

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.19540 of 2015

P.Suresh

... Petitioner

vs.

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai - 600 015.
2. The District Forest Officer,
Thirupathur Forest Division,
Vellore, Vellore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified mandamus, calling for the entire records which culminated in passing the order in Ref.No.LL2/3594/2013, dated 26.02.2015, on the file of the first respondent, quash the same and consequently direct the respondents to appoint the petitioner in any suitable post on compassionate grounds befitting to his educational qualification within a time to be stipulated by this Court.

For Petitioner : Mr.S.Mani

For Respondents : Mr.N.Inbanathan,
Govt. Advocate (Forests)

ORDER

The father of the petitioner was appointed as Plot Watcher on daily wages basis on 01.02.1976 and after 27 years, his service was brought into regular time scale of pay on 11.04.2003. He died on 08.01.2008 while in service leaving behind him, his wife/the mother of the petitioner, the petitioner and two daughters/sisters of the petitioner as his legal heirs.

2. According to the petitioner, on 16.06.2008, about six months after the date of death of his father, he submitted an application seeking compassionate appointment enclosing all necessary documents, including no objection letters from his mother and sisters to provide him compassionate appointment.

3. The second respondent recommended to the first respondent in the proceedings in No.1629/12/P1, dated

05.03.2012 to provide compassionate appointment as Junior Assistant to the petitioner.

4. Since there is no progress thereafter, he filed W.P.No.32649 of 2012 seeking direction to the respondents therein to provide him compassionate appointment in the light of the proceedings of the second respondent dated 05.03.2012 and this Court disposed of the writ petition on 06.12.2012 directing the respondents to consider his representation on merits and in accordance with law within a period of eight weeks from the date of receipt of that order copy.

5. Pursuant to the order of this Court dated 06.12.2012, the first respondent passed the impugned order on 26.02.2012 rejecting his claim for compassionate appointment. The impugned order mainly gave two reasons for rejecting the claim of compassionate appointment to the petitioner. Firstly, it proceeds on the basis that the father of the petitioner was a daily wages employee and he was not in regular employment and therefore, the scheme of providing compassionate appointment to any one of the legal heirs of the deceased Government servant would not apply. Secondly, the impugned order relied on the following four judgments of the Apex Court for declining compassionate appointment to the petitioner :

- (1) Secretary, State of Karnataka V. Umadevi (3), [(2006) 4 SCC 1] ;
- (2) Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen, [(2007) 1 SCC 408] ;
- (3) National Institute of Technology V. Niraj Kumar Singh, [(2007) 2 SCC 481] ; and
- (4) I.G. (Karmik) V. Prahalad Mani Tripathi, [(2007) 6 SCC 162].

6. Heard both sides.

7. The learned counsel for the petitioner submitted that the petitioner was denied compassionate appointment by the respondent in the impugned order on the ground that the father of the petitioner was a daily wages employee and there is no rule to provide compassionate appointment to the legal heir of the daily wage employee, whereas, the deceased Government servant was brought into regular time scale of pay with effect from 12.04.2003 and in this regard he placed reliance on the order of the second respondent in See.Mu.No.9080/04/P1, dated 31.07.2004 and in fact, the wife of the deceased Government servant is granted with family pension. According to him, on this sole ground, the impugned order is liable to be quashed.

8. The learned counsel for the petitioner also submitted that the judgments relied on in the impugned order could render no assistance to the respondents and he took me through those judgments in this regard.

9. The learned Government Advocate sought to sustain the

impugned order placing reliance on the judgments that are relied on in the impugned order.

10. I have considered the submissions made by either side.

11. At the outset, this Court is of the considered view that the first respondent wrongly proceeded on the basis that the father of the petitioner was a daily wage employee. The father of the petitioner joined on 01.02.1976 as Plot Watcher in the Forest Department. He was on daily wages basis. After 27 years of service, he was regularized on 11.04.2003 an granted scale of pay. The order of the second respondent in See.Mu.No.9080/04/P1, dated 31.07.2004 makes it very clear that the deceased Government servant was brought into regular time scale of pay with effect from 12.04.2003. It is seen that the mother of the petitioner was granted with family pension, on the death of her husband. Admittedly, family pension is payable to the widow of the deceased regular Government servant. Hence, it is clear that the impugned order is liable to be quashed on the sole ground that the same was passed without application of mind and thus, the petitioner is entitled to compassionate appointment.

12.1. The judgment of the Constitution Bench of the Apex Court in Secretary, State of Karnataka V. Umadevi (3), [(2006) 4 SCC 1], relied on by the first respondent in the impugned order has no relevance to the facts of this case. The said judgment has nothing to do with providing compassionate appointment.

12.2. The Apex Court in the said judgment held that the employees appointed as temporary, casual, adhoc and on daily wages basis could not ask for regularisation (i) if there are no sanctioned posts ; (ii) if they do not possess requisite qualification for the post and (iii) if they were not appointed to the post following the selection procedure as prescribed in the recruitment rules. Even after holding so, the Apex Court carved out an exception in paragraph 53 of its judgment and held therein that as a one-time measure, the temporary employees could be regularised, if there are sanctioned posts and if they possess the requisite qualification provided the temporary employees served 10 years or more continuously.

12.3. In the case on hand, the father of the petitioner served for more than two decades, viz., 27 years, on daily wages basis and thereafter, he was regularised in 2003. The Department nowhere cancelled his regularisation in service till his death. The learned counsel for the petitioner also brought to my notice that the person similarly situated like the father of the petitioner was also regularised, taking into account the long service rendered by him and the same was not disputed by the learned Government Advocate.

12.4. Hence, in my considered view, the judgment of the Apex Court in Umadevi's case (cited supra) has no application to the case on hand.

