

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.7398 of 2008

O.Samuel Armstrong

.. Petitioner

-vs-

1.The State of Tamil Nadu rep.
by the Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

2.The Director,
Medical and Rural Health Services,
Chennai-600 006.

3.K.Bava Badrudeen

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to (1) Pro.Na.Ka.No.402075/Ni.2/2/06 dated 28.12.2006 of the second respondent and (2) Government Letter No.64279/G/2001-4, Health and Family Welfare Department, dated 06.03.2002 of the 1st respondent, Government Letter No.7145/G-2007-1, Health and Family Welfare Department, dated 14.02.2007, quash the same and issue consequential directions to the respondents to appoint the petitioner on compassionate grounds to any suitable post, commensurate with his educational qualifications.

(Prayer amended as per order dated 22.03.2010 in M.P.No.1 of 2010 in W.P.No.7398 of 2008).

For Petitioner :: Mr.M.Ravi

For Respondents:: Mr.A.Kumar,
Special Government Pleader

ORDER

The father and mother of the petitioner herein are leprosy patients. On the death of his father, the petitioner originally had applied for appointment on compassionate ground. The father of the petitioner died in the year 1980 and at that time, the petitioner was only 10 years old. Thereafter, the petitioner made an application in the year 1989 after attaining majority.

It is also pertinent to note that the petitioner also was a leper and now he got cured of the disease. At the time when the petitioner applied for appointment on compassionate ground, there was a scheme to give job for persons affected by leprosy disease, without reference to the Employment Exchange. It was in vogue until 1997, but they were not considered. The petitioner had an earlier round of litigation wherein, in W.P.No.36710 of 2006, this Court, by order dated 17.10.2006, categorically stated that even though the petitioner is not eligible for appointment on compassionate ground, since he was a leprosy patient and got cured of the disease subsequently, it is not easy for him to get job anywhere as a normal person and unless the said aspect is borne in mind while dealing with cases of cured leprosy patients, there will be no meaning for the schemes introduced by the Government for the welfare of the cured leprosy patients and unless a specific provision is made to provide employment to such cured leprosy patients, their survival will become a question mark. Stating so, the learned single Judge issued a direction to consider the case of the petitioner for appointment on humanitarian ground, in any one of the posts to which he is suitable and pass orders thereon within a period of eight weeks from the date of receipt of a copy of the order. Without taking into consideration the said order, the impugned order in the present writ petition has been passed by the second respondent rejecting his very request for appointment on compassionate ground.

2.The learned counsel for the petitioner submits that the authority ought to have considered the order of this Court made in W.P.No.36710 of 2006, by at least taking into consideration that the petitioner is a cured leprosy patient. Though the petitioner is not entitled for appointment on compassionate ground, since there was a scheme at the relevant point of time for the cured leprosy patients, the petitioner is entitled for a job based upon the scheme. But in the impugned order conveniently, it has been stated that the said scheme had been withdrawn in the year 1997 and hence the petitioner is neither entitled for appointment on compassionate ground, nor entitled for a job under the scheme, which is totally wrong, illegal and unsustainable. On the ground that he was a leper and subsequently got cured of the disease, he should have been considered sympathetically, even as per the order of this Court. Stating so, the learned counsel for the petitioner submits that this writ petition has to be allowed.

3.The learned Special Government Pleader appearing for the respondents submitted that the petitioner has made the application belatedly, ie., beyond three years from the date of death of his father, and hence he is not entitled for appointment on compassionate ground. In so far as the scheme is concerned, he submitted that it was not available on the date of passing the impugned order and hence, it cannot be implemented.

4.Heard the learned counsel on either side and perused the materials available on record.

