



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No.2523 of 2016

and

W.M.P. (MD) No.2226 and 2227 of 2016

P.Dhanalakshmi

... Petitioner

vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Labour and Employment,
Secretariat, St.George Fort,
Chennai - 600 009.
2. The District Collector,
Dindigul District,
Collectorate, Dindigul - 624 001.
3. The Superintendent of Police,
Dindigul District, SP Office,
Dindigul - 624 001.
4. The Regional Administrative - Medical Officer,
Employees State Insurance Office,
4th Main Road, K.K.Nagar,
Madurai - 625 020.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter of the 4th respondent in O.Mu.No.7943/Ni3/2013, dated 06.08.2015 and the consequent proceeding of the 2nd respondent in O.Mu.No.18841/2015/A6, dated 28.08.2015 and quash the same and consequently direct the 4th respondent to appoint her in the post of the Hospital Worker.

For Petitioner

: Mr.B.Rooban

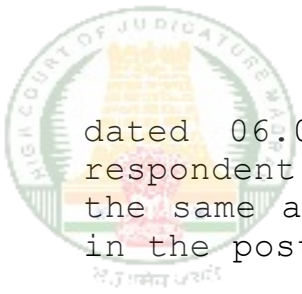
For Respondents

: Mr.S.Kumar,

Additional Government Pleader.

O R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter of the 4th respondent in O.Mu.No.7943/Ni3/2013,



dated 06.08.2015 and the consequential proceedings of the 2nd respondent in O.Mu.No.18841/2015/A6, dated 28.08.2015 and quash the same and consequently direct the 4th respondent to appoint her in the post of the Hospital Worker.

2.The case of the petitioner as has been averred in the affidavit filed in support of this writ petition is that, the petitioner's husband one M.Kkumar while he was working as a Grade-I Police Constable, died in harness on 06.04.2006. The said deceased Police Constable left behind one daughter aged 3 years and son aged 1 ½ years besides the widow that is the petitioner herein. Because of the sudden demise of the head of the family, the petitioner's family become helpless. Therefore, the petitioner had applied to the respondents, especially, the Department, where the petitioner's husband was working, seeking for compassionate appointment.

3.The petitioner was having the qualification of +2 passed at the time of making application for compassionate appointment. Since at that time there was no suitable post vacant for consideration of appointment to the petitioner, as per the Government Orders which were invogue the application of the petitioner had been transferred to other Departments for consideration.

4.Subsequent to the transfer of application of the petitioner, the petitioner received communications from various Departments either for interview or for certificate verification and in spite of the same, nothing has been materialized and no post had been offered to the petitioner on Compassionate ground for a long time. However, the petitioner's family after loosing its only breadwinner ie., the head of the family, was struggling a lot. In that process, the 4th respondent ie., the Employees State Insurance Office at Chennai had called the petitioner for interview after getting her name sponsored under the category of compassionate appointment and thereafter, based on the performances and the credentials, the petitioner was selected by the fourth respondent office. However, by the impugned proceedings, dated 06.08.2015, the fourth respondent had sent a communication to the second respondent without even marking a copy of the same to the petitioner, rejecting eight candidates including the petitioner for giving appointment on compassionate ground for the reasons that all the eight persons including the petitioner were over-qualified. In other words, as per the import of the impugned order, dated 06.08.2015, the fourth respondent had stated that the post on of Hospital Worker is a last grade service for which the qualification was only 10th standard failed, whereas the petitioner is having the higher qualification. i.e, passed in 10th standard or still higher qualification. Therefore, for that reason, appointment to the petitioner was rejected.



Challenging the said order of the fourth respondent, the petitioner has filed the present writ petition.

5. The learned counsel appearing for the petitioner would submit that in the impugned order the fourth respondent has stated the reasons that, as per the guidelines issued in Government Order under third reference of the said impugned order, appointment cannot be given to the petitioner and others as the appointment can be made only on the basis of educational qualification and the said post of Hospital Worker can only be given to persons, who have 10th standard failed or lesser qualified persons and therefore, the petitioner's candidature was rejected.

