

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE DR.JUSTICE S.VIMALA

W.A.No.17 of 2016

J.Ravichanran

... Appellant/Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by The Commissioner of Survey
and Land Records,
Chepauk, Chennai - 600 005.

2. The Assistant Director of Survey &
Land Records,
Namakkal & District.

... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 08.01.2015 in W.P.No.19634 of 2013.

W.P.No.19634 of 2013 : Writ Petition filed under Article 226 of
the Constitution of India, praying for issuance of a Writ of
Certiorarified Mandamus, to call for the records in pursuant to
the impugned Order issued by the 2nd Respondent in proceeding
Na.Ka.A2/5415/2012 dated 31.05.2013 to quash the same and
consequently direct the Respondent to reinstate the Petitioner
in any one of the post lower to the post of Draughtsman i.e.,
Record Clerk or office Assistant or field Assistant.

For Appellant : Mr.K.V.Govi Ganesan

For Respondents : Mr.A.Srijayanthi
Government Pleader
for R1 & R2

J U D G M E N T

[Judgment of the Court was delivered by HULUVADI G. RAMESH, J.]

The Writ Appeal has been preferred challenging the order of
the learned single Judge in dismissing the Writ Petition.

2. The appellant was appointed as a Draughtsman on compassionate appointment on account of the death of his father, who died on 10.08.1999, in harness. He was appointed way back in the year 2007. Thereafter, it appears that the Draughtsman has to write the Departmental test within a period of five years. Since the petitioner has not passed out in the departmental test, which is mandatory, the proceedings were initiated to terminate the service of the petitioner and accordingly, he has been terminated.

3. Challenging the same, the Writ Petition was filed before the learned single Judge. The learned single Judge holding that the appellant was appointed as a Draughtsman and it was a compassionate appointment and he accepted the appointment knowing fully well that he has to mandatorily pass the Departmental test within a period of five years and observed that in case, the appellant was of the view that it would not be possible for him to pass the Departmental test, he should have declined to accept the post. The appellant never made a request before the authorities that he should be given a lower post. He accepted the appointment with eyes open.

4. Referring to Rule 26(b)(ii) of the Tamil Nadu State and Subordinate Service Rules, there is no question of reverting to a lower post in view of the fact that there is no feeder category to the post of Draughtsman. Accordingly, the Writ Petition was dismissed.

5. As against which, in this appeal, the learned counsel for the appellant, in support of his contention, relying on the judgment of the Hon'ble Apex Court reported in 2013 (2) SC 7 [BRIJESH VIPIN CHANDRA SHAH vs. STATE OF GUJARAT & OTHERS] has held that alternative job of Class-IV, if failed in Class-III Test, the appellant, who was appointed in Class-III on compassionate ground and failed to qualify the test despite repeated chances, if terminated, he would plead to be retained as Class-IV in the circumstances of the case.

6. Heard the learned counsel appearing for the appellant and the learned Government Pleader appearing for the respondents.

7. It is submitted by the learned Government Pleader appearing for the respondents that there was no scope for interference invoking the provision of Rule 26(b)(ii) of the Tamil Nadu State and Subordinate Service Rules.

8. The explanation sought to be found in the judgment of the Hon'ble Apex Court in the case noted above is that, the

appointment as sought to be extended not on regular basis or on regular selection, but he was appointed as the family deprived in harness. The appellant was appointed way back in the year 2007 and he worked upto 2013 and requires to pass in the Departmental test. In view of the factual situation, when he failed, he has given a representation before the second respondent immediately after the termination and prayed for the post of Office Assistant or Record Clerk or Field Assistant, that has not been considered either by the Government or by the learned single Judge, ultimately, it resulted in filing the Appeal.

9. In 2013 (2) SC 7 [BRIJESH VIPIN CHANDRA SHAH vs. STATE OF GUJARAT & OTHERS] the Hon'ble Supreme Court has held as follows:

"8. We are of the considered opinion that the stand taken by the respondents is unnecessarily harsh. It must be remembered that the appellant was initially appointed on compassionate grounds as his father had died while he was in service. Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. It is unfortunate that the appellant was unable to pass the in-service examination so as to enable him to continue on a Class III post. But that ought not to result in depriving him of service altogether."

10. The very reasoning of the order noted above specifically refers the compassionate appointment by relaxing of the normal service rules for providing immediate financial assistance to the family of the deceased. Though the appellant put up 6 years of service, there is no material on record produced by the appellant that their family is doing well and the appellant was unable to pass the Departmental test and there is no continuance of the post.

11. As observed by the Hon'ble Apex Court in 2013 (2) SC 7 [BRIJESH VIPIN CHANDRA SHAH vs. STATE OF GUJARAT & OTHERS] they should not be deprived by losing the job itself. The appellant also sent a representation seeking to offer him the post of Office Assistant or Record Clerk or Field Assistant to support of his family.

12. In the judgment of the Hon'ble Apex Court, it is stated that the appointment of the appellant on Class IV post shall be from the date, he was initially appointed on Class III post. His

seniority shall be reckoned from the date of initial appointment. However, the appellant shall not be entitled to any back-wages since he has not worked, on any of the posts, after the date of termination of his services.

13. In view of the matter, we may also extend the continuity from the date the appellant was initially appointed and so far as the period of termination, he is not entitled to any back-wages and the respondents are directed to appoint the appellant in the post of Office Assistant or Field Assistant, within a period of three months from the date of receipt of a copy of this order. However, it is made clear that if posts are not available, they would create supernumerary post to accommodate the appellant to avoid him from any untoward situation or difficulties in the matter of appointment to the lower grade post.

14. The Writ Appeal is allowed accordingly. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Commissioner of Survey
and Land Records,
Government of Tamilnadu,
Chepauk, Chennai - 600 005.

2. The Assistant Director of Survey &
Land Records,
Namakkal & District.

+1cc to M/s.K.V.Govi Ganesan, Advocate, S.R.No.23083

+1cc to the Government Pleader, S.R.No.23538

W.A.No.17 of 2016

RR(CO)
CA(05/05/2017)