

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.08.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1410 of 2015

S.Dharmarajan

... Petitioner

Vs.

1. The Additional Chief Secretary /Commissioner,
of Revenue Administration, Disaster Management
and Mitigation, Chepauk,
Chennai - 600 005.
2. The Revenue Divisional Officer,
Gobichettipalayam, Erode District. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Na.Ka.No.3309/13/A4 dated 16.07.2013 and quash the same and direct the respondents to appoint the petitioner on compassionate ground in any suitable job commensurate with his qualification.

For Petitioner : Mr.P.Manoj Kumar

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

O R D E R

सत्यमेव जयते

The order of rejection in Na.Ka.No.3309/13/A4 dated 16th July 2013, rejecting the claim of the writ petitioner seeking compassionate appointment is under challenge in this writ petition.

2. The father of the writ petitioner late P.G.Subramanian was working as Village Assistant in Polavakalipalayam Village, Gobi Taluk, Erode District and passed away on 21.05.2012 while in service. Immediately after the death of deceased employee, the writ petitioner submitted an application seeking for compassionate appointment. The writ petitioner belongs to Schedule Caste Community and passed SSLC. The request of the

writ petitioner was rejected on the ground that on the date of death of the deceased Government employee i.e. on 21.5.2012, the writ petitioner has completed the age of 37 years and 4 days. As per G.O.Ms.No.9, Labour and Employment Department, dated 19.01.1998, the legal heir of the deceased Government employee shall submit his application for compassionate appointment within the age of 35 years. Since, the writ petitioner has completed the age of 37 years on the date of death of the deceased Government employee, the writ petitioner is not eligible for compassionate appointment and accordingly, the application was rejected.

3. The learned Additional Government Pleader appearing on behalf of the respondents opposed the contention of the learned counsel appearing on behalf of the writ petitioner by stating that the authorities have considered the application for compassionate appointment with reference to the scheme framed by the Government, more specifically, in G.O.Ms.No. 9 (Labour and Employment Department) dated 19.01.1998, the age limit is prescribed. Thus, the order of rejection is in accordance with the order issued by the Government with regard to the age limit.

4. The Hon'ble Division Bench of this Court in the case of the Secretary to Government, Tamil Nadu and Ors. Vs. G.Parthiban held in W.A. No. 1565 of 2015 dated 16.10.2015 has extracted hereunder:

" 6. Though Mr. T.N. Rajagopalan, Learned Special Government Pleader assailed the correctness of the order impugned in this Appeal on the grounds, inter alia, that the learned Single Judge has failed to consider in G.O.Ms. No. 9 Labour and Employment (G1) Department dated 19.01.1998 the upper age limit prescribed for compassionate appointment is 35 years and nothing is mentioned about the relaxation of upper age limit, and therefore, the order of the Learned Single Judge is liable to be set aside, this Court is not inclined to accept the said contention, for the simple reason that Rule 48 of the Tamil Nadu State and Subordinate Service Rules, empowers, the Governor to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have, served as aforesaid or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable. Provided

that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule. Therefore, the contention that nothing is mentioned in G.O.Ms.No.9 Labour and Employment (G1) Department dated 19.01.1998, about the relaxation of age cannot be countenanced, when statutory rules framed under Article 309 of the Constitution of India, have conferred power on the authority to grant relaxation of any Rule, for appointment to a service in such manner, as may appear to him to be just and equitable.

8. In the case on hand, the writ petitioner's father was a Village Administrative Officer. Writ Petitioner is a member of a downtrodden community. When the Government have considered a similar case and issued orders in G.O.(I) No.785, dated 30.12.1996, by relaxing the age limit for one Mr. R.R. Chandrasekaran, though he had exceeded the age limit prescribed, by three years, on the ground that he belongs to Scheduled Caste community, the same yardstick should be applied to the case of the writ petitioner also, who is also similarly placed.

9. Compassionate appointment is to tide over the financial constraints of the family of a Government servant and the post to which an applicant can aspire, under the existing rules and government orders issued from time to time, is only upto the level of Junior Assistant. Considering the background of the writ petitioner, number of dependents in the family, he is also entitled to seek for the benefit of the orders passed in similar circumstances, and the appellants are expected to extend compassion to him. When power is conferred on the authority in the rules to grant relaxation, having regard to the intention of the scheme to tide over the financial constraints, caused to the family, relaxation should be made, to achieve the laudable object of the scheme, instead of harping on technicalities, that nothing is mentioned in the G.O. relating to compassionate employment. Needless to state that G.O. does not prevail over the rules. It is also to be noted that the submission now advanced by the Learned Special Government Pleader is not even the reason assigned

in the order rejecting the request of the respondent for employment assistance. It is a well settled principle of law, that order impugned is sustained or set aside, for the reasons contained in it, and it cannot be improved by new reasons. Father, who was just a VAO, had provided education to his son, but his untimely death has made his son to request the authorities to show compassion to him."

5. This Court is also of the firm view that compassionate appointment is a scheme and provided to mitigate the indigent circumstances arising on account of a sudden demise of a Government employee in service. In the event of sudden demise of a Government employee, the family will be in trouble and it is for the Government to provide certain relief to the members of the family of a Government employee, in that basis. In the case on hand the penury of the family of the writ petitioner is not disputed by the respondents.

6. Further, the writ petitioner belongs to Scheduled Caste Community and always even in recruitment rules, there is a provision for relaxation of five years in respect of Scheduled Caste candidates. However, no such relaxation is prescribed in the Government order. But, a general provision of relaxation under Rule 48 of the Tamilnadu State and Subordinate Service Rules, is available for the Government to ratify the conditions of recruitment. This being a fit case for considering the writ petitioner for compassionate appointment this Court is of the opinion that the order of rejection passed against the writ petitioner is little harsh, in view of the fact, that there is no other person in the family of the writ petitioner employed in any Government service and the writ petitioner is belonging to a socially backward community and necessarily, the Competent Authority ought to have considered this case favourably for providing appointment on compassionate ground. The Government should be a model employer, the facts and circumstances of the each case should be considered while providing compassionate appointment.

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7. Compassionate appointment is a scheme and an exception to the regular recruitment rules. Thus, it is duty of the authority competent to consider the genuineness of the penury established by the family of the deceased employee. In other words, the indigent circumstances, if established by the deceased Government employee, then the Government has to consider any one of the eligible member of the deceased Government employee's family for appointment on compassionate grounds. At the outset, the object of the scheme is to provide some relief to the family of the deceased employee and if that object is not achieved by the Government, the very purpose of the scheme will be defeated. In this view of the matter, the order of rejection passed by the second respondent in proceedings Na.Ka.No.3309/13/A4 dated 16.07.2013 is quashed and accordingly, the writ petition stands allowed. However, there is no order as to costs.

8. The respondents are directed to consider the case of the writ petitioner for compassionate appointment on the basis of the observation made in this writ petition, within a period of 12 weeks from the date of receipt of a copy of this order and the writ petitioner is also directed to submit an application along with the documents prescribed under the scheme to the authorities without any further delay.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Additional Chief Secretary /Commissioner,
of Revenue Administration, Disaster Management
and Mitigation, Chepauk,
Chennai - 600 005.

2. The Revenue Divisional Officer,
Gobichettipalayam, Erode District.

+1 cc to Mr.P.Rajendran Advocate sr 58607
+1 cc to the Government Pleader High Court Madras
sr 58162

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