

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35119 of 2003

N.Angammal

... Petitioner

vs

The Chief Engineer/Employment,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the respondent dated 23.09.2002 in his letter No.099339/G10/G101/2000 and quash the same and direct the respondent to issue an order of appointment of sweeper on compassionate ground immediately.

For Petitioner : Mrs.M.Chithira Gomathy

For Respondents: Mrs.R.Varalakshmi

Standing Counsel for Electricity Board

O R D E R

Heard the learned counsel appearing for the petitioner as well as the respondent.

2.The brief facts are as follows. The petitioner was working as a sanitary sweeper in the Mambalam office of the respondent. While she was in duty, the car belonging to the respondent's office hit against the petitioner and she lost both legs in the year 1996 and she was discharged from service as medically unfit employee, because of the accident and the Medical Fitness Certificate not in favour of the petitioner. Hence, due to loss and hardship faced by the family of the petitioner, she made a representation to the authority for compassionate appointment for any one of the legal heir in the family.

3.Accordingly, she sent a representation dated 19.07.2000 to the respondent for compassionate appointment. Aggrieved by the

non consideration of the representation, the petitioner filed a Writ Petition in W.P.No.29269 of 2002. This Court by its order dated 08.08.2002 directed the respondent to pass appropriate orders on the representation. After receipt of the representation, the respondent passed the impugned order stating that the compassionate appointment application was not submitted within the period of three years and there was a lapse in their part and the petitioner did not possessed minimum education qualification. On the above said grounds the representation was rejected. Aggrieved by the above said rejection order, the petitioner filed this writ petition.

4.Learned counsel appearing for the petitioner would submit that though the petitioner sent a representation dated 19.07.2000 immediately within a year of discharge of the petitioner from service as medically unfit and at the time of impugned order, the minimum qualification of the sweeper is seventh standard. Hence the petitioner entitled for compassionate appointment for any one of the legal heir.

5.In support of his arguments, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in (2008) 15 SCC 560 (Steel Authority of India Limited Vs. Madhusudan Das and Others) the relevant portions of which reads as follows:

"20.Reverting back to the question as to whether in a case of this nature, it was required to be pleaded and proved that the death occurred in an accident, we must advert to the meaning of the term accident. This Court in Mackinnon Mackenzie and Co.(P) Ltd. v. Ibrahim Mahmmmed Issak held: (SCC p.611, para 5)

"5.To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere

nature of the employment. The expression applies to employment as such - to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

.....
22. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn. In regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.""

6. On perusal of entire Judgment of Hon''ble Supreme Court, the Hon'ble Supreme Court held that the appointment on compassionate ground cannot be granted as a matter of right. Hence the Judgment of Hon'ble Supreme Court cited supra may not be helpful to the petitioner. In the present case, the claim for compassionate appointment is rejected based on the guidelines of the petitioner company.

7. Per contra, learned counsel appearing for the respondent would submit that the petitioner did not establish the family suffering harness due to the discharge from service as medically unfit. In the facts and circumstances, it is useful to refer the decision of the Hon'ble Supreme Court reported in (1994) 1

SCC 192 (Auditor General of India Vs. G.Ananta Rajeswara Rao):

"5.A reading of these various clauses in the memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the breadwinner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16 (5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that

if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion."

8.The learned counsel appearing for the respondent would submit that the minimum educational qualification is eighth standard. The petitioner did not submit any of the document for considering the compassionate appointment for her widow daughter and her daughter has possessed only fifth standard and since she did not satisfy the minimum qualification of seventh standard.

9. 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.

10. In the above context, it is useful to refer 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:

"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."

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

11. For the reasons stated above, I am not inclined to entertain the present Writ Petition. Accordingly, the Writ Petition is dismissed and no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ah

To

The Chief Engineer/Employment,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

+1cc to Mr.R.Varalakshmi, Advocate, S.R.No.518831

+1cc to Mr.Chitra Gomathy, Advocate, S.R.No.

RSI (CO)
GN(03/10/2017)

W.P.No.35119 of 2003