

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No. 28782 of 2012

K.Muniappan

... Petitioner

Vs

1. The Indian Oil Corporation Limited,
rep. By its Chairman cum Managing Director,
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
Chennai-600 034.

2. The Deputy General Manager (HR),
Indian Oil Corporation Ltd.,
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
Chennai-600 034.

... Respondents

PRAYER : 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 order passed by the 2nd respondent bearing P/1121/ED dated 20.07.2010 and to quash the same and consequently direct the respondents to provide appointment to the petitioner herein under Rehabilitation Assistance Scheme within a time frame.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.Anand for

M/s.T.S.Gopalan & Co. for RR1 and 2

O R D E R

Heard Mr.K.M.Ramesh, learned counsel for the petitioner and Mr.Anand, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent bearing P/1121/ED dated 20.07.2010 and to quash the same and consequently direct the respondents to provide appointment to the petitioner herein under Rehabilitation Assistance Scheme within

a time frame."

3. The case of the petitioner is as follows:-

The petitioner's father Mr.V.Kulandaivelu was employed as Chargeman in the respondent Corporation. He died on 08.02.2009 while in service. The petitioner belongs to Scheduled caste community. On the death of his father, the mother of the petitioner had applied to the respondent Corporation seeking appointment on compassionate ground in the prescribed format on 20.05.2009. According to the petitioner, he has passed 10th Std. and acquired I.T.I. (Electrical) Certificate after undergoing two years Diploma Course.

4. The respondent Corporation has a scheme called Rehabilitation Assistance Scheme, which provides for employment assistance to the wards of the employees of the Corporation. In response to the application, the petitioner was called for interview on 23.09.2009. After the conclusion of the interview, the 2nd respondent directed the petitioner to undergo pre-employment medical examination and accordingly, the petitioner underwent the examination. However, after subjecting himself to the selection process, no further action was forthcoming from the respondents.

5. The petitioner, on enquiry, came to know that the respondent Corporation had entertained certain doubt about the physical fitness of the petitioner, in view of the death of his father due to kidney failure. Therefore, he appeared before the renowned Urologist in Madras Institute of Urology and a certificate was also issued stating that the petitioner had normal renal parameters. Thereafter, the said certificate was also forwarded to the 2nd respondent and in response to that, the 2nd respondent issued a letter on 04.06.2010 directing the petitioner to appear before the Medical Board constituted by them.

6. The Medical Board which examined the petitioner, had given its opinion as follows :-

"On the basis of the above, the Medical Board is of the opinion that Mr.Muniappan has

1. Autosomal dominant polycystic kidney
2. Hypertension
3. A positive family history of autosomal dominant polycystic kidney disease - His father died at the age of 51 years of end-stage kidney disease. He was diagnosed to have polycystic kidney.

Based on the above facts, medical literature review and our experience Board is of the view that there is a high possibility of Mr.Muniappan getting into

- 1.urinary tract infection

2. Obstructive Uropathy
3. Hematuria (passing blood in the urine)
4. Developing renal impairment (raise-up blood urea and creatinine). He is likely to face the problem in the fourth or fifth decades.
The above problems could manifest during his fourth or fifth decades of life and result in frequent medical consultation/admission and investigations. The Board concurs with the opinion of the Corporation Mr.Muniappan is not fit for employment."

7. According to the report of the Medical Board, the petitioner may have some kidney related ailment in future, that too, during his fourth or fifth decades of life. Strangely, on the basis of such medical report, the second respondent issued a communication dated 20.07.2010, rejecting the claim of the petitioner for compassionate appointment. The said communication is impugned in the present writ petition.

8. Upon notice, learned counsel appearing for the respondents, entered appearance and stoutly resisted the claim of the petitioner. The learned counsel appearing for the respondents would submit that it is not a fundamental right to be appointed on compassionate ground, since the candidate has to satisfy all the requirements, which are provided in the scheme framed by the respondent Corporation. Since the duly constituted Medical Board has given its opinion about the health condition of the petitioner, the Corporation is duty bound to accept the report. Therefore, on accepting the same, the impugned communication was issued, rejecting the claim of the petitioner.

9. On the other hand, the learned counsel for the petitioner would submit that the report of the Medical Board does not say anything about the present health condition of the petitioner and it only speculated about the health being affected to the petitioner in the fourth or fifth decades. Therefore, such opinion of the medical board cannot be relied upon for the purpose of denying compassionate appointment to the petitioner. In any event, such report cannot be the basis for any adverse decision, particularly, in regard to the claim for compassionate appointment when the petitioner satisfies the other criteria for being considered for compassionate appointment.

10. This Court has considered the rival submissions of the learned counsel on both sides, but, in agreement with the submission made on behalf of the petitioner. This Court is unable to see any justification for rejecting the claim of the petitioner for compassionate appointment on the basis of such medical opinion given by the Medical Board. From the opinion of

the Medical Board, it could be seen that nowhere the Medical Board has opined that the petitioner was not fit for employment presently and it was mere a medical speculation that the petitioner's health may get affected in future. Such speculative opinion cannot be given credence for the purpose of rejecting the claim of the petitioner. This Court is unable to appreciate as to how the authorities could place reliance on such report for refusing the claim of the petitioner for compassionate appointment. This Court is therefore of the considered view that the rejection of the claim on the stated ground, is without any justification and the same is unsustainable in law.

11. In view of the above, the impugned communication in P/1121/ED dated 20.07.2010, issued by the 2nd respondent is hereby set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment, on being satisfied with the eligibility of the petitioner on other aspects, the respondent Corporation is directed to give appointment to the petitioner in any suitable post on the basis of his educational qualification. The respondents are directed to comply with the direction as given above, within a period of four weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Chairman cum Managing Director,
The Indian Oil Corporation Limited,
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
Chennai-600 034.

2. The Deputy General Manager (HR),
Indian Oil Corporation Ltd.,
"Indian Oil Bhavan",
139, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.52720

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.52775

W.P.No.28782 of 2012

VSN II (CO)
GSP (25/09/2018)



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