

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.02.2017

Delivered on: 28.03.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and

The Honourable Mr. Justice V.PARTHIBAN

W.P.No.15925 of 2015
and M.P.No.1 of 2015

R.Sundaravadivel ... Petitioner

Versus

- 1 Union of India
Rep. by the Director (Staff)
Ministry of Communications and IT,
Department of Posts,
Dak Bhavan,
Parliament Street, New Delhi-1.
- 2 The Chief Postmaster General
Tamil Nadu Circle, Anna Salai
Chennai-2.
- 3 The Senior Superintendent of
Post Offices Tambaram Division
Chennai-45.
- 4 The Postmaster
Poonamallee East Chennai-56.
- 5 The Registrar
Central Administrative Tribunal,
Chennai-104.

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call the records pertaining to the order of the 5th Respondent which is made in O.A.No.1174 of 2012 dated 18.11.2014 and the order of the 2nd Respondent made in No.REP/32-41/94-WP dated 27.08.2015 and quash the same consequently to direct the Respondents 1 to 4 to appoint the petitioner on compassionate grounds in any one of the vacant

posts on considering the petitioners educational qualification with all service benefits.

For Petitioners : Mr. R.Malaichamy

For Respondents : Mr.V.Balasubramanian,SPC
1 to 4

R5 : Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.1174 of 2012, disposing of the application filed by the petitioner herein, with the directions as contained in para 37 of the order, which is extracted below:

" 37. While it is not possible to give a direction to the Respondents to appoint the Applicant on compassionate grounds, however, inasmuch as according to OM dated 26th July 2012 of DOPT, GOI, the time limit of 3 years prescribed earlier vide DOPT's O.M.No.14014/19/2002-Estt.(D) dated 5th May, 2003 for considering cases of compassionate appointment, has been withdrawn keeping in view the judgment dated 07.05.2010 in Civil Misc.Writ Petition No.13102 of 2010 of the Hon'ble High Court, Allahabad and accordingly, the cases of compassionate appointment might be regulated in terms of instructions issued vide O.M.of DoPT dated 09.10.1998 as amended from time to time, the Respondents should consider the case of the Applicant for the vacancies of subsequent year(s), provided the family is in indigent state, and decide on the prayer of the Applicant for appointment on compassionate grounds on a comparative assessment of the merits of all the eligible claimants and subject to availability of vacancies for appointment on compassionate grounds @ 5% of DR vacancies. The Respondents are directed to take necessary action accordingly. Though the Scheme of RMPs does not provide for giving any weightage for the service rendered by a candidate, it is open to the Respondents to give weightage for the service put in by the Applicant even though it was in leave vacancies on a temporary basis as an outsider."

2. The petitioner/applicant has approached the Tribunal, seeking the following relief:

"(i) to call for the records of the 1st Respondent pertaining to the scheme in No.37-36/2004/SPB-I/C dated 20.01.2010 and the order of the 2nd Respondent in No.REP/32-41/94 dated 26.07.2012 and set aside the same; consequently,

(ii) to direct the Respondents to appoint the Applicant on compassionate ground in any one of the posts in the 3rd Respondent's Division on considering his educational qualification with all attendant benefits; or in the alternative direct the Respondents to appoint the Applicant as MTS in the light of the judgement rendered in OA No.1050 of 2011, etc and batch cases."

3. The petitioner's father, who was working as Sub Postmaster in the Postal Department, died in harness on 19.12.1993 leaving behind his wife and two sons including the petitioner herein as his legal representatives. The petitioner was the elder son. At the time of death of his father, the petitioner was only 10 years of old. Though originally, the petitioner's mother was recommended for compassionate appointment, she could not accept the offer due to her ill health and thereafter, eventually, the petitioner was offered as a casual labourer and was employed in 2005 on short term vacancy. It is the case of the petitioner that he has been continuously working from 2005 onwards. The petitioner pleaded before the Tribunal that except a meagre pension, there was no other source of income for the family to survive and therefore, prayed for his appointment on compassionate grounds on regular basis.

