



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD) No.4194 of 2011

and

MP (MD) No.1 of 2011

A.S.Gandibhan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department, Secretariat,
Chennai - 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division,
By-pass Road, Madurai.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
No.19, Trivandram Road,
Vannarpettai Post,
Tirunelveli - 627 003.

4.The Branch Manager,
Tamil Nadu State Transport
Corporation (Madurai Division-3) Limited,
Nagercoil Post,
Kanyakumari District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd Respondent in Letter No.0050/Ni.Ya.1/TNSTC/Thi.Li./11-4 dated 21-01-2011 and quash the same and consequently direct the respondents to provide employment to the Petitioner on compassionate grounds based on the G.O.Ms.No.10 Labour and Employment Department dated 13.02.2009 and Educational Qualification.

For Petitioner : Mr.M.Saravanakumar

For Respondent 1 : Mr.R.Sethuraman,

Special Government Pleader

For Respondents 2 to 4 : Mr.Sathya Singh

ORDER

The order of rejection issued by the third respondent in proceedings dated 21.01.2011 in respect of the claim of the writ petitioner for appointment on compassionate ground, is under challenge in this writ petition.

2.The learned counsel for writ petitioner states that the father of the writ petitioner Shri.S.Selva Perumal was employed as a Driver in the Transport Corporation and subsequently was relieved from service on 31.12.1998, based on his application for voluntary retirement .

3.The learned Counsel for the writ petitioner made submissions that the father of the writ petitioner submitted an application, in view of his ill-health and he was suffering from Leprosy. Thus, the petitioner's father submitted an application for voluntary retirement. The learned Counsel for the petitioner states that since the application for voluntary retirement was submitted, on account of the ill-health, the claim of the writ petitioner ought to have been considered, for providing appointment on compassionate grounds. However, the learned counsel for the petitioner admits that the writ petitioner was not medically invalidated by the competent medical board. The learned counsel further states the respondents have not sent the father of the writ petitioner for medical examination. Therefore, he had submitted an application for voluntary retirement. May that it be, the fact remains that the writ petitioner's father was not subjected to medical examination by the competent medical board and no medical report was issued to consider his case for medical invalidation by the competent authorities. Thus, the respondents had relieved the father of the writ petitioner from service, based on his application seeking voluntary retirement.

4.The order dated 21.01.2011, enclosed at page number 25 of the typed set of papers, categorically states that the writ petitioner was relieved from service, on account of his request application, on medical grounds. In this view of the matter, the scheme of compassionate appointment cannot be extended in cases, where employees were allowed to retire based on their request applications. Even, in cases where employers were not properly sending the employees for medical examination and if any right was infringed, it is for the employees to approach the appropriate Court of Law for redressing their claims in respect of medical invalidation.

5.In the present case, no such steps were taken by the father of the writ petitioner. Contrarily, the father of the writ petitioner submitted a request application for voluntary retirement. The request application was allowed, the father of the writ petitioner was relieved and all the terminal and pensionary benefits as applicable under the voluntary retirement scheme were settled, in favour of the father of the writ petitioner. This apart, the father



of the writ petitioner is receiving the pension as applicable to the cases of voluntary retirement scheme. The terms and conditions for medical invalidation is entirely different than that of the terms and conditions for voluntary retirement.

6. Thus, there cannot be any comparison in respect of the voluntary retirement scheme and medical invalidation scheme. The pension applicable to the cases are also distinct. The scheme of compassionate appointment is extended only in respect of the cases, where the employees were allowed to retire from service on medical invalidation. Admittedly, in the present case, the father of the writ petitioner was not allowed to retire on medical invalidation and his voluntary application was admitted by the employer and he was relieved from service. This being the factum of the case, the scheme of compassionate appointment cannot be extended to the writ petitioner and he has to secure public employment only by participating in the open competitive process.

7. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected MP(MD) No.1 of 2011 is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government, Transport Department, Secretariat, Chennai - 009.
2. The Managing Director, Tamil Nadu State Transport Corporation, Madurai Division, By-pass Road, Madurai.
3. The General Manager, Tamil Nadu State Transport Corporation (Tirunelveli) Limited, No.19, Trivandram Road, Vannarpettai Post, Tirunelveli - 627 003.
4. The Branch Manager, Tamil Nadu State Transport Corporation (Madurai Division-3) Limited, Nagercoil Post, Kanyakumari District

+1CC to Mr.M.Saravanakumar, Advocate, SR.No. 43777

+1CC to Mr.K.Sathya Singh, Advocate, SR.No. 44136

+1CC to the Special Government Pleader SR.No.44324

ORDER MADE IN
W.P(MD) No.4194 of 2011
23.01.2018