

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.10.2019
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Rev.Appl.No.205 of 2019
against
W.A.No.2766 of 2018

1. The Director General of Police,
Mylapore, Chennai - 600 004.

2. The Commandant,
Tamil Nadu Special Police I Battalion,
Trichy-2.

... Review Applicants/Appellants/Respondents

vs.

G.Sudhakar
S/o. Gopal,
No.5/67, South Street,
Maruvathur Post,
Thuraiyur Post,
Trichy District.

... Respondent/Respondent/Petitioner

Prayer : Review Application against the order dated 12.12.2018
in W.A.No.2766 of 2018.

Prayer in WA.NO.2766/2018:

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 10.01.2018 made in W.P.No.31480 of 2016.

WP.No. 31480 of 2016: Writ Petition filed under Article 226 of
the Constitution of India seeking a Writ of Certiorarified
mandamus to call for the records of the 2nd respondent in Na.
Ka. No.D1/324/2013 dt 5.3.2013 confirming the earlier orders in
Na. Ka. No.D1/2582/07 dt 23.6.2011 and quash the same and
consequently direct the 2nd respondent to forward the proposals
as directed by the 1st respondent in RC. No. 38845/CA2/2013 dt
15.3.2013 for appointment of the petitioner in a suitable job on
compassionate grounds.

For Petitioner : E.Manoharan, AGP

ORDER

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

1. This Review petition is directed against the judgment dated 12.12.2018 passed in WA.No.2766 of 2018.

2. Shorn of details, the facts leading to this review petition are:-

a) The father of the respondent one Thiru. Gopal was working as an office assistant with the Office of the Commandant in Tamil Nadu Special Police I Battalion, Trichy.

b) The said Thiru. Gopal passed away in harness on 05.06.2001. He left behind his wife, the petitioner and a sister. On the date of death of Thiru.Gopal, the petitioner though have completed 12th std but had not attained majority.

c) The petitioner made an application for appointment on compassionate basis on 17.09.2002. The application was made to the Hon'ble Chief Minister's cell. The letter was forwarded to the Office of the Director General of Police.

d) Since there was no response, a fresh representation was made on 15.06.2003. The petitioner was directed to furnish death certificate, legal heir certificate and succession certificate.

e) The Government of Tamil Nadu imposed a ban on recruitment in all the departments. The ban was lifted on 2006. The petitioner states that one Sumathi claiming herself to be second wife of Thiru.Gopal had also filed an application for appointment on compassionate basis. Since there were two applications, no decision was taken on the representation of the petitioner.

f) The petitioner states that there was an arrangement between the petitioner and Sumathi and it was agreed between them that the petitioner would entitle to seek appointment on compassionate basis and Sumathi was to take the terminal benefits.

g) The petitioner thereafter moved another application with relevant documents. On 23.06.2011, this application was rejected on the ground it was belated and could not be entertained. This order of rejection was the subject matter of challenge in WP.No.314780 of 2016.

h) The learned single judge allowed the writ petition with the direction to the Commandant, Tamil Nadu Special Police to

consider the claim of the petitioner for appointment on compassionate ground within six weeks from the date of the receipt of the order. The learned single judge held that the rejection of the application for appointment on compassionate basis on the ground that it is barred by time in as much as it was given beyond three years of the date of the death of the writ petitioner's father is wrong for a simple reason that the respondent had made application on 17.09.2002 itself.

i) The Director General of Police, Chennai and another/Review Applicants herein filed a Writ Appeal No.2766 of 2018. This Court by the order dated 12.12.2018 dismissed the Writ Appeal by observing as under:-

"In the light of the above discussion, we find no merit in the writ appeal, and the same is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is dismissed. However, it is observed that the respondent shall submit the documents such as legal heir certificate, indigent certificate from the Tahsildar and any other document required for the purpose of providing employment assistance on compassionate grounds, within a period of 15 days from the date of receipt of a copy of this order. Having regard to the scheme of compassionate ground that it should be provided immediately to tide over the financial constraint of the bereaved family and having regard to the time consumed from the date of rejection, this Court is of the view that the respondent should be provided with employment on compassionate grounds, within a period of six weeks from the date of submission of the above documents."

3) Appellants have filed instant Review petition against the said order raising the following grounds:-

"1.The order passed by the Hon'ble Division Bench needs to be reviewed as there is an error apparent on the face of records.

2. The order of the Court is against law and against the Government orders on giving compassionate ground appointment and it is not sustainable either on law or on facts.