6. In this regard, the learned counsel for the petitioner would invite the attention of this Court on the very said Government order, namely, G.O.Ms.No.42, Labour and Employment Department, dated 12.03.2007, which was in fact referred as Reference No.3 in the said impugned order, dated 06.08.2015.

7. In the said G.O.M.sNo.42 among other things, the following two paragraphs are very relevant for the purpose of the present writ petition, which is extracted here under :

"2.3. The observation of Supreme Court is that the posts in Class III and IV are the lowest level posts and hence, they alone can be offered on compassionate grounds.

4. Appointment on compassionate grounds are made in "C" and "D" Groups only. Neither the qualification of the applicant nor the post held by the deceased employee is relevant. Appointment to the posts in 'B' Group cannot be made as laid down by the Supreme Court. The appointing authority shall, however consider if the dependent of the deceased employee wishes to accept employment in 'C' Group and if otherwise eligible. Pending applications seeking compassionate appointments under "B" Group be disposed off accordingly.

8. The Government decided to examine the issue of inter-departmental compassionate appointments in "C" and "D" category posts, where adequate vacancy is not available in a department to which the deceased Government servant belonged."

8. By relying upon the aforesaid paras of the Government Order, which has been cited by the fourth respondent in the impugned order, the learned counsel appearing for the petitioner would



submit that in fact, the Government Order was in favour of the petitioner as it has given a clear indication that qualification of the applicant or the post held by the deceased employee is not relevant as appointment by way of compassionate ground can only be given to "C" and "D" Group posts and therefore, the qualification whatever be acquired by the applicant can be ignored or on that basis, appointment on compassionate ground to Group "C" and "D" posts cannot be rejected. Since, this is the only reason cited in the impugned order that too by quoting the Government Order referred above and the said Government Order in fact provide a clear guidelines in favour of the petitioner, the learned counsel for the petitioner would submit that the impugned order shall not stand under the legal scrutiny and therefore, it is liable to be quashed.

9. Per contra, Mr.S.Kumar, the learned Additional Government Pleader appearing for the respondents would submit that whatever be the post in Group "C" and "D" cadre as has been envisaged in the Government Order referred above, the same can be filled up only with the candidates with the qualification prescribed for the said post. If higher qualified persons are appointed in lower posts especially in Group "C" and "D" posts, then the slot fixed for persons with lower qualification, who are otherwise eligible to be considered for Group "C" and "D" posts would be ousted from the purview of the public employment. Only on that basis, the educational qualification fixed for Group "C" and "D" posts are taken into account.

10. In this context, since the petitioner was over qualified as even at the time of making application, he was admittedly completed +2 course and subsequently, has completed Under Graduate degree course, certainly she would be a over-qualified person for the post of Hospital Worker, which is a lower grade service, for which persons with lesser qualification even without qualifying 10th standard can be preferred. Therefore, only in this context, even though the petitioner and others had been called for interview, their candidature had been rejected through the impugned order.

11. The learned Additional Government Pleader would also rely upon the averments made in the counter affidavit especially Paragraph No.5 of the Counter Affidavit filed by the fourth respondent which reads thus,

5. With regard to the averments made in paragraph (9) and (10) of the affidavit, it is most respectfully submitted that the list of 8 candidates who were provisionally selected and referred to the Directorate of Medical and Rural Health Services (ESI), Chennai-6 vide this office



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letter Ref No.7943/E3/2013, dated 10.12.2014 and the permission to issue appointment orders to those candidates were sought for. The Directorate of Medical and Rural Health Services sent the following communication vide proceedings in Ref.No.21582/Thou.Aa.Ee/E2/2/2015-1, dated 16.02.2016.

“மருத் துவமனை பணியாளர் மற்றும் துப்புரவு பணியாளர் காலிப் பணியிடங்கள் நிரப்பும் நிகழ்வில் இப்பணிகளுக் குரிய கல்வி தகுதியாக அடிப்படை பணியாளர் பணி தொகுப்பு விதிகளில் குறிப்பிட் டுள் ளவற்றை பின்பற்ற கேட் டுக் கொள் ளப்படுகிறது.

