

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2016

PRONOUNCED ON : 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH

Writ Petition No. 26082 of 2009

K. Gopi .. Petitioner

Versus

1. The State of Tamil Nadu
rep. by the Secretary to Government
Labour and Employment (Q-1) Department
Fort St. George
Chennai - 600 009
2. The District Collector
Namakkal
3. The Commissioner
Panchayat Union
Namagiripet
Namakkal District .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 from the file of the first respondent, quash the same in so far as it relates to restricting the age of the Government Servant retiring on medical grounds to 53 years as a pre-requisite to consider his legal representatives for employment on compassionate grounds and also quash the consequential proceedings in Na.Ka.No.3/49261/2006 dated 01.03.2007 on the file of the second respondent and further direct the respondents 1 and 3 to appoint the petitioner as Junior Assistant on compassionate grounds, consequent upon the retirement of the father of the petitioner on the ground of medical invalidation, within the time frame which this Court may be pleased to stipulate.

For Petitioner : Mr. D. Shivakumaran
For Respondents : Mr. S. Gunasekaran
Additional Government Pleader
for RR1 and 2

Mr. V. Arun for R3

ORDER

The petitioner calls in question the order passed by the Government in G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 on the file of the first respondent. By the said order dated 19.10.2000, the first respondent ordered to restrict the age of the Government Servant retiring on medical grounds to 53 years as a pre-requisite to consider his legal representatives for employment on compassionate grounds. As the said Government order dated 19.10.2000 is the basis for the second respondent to pass the order dated 01.03.2007 rejecting the claim of the petitioner for appointment on compassionate grounds, the petitioner has also challenged the said order dated 01.03.2007 with a consequential direction to the respondents to appoint him as Junior Assistant on compassionate grounds.

2. It is seen from the affidavit filed in support of the writ petition that the petitioner's father joined the services in the Revenue Department as Village Headman (Thalayari) on 07.10.1972 in the third respondent Panchayat Union. During the year 2004, while the petitioner's father was working as an Office Assistant in the office of the third respondent, he became ill and by reason of his ailment, he was on medical leave for a long time. In order to assess the medical fitness of the petitioner's father, he was referred to a Medical Board constituted by the third respondent. The medical board, after examining the father of the petitioner, concluded that the health of the petitioner's father is not fit enough to continue him as an Office Assistant inasmuch as he is suffering from a disease termed as "Right side Hemiplegia - Parieto Occipital - Infarcts". On the basis of such opinion rendered by the Medical Board, the third respondent relieved the petitioner from Government service on 24.01.2005. After the petitioner's father was relieved from the service on 24.01.2005, within a period of seven months thereof, the petitioner's father passed away on 25.08.2005.

3. According to the petitioner, even before and after the death of his father, his family confronted acute financial crisis. As far as the petitioner is concerned, he studied upto 12th Standard (failed). In such circumstances, the petitioner

submitted an application dated 06.11.2006 to the respondents to consider him for being appointed to any suitable post on compassionate appointment by enclosing all the relevant documents. While the petitioner was anticipating to hear from the respondents, the second respondent passed the order dated 01.03.2007 rejecting the claim of the petitioner on compassionate grounds by placing reliance on G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 which imposes a condition that the legal representatives of the deceased government servant, who happen to retire on medical grounds after attaining the age of 53 years will not be considered for appointment on compassionate grounds. In this case, as the petitioner's father was medically invalidated when he was 55 years 7 months and 17 days old, by applying the above G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000. the second respondent has passed the order of rejection dated 01.03.2007 without taking note of the financial hardship faced by the family of the deceased government.

4. When the writ petition is taken up for consideration, the learned counsel for the petitioner would contend that during the course of his employment, the petitioner's father suffered from a disease called "Right side Hemiplegia - Parieto Occipital - Infarcts" due to which he was bed ridden and was on medical leave. Ultimately, the Medical Board incapacitated him from continuing the government service and eventually he was relieved from his service on 24.01.2005 by the third respondent. After the petitioner's father was relieved from service, the family of the petitioner suffered acute financial crisis which has even worsened on the death of his father on 25.08.2005. According to the learned counsel for the petitioner, admittedly, within three years from the date of the death of his father, the petitioner has submitted the application dated 06.11.2006 for appointing him in any suitable post befitting his educational qualification on compassionate grounds. In other words, the petitioner has fulfilled one of the criteria required to be complied with as a condition precedent for getting appointed on compassionate grounds. While so, the second respondent, without considering the penurious circumstances prevailing in the family of the deceased government servant or the object with which the scheme for appointment on compassionate ground has been framed, has simply relied on G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 to reject the lawful claim of the petitioner.

