



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) No.1271 of 2015
and
M.P(MD)Nos.2 and 3 of 2015

A.Krishnan

... Appellant

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Most Backward Classes and
Denotified Communities Welfare Department,
Secretariat, Chennai 600 009.

2. The Commissioner,
Most Backward Classes and Minorities
Welfare Department,
Chennai 600 005.

3. The Joint Director,
Kallar Reclamation,
Collectorate,
Madurai 625 020

... Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 18.08.2015 made in W.P.(MD)No.4788 of 2015.

Prayer in WP(MD). 4788/ 2015 :

Petition filed under Article 226 of the Constitution of India, for the issue a writ of Certiorarified Mandamus to call for the records relating to the order Se.Mu.No.A2/286/2008, dated 26.02.2015 passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to regularize the service of the petitioner from the date of his appointment on 14.07.1997 and grant all the service and monetary benefits.

For Appellant : Mr.A.Thirumurthy
For Respondents : Mr.N.Manoharan,
Special Government Pleader.

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

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The writ appeal arises out of the dismissal of a writ petition



challenging the order of the appellate authority cancelling the decision taken by the disciplinary authority to drop the charges.

2. Heard Mr. A. Thirumurthy, learned counsel for the appellant.

3. The appellant's father was employed as the Headmaster of a Government Kallar Reclamation High School in Theni District. He died in harness on 09.11.1986.

4. The appellant applied for appointment on compassionate grounds. His application was recommended by the appropriate authority and he was appointed on compassionate grounds on 14.07.1997.

5. After about 10 years of his appointment, the appellant was slapped with an order in G.O.(2D)No.67, Backward Classes, Most Backward Classes and Minorities Welfare (BC-3) Department, dated 13.11.2007, terminating his services on the ground that the appellant's mother was also in Government service when his father died in harness and that therefore, the appellant was not entitled to appointment on compassionate grounds.

6. Challenging the Government Order in G.O.(2D)No.67, Backward Classes, Most Backward Classes and Minorities Welfare (BC-3) Department, dated 13.11.2007, the appellant filed a writ petition in W.P(MD)No.10408 of 2007. That writ petition was allowed by a learned Judge of this Court shockingly at the concession given by the learned Additional Government Pleader to the effect that before passing the said order, no opportunity was given to the appellant to explain his claim. However, the learned Judge was kind enough to grant liberty to the Government to initiate proceedings and to pass orders after affording opportunity to the appellant in the light of the Government Order that provides detailed guidelines on the question of appointment on compassionate grounds.

7. Pursuant to the said order, the appropriate authority issued a charge memo dated 09.04.2009 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The appellant gave a reply to the charge memo. Thereafter, the Deputy Director of Kallar Reclamation passed an order dated 09.07.2012 accepting the explanation of the appellant and also recommending further action to be dropped on the ground that the appellant had already completed 15 years of service and that there is a family behind him.

8. Finding such an order to be utterly perverse, the Head of the Department, the appellate authority, namely, the Commissioner of Most Backward Classes and Denotified Communities passed an order dated 26.02.2015 setting aside the order of the Deputy Director and directing further proceedings to go on in pursuance of the charge memo under Rule 17(b).

9. Challenging the order of the Head of the Department dated 26.02.2015, the appellant filed a writ petition in W.P(MD)No.4788 of 2015. The said writ petition was dismissed by a learned Judge by an order dated 18.08.2015. Aggrieved by the said order, the appellant is before



10. Today, there is no dispute about the fact that the appellant's mother was in Government service on the date on which his father died in harness. Therefore, the very appointment granted to the appellant, was completely contrary to the principles behind the grant of compassionate appointment.

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11. As the jaguar which has nine lives the appellant survived the first order of termination passed by the Government in G.O.(2D)No.67, Backward Classes, Most Backward Classes and Minorities Welfare (BC-3) Department, dated 13.11.2007 and survived even the charge memo with an officer in the rank of Deputy Director who was sympathetic to his cause.

12. The Hon'ble Supreme Court in **State Bank of India Vs. Rajkumar, (2010) 11 SCC 661** has already indicated the principles behind the grant of compassionate appointment as follows:

19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

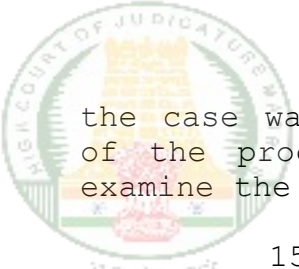
(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts".

13. Thus, the ground on which the appellant succeeded in getting the first order of termination was that he was not given an opportunity. When he was given an opportunity, he cannot take shelter under the plea that he has continued in employment for 15 years. If the appointment is illegal at the beginning, the continuance cannot save the same due to efflux of time.

14. Mr. A. Thirumurthy, learned counsel for the appellant relies upon the decision of the Supreme Court in **Union of India Vs. K.P. Tiwari (2003) 9 SCC 129**. But the said case arose out of the proceedings before the Tribunal. In that case, a person was denied employment on the ground that his brother was working in the same electricity board. Though



the case was registered, he was granted appointment during the pendency of the proceedings. Therefore, the Supreme Court, merely refused to examine the question of law arising in the case.

15. The Supreme Court did not lay down any law to the effect that once an appointment is given, the legality of the same cannot be tested after a lapse of considerable time. Therefore, the learned Judge was right in dismissing the writ petition. Hence, the writ appeal is dismissed. No costs. Consequently, M.P(MD)Nos.2 and 3 of 2015 are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Most Backward Classes and
Denotified Communities Welfare Department,
Secretariat, Chennai 600 009.
2. The Commissioner,
Most Backward Classes and Minorities
Welfare Department,
Chennai 600 005.
3. The Joint Director,
Kallar Reclamation,
Collectorate,
Madurai 625 020

+ 1 CC TO MR.A.THIRUMURTHY, ADVOCATE IN SR NO. 67620
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO. 67955

SMS

TE/AAL-MPA/ : 14/12/2015 : 4P/6C

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