

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 23.09.2016)

DATED : 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.22746 of 2014
and
M.P.Nos.1 & 2 of 2014
and
M.P.No.1 of 2015

R.Palraj Kumar Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Secretary to Government,
Department of School Education,
Fort St.George, Chennai-600 009.
2. The Director of School Education,
Chennai-6.
3. The District Educational Officer,
Tiruvallur. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with Letter No.Na.Ka.No.5893/A1/2012 dated 15.05.2014 on the file of the 3rd respondent and to quash the same and consequently, to direct the 3rd respondent to reinstate the petitioner in the service with full attendant service benefit, including seniority and back-wages.

For Petitioners : Mr.A.Govindasamy

For respondents : Mr.S.Gunasekaran,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Letter No.Na.Ka.No.5893/A1/2012 dated 15.05.2014 on the file of the

3rd respondent and to quash the same and consequently, to direct the 3rd respondent to reinstate the petitioner in the service with full attendant service benefits, including seniority and back-wages.

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

2-1. The petitioner's mother Tmt.P.Selva Jayasundari was working as a Secondary Grade Teacher in Melmanambedu Panchayat Union Middle School, Poonamallee Union, Tiruvallur District. On 15.03.2001, she died in harness during her service. The petitioner's father had pre-deceased her. At the time of the demise of the petitioner's mother, her legal heirs are two sons (including the petitioner herein) and two daughters. The petitioner's sisters were married and settled during the lifetime of his mother. The petitioner's brother is suffering from ailments and he is not fit for any job. The petitioner is an unemployed person. Hence, the petitioner made an application on 30.10.2001 to the District Educational Officer, (3rd respondent herein) seeking for appointment on compassionate ground. The petitioner's brother and his two sisters also gave letters stating that they have no objection if the compassionate appointment is offered to the petitioner. The petitioner has made an application for compassionate appointment well within three years limitation period. Since the petitioner's earlier application was not considered, he has sent another application on 25.04.2004 for compassionate appointment. Thereafter, the 3rd respondent in his proceedings in O.M.No.3668/A3/2004, dated 29.04.2008, rejected the petitioner's application for compassionate appointment, stating that on 15.03.2001, ie on the date of demise of the petitioner's mother (Government servant), the petitioner herein has crossed the age of 35 years and as such in terms of the G.O.No.9, Labour Department, dated 19.01.1998 and G.O.No.4828/P1/98, Labour Department, dated 26.03.1998, he is not entitled for compassionate appointment.

2-2. Thereafter, the petitioner made a representation on 28.07.2008, to the 3rd respondent for compassionate appointment, on the ground that he belonged to Scheduled Caste Christian Community and the relaxation of age limit could be considered in terms of the Letter No.46571/N1/82-3, dated 24.11.1982, issued by the Labour Department. However, the 3rd respondent in his proceedings in O.M.No.4245/A3/2009, dated 26.02.2009, reiterated the earlier rejection of his application for compassionate appointment.

2-3. Thereafter, the petitioner preferred an appeal to the Director of Elementary Education, Chennai, on 04.05.2009 to reconsider his request for compassionate appointment. The Director of Elementary Education, Chennai in his Proceedings in O.M.No.14992/D3/2010, dated 19.11.2010,

forwarded the application of the petitioner to the Directorate of School Education, Chennai, and issued the following direction_

"கருணை அடிப்படை நியமனம் பள்ளிக் கல்வி இயக்கத்தில் முன்னுரிமை வழங்கப்பட்டு வருகிறது. எனவே மேல்முறையீட்டு விண்ணப்பத்தை பள்ளிக் கல்வி இயக்கத்திற்கு அனுப்பி வைத்திடும்படி சமந்தப்பட்ட மனுதாரர் கேட்டுக் கொள்ளப்படுகிறார் "

According to the petitioner, the Directorate of School Education did not concur with the orders of rejection passed by the 3rd respondent, but, directed that the petitioner's application be favourably considered.

