

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.22892 of 2014
and
M.P.Nos.2 and 3 of 2014

S.Thangaraj .. Petitioner

Vs.

- 1.The Commissioner,
Salem City Municipal Corporation,
Salem-636 015.
- 2.The Secretary to Government,
Labour and Employment Department,
Secretariat,
Chennai-600 009.
- 3.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-600 009. Respondents

(R2 & R3 impleaded as per order
dated 14.09.2017 in
WMP.No.25974 2017 in
W.P.No.22892 of 2014)

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order of the respondent issued in Na.Ka.No.C4/4343/2014 dated 17.03.2014 and quash the same and consequently direct the respondent to consider the case of the petitioner for compassionate appointment to his son Thiru T.Mohan taking into consideration the date of application for medical invalidation(as on 10.06.32013) to arrive the eligibility.

For Petitioner .. Mr.T.Ranganathan
For R1 .. Ms.K.Bhuvaneswari, Standing Counsel
For R2 & 3 .. Mr.T.M.Pappiah, Spl.G.P.

ORDER

The petitioner has approached this Court seeking for the following relief:

'To issue a writ of certiorarified mandamus to call for the records relating to the impugned order of the respondent issued in Na.Ka.No.C4/4343/2014 dated 17.03.2014 and quash the same and consequently direct the respondent to consider the case of the petitioner for compassionate appointment to his son Thiru T.Mohan taking into consideration the date of application for medical invalidation(as on 10.06.2013) to arrive the eligibility'.

2.The case of the petitioner is as follows:

The petitioner was appointed as Office Assistant on 01.10.1995 in the Salem Municipality, which was subsequently upgraded as Municipal Corporation. While working as Office Assistant, the petitioner, due to acute ill health, has opted for voluntary retirement on medical grounds and accordingly, submitted his application on 10.06.2013 to the respondent. When he submitted the application for retirement on medical grounds on 10.06.2013, the petitioner had completed 53 years of age and so qualified for medical invalidation and on such invalidation, the petitioner was also entitled to seek compassionate appointment to any one of his family members. However, there was no proper action on the part of the authorities concerned while considering his application for retirement on medical grounds and therefore, the Medical Board after receiving the medical records on 24.10.2013 from the respondent and report dated 10.01.2014 had opined that the petitioner was incapacitated for further service. Thereafter, proceedings dated 27.01.2014 had been issued allowing the petitioner to retire from service on medical invalidation with effect from 06.01.2014 and not from the date when he submitted his application on 10.06.2013. After his retirement, the petitioner submitted a representation on 05.02.2014, seeking appointment to his son on compassionate ground as per the Government Order issued in G.O.(Ms.)No.10, Labour and Employment Department dated 13.02.2009. However, the claim for compassionate appointment came to be rejected vide proceedings dated 17.03.2014 on the ground that the petitioner at the time of retirement, had rendered more than 53 years of service and therefore, his claim for compassionate appointment cannot be considered within the time frame of the above said Government Order. The said rejection order is under challenge in the present writ petition.

3. The learned counsel for the petitioner, at the outset, would submit that the Government Order was issued on the basis

of the order dated 12.08.2008 of the Hon'ble Supreme Court of India in C.A.No.4210 of 2003. The G.O.Ms.No.10 Labour and Employment Department dated 13.02.2009, came to be issued after the considering the law laid down by the Hon'ble Supreme Court of India in the above said appeal. The Hon'ble Supreme Court of India, while considering the claim made in similar circumstances, has held that the benefit of compassionate appointment is available to son/daughter/spouse of the Government servant who retired from service on medical invalidation 5 years before attaining the age of superannuation. According to the learned counsel, the age of retirement as far as the basic service is concerned in the Salem Corporation is, 60 years and therefore, the petitioner had rendered more than 53 years of service and seven more years had left for attaining the age of superannuation. While that being the case, the rejection order dated 17.03.2014 issued by the respondent on the ground that the petitioner rendered more than 53 years of service at the time of retirement, suffers from non-application of mind, since the Government Order would apply in cases where the Government servant retired at the age of 58 years and not at the age of 60 years. Therefore, it is incumbent upon the Government to apply the law laid down by the Hon'ble Supreme Court of India in the above said appeal while considering the claim of the petitioner for compassionate appointment.

4. Upon notice, Mrs.Bhuvaneswari, learned counsel entered appearance for the respondent Corporation. As regards the age of retirement of the petitioner is concerned, there is no dispute as the age of retirement is only 60 years. However, she would submit that the Government Order cannot in any way help the petitioner since he had rendered more than 53 years of service at the time he was medically invalidated.

5. The point for consideration of this Court is whether the aforesaid G.O.Ms.No.10 Labour and Employment Department, dated 13.02.2009, can be applied in the case of the petitioner herein, whose age of retirement is admittedly 60 years.

6. Hence, this Court is of the view that the Government has to revisit the above said Government Order in respect of the similar claim of the petitioner herein and pass appropriate orders by following the dictum of law laid down by the Hon'ble Supreme Court of India that in cases like medical invalidation, 5 years of remaining service should be considered for compassionate appointment. In the instant case, more than 6 years are left for the retirement of the petitioner and therefore, the rejection of the claim of the petitioner holding that the aforesaid G.O.(Ms.) No.10, Labour and Employment Department dated 13.02.2009 cannot be applied, is not proper and

fair for denying the benefit of compassionate appointment to the petitioner. The said G.O. was obviously passed taking into consideration the retirement age of employee as 58 years and not 60 years.

6. In the said circumstance, there shall be a direction to the respondents to consider the claim of the petitioner in the light of the order passed by the Hon'ble Supreme Court of India dated 12.08.2008 in C.A.No.4210 of 2003 and in case the petitioner is otherwise entitled to such compassionate appointment for his son, the same shall be considered as per the original claim for compassionate appointment. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

7. The writ petition stands disposed of, on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Salem City Municipal Corporation,
Salem-636 015.
2. The Secretary to Government,
Labour and Employment Department,
Secretariat,
Chennai-600 009.
3. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai-600 009.

+1cc to Mr.K.Bhuvaneshwari, Advocate, S.R.No.67072
+1cc to the Government Pleader, S.R.No.67562

W.P.No.22892 of 2014

CP(CO)
GN(16/11/2017)