

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.9430 of 2017

- 1 The Union of India
rep. by its General Manager
Southern Railway
Park Town, Chennai-3.
- 2 The Divisional Railway Manager
Southern Railway, Tiruchirapalli Division
Tiruchirapalli Junction - 620 001.
- 3 The Divisional Personnel Officer
Southern Railway, Tiruchirapalli Division
Tiruchirapalli Junction - 620 001. .. Petitioners

Vs

- 1 A.Abdul Hameed
- 2 A.Fathima Bi
- 3 The Registrar
Central Administrative Tribunal
Madras Bench, Chennai - 600 104. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to O.A.No.1049 of 2016 on the file of the Central Administrative Tribunal, Madras Bench, the 3rd respondent herein, and quash the order dated 9.6.2016.

For Petitioners : Mr.T.P.Savitha

For Respondents : No appearance
for respondents 1 and 2

R3 ; tribunal

ORDER
(Made by the Hon'ble Chief Justice)

Heard the learned counsel for the petitioners. There is no representation on behalf of respondents 1 and 2. Even on 16.8.2018 and 27.8.2018 no one represented respondents 1 and 2.

2. The petitioners have preferred this petition against the order dated 9.6.2016 passed by the Central Administrative Tribunal, Madras Bench, by which O.A./310/1049/2016 came to be allowed. The Original Application had been preferred by the first respondent, A.Abdul Hameed, and his daughter, second respondent, Fathima Bi, to set aside the order dated 2.6.2014 and to direct the petitioners to consider appointment of Fathima Bi on compassionate ground. The order dated 2.6.2014, which was addressed to the first respondent, stated that as his wife, Jubaidhabee, has produced bogus educational certificate for appointment on compassionate ground, in terms of CPO/MAS Letter No.PB/CS/30/RBC, dated 25.2.2005/01.03.2005, his family forfeits the claim for appointment on compassionate ground. As stated earlier, the Tribunal allowed the Original Application by quashing the order dated 2.6.2014 and directing the petitioners to reconsider the candidature of the second respondent, i.e., the daughter of the first respondent, on merits and pass a speaking order within a period of two months.

3. Brief facts relating to this case are that the first respondent was appointed as Porter on 5.1.1981 in the Southern Railways, Tiruchirapalli Division and he was terminated from service on 18.2.2014 on account of being medically unfit. Thereafter, the first respondent preferred an application on 13.3.2014 seeking appointment on compassionate ground for his wife, A.Jubaidhabee. The said application came to be rejected by order dated 2.6.2014 on the ground that she had produced bogus educational certificate for seeking appointment on compassionate ground. At that time, the education qualification which was required was VIII pass and the first respondent has produced the educational certificate of his wife showing that she was VIII pass. However, the said certificate was found to be bogus, hence, request for appointment on compassionate ground was rejected.

4. Thereafter, the first respondent made a representation on 18.3.2015 praying that his daughter, Fathima Bi, be considered for appointment on compassionate ground. However, the petitioners did not respond to the same, as, according to them, the daughter forfeited the claim for appointment on compassionate ground on the basis of CPO/MAS Letter No.PB/CS/30/RBC, dated 25.2.2005/01.03.2005. Hence, the first respondent preferred the above mentioned Original Application.

5. In the Original Application, it was submitted by the first respondent that simply because the candidature of his wife was rejected on the ground that she produced bogus certificate, the candidature of his daughter ought not to have been rejected.

6. The Tribunal relied on a decision of the Calcutta High Court in Smt.Sushila Bauri and another v. Union of India and others (WPCT No.249 of 2013, dated 4.7.2013), wherein it was observed that candidature of a person cannot be rejected merely because the applicant's brother earlier produced fake educational certificate. It was further observed that in such case the Railway Board's Circular treating the entire family as one not entitled to appointment on compassionate ground in view of bogus certificate produced by one of the members of the family was incorrect.

