

compassionate basis in lieu of the death of his father. The appointment was made under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules. Rule 10(a)(i) provides for appointment on temporary basis on sponsoring by the employment exchange. Rule 10(a)(i) does not deal with any appointment under compassionate basis. Thus, the finding of the authorities that the respondent had obtained appointment on compassionate basis on account of the death of his father in harness has no basis.

9. Further, the respondent was permitted to work for more than two decades before an abrupt decision of removal on an unestablished ground of compassionate appointment was taken. Thus, the termination of the respondent on this ground is unsustainable in the eye of law and the same deserves to be set aside. The learned Single Judge has examined all aspects of the matter and has rightly come to the conclusion that the termination was bad and granted 25% of backwages with continuity of service and other attendant benefits. We do not find any infirmity, illegality or irregularity in the impugned order, warranting interference. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vvk

To

The Deputy Director of Public Health
and Preventive Medicine,
Institute of Public Health,
Poonamallee,
Chennai-600 056.

2 CCs to M/s.Ashok Menon, Advocate SR.No. 14539

1 CC to the Government Pleader, SR.No. 14668

W.A.No.356 of 2015

UG (CO)

PSI (30.03.2015)