5. According to the learned counsel for the petitioner, after the death of the petitioner's father, the entire family confronted acute financial constraint and there was no source of livelihood to even meet the basic necessity. In such

circumstances, the second respondent, without considering the claim of the petitioner with compassion, has rejected the claim of the petitioner for appointment on compassionate ground on technicalities by only referring to the G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000. Even as per the above said Government Order, the petitioner's father was on medical leave for more than a year prior to his relieving from service on 24.01.2005. Even during the course of his ailment, he was almost bedridden and at that time also, there was no succour lent by the deceased government servant to the petitioner's family and his family had to endure great financial hardship. In such an event, according to the learned counsel for the petitioner, it shall be presumed that the disease suffered by the deceased government servant even one year prior to death has left his family in penerious circumstances and it can be equated to his death. In such circumstances, the learned counsel for the petitioner prayed for quashing the impugned orders and to direct the respondents to consider the claim of the petitioner for appointment on compassionate grounds notwithstanding the order passed by the Government in G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000.

6. In order to buttress his submission, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (V. Sivamurthy vs. State of Andhra Pradesh and others) reported in (2008) 13 Supreme Court Cases 730 wherein it was held that even when death or medical invalidation of government servant occasioned or when a government servant voluntarily seeks for retirement on medical grounds, appointment on compassionate grounds cannot be refused and it is permissible under the Constitution.

7. Per contra, the learned Government Advocate appearing for the respondents opposed the prayer in the writ petition by relying upon the counter affidavit of the second respondent. According to the learned Government Advocate, the order passed by the Government Order in G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 will bind the second respondent or the second respondent is bound to follow the said order. Admittedly, the petitioner's father died when he was 55 years old and therefore, by ignoring the order passed by the Government, the second respondent cannot be expected to pass an order appointing the petitioner on compassionate grounds. The learned Government Advocate therefore justifies the order of rejection dated 01.03.2007 passed by the second respondent and prayed for dismissal of the writ petition.

8. On the above contention, this Court heard the learned counsel appearing for the third respondent.

9. I heard the learned counsel on either side and perused the materials placed on record. The petitioner seeks for appointment on compassionate grounds on the death of his father on 25.08.2005. Admittedly, within three years from the date of death of his father, the petitioner has submitted his application on 06.11.2006 seeking to appoint him on compassionate grounds in any suitable employment which would add succour to his family to survive. It is also stated in the application dated 06.11.2006 that the petitioner has failed higher secondary (+2) and befitting such educational qualification, he can be considered for appointment to any suitable employment on compassionate grounds.

10. Before venturing to consider the legality or otherwise of the orders, which are impugned in this writ petition, it has to be noted that the Government has framed the scheme for appointment on compassionate grounds with an avowed object to ensure succour to the family of the deceased government servant which has slipped into acute or abject poverty. In order to redeem such a situation, it is permissible to confer appointment on compassionate grounds. Such a claim for appointment on compassionate grounds has to be made with compassion taking into account the plight of the family left behind by the government servant. It is trite that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. However, it cannot be ignored that the object with which the claim for appointment on compassionate ground is to be made is to enable the family of the deceased government servant to overcome the sudden financial crisis and not to confer any status upon such family.