மேலும் இக்கல்வி தகுதிக்கு மேல் கல்வித் தகுதி பெற்றுள்ள தனியருக்கு பணி நியமன அதிகாரி என்ற அளவில் அவரே பொறுப்பாளர் எனத் தெரிவித் துக் கொள் ளப்படுகிறது.”

12.For all these reasons, the rejection which was made through the impugned communication is to be sustained and therefore, the petitioner since being admittedly a over-qualified candidate would not be entitled to claim the post like Hospital Worker under Group “C” and “D” category and therefore, the impugned order requires no interference from this Court, he contend.

13.This Court has considered the rival submissions made by both sides.

14.As has been contended by the learned counsel appearing for the petitioner, the only reason cited in the impugned order is that the petitioner is over qualified and therefore, based on the guidelines given by the Government through the G.O.Ms.No.42, the candidature of the petitioner was rejected. When we look into the said G.O.Ms.No.42, dated 12.03.2007, it has been unambiguously given that the appointment on compassionate grounds are made in Group “C” and “D” posts only. Neither the over qualification of the applicant nor the post held by the deceased employee is relevant. The appointing authority shall consider if the dependant of the deceased employee wishes to accept employment in “C” Group and if otherwise eligible, pending application seeking compassionate appointment under “C” Group be disposed off accordingly. At para No.8 of the said Government Order, it is further stated that the Government decided to examine the issue of inter-departmental compassionate appointments in “C” and “D” category posts, where adequate vacancies are not available in a Department to which the deceased Government servant belonged. All these guidelines issued by the Government through the said Government Order in G.O.Ms.No.42, would definitely support the



case of the petitioner as the decision has been taken to give compassionate appointment only in group "C" and "D" posts and while giving such posts, neither the over qualification of the applicant, who seeks compassionate appointment nor the post held by the deceased Government servant shall be relevant. This is what exactly has been interpreted in a negative manner and has been quoted in the impugned order by the fourth respondent as if that the G.O.Ms.No.42, prohibits or put an embargo against the petitioner from considering her candidature to offer compassionate appointment to the post of Hospital Worker, which is admittedly a Group "D" post. Therefore, the only reason cited in the impugned order is totally un-sustainable and not even worthy to make a reason to reject the candidature of the petitioner for compassionate appointment.

15. During pendency of the writ petition, this Court by order, dated 04.02.2016 has passed an interim order thereby till disposal of the writ petition, a post be kept vacant in the category of Hospital Worker. Accordingly, one post of Hospital Worker has been kept vacant by the fourth respondent, till date.

16. Since the only reason cited in the impugned order, as has been discussed and found above, is fully unjustifiable and un-sustainable, this Court is of the view that said impugned order of the fourth respondent is liable to be quashed. Accordingly, the said impugned order is quashed. In view of the quashing of the order of the fourth respondent, dated 06.08.2015, the consequential impugned order passed by the second respondent District Collector, vide his proceedings in O.Mu.No.18841/21015/A6, dated 28.08.2015, is also quashed.

17. In the result, the writ petition is allowed. Since, one post of Hospital Worker is kept vacant at the fourth respondent office pursuant to the interim order passed by this Court as referred above, the petitioner shall be appointed in the said post. The needful as directed above shall be undertaken by the fourth respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1. The Principal Secretary,
Department of Labour and Employment,
Secretariat, St.George Fort,
Chennai - 600 009.
2. The District Collector,
Dindigul District,
Collectorate, Dindigul - 624 001.
3. The Superintendent of Police,
Dindigul District, SP Office,
Dindigul - 624 001.
4. The Regional Administrative - Medical Officer,
Employees State Insurance Office,
4th Main Road, K.K.Nagar,
Madurai - 625 020.

+1cc to Mr.B.Rooban, Advocate Sr.No.55965
+1cc to Spl.Government Pleader Sr.No.55978

SKM/TRP/PM

VB/SV/MMS/SAR1/04/12/2017/7P/7C

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