

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.12.2016

CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.42353 of 2016
WMP No.36258 of 2016

1. The Secretary,
Union of India, Department of Posts,
Sansad Marg, Dak Bhawan,
New Delhi - 110 001.

2. Chief Postmaster General,
Tamilnadu Circle, Chennai - 600 002.

3. The Postmaster General,
Southern Region (TN),
Madurai - 625 002.

4. The Senior Superintendent of Post Offices,
Madurai Division, Madurai - 625 002.

5. The Head Post Master,
Madurai HO, Madurai - 625 002.

.... Petitioners

vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.

2. N.Shanmugham

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, to call for and quash the impugned order of the first respondent dated 28.03.2016 passed in O.A.No.1006 of 2015.

For Petitioners : Mr.C.V.Ramachandra Murthy

ORDER

[Order of the Court was made by S.MANIKUMAR, J.]

Challenge in this writ petition is to an order, made in O.A.No.1006 of 2015, dated 28.03.2016, by which, the Central Administrative Tribunal directed the writ petitioners to

consider the case of the 2nd respondent for compassionate appointment, as per the scheme, which existed on 08.09.2011, on the death of the 2nd respondent's father in harness and further directed the writ petitioners to reconsider the case of the 2nd respondent and process the same.

2. Short facts leading to the writ petition are that the 2nd respondent's father, E.Natarajan, was a Group-D employee in Postal Department, Polur SO, Tiruvannamalai Division. He expired on 08.11.1991, while he was in service. The 2nd respondent was working in the short term leave vacancies at Tiruvannamalai PO, from the year 1994 and for want of vacancies, under 5% direct recruitment quota, fixed by the Ministry of Personnel, Public Grievances and Pensions, vide Official Memorandum, dated 26.05.1995, the 2nd respondent's case was kept in waiting list. Subsequently, the Postal Directorate, by letter, dated 08.02.2001, has given instructions to discontinue the maintenance of waiting list of candidates for compassionate appointment immediately, with a direction to such wait listing candidates to give their willingness for consideration in other ministries.

3. Like the 2nd respondent, many candidates were under consideration for compassionate appointment, working in various cadres viz. Postal Assistant, Postman and Group D, on leave/short term vacancies. The above candidates preferred cases before the Central Administrative Tribunal, during the year 2001, for their regular absorption and got orders in favour of them. Against the orders of Central Administrative Tribunal, the petitioners have preferred writ petitions before this Court and that the same were dismissed. Against those orders of this Court, the petitioners have preferred SLPs before the Hon'ble Supreme Court and vide orders, dated 30.07.2010, the Hon'ble Supreme Court directed the department to regularise the services of 202 respondents therein, who were working in the Department, as on 27.10.2009, based on the list submitted by the department and submitted an additional affidavit, a part of the Supreme Court records, with a specific observation that the findings recorded by the Tribunal and as well as the High Court, with regard to the interpretation of Office Memorandums and circulars of the department are set aside and that those findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be pending. It is therefore submitted that on the basis of the judgment of the Hon'ble Supreme Court of India, orders for regularization of 202 respondents were issued by the second petitioner on 30.08.2016. Subsequently, services of 37 applicants were also regularized, in pursuance of the orders of Hon'ble Supreme Court.

4. Since the 2nd respondent was not a party in the proceedings before the Hon'ble Supreme Court, his service was

not regularised on the basis of the Supreme Court orders. Aggrieved over this, the 2nd respondent filed O.A.No.1453 of 2010 and the same was disposed with a direction, dated 13.12.2012, to place the name of the second respondent, before the Circle Relaxation Committee Meeting to be held in the immediate future and to consider his case for appointment on compassionate ground, in accordance with the guidelines and instructions for appointment on compassionate ground issued by the DOP&T with regard to relaxation of 5% quota falling under the direct recruitment and till such consideration, the engagement of the second respondent in short term leave vacancies, shall be continued.