11. Applying the above principles to the facts of the present case, the father of the petitioner was said to be bed ridden even one year prior to his medical invalidation by the medical board constituted by the third respondent. Therefore, according to the petitioner, even before a year prior to the death of his father, the entire family was left with any source of livelihood and it had worsened after the death of his father on 25.08.2005. In such a situation, this Court is of the view that the order of rejection dated 01.03.2007 passed by the second respondent has to be interfered with especially when the second respondent did not take into account the penurious circumstances prevailing in the family of the deceased government servant. The second respondent is not expected to act on technicalities or to adopt a straight-jacket formula to simply rely on the order passed by the Government but the second respondent could have taken note of the plight and attendant circumstances which led to the petitioner submitting the

application seeking compassionate grounds on the death of his father. In the order of rejection dated 01.03.2007, the second respondent has absolutely failed to deal with the resourcefulness or otherwise of the family of the petitioner to lead a decent life which is one of the considerations required to be taken note of by the second respondent while considering the claim for appointment on compassionate grounds. In this context, I am fortified by the decision of the Honourable Supreme Court relied on by the counsel for the petitioner in V. Sivamurthy vs. State of Andhra Pradesh and others (2008) 13 SCC 730 mentioned supra wherein it was held in para No. 25, 26 and 27 as follows:-

"25. We may also notice that this Court dealt with provisions relating to compassionate appointments on medical invalidation in several cases, but did not hold that such appointments were violative of Article 16. Reference may be made to W.B. SEB Vs. Samir K. Sarkar (1999) 7 SCC 672 and Food Corporation of India vs. Ram Kesh Yadav (2007) 9 SCC 531. Be that as it may. The assumption by the High Court that this Court had held that compassionate appointments can be only in death-in-harness cases and not in retirement on medical invalidation cases, is not sound.

26. As an identical reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a 'higher footing' when compared to sickness. The inference is compassionate appointment in case of medical invalidation is not of the same degree of importance or gravity as that of death, and that as medical invalidation is not as serious as death-in-harness, exception can be made only in cases of employees dying-in-harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bedridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences for his family may be much more serious than the consequences of an employee dying-in-harness.

27. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently

terminated, the family is thrown into greater financial hardship because not only the income stops but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no loss, in fact far more than the consequences of death-in-harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness etc.,"

12. Applying the above observations made by the Honourable Supreme Court to the facts of the present case, the father of the petitioner was on medical leave for about one year prior to his medical invalidation and during the course of such medical ailment, as contended by the petitioner, the expenditure to be incurred towards medical expenditure would have doubled even in the absence of the normal regular income. Therefore, it can be presumed and assumed that the family of the deceased government servant, in this case, would have suffered greater hardship during the life time of the deceased owing to his medical incapacitation and after his death in the absence of regular income out of his employment. Therefore, the resultant conclusion would be the second respondent ought not to have merely relied on the Government Order to reject the claim of the petitioner, instead, he ought to have examined the resourcefulness or penurious circumstances prevailing in the family of the petitioner and thereafter decide the claim of the petitioner with compassion.

13. As regards the order passed by the Government in G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000, which formed the basis for passing the order dated 01.03.2007 of the second respondent rejecting the claim of the petitioner for appointment on compassionate grounds, in this writ petition, at the instance of the petitioner, this Court is not inclined to quash the said Order of the Government. This Court, in exercise of its powers conferred under Article 226 of The Constitution of India, can only observe that the second respondent, without regard to the order passed by the Government on 19.10.2000 mentioned above, shall consider the claim of the petitioner for appointment on compassionate grounds taking into account the penurious circumstances prevailing in the family of the deceased government servant.

14. In the light of what is stated above, the writ petition is partly allowed by setting aside only the order dated 01.03.2007 passed by the second respondent. No costs. The second respondent is directed to consider the application dated 05.11.2006 of the petitioner seeking appointment on compassionate grounds on its own merits with compassion, without taking into account the applicability or otherwise of the order passed by the Government in G.O. Ms. No.168, Labour and Employment (Q-1) Department dated 19.10.2000 and pass appropriate orders thereon within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The State of Tamil Nadu
rep. by the Secretary to Government
Labour and Employment (Q-1) Department
Fort St. George
Chennai - 600 009
2. The District Collector
Namakkal
3. The Commissioner
Panchayat Union
Namagiripet
Namakkal District

+1cc to Mr. D. Shivakumaran, Advocate, S.R.No.56334
+1cc to the Government Pleader, S.R.No.56482

rsi (CO)
md (11/11/2016)

W.P. No. 26082 of 2009