

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.06.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20252 of 2015

and W.M.P.No.9404 of 2016

I.Sam Xavier

..Petitioner

vs

1.The Secretary to Government,
Public (Administration) Department,
Secretariat, Chennai - 600 009.

2.The Additional Secretary,
Public (Administration) Department,
Secretariat, Chennai - 600 009.

3.The Principle Accountant General (A & E),
Tamil Nadu, Chennai- 600 018.
(R-3 is impleaded as per order dated:14.03.2016
by M.M.SJ. in WMP.5874/2016
in WP.No.20252/2015.)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders in (1) Government Lr.No.17905/Admn.1 (Ma).Sa.Ma./2014-4, dated 06.11.2014 of the second respondent (2) Government Lr.No.36968/Admn.1 (Ma) Sa.Ma./2014-1 dated 30.03.2015 of the second respondent and (3) Government Lr.No.14874/Admn.1 (Ma). Sa.Ma/2015-1 dated 19.05.2015 of the second respondent, to quash the same and to issue consequential directions to the respondents to provide appointment to the petitioner's elder son, Thiru.S.Vijay Xavier, on compassionate Grounds consequent on the retirement of the petitioner on medical invalidation w.e.f. 09.06.2014 and also to sanction and disburse pensionary benefits to the petitioner with interest.

For Petitioner : M/s.M.Ravi

For RR1 & 2 : Mr.M.Elumalai,
Government Advocate

For R3 : No Appearance

O R D E R

The order of rejection issued by the respondents in respect of the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2. The writ petitioner initially joined as Office Assistant in the Tamil Nadu Secretariat in the year 1985 and subsequently promoted to the post of Record Clerk in the year 2006. The petitioner underwent Laparoscopy Surgery on 05.01.2008 and subsequently underwent Angiogram treatment and surgery on 27.04.2009. On account of an ailment, the writ petitioner submitted an application permitting him to retire on the ground of medical invalidation. The writ petitioner submitted his representation on 29.11.2013 seeking permission to retire him on medical invalidation and to provide appointment for his elder son one, Mr.Vijay Xavier on compassionate grounds. At that point of time, the writ petitioner had not completed 53 years of age as his date of birth was 03.01.1961. This apart, his elder son was also eligible for appointment on compassionate grounds. The first respondent issued an order in G.O.No.439 Public (Admn.2) Department dated 09.06.2014 permitting the writ petitioner to retire from service on medical invalidation with effect from 09.06.2014 based on the recommendations made by the Medical Board, Rajiv Gandhi Government General Hospital, Chennai. However, the claim of the writ petitioner to appoint his elder son on compassionate grounds had not been considered by the respondents. Thus, the petitioner made further representation seeking compassionate appointment to his elder son. The same had not been considered. The respondents issued an order in proceedings dated 06.11.2014 stating that after allowing the writ petitioner to retire from service on the ground of medical invalidation, the application to provide compassionate appointment to the elder son of the writ petitioner Mr.Vijay Xavier had been considered. However, the claim was rejected on the ground that as per the terms and conditions of the compassionate appointment, the elder son of the writ petitioner had not fulfilled the required eligibility. Again the respondents passed an order of rejection stating that earlier request of the writ petitioner to provide appointment to his elder son had been rejected on 06.11.2014. Once again, the petitioner submitted an application on 13.11.2014. The same also was rejected on the ground that there is no provisions to provide appointment to the son of the writ petitioner. The impugned order has been issued on 19.05.2015 which states that as per the terms and conditions of the scheme of compassionate appointment, an employee allowed to retire from service on the ground of medical invalidation before attaining the age of 53 years, his dependents, wife or son, are not eligible for compassionate appointment.

3. It is made clear that the learned Government Advocate also contended that as per the terms and conditions of the scheme of compassionate appointment, an employee allowed to retire on medical invalidation after completion of the age of 53 years, the dependents are eligible to submit application seeking compassionate appointment. If the medical invalidation was accepted before attaining the age of 53 years, then, the benefit of scheme of compassionate appointment cannot be extended to the family members of the applicant. If it is the terms and conditions of the scheme of compassionate appointment, then court cannot extend the scope of the scheme or dilute the terms and conditions stipulated by the Government in its Order.

4. The scheme of compassionate appointment is an exception and provided as a special scheme. The terms and conditions stipulated in such special schemes cannot be diluted or extended so as to affect the constitutional rights of all other eligible candidates who are longing to secure public employment by participating in the open competitive process. All appointments in normal circumstances are to be made only under the constitutional schemes and in accordance with the recruitment rules in force. Such special schemes are affecting the rights of all other candidates who are burning mid night lamps for securing public employment. The constitutional rights of millions of people cannot be deprived by extending the scope of such special schemes. Such schemes are always exception and the same are to be implemented strictly in accordance with the terms and conditions stipulated. The State also cannot extend the scope of such special schemes unnecessarily for the purpose of providing public employment. Equal opportunity in public employment is the constitutional mandate. Providing such concession by violating the terms and conditions, then the equality principles enshrined under the constitution are violated. At the outset, in the event of extending the scope of such special schemes, Articles 14 and 16 of the Constitution of India are certainly violated. Thus, the State must be cautious in introducing and implementing such special schemes for providing public employments and it is for the State to restrict the same to the maximum possible and provide public employment by allowing all the eligible persons to participate in the competitive process. The people should get best public services from the State. If meritorious candidates are selected and appointed through open competitive process then the level of the public administration will not only improve, but will be beneficial to the public at large. The public interest also to be looked into by the State, while extending such special schemes like compassionate appointment.

5. This being the legal principles to be followed, the

order of rejection passed by the respondents on the ground that at the time of submission of the application seeking medical invalidation, the writ petitioner had not completed 53 years of age, is in accordance with the terms and conditions and there is no infirmity as such. Thus, the writ petitioner has not established any legally acceptable ground for the purpose of considering the grounds and the relief as such sought for in this writ petition6.

6. Accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Public (Administration) Department,
Secretariat, Chennai - 600 009.
- 2.The Additional Secretary,
Public (Administration) Department,
Secretariat, Chennai - 600 009.
- 3.The Principle Accountant General (A & E),
Tamil Nadu, Chennai- 600 018.

+1cc to Mr.M.Pavi, Advocate SR.No.38514

W.P.No.20252 of 2015

SKS (CO)
GN(04/07/2018)

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