

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.6.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.17872 of 2015
and
M.P.No.1 of 2015

1. Union of India, rep. by the Chief Postmaster General, Chennai-2.
2. The Superintendent of Post Offices, Tirunelveli Division, Tirunelveli. ... Petitioners

Versus

1. The Registrar, Central Administrative Tribunal, Chennai.
2. J.Raja ... Respondents

Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records from the file of the first respondent made in O.A.No.1110 of 2012 dated 30.12.2014 and quash the same.

For Petitioners : Mr.Su.Srinivasan,
Additional Solicitor General

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMAN, J

The Union of India has come up with the above writ petition challenging an order of the Central Administrative Tribunal setting aside the termination of compassionate appointment given to the second respondent herein.

2. Heard Mr.Su.Srinivasan, Additional Solicitor General.

3. The second respondent's father was employed in the Sub Post Office and he died in harness on 18.10.2001. The second respondent applied for appointment on compassionate ground only after 8 years on 13.3.2009. The deceased had left behind a wife, two sons and a daughter. But, without rejecting the claim of the second respondent on the ground that it was made after eight long years, the Department appointed the second respondent provisionally on compassionate ground by a memo dated 26.5.2010. As a matter of fact, the decision to appoint him on compassionate ground was taken by the Circle Relaxation Committee, which met on 19.4.2010 and the Committee took a decision to condone the delay and appoint the second respondent. As a consequence, the petitioners offered appointment to the second respondent on compassionate ground.

4. After more than 19 months of such appointment, the second petitioner herein terminated the services of the second respondent, by an order dated 19.12.2011 in terms of Rule 8 of the Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules 2011, without assigning any reason. When the second respondent made a representation on 3.1.2012, the same was rejected by a communication dated 23.4.2012, with a suggestion that the second respondent's mother may apply along with suitable documents and that she would be considered for appointment. The second petitioner also directed his immediate subordinate to get fresh proposals from the second respondent's mother for appointment on compassionate grounds. Though the second respondent's mother sent a letter dated 6.7.2012 expressing unwillingness and requesting the petitioners to take back the second respondent, the petitioners did not agree.

5. Therefore, the second respondent filed an application in O.A.No.1110 of 2012, before the Central Administrative Tribunal, Madras Bench. By an order dated 30.12.2014, the Tribunal allowed the application on two grounds namely that there was a violation of the principles of natural justice and that the scheme, on which reliance was placed, came into effect after the appointment of the second respondent. Therefore, challenging the order of the Tribunal, the Union of India is before us.

6. The main contention of the petitioners is that the second respondent applied for appointment on compassionate grounds only after 8 years of the death of his father and that the appointment was made only provisionally and that therefore, it was liable to be terminated at any time. Till the appointment was made permanent, the petitioners were entitled to terminate the appointment.

7. But, we do not think that the writ petitioners can now take advantage of the delay on the part of the second respondent in seeking appointment on compassionate grounds. Admittedly, the Circle Relaxation Committee, which met on 19.4.2010, decided to condone the delay and appoint the second respondent. Accordingly, he was appointed. The appointment made on that date was in tune with the scheme for compassionate appointment that was in existence at that time. Therefore, merely because of a subsequent change in the scheme, the earlier appointment cannot be set at naught even without any notice.

8. As seen from the averments contained in the affidavit in support of the writ petition, the appointment of the second respondent was sought to be terminated only on the basis of the guidelines issued by the Postal Directorate in Letter No.17-17/2010-GDS, dated 14.12.2010 and Letter No.17-30/2010-GDS, dated 21.1.2011. The appointment of the second respondent was made in May 2010 and he joined duty on 16.6.2010. Therefore, the Tribunal was right in concluding that the guidelines issued after the appointment, cannot make the appointment illegal, so as to invoke Rule 8 for terminating the same.

9. Even today, it is not the case of the petitioners that the family of the deceased was not living in indigent circumstances and that they were ineligible for consideration. On the contrary, the specific case of the writ petitioners is that the mother of the second respondent can apply and her case will be considered even now. But there is no logic behind such a stand. If one of the family members is entitled, even today, to compassionate appointment, we do not know why the decision taken already to appoint the son should be recalled, only with a view to appoint the wife of the deceased.

10. It appears that under the new guidelines all candidates applying for compassionate appointment are to be evaluated with reference to certain merit points. According to the petitioner, the merit points scored by the second respondent was 48 as against the requirement of 50. Therefore, the petitioners contend that the appointment became liable to be terminated.

11. But, as we have pointed out earlier, the guidelines were issued only after the appointment of the second respondent. Therefore, these guidelines cannot make the appointment of the second respondent that was already made, bad in law. Hence, we find no merits in the writ petition.

12. Therefore, the writ petition is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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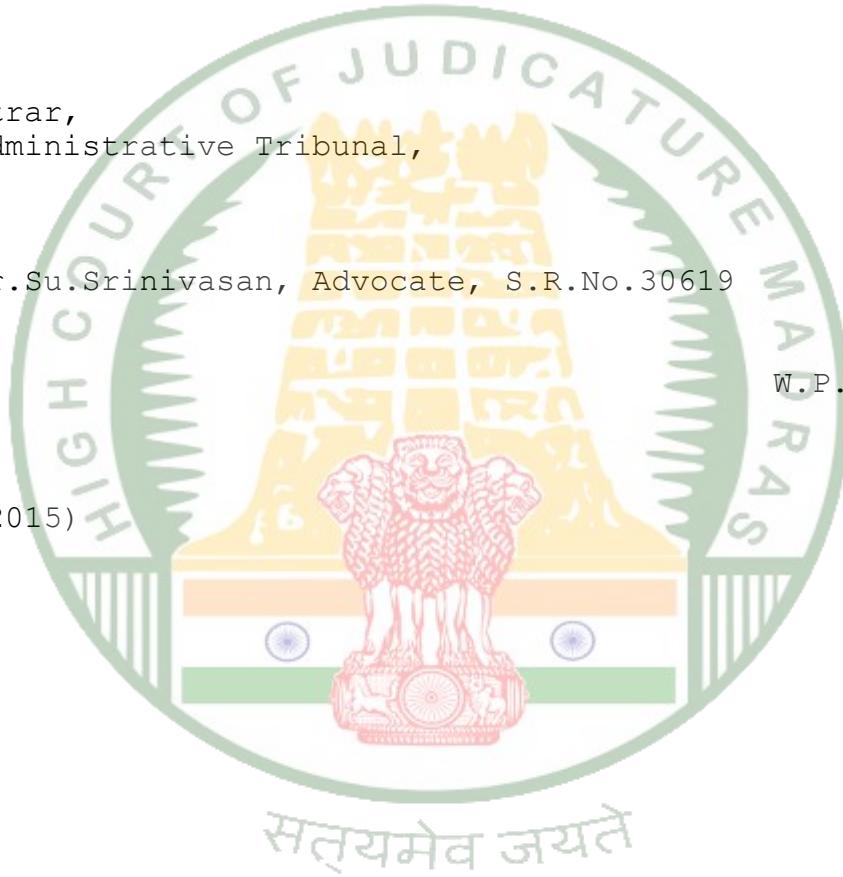
To

The Registrar,
Central Administrative Tribunal,
Chennai.

+lcc to Mr.Su.Srinivasan, Advocate, S.R.No.30619

NM(CO)
CA(06/07/2015)

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