

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.16564 of 2018

G.Manikandan

.. Petitioner

-vs-

1.Union of India,
rep. by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.

2.The Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai - 600 017.

3.The Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104,
rep. by its Registrar.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari Mandamus calling for the records of the third respondent pertaining to its order which is made in O.A.No.310/01653/2016, dated 06.04.2018 and quash the same, consequent to direct the respondents 1 and 2 to appoint the petitioner on compassionate grounds in any one of the Group-C post on considering his educational qualifications.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.G.Karthikeyan
Asst. Solicitor General
for respondents 1 and 2

ORDER

(Order of the Court made by The Hon'ble Chief Justice)

The petitioner has preferred this writ petition against the order dated 06.04.2018 of the Central Administrative Tribunal, Chennai Bench, Chennai in O.A.No.310/01653/2016. By the said order, the O.A. preferred by the petitioner came to be dismissed. In the O.A., the petitioner had prayed for directions to the respondents 1 and 2 to appoint him on compassionate ground in any one of the post including as GDS considering his long years of service as an outsider.

2. It is not disputed that the father of the petitioner expired on 19.1.1996 while working as Postman leaving behind his wife, old mother and five sons, including the petitioner. At the time of the death of the father of the petitioner, the petitioner and his brothers were minors. The petitioner's mother submitted a representation for appointment on compassionate ground, which was approved against Group 'D' NTC cadre. As there was no vacancy, the mother was put on wait list. In compliance of the DOP&T OM dated 24.11.2000, the Department vide a letter dated 8.2.2001 directed that maintaining of wait list for approved candidates shall be discontinued. The wait list was, therefore, dispensed with, with effect from 25.7.2001. Admittedly, this was not challenged by the mother of the petitioner.

3. The case of the petitioner is that in 2003 his mother fell ill and she could not approach the Central Administrative Tribunal to seek remedy like others. She, therefore, made a request for appointing her son, the present petitioner, on compassionate ground. However, during the course of arguments, the learned counsel appearing for the petitioner conceded that the mother of the petitioner had not made any application to authorities to consider the petitioner on compassionate ground.

4. The second respondent allowed the petitioner to work as an outsider at Business Post Centre, T.Nagar Post office. According to the petitioner, he has been working continuously for the past 13 years as an outsider in the Department, hence, he should be appointed on compassionate ground. According to the petitioner, though he made an application in the year 2016 for appointment on compassionate ground, the said application has not yet been considered.

5. Though wait list for approved candidates was discontinued in the year 2001, a decision was taken to consider such wait listed candidates for the vacant posts of GDS, if they are willing. It is an admitted fact that though the mother of the petitioner was asked, she did not respond. According to the respondents 1 and 2, as the mother of the petitioner did not respond, she was not offered GDS post.

6. No doubt, the direction to discontinue the wait list was challenged before the Tribunal in a batch of Original Applications, which came to be allowed by order dated 28.3.2002. Thereafter, the Department has challenged the same before this Court in W.P.No.38990 of 2002 etc., batch and the same came to be dismissed by a common order dated 13.6.2007. Hence, the respondents 1 and 2 have preferred SLPs before the Hon'ble Supreme Court being Civil Appeal No.7773 of 2009 (Union of India and another v. M.Nallavan) etc. batch. The mother of the petitioner was not one of the respondents before the Apex Court, nor she had taken steps for impleading her in the said matter. It may be stated that the Apex Court, in its common order dated 30.7.2010, has clearly stated that findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be pending.

7. It may be stated that action of the Department and discontinuing the wait listed candidates stands confirmed by the order of the Apex Court setting aside the findings and observations of the Tribunal and the High Court, hence, the validity of the order issued by the Department to discontinue the wait listed candidates cannot be challenged after the judgment of the Supreme Court in the case of Union of India and another v. M.Nallavan, supra.

8. According to the petitioner, he submitted his representation dated 13.9.2016 seeking appointment on compassionate ground in any one of the cadre including GDS post keeping in view his long service rendered as an outsider. According to him, none of the members of his family were employed and, hence the penury condition still persists and therefore, the respondents 1 and 2 ought to have considered the case of the petitioner in the cadre of GDS by awarding point system as per the Circular dated 14.12.2010.

9. It is the petitioner's further contention that he should be given appointment in GDS category on compassionate ground in the place of his mother, because his mother although approved as compassionate appointee, was denied the said appointment. As far as this

contention is concerned, it is seen that the mother of the petitioner did not respond when she was offered the vacant post of GDS and thereafter, the wait list was discontinued in 2001. The learned counsel for the petitioner also fairly admitted that the mother of the petitioner had not made any request to the respondents 1 and 2 for appointment of her son i.e., the petitioner. The record shows that the petitioner was merely engaged as an outsider.