5.On a careful perusal of the entire records, it is seen that the petitioner had an earlier round of litigation wherein, in W.P.No.36710 of 2006, this Court, by order dated 17.10.2006, categorically stated that even though the petitioner is not eligible for appointment on compassionate ground, since he was a leprosy patient and got cured of the disease subsequently, it is not easy for him to get job anywhere as a normal person and unless the said aspect is borne in mind while dealing with cases of cured leprosy patients, there will be no meaning for the schemes introduced by the Government for the welfare of the cured leprosy patients and unless a specific provision is made to provide employment to such cured leprosy patients, their survival will become a question mark. Stating so, the learned single Judge issued a direction to consider the case of the petitioner for appointment on humanitarian ground, in any one of the posts to which he is suitable and pass orders thereon within a period of eight weeks from the date of receipt of a copy of the order. Even though the petitioner made the application in the year 1989, and the scheme was very well available till 1997, it has been stated in the impugned order which was passed in the year 2006, that there was no scheme available at the time of passing the impugned order and hence the same cannot be implemented. There is no mistake on the part of the petitioner for the delay caused. It is to be noted that he made the application while the scheme was in vogue. Therefore, the authorities should have considered the case of the petitioner as to whether he was originally entitled under the scheme during the relevant point of time.

6.In view of the reasons stated supra, the impugned orders are set aside and the matter is remitted to the second respondent to pass fresh orders, in the light of the observations made above. The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

7.The writ petition is disposed of accordingly. No costs.

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Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KM

To

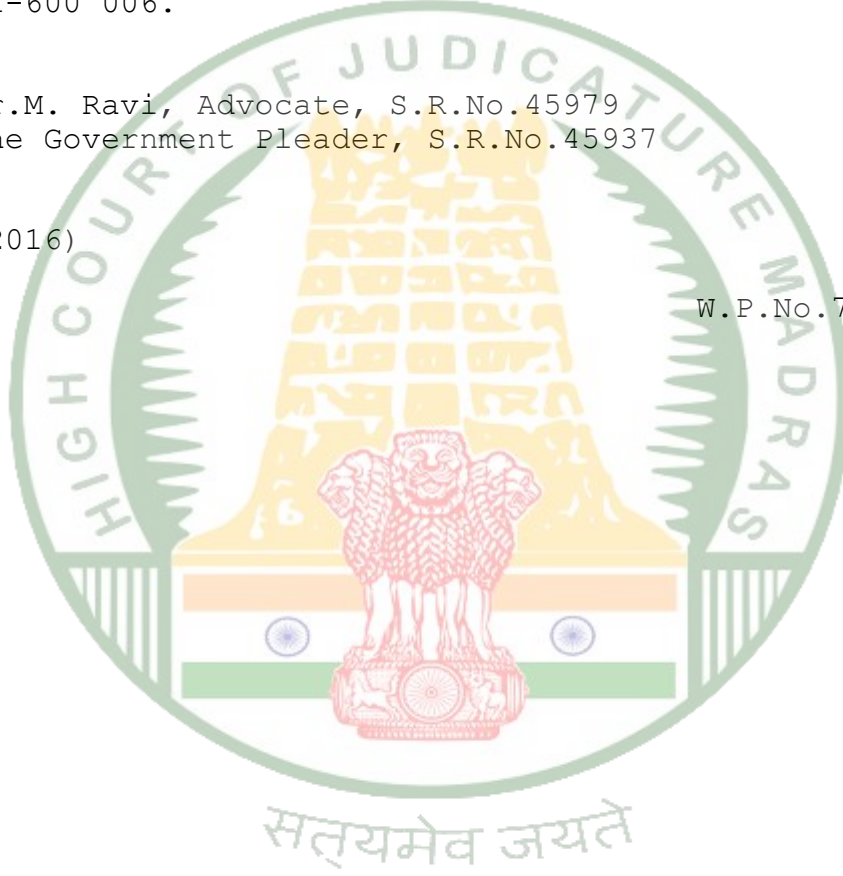
1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

2.The Director,
Medical and Rural Health Services,
Chennai-600 006.

+1cc to Mr.M. Ravi, Advocate, S.R.No.45979
+1cc to the Government Pleader, S.R.No.45937

AD(CO)
EU(08/09/2016)

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