

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 14.09.2016)

DATED :07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.7163 of 2014

and

M.P.Nos.1 & 2 of 2014

1.U.Nirmala

2.U.Radha

... Petitioners

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
Labour & Employment Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Labour,
Chennai-600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent made in Na.Ka.No.G2/53992/11, dated 01.02.2013, to quash the same and consequently, to direct the respondents to consider the claim of the 2nd petitioner for appointment on compassionate ground forthwith.

For Petitioners : Mr.L.Chandrakumar

For respondents : Mr.R.Rajeswaran, Spl. GP.

* * * * *

ORDER

This writ petition has been filed by the petitioner challenging the order of the 2nd respondent made in Na.Ka.No.G2/53992/11, dated 01.02.2013, in and by which the request of the petitioners to appoint the 2nd petitioner on compassionate ground, was rejected.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The 1st petitioner is the wife and the 2nd petitioner is the daughter of one M.D.Udhaykumar, who was medically invalidated while working as Special grade Office

Assistant in the Office of the Assistant Inspector of Labour, 29th Division, Chennai. While working as Office Assistant, the said M.D.Udhayakumar was suffering from Right Hemiplegia (Ischamemic Stroke). His health condition got deteriorated and worsened. While so, on 30.03.2011, while he was in office, he fainted and fell down.

2-2. Thereafter, a request was made to the respondent to refer him to the Medical Board to assess his fitness. Thereafter, the petitioner was referred to a Medical Board and the Medical Board, by its proceedings in L.Dis.No.04043/RMB/RGhGH/2012, dated 12.04.2012, held that the said M.D.Udhayakumar may be invalidated on Medical Grounds, which was later affirmed by the appropriate competent authority. Thereafter, he was medically invalidated. Since the said Udhayakumar was medically invalidated, one of his family members is entitled for compassionate appointment.

2-3. When a request was made before the respondents, for providing an appointment to the 2nd petitioner herein, who is the daughter of the said Udhayakumar, the same was rejected by the proceedings in Na.Ka.No.G2/53992/11, dated 01.02.2013, by referring the Government Letter dated 26.12.2012, assigning the reason that the date of birth of the said Udhayakumar is 20.04.1958 and he would be reaching the age of 53 years on 19.04.2011. It is stated by the respondent that the upper age limit of the medically invalidated person has been fixed as 53 years by the Government vide G.O.No.168, Labour & Employment (Q1) Department, dated 19.10.2000, for considering the compassionate appointment of one of his family members. It is further stated by the respondents for rejecting the request for compassionate appointment, that the said Udhayakumar was assessed by the Medical Board towards his medical invalidation only on 15.05.2012, i.e., after he completed the age of 53 years. Thus, the request of the petitioners for compassionate appointment was rejected by the respondents. Hence, challenging the same, the petitioners have come forward with the present writ petition.

3. When the matter was taken up for consideration, the learned counsel for the petitioners would submit that the 2nd petitioner's father Udhayakumar was working as Special Grade Office Assistant in the office of the Assistant Inspector of Labour, 29th Division, Chennai and he was suffering from various ailments ever since October, 2010. On 30.03.2011, while he was on duty, he fainted and fell down in the Office itself. After 30.03.2011, he did not attend Office. He had completed the age of 53 years only on 19.04.2011. According to the learned counsel for the petitioners, since he was continuously absent from duty, it has to be construed that he had been medically invalidated from 30.03.2011 onwards. Whereas the request of the petitioners for compassionate appointment was rejected by the respondents on the reasoning that the Medical Board, which was constituted for assessing the fitness of the said Udhayakumar, had issued its proceedings only on 12.04.2012 recommending that the said

Udhayakumar might be invalidated on Medical Ground; as on 12.04.2012, on which date the Medical Board issued its proceedings, the said Udhayakumar had completed 53 years of age; that as per the Government Order in G.O.168, Labour & Employment (Q1) Department, dated 19.11.2000, one of the legal heirs/family members can be appointed on compassionate ground, if the age of the Government Servant, who is invalidated from service, is 53 years or below.

4. In this regard, the learned counsel for the petitioners would further contend that the said Udhayakumar was invalidated from service only on 15.05.2012 and the delay was only on the part of the respondents in referring him to the Medical Board. Therefore, date 15.05.2012 on which date he was invalidated from service, cannot be taken into consideration, for rejecting the claim of the petitioners for compassionate appointment. Thus, the learned counsel for the petitioners sought for quashing the impugned order and consequential direction to the respondents to give appointment to the 2nd petitioner on compassionate ground.

