

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.24506 of 2013 and

M.P.No.2 of 2013

C.Prabhu ... Petitioner
Vs.

1.The Director General of Police,
Office of the Director General of Police,
Chennai 600 004.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai Police,
Egmore,
Chennai.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his impugned order in R.C.No.69626/CA1/2013 dated 07.05.2013 and quash the same and consequently direct the respondents herein to appoint the petitioner as Junior Assistant or any other post as per the petitioner's educational qualification.

For Petitioner : Mr.K.Govindaraj for
M/s.N.Suresh

For Respondents: Mr.T.M.Pappiah
Special Government Pleader

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O R D E R

Heard Mr.K.Govindaraj, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his impugned order in R.C.No.69626/CA1/2013 dated 07.05.2013 and quash the same and consequently direct the respondents herein to appoint the

petitioner as Junior Assistant or any other post as per the petitioner's educational qualification."

3. The case of the petitioner is as follows:

The petitioner's father while working as a Police Constable in the Police Department suffered loss of health and he had to be retired on medical invalidation in the year 1989. Since the petitioner is the only son, an application was made for grant of compassionate appointment on 13.03.1991, within a period of three years from the date of medical invalidation of the petitioner's father. At that time, the petitioner was only 11 years old and had studied upto 7th standard. Since he was only 11 years old at that time, he could not be offered employment. Thereafter, the petitioner had completed 10th standard successfully in the year 1995. After being qualified, the petitioner made a representation to the authorities in the year 1998, for compassionate appointment and the same was also recommended by the official.

4. The petitioner was also directed to produce all the essential certificates in support of his claim in the year 2001. Initially, the claim was rejected by proceedings dated 12.03.2007, but subsequently, after reviewing the claim of the petitioner, ultimately, he came to be appointed as Sweeper on 12.04.2013. Since the petitioner had passed SSLC and qualified to consider for appointment as Junior Assistant, he made a representation on 19.04.2013. However, the same was rejected by the first respondent on 07.05.2013. The said rejection order was put to challenge in this writ petition.

5. The learned counsel appearing for the petitioner would submit that the reasoning given by the first respondent for rejecting the claim of the petitioner for consideration for appointment to the post of Junior Assistant cannot be a valid reason, since the authority had rejected only on the ground that at the time when an application was made on compassionate appointment in 1991, the petitioner had studied only 7th standard and therefore, that qualification alone taken into consideration for his eventual appointment as sweeper.

6. The learned counsel for the petitioner would submit that at the time of application was made in 1991, he was only 11 years old and was studying 7th standard and thereby the petitioner's qualification at that point of time taken into consideration for eventual appointment which had taken place on 2013. According to the first respondent, the claim of the petitioner cannot be considered in view of the guidelines issued by the Government. The learned counsel would draw this Court's attention to Government Letter (Ms) No.86, Labour and Employment Department, dated 04.05.2010, which prescribed the guidelines for appointment on the compassionate ground.

7. According to the sub-paragraph IV of the Government

Letter, the said guidelines came into effect only from the date of issue i.e., from 04.05.2010. As per the said guidelines, the compassionate appointment will be considered only on the basis of the qualification of the persons who applying for such appointment on the day when initial application is made. Relying on the said guideline alone, the present impugned rejection order issued.

8. According to the learned counsel for the petitioner, the petitioner's original application was admittedly made in 1991 and therefore, the present guidelines issued in the year 2010, cannot be made applicable to his claim, since the eventual appointment was issued only on 12.04.2013. In pursuance of the original application dated 13.03.1991, the said guidelines cannot be pressed into service with regard to the claim of the petitioner herein.

9. Upon notice, the learned Special Government Pleader entered appearance and filed a detailed counter. The learned counsel for the respondents would submit that at the time when valid application was made in 1991, the qualification of the petitioner was only 7th standard and hence, on the basis of said qualification, he was appointed as sweeper. As per the scheme of compassionate appointment, the employment assistance has to be rendered immediate on death of the employee or medical invalidation and such benefit cannot be conferred after a lapse of so many years. Therefore, he would submit that the present claim cannot be considered favourably, since the medical invalidation had taken place in the year 1989. Therefore, he would impress this Court to dismiss the writ petition.

10. This Court has considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record. As rightly contended by the learned counsel for the petitioner that the rejection order by the first respondent on the ground that the petitioner had studied up to 7th standard and the application was made in the year 1991, cannot be a valid ground for the rejection of his claim, if the petitioner is otherwise entitled to be considered for appointment on compassionate ground in the post of Junior Assistant. Even otherwise, as rightly contended by the learned counsel for the petitioner that the guidelines issued on 04.05.2010, cannot be made applicable to the claim of the petitioner whose claim was considered and the appointment given on the basis of his original application dated 13.03.1991. Even otherwise, the reasoning given in the impugned order of rejection appears to be arbitrary and preposterous and cannot be acceptable as a valid reason for not considering the claim of the petitioner for consideration of his appointment to the post of Junior Assistant.

11. In the above circumstances, the impugned order of rejection dated 07.05.2013, is set aside and the respondents are directed to consider the claim of the petitioner for appointment to the post of Junior Assistant on the basis of his present qualification, if he is otherwise entitled to be considered for compassionate appointment as per the rules and regulations. The said direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1.The Director General of Police,
Office of the Director General of Police,
Chennai 600 004.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai Police,
Egmore,
Chennai.

+1 CC to Mr. M. Veerappan, Advocate SR.NO.65358/17

+1 CC to Government Pleader SR.No.64959/17

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W.P.No.24506 of 2013

SR(CO)
VC (11/10/2017)

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