3. The Hon'ble Division Bench ought to have taken in to consideration that as per the procedure followed for compassionate appointment, the applicants found eligible are kept in a waiting list and appointed according to their turn in the waiting list. As such as on date there are 2782 candidates are kept in the waiting list under compassionate appointment as Junior Assistant.

4. The Hon'ble Division Bench ought to have considered the fact that till 03.10.2006, the criteria for seniority was the date of application made by the individual and as per G.O.(Ms)No.135 Labour and Employment (Q2) Department dated 04.10.2006, the criteria for seniority is the date of death of the Government servant. In the instant case, the respondent herein had submitted the application to the Chief Minister's Special Cell on 17.09.2002. As such, as per the procedures, the seniority of the respondent would be received from 17.09.2002 and his seniority would be 350(A).

5. The Hon'ble Division Bench ought to have taken into consideration that as on date 350 person are kept in seniority list above the name of the respondent herein. Before providing employment to the respondent as directed by this Hon'ble Court will be against the established procedures followed as per the Compassionate Appointment Scheme.

6. The Hon'ble Division Bench ought to have considered the procedures followed in the Compassionate Appointment Scheme. Though as per the scheme, the respondent herein is not eligible for Compassionate Appointment since the application sent by the respondent to the Chief Minister's Special on 17.09.2002 cannot be taken as sent to the appropriate authority. As per the scheme, the application shall be sent to the appropriate authority only. The Chief Minister's Special Cell is not an appropriate authority. However, as per the orders of this Hon'ble High Court, if the respondent is to be provided with the employment as per the scheme, he has to be kept in the waiting list first and then would be eligible for appointment as per his seniority. Providing appointment to the respondent herein without following established procedure, by Bypassing the seniority list is not proper and against law."

4) Heard the counsel for the petitioner.

5) A Review Petition is entertained only if there is an error apparent on the face of the record. None of the grounds bring out any error apparent on the face of the record. As early as in 1961, the Hon'ble Supreme Court in Shri Ambica Mills Company Ltd., Vs. S.B.Bhatt, AIR 1961 SC 970, the Supreme Court by explaining when an error of law can be an error apparent on the face of record held that only errors which are self evident that is to say which are evident without any elaborate

examination of the merits that can be corrected, and not those which can be discovered only after an elaborate argument. In a sense it would be correct to say that an error of law which can be corrected by a writ of certiorari must be self-evident; that is what is meant by saying it is an error apparent on the face of the record, and from that point of view, the test that the error should be self-evident and should not need an elaborate examination of the record may be satisfactory as a working test in a large majority of cases. It is well settled that the scope of appellate powers and review powers are well defined. The power of review is very limited and can be exercised only when a) the person aggrieved by a decision discovers a new and important matter or evidence which, after the exercise of due diligence, was not available within its knowledge or could not be produced by him at the time when the decree was passed or order made, or the on account of some mistake or error apparent on the face of record. None of the grounds states above fall within the parametres which would compel this Court to review its own order.

6) The only ground which is raised is that the writ petitioner cannot be given an employment immediately as there are 350 person above him who are waiting to be appointed on compassionate basis and the writ petitioner cannot jump seniority. In the Contempt Petition No.1358 of 2019 filed by the writ petitioner, the same is answered thus:-

"3. The Government by an order dated 17.09.2002 has placed the petitioner in the waiting list 350-A out of 2774 candidates for appointment as Junior Assistant. It is stated in the order that the petitioner will be informed about his appointment as and when his turn comes. The order dated 10.01.2018 has been complied with. No wilful disobedience of the order dated 10.01.2018 in W.P.No.31480 is made out.

4. The learned Counsel for the petitioner states that he is not keen on the post of the Junior Assistant and he can be appointed to any post. The prayer is beyond the pleadings in the writ petition. It is up to the petitioner to make a representation for appointment in any post vacant. The first respondent can consider the representation taking note of the fact that the appointment is sought on the ground of compassionate appointment i.e. to get over the penury which is family is placed. If and when such representation is made, the Government shall pass necessary orders."

7) Therefore, order passed in W.A.No.2766 of 2018, dated 12.12.2018 requires modification to the above effect. Review Petition is accordingly disposed of.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

TO:

1. The Director General of Police,
Mylapore, Chennai - 600 004.

2. The Commandant,
Tamil Nadu Special Police I Battalion,
Trichy-2.

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ssd(co)
nr 12/11/2019