5. Petitioners have further stated that as per the direction of the tribunal, the case of the 2nd respondent was placed before the Circle Relaxation Committee meeting held during the year' 2013 for compassionate appointment, applying the relative merit points prescribed by the Directorate's letter, dated 20.01.2010 and recommended for the post of MTS Cadre. The required qualification for the post of PM/MTS cadre as per Recruitment Rules, is Matriculation. It is submitted that as the educational qualification of the second respondent was only fifth standard, his case was referred to the 1st petitioner for approval, as Secretary Posts, the Directorate is the competent authority, for approving compassionate appointment cases of wards with the qualification below Matriculation, as per the DoPT instructions on the subject. The first petitioner, vide letter, dated 11.12.2013, has approved his case as "Trainee" on compassionate grounds, in the pay band of Rs.4470-7440/-, without grade pay, in view of the guidelines and clarifications issued by the Department of personnel & Training, New Delhi, vide letters, dated 11.12.2009 and 03.04.2012, respectively, and further directed to ensure that the second respondent acquired the minimum educational qualification, within the time-limit of five years, and beyond which, the services of the person, if still unqualified, are liable to be terminated.

6. Department of Personnel and Training, vide letter, dated 03.04.2012 has clarified that the person appointed as a "Trainee" on compassionate grounds, has to acquire the minimum educational qualification of 5 years and belated case of compassionate appointment are to be considered as the revised recruitment rules for the MTS posts. As the 2nd respondent's case was considered during 2013, the educational qualification prescribed for MTS post as Matriculation, in MTS Recruitment Rules, 2010, is to be taken into consideration, while considering his case.

7. Based on the above orders, the second respondent was granted appointment in the MTS cadre as "Multi Tasking Staff Trainee", vide memo No.REP/47-3/2013 dated 24.12.2013, citing

the instructions issued by the 1st petitioner's letter, dated 11.12.2009 and thus, the orders of Central Administrative Tribunal in O.A.No.1453/2010 were complied with and the second respondent was allotted to Madurai Division, wherein, he was posted as "MTS Trainee" at Madurai Head Post Office.

8. The second respondent was working as a trainee from the year 2014, i.e., from the date of appointment as a trainee. But, without even making an attempt to fulfill the condition stipulated in his appointment order, as a trainee, the second respondent has filed O.A.No.1006 of 2015, before the Central Administrative Tribunal, Madras Bench, on the contention that at the time of recommendation, the revised MTS Recruitment Rules, 2010, were in force.

9. Though a detailed reply was filed by the department, citing the orders issued by the Directorate of Personnel and Training, for the appointment on compassionate grounds, the Central Administrative Tribunal, vide order, dated 28.03.2016, has disposed of the said Original Application, without taking into consideration of existing rules/instructions on the issue, but citing the judgment made in the case of Canara Bank & Anr. V. Mahesh Kumar & Ors dated 15.05.2005, with a direction to the petitioners to apply the erstwhile scheme relating to compassionate appointment, so to say the scheme, which existed as on 08.11.1991, i.e., the date of death of the 2nd respondent's father, in harness and accordingly, further directed the department to reconsider the case of the 2nd respondent and process it accordingly and communicate the decision to the 2nd respondent. Against which, the petitioners had preferred this writ petition.

10. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

11. The question that calls for consideration is whether the petitioner is entitled to be considered under the old scheme or new Rules 2008. It is trite that the compassionate appointment is made to provide succour to the family who is living in penury. The object of offering the compassionate appointment is to provide a job to a family which has lost his breadwinner and as such, the appointment is always made in relaxation of the extant rules. Such appointment is offered on humanitarian consideration that unless some source of livelihood is not provided immediately, the family would suffer financial hardship.

12. The Honble Supreme Court in Canara Bank and another v. Mahesh Kumar reported in [2015 SAR (Civil) 829], clearly held that rules, existed on the date of death of the concerned employee, would govern the employment on compassionate ground

and not the subsequent scheme or the later amended rules. Paragraph 11 of Canara Bank's case, is extracted hereunder:

"11. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaurs case (supra) to contend that the respondents case cannot be considered on the basis of Dying in Harness Scheme 1993 when the new Scheme of 2005 providing for ex-gratia payment had been put in place. In Jaspal Kaurs case (supra), Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis-a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaurs case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim."
(emphasis supplied)

13. Reverting to the case on hand, 2nd respondent's father, E.Natarajan, was a Group-D employee in Postal Department, Polur SO, Tiruvannamalai Division and he died in harness on 08.11.1991. The educational qualifications of 2nd respondent is 5th standard. After the demise of his father, the 2nd respondent was engaged in the leave vacancies in Group-D cadre, at Tiruvannamalai Division, vide Memo, dated 10.05.1994. Thereafter, the 2nd respondent was placed before the Circle Relaxation Committee meeting held during the year' 2013 for compassionate appointment, applying the relative merit points prescribed by the Directorate's letter, dated 20.01.2010 and recommended him for the post of MTS Cadre. As his educational qualification was only fifth standard, his case was referred to the 1st petitioner for approval and vide letter, dated 11.12.2013, the first respodnent has approved his case as

"Trainee" on compassionate grounds in the pay band of Rs.4470-7440/-, without grade pay, in view of the guidelines and clarifications issued by the Department of personnel & Training, New Delhi, vide letters, dated 11.12.2009 and 03.04.2012, respectively and was further directed to ensure that the second respondent acquired the minimum educational qualification, within the time-limit of five years, and beyond which, the services of the person, if still unqualified, are liable to be terminated.