4. The claim for compassionate appointment was resisted by the official respondents, stating that the compassionate appointment should be only with reference to availability of vacancies within 5% of direct recruitment quota in Group C and D posts and for want of vacancies, the claim of the petitioner could not be considered and in view of the limited per centage earmarked for compassionate appointment, his name contained in the waiting list for appointment. Moreover, there were several hundreds cases pending before various Courts on the same issue of compassionate appointments. In view of the pendency of the cases, the application received after 2000 onwards were kept pending for consideration and decision. In fact, in one of the representations addressed on behalf of the petitioner, he was intimated by the Department that the matter was sub judice and the petitioner has to await till the outcome of the SLP pending before the Hon'ble Supreme Court.

5. It appears that the SLPs were disposed of by the Hon'ble Supreme Court on 30.7.2010 directing the Postal Department to regularize the services of 202 employees who were engaged in the Department as on 27.10.2009 in short term/leave vacancies and 37 interlocutory applications against the vacancies kept reserved for compassionate appointment from 2001 to 2009 on humanitarian grounds. However, the case of the petitioner was not considered, according to the Department, only on the ground that neither the petitioner nor his mother who originally claimed for compassionate appointment, did not file any original application nor sought for being impleaded themselves as parties in the pending SLPs and hence, consideration for regular appointment on compassionate grounds, was not pursued by the Department.

6. After taking note of the submissions of the parties, the learned Tribunal directed the Department to consider the case of the petitioner subject to availability of vacancies for appointment on compassionate grounds i.e. 5% of direct recruitment vacancies. As against the order of the Tribunal, the present Writ Petition has been filed.

7. Mr.R.Malaichamy, learned counsel appearing for the petitioner strenuously contended that several similarly placed persons had been appointed on regular basis on compassionate grounds and the petitioner was left out only because he did not choose to file any application before the Tribunal or he did not choose to get impleaded himself in the pending SLPs before the Hon'ble Supreme Court. Other than these reasons set out, there was no justification for denying the petitioner of appointment on compassionate grounds.

8. Learned counsel appearing for the official respondents reiterated his submissions put forth before the learned Tribunal.

9. We gave our anxious consideration to the submissions made by the rival parties and we feel it appropriate to give a direction to the competent authority, the official respondents to consider the case of the petitioner for regular appointment on compassionate grounds in any suitable post in the next available vacancies. We feel this direction is necessitated in view of the fact that several similarly placed persons had been directed to be appointed on regular basis on compassionate grounds. Admittedly, the case of the petitioner could not be considered along with similarly placed persons only because of the fact that the petitioner did not choose to file any original application or did not choose to approach any Court of law for seeking the relief. This cannot be a reason for denying the compassionate appointment to the petitioner when the petitioner is otherwise eligible for being considered for appointment on compassionate grounds.

10. In such view of the matter, we allow the Writ Petition, modifying the direction given by the learned Tribunal as indicated above and the official respondents are directed to pass orders, appointing the petitioner on compassionate grounds in any one of the vacancies which may arise immediately in the future and accommodate the petitioner on regular basis on compassionate grounds and communicate the same to the petitioner forth with. We do hope that the Department would implement in all earnest and accommodate the petitioner in the first available vacancy. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Director (Staff)
Union of India
Ministry of Communications and IT,
Department of Posts, Dak Bhavan,
Parliament Street, New Delhi-1.
- 2 The Chief Postmaster General
Tamil Nadu Circle, Anna Salai
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Poonamallee East Chennai-56.
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Central Administrative Tribunal,
Chennai-104.

+2cc to Mr.V.Balasubramanian, Advocate SR.No.11878, 19159

+1cc to Mr.R.Malaichamy, Advocate SR.No.19107

W.P.No.15925 of 2015

SSI (CO)

GN(24/04/2017)