

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2018

CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI
W.P.No.24511 of 2017 and
WMP. No. 25883 of 2017

S.Mohan

...Petitioner

..vs..

1.The Secretary to Government,
Home (Transport IIA) Department),
Fort St. George, Chennai-9.

2.The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-5.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the 2nd respondent in R No.6903/RII/2017 (EO No.488/2017) dated 28.08.2017 and quash the same and direct the respondents to accept the medical invalidation of the petitioner as recommended by the Medical Board and further direct the respondents to appoint the petitioner's son Tr.M.Rajeshkumar on compassionate ground on the ground of medical invalidation of the petitioner, within a reasonable time.

For Petitioner : Mr.K.Venkatramani
Senior Counsel
for Mr.M.Muthappan

For Respondents: Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the the impugned order passed by the second respondent in R No.6903/RII/2017 (EO No.488/2017) dated 28.08.2017, by which the representation of the petitioner seeking to accept the medical invalidation of the petitioner as recommended by the Medical Board and to provide compassionate appointment to his son, has been rejected, on the ground that the same is not within the norms, as prescribed in G.O.Ms.No.168, Labour and Employment Department, dated 19.10.2000 and Employment (Q1) Department, dated 13.02.2009. He also sought for a direction to the respondents to provide compassionate appointment to his son, by

accepting the medical invalidation of the petitioner.

2. The case of the petitioner is that while he was serving as a record clerk in the Regional Transport Office (South East), Mandaveli, Chennai, in the year 2011, he had a heart attack for which he had undergone surgery. After taking the medical leave for three months, he joined the duty. But, the petitioner being incapable of performing his duty, made a representation on 29.11.2012 to the Regional Transport Officer, Chennai (South East) requesting to accept his medical invalidation and to provide job for his son on compassionate grounds. Due to contemplation of the disciplinary proceedings to be initiated against the petitioner, his request was not considered and he was not permitted to retire. Subsequently, the disciplinary proceedings has been withdrawn against him and in the meanwhile, the petitioner reaching the age of superannuation got retired from service. Thereafter, the impugned order came to be passed, rejected the representation of the petitioner to allow him to retire on the ground on medical invalidation from the date he attended 53 years. Hence, the petitioner has come forward to file this Writ Petition, seeking for the relief as stated supra.

3. A counter affidavit has been filed by the respondents stating that the petitioner has already retired from service on attaining the age of Superannuation and he had also admittedly not made any representation for retirement on medical grounds as well as for compassionate appointment, before reaching the age of 53 years and such representation have been made after only crossing the age limit for 53 years as prescribed. Hence, the claim of the petitioner is devoid of merits in view of G.O.Ms.No.168, Labour and Employment Department, dated 19.10.2000 and Employment (Q1) Department, dated 13.02.2009 and as such liable to be dismissed.

4. On consent of the parties, this case is taken up for disposal at the stage of admission.

5. During the course of hearing, it is submitted that since the petitioner was suffering from illness before he attended the age of 53 years and was on medical leave, even if after attending the age of 53 years, he had made application for retirement on the ground of medical invalidation and appointment of his son on compassionate ground which could not be accepted in view of the disciplinary proceeding and in the meanwhile, he has superannuated and the disciplinary proceeding has been dropped against him, rejection of his prayer in this regard on the ground of superannuation was unjust and improper. It is further submitted that he is ready and willing to surrender all the benefits that has accrued to him from the services after 53

years and shall only claim the benefit that could have accrued to him with regard to pension and other benefits on the date he attended 53 years, if he is allowed to superannuate on the day on the ground of medical invalidation and his son is given employment on compassionate ground. Reliance has been placed on a decision of the Apex Court in the case of V. Sivamurthy and others Vs. State of Andhra Pradesh and others reported in 2008 4 CTC 446, wherein the Apex Court have held that while upholding the scheme of compassionate appointment on ground of medical invalidation to be constitutionally valid, interpreting with regard to the provisions of the left over period of service to extend the benefit of compassionate appointment to the Government servant taking retirement on medical invalidation ground, with regard to the rule of State of Andhra Pradesh, have held as follows:

"19. The 'five year left over period' is capable of being commenced with reference to any one of the following dates : (i) the date of application by the Government servant for medical invalidation; (ii) the date of report of the Medical Board certifying that the Government servant required to be medically invalidated; (iii) the date of recommendation by the State/District Level Committee in regard to medical invalidation; and (iv) the date of issue of orders of retirement on medical invalidation.

