

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION NO.30263 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue writ of Mandamus declaring the inaction of the respondents in appointing the petitioner as Fair Price Shop Dealer of Shop No.9 of Chenchamareddygaripalli village, Rampicherla Mandal, Chittor District on compassionate grounds as illegal and arbitrary.

2. Heard learned counsel for the petitioner and the learned Assistant Government Pleader, representing respondents 1 to 3.

3. A perusal of the record reveals that the father of the petitioner was appointed as Fair Shop Dealer of Shop No.9 of Chenchamareddygaripalli village, Rampicherla Mandal, Chittor District in the year 1984. Father of the petitioner died on 19.12.2010. It is the case of the petitioner that he is the sole legal heir to his father. After the death of his father, the petitioner submitted an application to the 3rd respondent seeking appointment as fair price shop dealer on compassionate grounds. The 3rd respondent passed orders on 31.07.2014 rejecting the claim of the petitioner on the ground that the petitioner has crossed 40 years of age at the time of death of his father.

4. The contention of the learned counsel for the petitioner is two fold viz., (1) the order, dated 31-07-2014 passed by the 3rd respondent is not sustainable either in law or on facts and (2) the petitioner is entitled for appointment as fair price shop dealer on compassionate grounds in view of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014.

5. Per contra, learned Assistant Government Pleader submitted that the 3rd respondent considered the case of the petitioner in the light of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014 and rightly rejected the claim of the petitioner. He further submitted that the writ petition is not maintainable without challenging the legality of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 19.02.2011.

6. G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014 deals with appointments of legal heirs of deceased Fair Shop Dealers on compassionate grounds. Para 6 of the said G.O. reads thus:

“ 6. After considering all the above, in continuation of orders issued in the reference 1st read above, Government, decided to appoint legal heirs of the deceased Fair Price Shop Dealers and hereby issue orders, to appoint legal heirs of the deceased Fair Price Shop Dealers with the following guidelines:-

- i) Compassionate appointment shall be confined to death cases only. Legal heirs/heirress only would be considered;
- ii) In the cases, where the family may be having an unmarried dependent daughter of the deceased without any living son or wife, the unmarried daughter shall be considered;
- iii) Compassionate appointments shall be restricted to the cases in which the demise of the Fair Price Shop Dealer took place during the last 5 years i.e., 2009 onwards only and not to the years prior to 2009;
- iv) The compassionate appointment shall also be applicable to the persons who were within the age limit as on the date of the demise of the Fair Price Shop Dealer;
- v) The legal heirs, who were not having prescribed educational qualifications, shall be given 3 years time from the date of appointment for possessing the prescribed educational qualifications;
- vi) Previous record of the dealer shall be clean and there shall be no cases under the orders issued under the Essential Commodities Act pending against him/her;
- vii) While appointing the wife/son/daughter on compassionate grounds it shall be ensured that there are no other earning member in the deceased Fair Price Shop Dealer/s family;
- viii) While appointing the wife/son/daughter on compassionate grounds as Fair Price Shop Dealer it shall be ensured that he/she shall have clear record without having any criminal cases..

7. The learned counsel for the petitioner mainly placed reliance on para 6 of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014. As per clause (iv) of Para 6 of the said G.O., the persons seeking appointment as Fair Price Shop Dealer on compassionate grounds shall satisfy the condition of age limit. As rightly pointed out by the learned counsel for the petitioner, the upper age limit is not stipulated in the said G.O.

8. The learned Assistant Government Pleader submitted that one has to read G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014 in juxta position G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 19.02.2011 in order to reach just and reasonable conclusion. It is not out of place to extract herein para 6 of the said G.O., which reads thus:

“The candidates applying for a fair price shop shall have completed 18 years of age and shall not have crossed 40 years of age on the date of application.”

9. A perusal of the above two G.Os mandates that a person, who is seeking appointment on compassionate grounds, shall complete 18 years of age and shall not have crossed 40 years of age as on the date of application.

10. Let me consider the facts of the case on hand in the light of the above G.Os. The father of the petitioner died on 19-12-2010. The petitioner submitted a representation to the 3rd respondent seeking appointment as Fair Price Shop Dealer on compassionate grounds. The 3rd respondent rejected the claim of the petitioner on 31-07-2014 on the ground that the petitioner has crossed 40 years of age at the time of death of his father. By the time of filing of the writ petition, the petitioner is aged about 55 years. At the time of death of his father, the petitioner was aged about 49 years. The material

placed before this Court clinchingly establishes that the petitioner has crossed 40 years of age by the time of death of his father. In view of para 6 of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 19.02.2011, the petitioner is not qualified to seek appointment as Fair Price Shop Dealer on compassionate grounds. The petitioner has not challenged the legality or otherwise of G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 19.02.2011.

11. On the other hand, the petitioner is seeking appointment as Fair Price Shop Dealer on compassionate grounds basing on G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 28.02.2014. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the order passed by the 3rd respondent is not sustainable either in law or on facts. There is no illegality or irregularity in the order passed by the 3rd respondent, dated 31-07-2014, which warrants interference by this Court by exercising the jurisdiction under Article 226 of the Constitution of India. The petitioner is not entitled to seek appointment as Fair Price Shop Dealer on compassionate grounds even as per G.O.Ms.No.4, Consumer Affairs, Food & Civil Supplies (CS-I) Department, dated 19.02.2011

12. Accordingly, Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 13-10-2016.

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