2-4. Thereafter, on 02.12.2010, the petitioner preferred an appeal to the Joint Director of School Education, Chennai, a copy of which was endorsed to the 3rd respondent. Thereafter, by proceedings in Na.Ka.No.8978/A3/2011, dated 14.01.2011, the 3rd respondent directing the petitioner to submit his application for compassionate appointment in original along with two copies, to the office of the District Educational Officer, Tiruvallur. Accordingly, the petitioner submitted his application as per the directions of the 3rd respondent. Thereafter, the 3rd respondent vide his proceedings in Na.Ka.No.859/A3/2011, dated 11.11.2011, issued the appointment order appointing the petitioner as Office Attendant in Arignar Anna Government Higher Secondary School, Poonamallee, in the regular scale of pay. Pursuant to the said appointment order, the petitioner joined duty and had put in 2 years of service.

2-5. While so, to his shock and surprise, the 3rd respondent issued a show cause notice/order in Na.Ka.No.5893/A1/2012, dated 30.12.2013, asking the petitioner to show cause as to why his appointment order should not be cancelled. Hence, the petitioner had filed a writ petition in W.P.No.3380 of 2014 before this Court, seeking to quash the said show cause notice. In the said writ petition, by order dated 28.02.2014, this Court directed the petitioner to give reply to the show cause notice and further directed the respondents to consider the same, in the light of the judgment passed by this Court in W.A.(MD).No.48 of 2011. Pursuant to the above said order, the petitioner gave a reply to the show cause notice. But, again the 3rd respondent by the impugned order dated 15.05.2014, terminated the service of the petitioner on the ground that the petitioner was over-aged at the time of his appointment, as such he could not be given appointment on compassionate grounds. Hence, challenging the same, the petitioner has come forward with the present writ petition before this Court.

3. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the petitioner was terminated from service only on the ground that at the time of death of his mother (govt. servant), he was aged 35 years 7 months 18 days, as such he is over-aged for compassionate appointment. According to the learned counsel for the petitioner, the petitioner belongs to Scheduled Caste Christian Community and as such, the relaxation of age limit could be considered, in terms of the Letter No.46571/N1/82-3, dated 24.11.1982, issued by the Labour Department, wherein the question of age relaxation in the case of Schedule Caste and Scheduled Tribe was clarified to the effect that the dependents of the deceased Government servants, belonging to the SC/ST Community, can be appointed on compassionate ground in relaxation of age rule even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual. Thus, the learned counsel for the petitioner sought for quashing the impugned order and consequential direction to the respondents to reinstate the petitioner into service, by provide compassionate appointment to the petitioner, by giving relaxation to the age limit.

4. But, the learned Additional Government Pleader, by filing a detailed counter, would contend that Rule 5 (1) of the Special Rule for Tamil Nadu Basic Services prescribes the age limit as 35 years in respect of the Schedule Caste and Schedule Tribe, for appointment in the posts in Classes III & IV. But, in the instant case, the petitioner herein has crossed the age of 35 years on the date of death of his mother (Government Servant). Further, the petitioner belongs to Schedule Caste Christian Community; as such, Letter No.46571/N1/82-3, dated 24.11.1982, issued by the Labour Department, will not be application to the petitioner for compassionate appointment. Hence, as per the Government Order in G.O.Ms.No.23, Labour and Employment Department, dated 10.02.1993, the petitioner is not entitled to the compassionate appointment. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

6. It is the only submission of the learned counsel for the petitioner that by giving age relaxation, compassionate appointment could be provided to him. In support of his contention, the learned counsel for the petitioner has also relied upon the judgment reported in (2003) 9 SCC 129 [Union of India Vs. K.P.Tiwari]. But, it is the submission of the learned Additional Government Pleader that the petitioner belongs to Schedule Caste Christian Community and he is not entitled for age relaxation, for compassionate appointment. I

find some force in the submission made by the learned Additional Government Pleader. It is admitted fact that on the date of death of his mother (Govt. servant), the petitioner was aged above 35 years. Further, the petitioner belongs to Schedule Caste Christian Community and as such, he cannot claim age relaxation by relying upon the Letter No.46571/N1/82-3, dated 24.11.1982, issued by the Labour Department. Therefore, I am not inclined to entertain the prayer made by the petitioner in the present writ petition. There is no merit in the writ petition and the writ petition is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Secretary to Government,
Government of Tamil Nadu
Department of School Education,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
Chennai-6.
3. The District Educational Officer,
Tiruvallur.

+1cc to the Government Pleader, S.R.No.60530

W.P.No.22746 of 2014
and
M.P.Nos.1 & 2 of 2014
and
M.P.No.1 of 2015

NM(CO)
CA(18/11/2016)