20. The contention of the appellants is that once an application is made by a government servant at a point of time when the left over period of service is more than five years, the medical examination by the Medical Board, recommending process by the District/State Level Committees and consideration and decision by the state government, are not in the hands of the Government servant and therefore neither he nor his dependant should be punished by denying compassionate appointment on account of delays on the part of the authorities. The appellants therefore contend that the eligibility should be determined with reference to date of application and not with reference to date of sanction. But the terms of the scheme are clear. The benefit of compassionate appointment is available to a son/daughter/spouse of a government servant who retires from service on medical invalidation five years before attaining the age of superannuation. Under the scheme therefore, the five year cut off period commences from the date of retirement from service on medical invalidation and not from the date of application by the government servant for retirement on medical invalidation. This was also clarified in the G.M dated 25.6.1999 which forms part of the scheme. The issue is not what is most advantageous to the government

servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the Government servant should be adopted. The question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference merely because the court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a government servant may lose the benefit of the scheme, is no ground to relax the terms of the scheme. If in a particular case the processing of an application is deliberately delayed to deny the benefit to the government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to process the application (through medical Board, local/State level Committee and the government) is reasonable, the government servant cannot contend that relief should be extended, even if the left over period is less than five years. Let us give an example. If an application for compassionate appointment on the ground of medical invalidation is given five years and one week before the date of superannuation, obviously the Government servant cannot expect the entire process of scrutiny, medication examination, recommendation and consideration at three levels should be completed in one week. He cannot contend that when he had made the application the left over period was more than five years and therefore his dependant is entitled to appointment. As stated above these are matters of policy and courts will not interfere with the terms of a policy, unless it is opposed to any constitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness."

(underline are mine)

6. Placing reliance on the same it is submitted by the counsel appearing for the petitioner that since the application of the petitioner in this case could not be processed on the ground of contemplated disciplinary proceeding and in the meanwhile he having retired being exonerated in the disciplinary

proceeding his such prayer could not have been rejected on the ground he has in the meanwhile crossed the age of 53 years and superannuated. Therefore, he submits to set aside the impugned order and direct the respondent to consider the case of the petitioner's retirement on the ground of medical invalidation and extend the benefit of compassionate appointment to the son of the petitioner.

7. In response, the learned counsel appearing for the State respondents would submit that in this case the petitioner had never made the applications before he attended the age of 53 years. No doubt he was on medical leave but very applications having been made by him after attending the age of 53 years, even if the same was not accepted on the ground that a disciplinary proceeding is contemplated against him which was later on drawn and dropped, still the same does not enure to the benefit of the petitioner. It is submitted that since the petitioner has no left over of service by the time he made the application the therefore the reliance placed on the decision is of no assistance to the petitioner. The writ petition therefore is liable to be dismissed.

8. After hearing the counsel for the parties and going through the relevant rules, prevailing in the State of Tamil Nadu in respect of compassionate appointment on the ground of the compassionate appointment to the dependant of a Government Servant in the State of Tamil Nadu and also the decision cited supra, I am of the view that the petitioner appears to have no case inasmuch as for availing the benefit of medical invalidation a person who had otherwise no impediment for taking retirement must have the left out service of five years by the time he was allowed to retire on the ground of medical invalidation. For that, an application before the left out service of five years is a must. It is only when a person made an application well ahead of five years of service seeking retirement on the ground of medical invalidation but the application is not attended to and deliberate delay was made in entertaining the same and in the meanwhile by the time the application is accepted he has left out service fallen short of five years, then in such a case the Government servant is required to be extended the benefit of the compassionate appointment to his dependants notwithstanding the fact that he has less than five years left out service by the time he was allowed to superannuate on medical invalidation ground. Here in this case, admittedly the petitioner had made no such application before attending the age of 53 years much less well ahead of 53 years and as such by the time he had made the application to seeking retirement on the ground of medical invalidation he has not left out service of five years. When he had no left out service of five years by the time, he made the

application seeking retirement on the ground of medical invalidation and compassionate appointment of his son even if the same was not attended to, the petitioner thereafter cannot be heard of saying that since the same was not accepted in time and prior to attending the age of 53 years as he was having left out service of more than five years and he being on medical leave, he has a case for seeking retirement on the ground of medical invalidation and compassionate appointment of his son. The decision rendered therefore in the case of V.Sivamurthy (supra) having no application to the facts and situation, the same is of no assistance to the petitioner.

9. The petitioner's case therefore, not being covered by the aforesaid G.O.Ms.No.168, Labour and Employment Department, dated 19.10.2000 and Employment (Q1) Department, dated 13.02.2009, which is a policy decision of the Government, the petitioner appears to have no case. Hence, rejection of the representation in this regard vide the impugned order to extend him the benefit of superannuation on medical invalidation by allowing him to retire on the said ground, appears to suffers from no illegality warranting an interference of this Court. Accordingly, the writ petition filed by the petitioner is devoid of merits and as such the same stands dismissed. However, in the circumstances there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Transport IIA) Department),
Fort St. George, Chennai-9.

2. The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-5.

+1cc to Mr.M.Muthappan, Advocate, SR.64523
+1cc to the Government Pleader, SR.64571

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SV(CO)
rrs 16/10/2018