IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6202 of 2004

R.Packialakshmi ... Petitioner

Vs.

The Additional Chief Engineer,
Superintending Engineer,
Tamilnadu Electricity Board,
Salem Electricity Distribution Circle,
Salem. ... Respondent

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ in the nature of writ Certiorarified Mandamus after calling for the records pertaining to the orders passed by the Respondent in Letter No.48980/SE/SEDC/Admn.Branch-2/U.Tha.2/Ko.Va.Velai(Nira)/ Tha.No.972/2002, dt.23.10.2002 and in Letter No.014930/Addl.CE/SE DC/Salem/Administrative Branch 2 (2) KoVaa.Ve/Tha.No.311/03 dt.17.07.2003, Quash the same and consequently direct the respondent to provide the petitioner appointment on compassionate ground, Award costs.

For Petitioner : Mr.V.Ajoy Khose
For Respondent : Mr.P.R.Dhilip Kumar

O R D E R

The petitioner has filed this writ petition seeking issuance of writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the Respondent in Letter No.48980/SE/SEDC/ Admn. Branch-2/U.Tha.2/Ko.Va.Velai(Nira)/ Tha.No.972/2002,dt.23.10.2002 and in Letter No.014930/Addl.CE/SE DC/Salem/ Administrative Branch 2(2) KoVaa.Ve/Tha.No.311/03 dt.17.07.2003 and to quash the same and consequently direct the respondent to provide the petitioner appointment on compassionate grounds.

1. The brief facts of the case are as follows: The petitioner's husband worked as a Field Assistant and died during the course of employment on 24.10.1999. After the death of the husband, in order to maintain the family, the petitioner made an application on 19.10.2002 as per the Board Order No.B.P.No.46,

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was implemented on 13.10.1995 and as per the said Board Resolution the present family dependants of the person can make an application within three years if minimum eligibility of VIII standard. However the petitioner made an application on 19.10.2002 before the expiring of five days of three years period without qualification fixed by the board. Hence, his application was rejected. Challenging the same, the present writ petition is filed.

2. It is true, the person if guidelines and rules permits, a dependent of the deceased person is entitled to seek compassionate appointment from respondent Board. There is no dispute regarding entertaining the application filed by the petitioner. However, the Board rejected the application only on the ground for want of educational qualification.

3. The learned counsel Mr.V.Ajoy Khose appearing for the petitioner would submit that the Impugned order passed by the authority is arbitrary and violative of Article 14 of the Constitution. There is no rule or provision stipulating eligibility to possess VIII Standard for acquiring compassionate appointment and further the petitioner is not necessary to possess VIII standard qualification at the time of making application.

4. There is no dispute in the case on hand the petitioner made an application within the time stipulated time in B.P.M.s.(FB)No.46, dated 13.10.1995. However, petitioner did not establish the family suffering hardness due to the death of the deceased person. Admittedly, the petitioner made an application at the end of three years prior to five days of expiry of three years. Admittedly, the petitioner did not possess the required qualification of VIII Standard at the time of making application, though he may possess VIII Standard at the time of passing of the impugned order i.e., 23.10.2002 which is much after the three years period.

5. The appointing authority is competent to fix eligibility criteria for selection of compassionate appointment in a particular post. Normally the Court while exercising discretionary jurisdiction cannot relax the educational qualification fixed by the appointing authority, unless the order of the appointing authority is arbitrary and not exercise the power available in the relevant rules or guidelines.

6. This Court's view is supported by the Hon'ble Supreme Court by the judgment rendered in Civil Appeal No.6468 of 2012 in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari and another, the relevant portions of which are extracted hereunder:

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"7. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide:State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216;J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812).

8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

"The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."

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9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object (s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 436).

10. In State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.

Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1)

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SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

7. For the reasons above stated and applying the ratio laid down by the Hon'ble Apex Court, this Court is not inclined to interfere with the order passed by the respondent. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Additional Chief Engineer,
Superintending Engineer,
Tamilnadu Electricity Board,
Salem Electricity Distribution Circle,
Salem.

+1 cc to Mr.P.R.Dhilipkumar,advocate,sr.47469.

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