10. According to the learned counsel for the petitioner, the respondents 1 and 2 engaged the petitioner as an outsider in the year 2003 only on the ground that his mother could not be given regular appointment, even though, her case was approved for compassionate appointment and by virtue of the said engagement, he had served as an outsider for the last 13 years and hence, he is eligible for regularisation. Hence, the compassionate appointment given to his mother be transferred in his name since his mother's right to appointment on compassionate ground did not fructify.

11. No doubt, the mother of the petitioner was earlier approved to be a candidate for compassionate appointment. However, though she was offered post of GDS, she did not take it up. Thereafter, the wait list was discontinued. There is no record to substantiate that the petitioner was appointed as an outsider on the ground that his mother could not be given regular appointment. Moreover, it is to be noted that as per DOP&T order circulated on 9.10.1998, there is no provision for replacement of approved candidates.

12. We may state that the request of the petitioner in his representation dated 13.9.2016 for appointment as GDS is not covered under the Rules. The GDS selection and engagement are covered by separate set of Rules and there is no provision for absorption as GDS considering the services rendered as outsiders.

13. It is categorically denied by the respondents 1 and 2 that the petitioner was engaged as an outsider in the place of his mother. According to them, the engagement of the petitioner is independent of his mother's case and the mother never came before the respondents 1 and 2 seeking appointment on compassionate ground for the petitioner. Once the case of the mother of the petitioner was approved, there was no right in existence for the petitioner to be considered on compassionate ground.

14. The learned counsel for the petitioner placed reliance on the decision of this Court dated 31.10.2011 in

W.P.No.22582 of 2008 (Union of India and others v. L.Nagaraj and another). He pointed out that in the said case the mother had applied for appointment on compassionate ground, which was favourably considered by the Department, however, thereafter, the son was granted compassionate appointment. On perusal of the said decision, it is noticed that the mother after applying for appointment on compassionate ground expired. It was in such circumstances that the respondent therein sought appointment on compassionate ground and was granted the same. In the present case, the mother of the petitioner is very much alive, hence, this decision would not apply to the case of the petitioner.

15. Thereafter, the learned counsel for the petitioner placed reliance on another decision of this Court dated 9.10.2014 in W.P.No.26851 of 2014 (Union of India and others v. C.Lakshminarayanan and another). In the said case, it is seen that a widow had submitted an application for compassionate appointment and she was offered an appointment as Group 'D' staff. However, she expressed her difficulty in working as Group 'D' staff on account of her poor health condition, hence, she made an application requesting to give compassionate appointment to her son. Admittedly, in the present case, there is no application by the mother that the petitioner should be given compassionate appointment in her place. Thus, it clearly emerges that the petitioner's case is not similarly situated to the two cases on which reliance is placed, hence, they would be of no help to the petitioner.

16. In the present case, the petitioner is seeking transfer of the right of the mother for compassionate appointment in his name without any application being made by the mother. The Central Administrative Tribunal was right in holding that this cannot be allowed. As stated earlier, the mother of the petitioner had never sought for compassionate appointment of the petitioner. The petitioner was the third son among five sons of the deceased employee Mr.K.Ganesan and was 10 years old in 1996 i.e., at the time of the death of his father. In the year 1996, all the five children, including the petitioner were minors. On going through the O.A., it is noticed that nowhere in the O.A., the petitioner had referred to or filed any record to show that the mother even sought appointment of the petitioner in her place.

17. The family composition of the deceased employee Mr.K.Ganesan shows that in the year 1996 when the father of the petitioner expired, his mother was 33 years. At that time all the five sons, including the petitioner were

minors. They were 13, 11, 10, 8 and 5 years old respectively. At that time, the petitioner was 10 years old. By the year 2012, all had attained majority. As stated earlier, the mother of the petitioner, at no point of time, recommended the petitioner for compassionate appointment. There is also nothing to show that she chose the petitioner for the appointment in her place from among the five sons, the evidence of which would have been by way of a No Objection Certificate produced by the four other brothers. Hence, there is no proof to show that the petitioner was ever recommended by his mother for compassionate appointment in her place. The Central Administrative Tribunal has considered all these facts and thereafter, dismissed the O.A.

18. In view of the facts stated above, we find no merit in this writ petition, hence, it is dismissed. No costs.

Sd/--

Assistant Registrar(Co)

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Sub Assistant Registrar

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To

- 1.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.
- 2.The Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai - 600 017.
- 3.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

+1cc to Mr.R.Malaichamy , Advocate SR.No. 61903
+1cc to Mr.G.Karthikeyan , Advocate SR.No. 61585

W.P.No.16564 of 2018

ASK(05/10/2018)