

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.7.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.No.20131 of 2015
and
M.P.No.1 of 2015

V.Vijaybalaji

Petitioner

vs.

- 1 Union of India
Rep. by The General Manager
Southern Railway
Park Town Chennai-600 003.
- 2 The Senior Divisional Personnel Officer
Southern Railway Chennai Division
NGO Annexe III Floor Park Town
Chennai-600 003.
- 3 The Chief Medical Superintendent
Southern Railway Chennai Division
E.V.R.Salai Egmore
Chennai-600 008.
- 4 The Central Administrative Tribunal
Madras Bench Rep. by its Registrar
City Civil Court Buildings
Chennai-600 104.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the order dated 06.04.2015 made in O.A.No.310/00588 of 2014 passed by the 4th respondent Tribunal rejecting the claim of the petitioner and quash the same as being illegal unconstitutional and consequently issue a direction to respondents 1 to 3 to consider and appoint the petitioner on compassionate grounds to any suitable post in the respondent railways with all attendant service benefits and monetary benefits.

For Petitioner : Mr.M.Gnanasekar

For RR 1 to 3 : Mr.P.T.Ramkumar

ORDER

(Order of the court was made by V.RAMASUBRAMANIAN, J.)

Petitioner has come up with the above writ petition challenging the rejection of his claim for appointment on compassionate grounds by the Southern Railways, which has also been approved by the Central Administrative Tribunal.

2. Heard Mr.M.Gnanasekar, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned Standing Counsel for the respondents.

3. The petitioner's mother was employed as an Accounts Assistant in the Southern Railways. She died in harness on 12.10.2007. Therefore, the petitioner made an application for appointment on compassionate grounds.

4. By order dated 22.12.2010, his application for appointment on compassionate grounds was rejected on the ground that he was medically unfit to be appointed to any post. The petitioner sought re-medical examination, but, the same was rejected by order dated 12.7.2013.

5. Therefore, the petitioner filed an application in O.A.No.588 of 2014 on the file of the Central Administrative Tribunal. The Tribunal dismissed the application forcing the petitioner to come up with the above writ petition.

6. On a stand alone basis, the order passed on 22.12.2010 by the Railway Administration rejecting the application of the petitioner for appointment on compassionate grounds cannot be sustained in view of the consistent stand taken by this court that diabetes cannot be a ground for depriving employment. But unfortunately, for the petitioner, there are other grounds which are not reflected in the impugned order. In normal circumstances, we would follow the ratio laid down in MOHINDER SINGH GILL AND ANOTHER v. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS (1978(1) SCC 405) to the effect that an order impugned in the writ petition cannot be improved by a counter affidavit. But, in this case, it is impossible for us to overlook certain other aspects.

7. The other aspects are that the petitioner's father was working as Chief Office Superintendent in the very same Southern Railways even at the time of death of the petitioner's mother. The petitioner's father retired after six years after the death of the

petitioner's mother viz., on 31.8.2013. His last drawn salary was Rs.45,000/- per month.

8. Though it appears that the retirement benefits of the petitioner's father are not yet settled on account of a question raised by the Railway Administration about his community status, the fact remains that he was in employment atleast for six years in a Senior position in the Southern Railways even after the death of the petitioner's mother. The very purpose of compassionate appointment, as pointed out by the Supreme Court in UMESH KUMAR NAGPAL v. STATE OF HARYANA (1994(4) SCC 138), is to help the family of the deceased Government Servant to tide over the financial crisis due to the sudden demise of the Government Servant. But, in this case, for a full period of six years after the death of the petitioner's mother, his father had been in employment in the very same Southern Railways as a Chief Office Superintendent.

9. As a matter of fact, the respondents have filed a counter affidavit, wherein they have given details of the benefits to which the petitioner and his family had been entitled to. Relevant portion of paragraph 15 of the counter reads as follows:-

"The financial situation of the petitioner's family after the death of his mother is tabulated as follows:-

i) Settlement benefit given on account of death of the petitioner's mother Rs.7,00,000/-

ii) Enhanced family pension given to petitioner's father on account of death of his wife (Rs.9910/- per month) from 2007 to 2013 Rs.9,51,360/-

iii) Salary drawn by the petitioner's father from 2007 to 2013 i.e., after death of his wife (Rs.45,000/- per month) Rs.32,40,000/-

iv) Settlement given to the petitioner's father at the time of his retirement Rs.1,48,914/-

v) Pension received by petitioner's father from 2013 to 2015 (Rs.16745/- per month) Rs.4,00,000/-

Total

Rs.54,40,274/-

10. Therefore, despite the fact that the original order of rejection of the claim of the petitioner was completely erroneous, we do not find that the petitioner is in indigent circumstances so as to seek a direction for appointment on compassionate grounds. Hence, the writ petition is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ssk.

To

- 1 The General Manager
Union of India
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+1 cc to Mr.P.T.Ramkumar, Advocate, sr.37557

+1 cc to Mr.M.Gnanasekar, Advocate, sr.37592.

W.P.No.20131 of 2015

ca(co), kra(19/08)