

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.9232 of 2008

M. Paul Freedy

..

Petitioner

Vs

1. The Zonal Manager,
Food Corporation of India,
Zonal Office South,
Haddows Road,
Madras - 600 006.

2. The Senior Regional Manager,
Food Corporation of India,
Regional Office,
Madras - 600 006.

3. The District manager,
Food Corporation of India,
District Office,
Vellore - 12.

4. The General Manager,
Regional Office,
Food Corporation of India,
124, Greams Road,
Chennai - 600 006.

.. Respondents

Prayer:-

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the respondents, quash the impugned order dated 09.10.2007 issued by the General Manager, the 4th respondent herein, as null and void and consequently direct the respondents to appoint the petitioner in any vacancy as deem fit and proper to his educational qualification.

For Petitioner

: Mr. S.Raveendran

For Respondents : Mr. Vijayakumar
ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 09.10.2007 issued by the General Manager, the 4th respondent herein, as null and void and consequently direct the respondents to appoint the petitioner in any vacancy on compassionate ground as per his educational qualification.

2. The case of the petitioner is that, the petitioner's father Munuswamy was working as Watchman in G.O.54736 AG III (D) FCI Food Storage Department Arakkonam and he died on 28.11.1997. At that time, the petitioner's mother was about 50 years and the petitioner's sisters were about 28years, 24years and 12years. After the death of his father, the Revenue officials have given a certificate stating that, they were living below the poverty line and all of the three sisters were remaining unmarried and the petitioner and his mother made out money by doing menial work as coolies.

3. The petitioner would submit that, after the death of his father, his mother applied to the Food Corporation of India (respondents herein) on 01.09.1998 to appoint the petitioner in the place of his father on compassionate grounds (under deceased quota). Thereafter, the petitioner has also sent several representations on 01.10.2002, 06.11.2003, 20.12.2003, 16.09.2005 and 24.10.2007. In the earlier representation dated 01.09.1998, they have given all details. On 04.12.2002, the respondents have sent a communication, wherein, it was stated that "seeking compassionate appointment to her second son Paul Freedy is forwarded for consideration." In response to the petitioner's representation dated 10.04.2003, the Senior Regional Manager to the Zonal Manager, by another letter dated 16.04.2003, stated that "proposal for compassionate appointment under D.D.E scheme is done by forwarding along with all relevant documents".

4. The petitioner was under the hope that, everything in line but to his shock and surprise, he received the impugned order dated 09.10.2007, which states that, the Committee has recommended to delete all the candidates whose applications were received from 01.10.2003 to 31.12.2003. Further pending list since they have competed 3 years as per the Head Quarters letter dated 19.08.2005 (Regarding time limit) for considering application for compassionate ground appointment. Aggrieved by the said impugned order, the petitioner has no other remedy except to knock this Court's door under Article 226 of Constitution of India.

5. The petitioner would submit that the respondents have negated the case of the petitioner on the ground that 3 years period was lapsed, ever since the death of the father, the petitioner was making representations to the respondents to consider his case for compassionate appointment and after a lapse of 9 years, the petitioner's request was kept alive then saying that three years period was over which is nothing but to avoid or deny the legal right created under Food Corporation of India Act. The compassionate appointment is only for the family under distress, but the respondents have not considered the said issue and the loss of father, the bread winner of the family has not been taken into account by the respondents while passing the impugned order.

6. The respondents have filed a counter affidavit dated 12.07.2018 and the learned counsel for the respondents would contend that, as per the instructions, the representations were forwarded by the Regional Office to the Zonal Office and as per DoPT No.14014/19/2002 - Estt(D) dated 05.05.2003, the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that, the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. Based on the above instructions, the petitioner's application was deleted from the list and the petitioner was intimated the same as there was no vacancy under DDE Quota for Category III and Category IV at that point of time and the application of the petitioner was considered for 3 years and the above said guidelines were withdrawn as per DoPT vide Circular No.14014/3/2011 - Estt(D) dated 26.07.2012, which instructed to reopen all such cases which had been rejected due to non-availability of vacancies. As per the said revised guidelines, all such cases including the petitioner's case have been reopened during 2013-2014 for appointment of Category III posts, since there was no vacancy at that time.

7. The respondents would further contend that as per the DoPT guidelines O.M.No.14014/02/2012-Estt.(D) dated 16.01.2013, the qualification for Dependents of Deceased Employees Quota (DDEQ) is same as Direct Recruitment. As per FCI Recruitment Rules/FCI Staff Regulations, only graduates are eligible for Category III posts and the persons who are not qualified for Category III posts were kept pending for placing before the committee, when Category IV posts are being filled whenever vacancies arise under DDE Quota, wherein, the qualification is VIII standard pass. Accordingly, the

petitioner's case is kept pending along with the similar cases and whenever vacancies arise those cases will be considered.

8. The learned counsel for the respondent would also submit that however, 5% of Direct Recruitment Plan are to be filled under DDE Quota and Direct Recruitment has taken place during the year 2017-2018 in Category IV post and now 32 vacancies have identified for filling these vacancies through compassionate ground of appointment. They would further state that, the said recruitment process will commence shortly, to fill up the vacancy. Hence the case of the petitioner will be put up before the Competent Authority for examining and considering along with similar candidates as per instructions in vogue. The learned counsel for the respondent would also submit that DDE Quota appointment are made after considering the penury status of the family of the deceased employee and other eligible criteria and also availability of vacancies.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

10. It could be seen that from the date of the death of the petitioner's father, the petitioner's mother has been knocking the doors of the respondents for seeking compassionate appointment for her son. Five members were striving with the meager income of the mother and the petitioner as a coolies, which is not sufficient to run the family and three daughters were unmarried. The Revenue authorities have also issued the certificate that the petitioner is living below the poverty range and the same should be taken into consideration, while giving an opportunity to the petitioner concerned.

11. Eventhough the Hon'ble Supreme Court has stated, in many cases, that, the compassionate appointment is not a matter of right, but, each case has to be looked into individually and independently. The petitioner's case has to be considered by the respondents. The respondents have also stated in the counter that the petitioner's case will be placed before the committee for the next selection.

12. In view of the fact that the earlier circular was closed and new circular was opened for the present appointment, the respondents are directed to consider the case of the petitioner without any further delay and the petitioner should be given an opportunity at the time of selection and his case has to be considered as a special case since he has been running from pillar to post for the past 20 years i.e., from 1998-2018

and petitioner's case has to be considered positively by the respondents, within a period of three months from the date of receipt of copy of this order, in accordance with law.

13. With the above observation and direction, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nsd / vji

To

1. The Zonal Manager,
Food Corporation of India,
Zonal Office South,
Haddows Road,
Madras - 600 006.
2. The Senior Regional Manager,
Food Corporation of India,
Regional Office,
Madras - 600 006.
3. The District manager,
Food Corporation of India,
District Office,
Vellore - 12.
4. The General Manager,
Regional Office,
Food Corporation of India,
124, Greams Road,
Chennai - 600 006.

+1cc to Mr.S.Raveendran, Advocate, S.R.No.50250

W.P.No.9232 of 2008

AK(CO)
CS/05/03/2019