7. We are in respectful disagreement with the view taken by the Calcutta High Court. According to us, once there is a Circular dated 25.2.2005 which states that if a bogus certificate is submitted by one member of the family, the entire family forfeits the claim for appointment on compassionate ground, the said circular will have to be followed scrupulously. The family cannot be allowed to take advantage of the fact that once a certificate is proved as bogus, thereafter one by one each member of the family will keep on applying till the candidature of one member of the family is accepted for appointment on compassionate ground. This act on the part of the employee of submitting a bogus certificate of his wife cannot be condoned. Such act has to be deprecated and he cannot be allowed to take advantage of the same. It is the first respondent who had made the application to give compassionate appointment to his wife. At that time, he submitted bogus certificate relating to educational qualification of his wife. Thus, first respondent tried to first obtain employment for his wife by practising fraud, which act cannot be countenanced. After first respondent failed in this attempt, he tried to obtain employment for his daughter on compassionate ground. Thus, it is seen that the first respondent had not approached the Tribunal with clean hands and in such case, he is not entitled to any relief. In this regard, we make useful reference to the decision of the Supreme Court in R.Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105, wherein it was held as under:

"..... A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner."

(emphasis supplied)

In this view of the matter, the writ petition is allowed and the order passed by the Tribunal is set aside. No costs. Consequently, W.M.P.No.10394 of 2017 is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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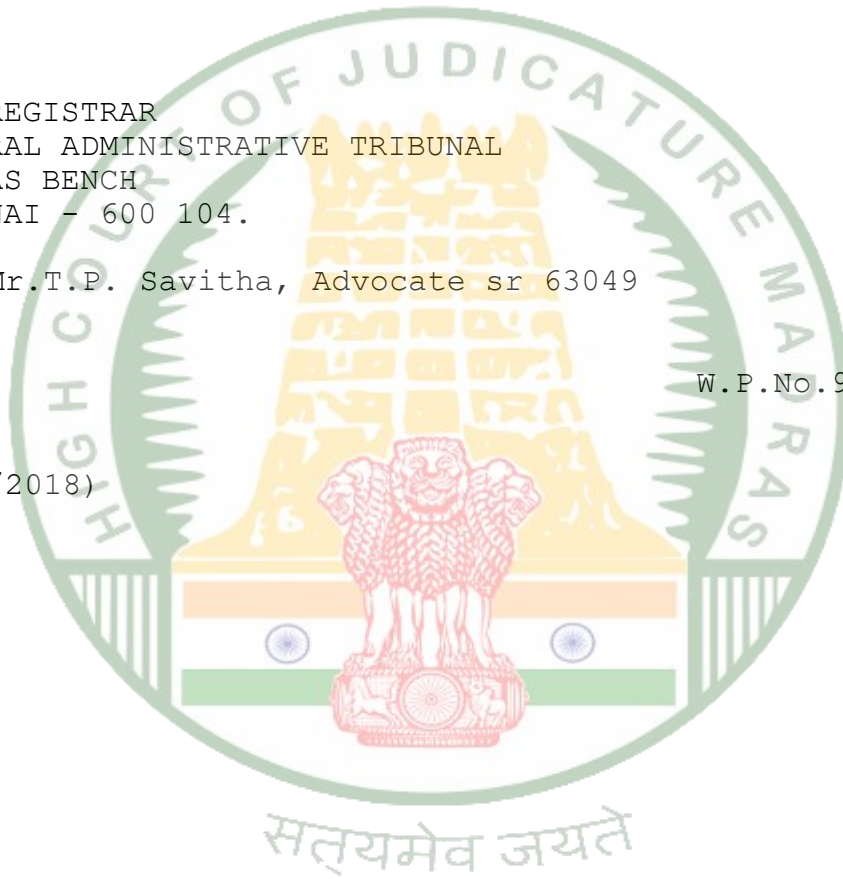
To:

THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH
CHENNAI - 600 104.

+1 cc to Mr.T.P. Savitha, Advocate sr 63049

W.P.No.9430 of 2017

SV (CO)
SRG (27/09/2018)



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