

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31016 of 2017

V.Thirumaran

... Petitioner

-vs-

1.Union of India
rep.by Government of Puducherry,
though its Director of School Education,
Puducherry.

2.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 22.10.2016 made in O.A.No.1828 of 2013 on the file of the Hon'ble Central Administrative Tribunal and quash the same and consequently directing the respondents to allow the O.A.

For Petitioner :: Mr.U.Karunakaran

For Respondents :: Mr.Syed Musthafa,
Spl.GP (Pondy) for R1

ORDER

(Made by HULUVADI G.RAMESH, J.)

The petitioner's father, viz. S.Vaithilingame died in harness while working as Language Teacher (Tamil) in Government Primary School, Manavali, Araiakuppam, Puducherry on 23.09.1993, leaving behind his wife, son (the petitioner herein) and daughter. Thereafter, the petitioner was granted compassionate appointment as Part-Time Sanitary Assistant. In the order dated 27.12.1996 passed for compassionate appointment, it was mentioned that the petitioner would be considered for regular

vacancy as and when the same arises under the compassionate appointment quota. Thereafter, the petitioner completed his Master Degree in History in May 2000, while in service. He made a representation to the respondents on 04.11.2004 requesting to consider him for a regular post. But he was not considered. Citing the Circular dated 17.09.2013 issued by the Directorate of Health and Family Welfare Services for filling up the post of Sanitary Workers by absorption from Daily Rated / Part-time casual labourers under the control of DPAR, the petitioner gave his willingness in the month of October 2013, which also evoked no response. It is also the case of the petitioner that one Maraimudi and Bactavachalame, who were appointed on part-time basis on compassionate grounds and who were juniors to the petitioner, were considered for regular appointment following the orders of the Tribunal in O.A.No.163 of 2011 dated 30.09.2011, and hence his services also has to be considered for regular appointment. Hence he requested his services to be regularised, for which it was pointed out by the Department that at the time of initial appointment, the petitioner did not possess the qualification required for any Group C Post. Added further that even though there were no vacant posts in the direct recruitment quota of Group D and Group C posts, the Department engaged the petitioner on part-time basis, taking into account the indigent circumstances of the petitioner's family.

2.The petitioner filed an application before the second respondent - Tribunal seeking for a direction to appoint him in a regular Group D post on compassionate grounds with effect from 06.01.1997, when the applicant joined the service on part time basis as a Sanitary Assistant, as was done in the case of his juniors, with all consequential benefits. Taking into consideration the facts and circumstances of the case, the Tribunal rejected the case of the petitioner by way of passing the impugned order, which resulted in the filing of this writ petition.

3.The learned counsel for the petitioner has submitted that despite the representation made by the petitioner to regularise his service from the date of his appointment, viz. 06.01.1997, as was done in the case of his juniors, the respondents have not done so, without any reason. He also submitted that compassionate appointments have to be made only on a regular basis as per the Scheme for Compassionate Appointment. Stating so, he prayed this Court to quash the impugned order passed by the Tribunal and also for a further direction to the authorities to regularise the service of the petitioner from the date of his initial appointment.

4.The learned Special Government Pleader appearing for the first respondent has submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It is the case of the petitioner that as per Para 7(a) of the Scheme for Compassionate Appointment, appointments on compassionate ground should be made only on a regular basis. But it appears that even though there were no vacant posts at the time of the death of the petitioner's father, taking into consideration the indigent circumstances of the petitioner's family, the respondents had granted compassionate appointment to the petitioner as part-time Sanitary Assistant in the year 1997 based on his educational qualification of H.S.C. and he also reported for duty. With regard to the Scheme framed for providing compassionate appointment, this Court is of the considered view that it has been introduced in order to help the family of the Government servant who dies in harness so as to tide over the immediate financial crisis and it cannot form a mode of regular appointment for all the Government posts. Taking into consideration the entire facts and circumstances of the case, the Tribunal rejected the prayer sought for by the petitioner.

7.With regard to non-consideration of the petitioner to the vacancies that arose is concerned, it appears that among rota-quota and other things, in the process, some irregularities had occurred while accommodating the incumbents. In this regard, it is for the respondent-authorities to take a decision as to whether rota-quota rule has to be applied in accommodating them on regular basis; whether it has to be done from the original date of appointment or not while allowing the seniority etc. The respondents to consider the same and if the petitioner is found to be eligible on the basis of seniority as against his juniors, appropriate decision be taken, within a period of three months from the date of receipt of a copy of this order.

8.The writ petition is disposed of accordingly. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

KM

To

1.The Director of School Education,
Government of Puducherry,
Puducherry.

2.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai-600 104.

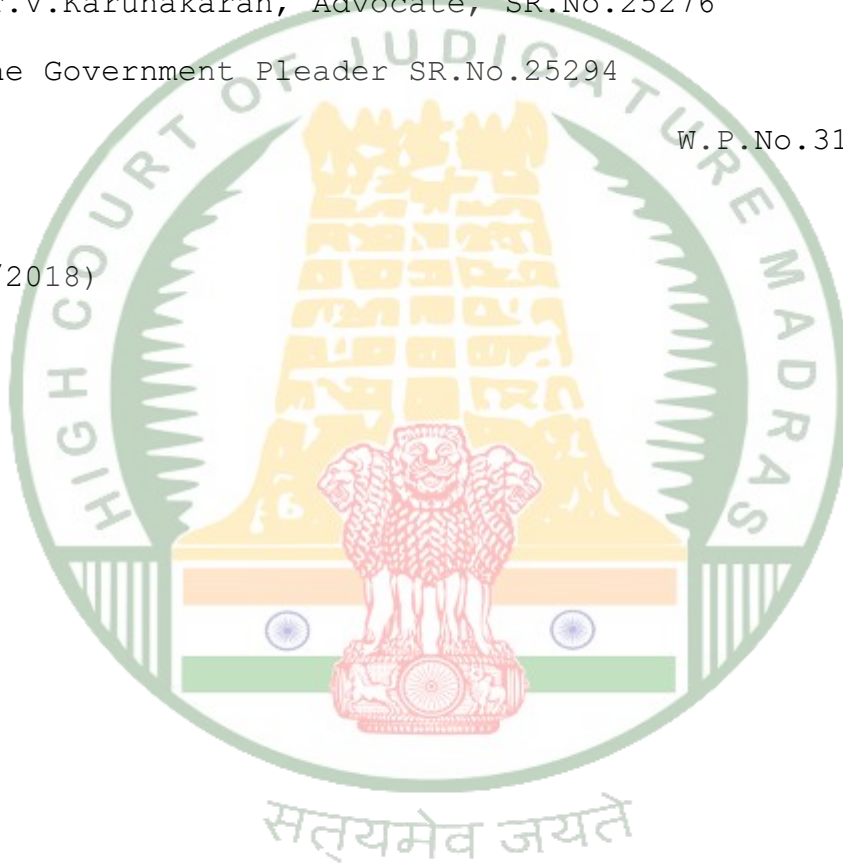
+1cc to Mr.V.Karunakaran, Advocate, SR.No.25276

+1cc to the Government Pleader SR.No.25294

W.P.No.31016 of 2017

KAN(CO)

RRK(21/05/2018)



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