14. While considering the issue, as to whether, the scheme for compassionate appointment, as it existed, as on the date of death of the 2nd respondent's father in harness, would be applicable or the latter scheme would be applicable and taking note of Paragraph 17 of the the decision in Canara Bank's case, which states that, "considering the scope of the scheme "Dying in Harness Scheme 1993" then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence.", the Central Administrative Tribunal, vide order, dated 28.03.2016, made in O.A.No.1006 of 2015, has rightly held that the petitioners have to apply the then existed scheme, relating to compassionate appointment, so to say the scheme, which existed as on 08.11.199, ie., the date of death of the applicant's father in harness. Going to the material on record, we are of the view that there is no error in the order, warranting interference.

15. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.

2.The Secretary
Union of India,
Department of Posts,
Sansad Marg,Dak Bhawan,
New Delhi -110001.

3.Chief Postmaster General,
Tamilnadu Circle,
Chennai - 600 002.

4.The Postmaster General
Southern Region (TN),
Madurai - 625 002.

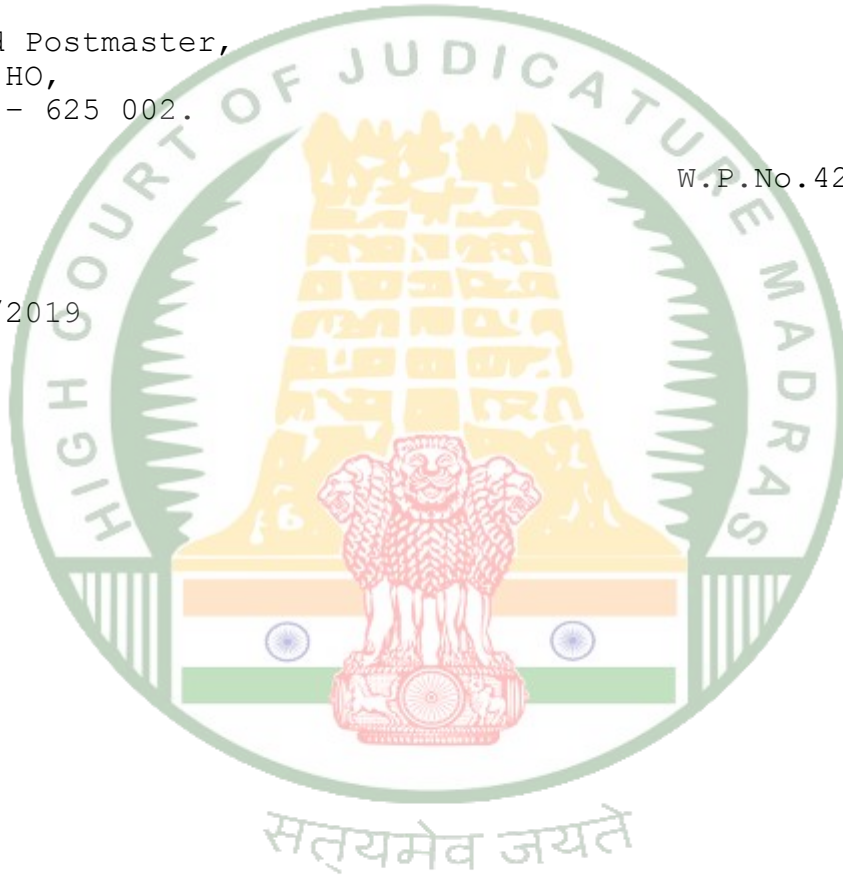
5.The Senior Superintendent of Post Offices,
Madurai Division,
Madurai - 625 002.

6.The Head Postmaster,
Madurai HO,
Madurai - 625 002.

W.P.No.42353 of 2016

AK(CO)

rrs 19/03/2019



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