

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.10720 of 2010

P.Balu

.. Petitioner

Vs.

1.State of Tamilnadu,
Rep. by its Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Office of the District Educational Officer,
Ariyalur.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records leading to the order of the third Respondent in his proceedings Moo.Mu.No.2575/Aa/2000 dated 24.11.2009 and quash the same as illegal and invalid and consequently directing the third respondent to consider the petitioner for employment on compassionate ground.

For Petitioner : Mr.P.Prem Narayan
for M/s.M.Anthony Selvaraj

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records leading to the order of the third respondent in his proceedings Moo.Mu.No.2575/ Aa1/2000, dated 24.11.2009, to quash the same as illegal and invalid and to consequently direct the third respondent to consider the petitioner for employment on compassionate ground.

2. According to the petitioner, his father, who was working as Headmaster in Government Middle School, T.Kalathur, Perambalur District, died in harness on 03.10.1985. It is stated that at the time of the death of the petitioner's father, he was six years and his younger sister was about two years and another child was in his mother's womb. The petitioner's mother, who became a widow at a very young age, lacked educational qualification and was not in fine fettle and, therefore, she had not applied for any post.

3. It is stated that after attaining majority, in the year 1997, the petitioner applied to the third respondent for employment on compassionate grounds and even at stage, the petitioner's family was in indigent circumstances. The petitioner approached the third respondent seeking appointment on compassionate grounds, however, such request was rejected by proceedings dated 24.11.2009 on the ground that the application seeking appointment on compassionate ground was not made within the time limit of three years.

4. It is the averred that the case of the petitioner ought to have been considered by the Committee constituted vide the Standing Order No.2, Personnel and Administrative Reforms, dated 09.01.1992, in terms of the government order in G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, but the respondents, without referring to the said government order, rejected the application of the petitioner mechanically, without assigning any reasons whatsoever.

5. In such backdrop, the present writ petition is filed for the relief stated supra.

6. It is the contention of the learned counsel appearing on behalf of the petitioner that the government order, referred supra, stipulates that relaxation can be granted in respect of certain restrictions for consideration to appointment on compassionate grounds and non consideration of the application of the petitioner in the light of the above said government order is untenable.

7. In any event, it is pleaded that the family of the petitioner still continues to be in indigent conditions and, therefore, some indulgence should be shown to grant appointment to the petitioner on compassionate grounds.

8. Per contra, the learned Special Government Pleader appearing on behalf of the respondents reiterated the stand taken by the respondents while passing the impugned order and prayed for dismissal of the writ petition.

9. Heard the learned counsel on either side and perused the documents available on record.

10. A perusal of G.O.Ms.No.155, Labour and Employment Department dated 16.07.1993 reveals that the Government thought it fit to grant appointment to a member of the family of a Government servant, who died in harness.

11. In paragraph (5) of the government order, it is stated that only the dependants of the Government servant, namely, wife/husband/son/unmarried daughter, would be eligible for appointment. The Government Order further states that if the widow is not educationally qualified, she could be given a job like sweeper.

12. In paragraph (7) of the government order, it is stated that the cases requiring relaxation will be considered by the Committee constituted with reference to para 20 of the Chief Minister's Standing Order No.2, Personnel and administrative Reforms dated 09.01.1992.

13. In the light of the above said government order, the claim of the petitioner merits consideration by the Government. The contention of the respondents that the widow had not applied within three years and, therefore, the application of the petitioner, who is the son, cannot be considered at a belated stage, goes against the tenor of the Government order, which was issued as a welfare measure for the family members of the deceased Government servants.

14. Concededly, the petitioner was six years old at the time of the death of his father, a Government servant. In my view, the stand of the respondents that the petitioner has not applied for compassionate appointment within three years does not stare at the face of the petitioner.

15. In a case, where an application seeking appointment on compassionate grounds was made after 17 years of death of the government servant, a learned Single Judge of this Court in B.Arun Kumar v. Secretary to the Government of Tamil Nadu, (2011) 8 MLJ 457, held as under:

"10. I do not find any infirmity in appointing the petitioner on compassionate ground, when the application was made after 17 years from the death of the father of the petitioner, who was a Government Servant. Admittedly, the father of the petitioner died on 14.06.1979 and the mother of the petitioner made an application on 13.08.1996. At the time of death of his father, the petitioner was

aged about 7 years. In view of the existing scheme providing compassionate appointment, the mother of the petitioner sought compassionate appointment to the petitioner and the same was also provided. Without taking into account the letter dated 11.10.1995, Labour and Employment Department, as well as the letter of the first respondent dated 14.11.1995, the impugned order was passed. Hence, I am of the view that the impugned order is liable to be quashed.

11. As rightly pointed out by the learned counsel for the petitioner, the Division Bench of this Court in the order dated 03.11.2009 made in W.A.No.1559 of 2009 (V.Balakrishnan vs. 1. The Joint Director of Agriculture, Tiruvannamalai and others), considering the decision of the Supreme Court in Union of India vs. K.P.Tiwari reported in (2003) 9 SCC 129 and D.M.Premkuari vs. The Divisional Commissioner, Mysore Division reported in 2009 (2) Supreme 271, has held in para 6 as follows:

'6. We have noted the submissions of both the parties. We quite see the force in the submission of the learned Government Pleader. Compassionate appointment is not meant for persons who do not in fact face the difficulty. It is meant to tide over the immediate difficulty of the family. For a moment, we do not approve the manner in which he has obtained the employment. At the same time, it is also to be seen that in the instant case nearly after four years, the State Government has moved to cancel the appointment. Nothing is placed on record as to what action was taken against the officers, who are responsible for the disputed appointment and delayed action on the part of the Government. Almost similar facts were there in the two matters which have been referred herein in the sense that the persons were sought to be removed after passing of good number of years. Besides, by now, nearly 15 years have gone since the time the appellant has been initially appointed, and, therefore, we do not think that it will be fair to disturb his employment.'

12. In my view, the aforesaid decision of the Division Bench of this Court squarely applies to this case also. In the result, the impugned order is quashed and the writ petition is allowed. No costs."

16. Moreover, having regard to paragraph 7 of the Government Order, which states relaxation can be given on a decision by the Committee constituted as per the Chief Minister's Standing Order No.2, Personnel and Administrative Reforms, dated 09.01.1992, this Court is of the firm view that the order passed by the respondent authorities cannot be countenanced.

17. For the foregoing reasons, the writ petition is allowed and the order passed by the third respondent dated 24.11.2009 stands set aside. The respondents are directed to appoint the petitioner in any post on compassionate grounds. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.2 of 2010 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Educational Officer,
Office of the District Educational Officer,
Ariyalur.

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.84309

+1cc to the Government Pleader, S.R.No.84736

W.P.No.10720 of 2010

SR(CO)
RRK(11/04/2018)