5. Per contra, the learned Special Government Pleader, by filing a detailed counter, would contend that based on the recommendations of the Medical Board, as per the Rule 36(1) of the Tamil Nadu Pension Rules, 1978, the said Udhayakumar was permitted to retire from service on medical invalidation, by proceedings of the Commissioner of Labour in G2/53992/2011, dated 07.08.2012. Thereafter, he was relieved from government service on 15.05.2012 afternoon, at that time he was aged 54 years. As per the Government Order in G.O.168, Labour & Employment (Q1) Department, dated 19.11.2000, the legal heir of the medically invalidated government servant can be appointed on compassionate ground if the age of the such government servant is below 53 years. Hence, the petitioners herein who are the legal heirs of the said Udhayaukar, are not eligible for appointment on compassionate ground. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

6. Heard the submissions made on either side and perused the materials available on record.

7. It is admitted case that on 30.03.2011, while he was on duty, the said Udayakumar fainted and fell down in the office itself; thereafter, he did not attend the Office and he was continuously on medical leave. After several requests, the respondents referred him to the Medical Board only after a long delay. The Medical Board had issued its proceedings only on 12.04.2012 recommending his medical invalidation from service. From the factual aspects of the case, it is clear that he had become totally incapacitated from doing work and earning income right from 30.03.2011; whereas he has completed the age of 53 years only on 19.04.2011. In this regard, it would be appropriate to extract the relevant portion in the

Proceedings of the Regional Medical Board, dated 12.04.2012, which reads as follows

"suffering from hemiparesis (right) side. He is not in a position to perform his activity of daily living and unable to render his service as an OA in his office. He suffers from Cerebro Vascular disease due to Systemic Hypertension. He may be invalidated on Medical grounds. The availed and absence of duties may be regularized on medical grounds."

Further, in the proceedings dated 13.02.2012, the Medical Board has stated as follows

"head Quarters Hospital, Thiruvallur, examined Thiru.M.D.Udhayakumar, O.A, O/o.தொழிலாளர் உதவி ஆய்வாளர் இ 29 ஆம் வட்டம் சென்னை on medical leave from 1.4.2011 to till date fro (R) Hemiplegia aphasia.... "

From the above medical report, it is seen that the said Udhayakumar was continuously on medical leave from 01.04.2011, which would show that he has totally become incapacitated to do any work and earn income even prior to reaching the age of 53 years. When that being so, I do not find any justification in the rejection of the claim of the petitioners for compassionate appointment, by citing the Government Order in G.O.168, referred to above. Hence, I am of the opinion the petitioners are entitled to the relief sought for in the present writ petition.

8.In fine, the writ petition is allowed and the impugned order passed by the 2nd respondent is quashed. The respondents are directed to consider the request of the petitioners and to pass appropriate orders, with regard to giving compassionate appointment to the 2nd petitioner, within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

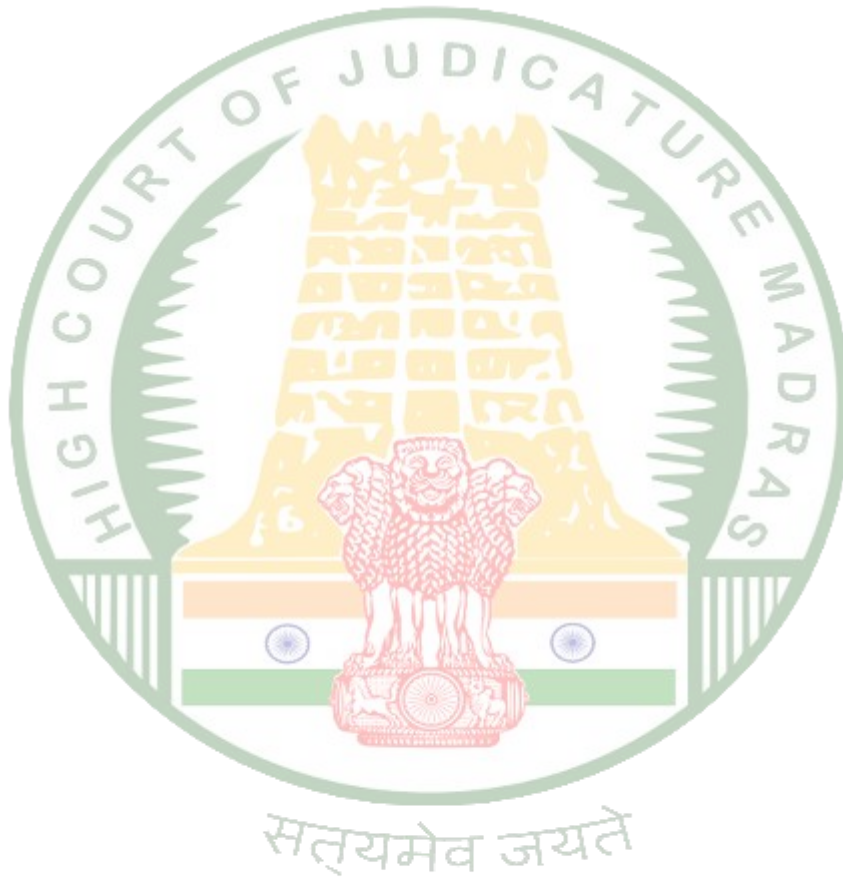
To,
1.The Secretary,
State of Tamil Nadu
Labour & Employment Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Labour,
Chennai-600 006.

+1 cc to Government Pleader,sr.55212.

sv(co)
krd 25/10

W.P.No.7163 of 2014
and
M.P.Nos.1 & 2 of 2014



WEB COPY