13.1. The next judgment, relied on in the impugned order, is the judgment of the Apex Court in Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen, [(2007) 1 SCC 408].

13.2. That judgment relates to the claim of regularization of 10 casual workmen employed in the plant of the appellant at Rishikesh in Uttarakhand State. Their claim for regularization was upheld by the Labour Court, though they were appointed beyond the sanctioned strength. The sanctioned strength was 1049 and there were 1299 workmen were employed at the relevant time. Those 10 workmen, in that case, were beyond 1299.

13.3. In those circumstances, the award of the Labour Court was interfered with by the High Court at Uttaranchal. However, the High Court directed the appellant therein to continue those 10 workmen in employment till their superannuation and to pay the wages of regular workmen.

13.4. The appellant therein approached the Apex Court pleading that the company was sick and the proceedings was pending before the BIFR and therefore, even the regular workmen were to be sent on VRS.

13.5. In those circumstances, the Apex Court, by following the judgment in Umadevi's case, held that the High Court committed grave error in issuing direction to continue the service of those workmen until their superannuation, particularly, when those 10 persons were appointed beyond sanctioned strength and reversed the judgment of the High Court. It is useful to extract the following passage in this regard :

"It has come in the evidence that the number of sanctioned posts in the company were only 1049, but there were already 1299 employees working in the company at the relevant time. We fail to understand how could 1299 employees be appointed when there were only 1049 sanctioned posts? Moreover, the ten concerned employees were over and above the 1299 already working in the company at the relevant time.

....

In our opinion the High Court failed to appreciate that when the appellant is still before the BIFR, and where the Government is making an effort to again present a revival proposal, there was no justification to saddle the appellant with liabilities on the basis of compassion when no legal right exists in favour of the concerned

respondents. When there was no vacancy and the company was in poor financial condition, the impugned order was wholly uncalled for.

....

It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier)."

13.6. The aforesaid narration of facts of the case, that was considered by the Apex Court, would make it very clear that the said judgment also has no application to the case on hand. In this case, the Government has not disputed about the regularization of the service of the father of the petitioner in 2003 itself.

13.7. Hence, I have no hesitation to hold that this judgment, referred to in the impugned order, could render no assistance to the respondents.

14.1. The third judgment, relied on in the impugned order, is National Instituted of Technology V. Niraj Kumar Singh, [(2007) 2 SCC 481].

14.2. In that case, the respondent therein was appointed on compassionate ground due to the death of one B.P.Sinha, who was employed as Senior Storekeeper in the appellant institute. He died leaving behind his widow Smt.Vidhya Devi and son. At the time of his death, his son Ashuthosh Kumar was aged about one year.

14.3. Smt.Vidhya Devi secured employment to the respondent herein by making false declaration as if the respondent was a grandson of the deceased. Actually, he was a grandson of the cousin brother of the deceased Government servant.

14.4. On coming to know that the appointment was secured on false ground, the appellant - Institute terminated the service of the respondent.

14.5. In the said case, in view of the earlier round of litigation, wherein, Smt.Vidhya Devi herself questioned the appointment of the respondent and sought to cancel the same, while seeking to provide employment to her son Ashutosh Kumar, on reaching the age of 18 years, the High Court rejected her claim and the Division Bench also confirmed the same.

14.6. In that context, the termination of the respondent was sought to be interfered with by the High Court.

14.7. The Apex Court held that the scheme of compassionate appointment provides for appointment to the

widow or one of the children of the deceased Government servant and not to a grandson that too, the grandson of the cousin brother of the deceased Government servant. Hence, the Apex Court held in categorical terms that the very appointment of the respondent was illegal and without jurisdiction and the appointment was obtained by practicing fraud upon the appellant and therefore, the same was nullity. In this regard, it is useful to extract the following passage from that judgment in (2007) 2 SCC 481 :

"But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment.

....

If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity."

14.7. Hence, that judgment would render no assistance to the case on hand.

15.1. The last judgment, relied on in the impugned order, is the judgment of the Apex Court in I.G. (Karmik) V. Prahalad Mani Tripathi, [(2007) 6 SCC 162].

15.2. That case also could have no assistance to the respondent. In that case, the father of the respondent was a Constable in Uttar Pradesh Police Service. He died in harness, while he was in service. The respondent applied for compassionate appointment. He was considered for appointment for the post of Constable. But he was found not eligible, as he did not satisfy the physical standard stipulated in the Rules. Hence, he was appointed as a Peon.

15.3. He accepted the said appointment without any demur whatsoever. But he approached the Uttar Pradesh Services Tribunal, Lucknow, seeking to absorb him in the post of Police Constable, after five years of his appointment.

15.4. The Tribunal allowed his claim. The High Court also confirmed the judgment of the Tribunal.

15.5. When the matter was taken to the Apex Court, the Apex Court held that both the Tribunal and the High Court committed error in issuing a direction for regularization to the class III Post of Constable. The following passage in the judgment is usefully extracted in this regard :

"Respondent, thus, could be offered an appointment only to the post for which he was suitable.

Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria."

15.6. Therefore, I am of the view that the said judgment has no application to the facts of this case.

16. For the foregoing reasons, I have no hesitation to quash the impugned order and also to issue a positive direction to the first respondent to provide compassionate appointment to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai - 600 015.
2. The District Forest Officer,
Thirupathur Forest Division,
Vellore, Vellore District.

+1 cc to Mr.S.Mani, Advocate (sr.34992)

+1 cc to The Special Government Pleader (Forest)

High court chambas, chennai 104. (sr.35008)

W.p.No.19540 of 2015

jsv(CO)

CP 27/10/2015