

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 299 of 2019
and
C.M.P. No. 2911 of 2019

S. Rajaraman ... Appellant/Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Joint Director of School Education (Personnel),
College Road,
Chennai - 600 006.
4. The District Elementary Educational Officer,
Cuddalore,
Cuddalore District. ... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent,
praying to set aside the order dated 24.10.2018 in W.P. No. 5931
of 2017.

Prayer in W.P.No.5931 of 2017:-Writ petition filed under Article
226 of the Constitution of India for the issuance of a writ of
Certiorarified Mandamus calling for the records relating to the
proceedings dated 08.10.2016 in Moo.Mo.En.42425/J1/2016 passed
by the 2nd respondent and quash the same as illegal arbitrary
and unconstitutional and consequently direct the respondents to
post the petitioner herein as Junior Assistant in the office of
the 4th respondent.

For Appellant : Mr. Haja Mohideen Gisthi
For Respondents : Mrs. A. Sri Jayanthi
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 24.10.2018 passed by Learned Judge of this Court in W.P. No. 5931 of 2017.

2. The father of the Appellant, viz., R. Sambandam, who was working as Headmaster in Panchayat Union Elementary School at Kattumannarkoil, died in harness on 30.05.2003 leaving behind his wife, one son and one daughter. On the application made by the Appellant, he was appointed on compassionate grounds as Driver in the office of the District Elementary Educational Officer, Manjakuppam, Cuddalore on 30.10.2008 and his service was regularized with effect from 31.10.2008 by proceedings R.C. No. 9181/A1/08 dated 01.11.2011 issued by the District Educational Officer, Cuddalore.

3. According to the Appellant, he possess qualification for the post of Vocational Instructor as well as Junior Assistant and he ought to have been appointed to either of those posts instead of the post of Driver. The representation dated 13.09.2010 made by the Appellant to appoint him as Vocational Instructor in Higher Secondary Schools was directed by this Court to be disposed by order dated 22.12.2010 in W.P. No. 29230 of 2010. After examining the claim of the Appellant in that regard, it was communicated to him by order dated 09.03.2011 that the post of Vocational Instructor comes under the Group B post, while compassionate appointment could be made only in posts under Group C and Group D and hence, his request could not be acceded. The Appellant then made another representation dated 02.02.2015 for transfer from the post of Driver to Junior Assistant, which was directed to be disposed by this by order dated 07.06.2016 in W.P. No. 19130 of 2016. In pursuance thereof, the Second Respondent by order No. 42425/J1/2016 dated 08.10.2016, after considering the report received from the Medical Board regarding his health condition, in which there was nothing to show that he was suffering from any disease or health disorder, came to the conclusion that his request for appointment to the post of Junior Assistant, could not be accepted. The Appellant challenged the said order of rejection in W.P. No. 5931 of 2017

and has sought for consequential direction to post him as Junior Assistant in the office of the Fourth Respondent. The Respondent had filed a detailed Counter Affidavit opposing the Writ Petition and while justifying the order impugned in the Writ Petition, further pointed out that for performing clerical work, physical fitness is vital.

4. The Learned Judge, who heard the Writ Petition by order dated 24.10.2018, upheld the order of rejection of the representation of the Appellant and rightly pointed out that if he wishes to secure any higher post, he has to participate in the selection in the open competition process, if any recruitment notice is issued as per rules in force and dismissed the Writ Petition. Aggrieved thereby, the Appellant has preferred this Appeal.

5. We have heard Mr. Haja Mohideen Gisthi, Learned Counsel appearing for the Appellant, Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

6. The Learned Counsel for the Appellant relying on the report in L. Dis. No. 8738/E5/2016 dated 12.09.2016 issued by the Chairman, Medical Board, Cuddalore, in which it has been opined that since the Appellant could not maintain concentration while driving, he may be considered for clerical (office) work, submitted that the request of the Appellant for change of job from Driver to Junior Assistant was justified and the Respondents may be directed to consider the same.

7. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], wherein it has been held as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of

justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

The Hon'ble Supreme Court of India in Union Bank of India -vs- M.T. Latheesh [(2006) 7 SCC 350] has cautioned that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing

population of unemployed youth. In State Bank of India -vs- Somvir Singh [(2007)4 SCC 778], it has been held by the Hon'ble Supreme Court of India as follows:-

"Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer."

8. On a conspectus of the dictum laid down in the bidding decisions referred supra, it would necessarily follow that the Appellant, who had already been granted compassionate appointment as Driver cannot make another claim for being posted as Junior Assistant and on the contrary, if any direction as sought by the Appellant is issued, it would unwittingly tantamount to unduly favouring the Appellant to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. As rightly contended by the Respondents, if the Appellant suffers from any lack of concentration, it is really questionable as to how he could be given any clerical work. The inability of the Appellant to maintain concentration while driving reported by the Medical Board cannot per se enable the Appellant to claim alternative employment. There is nothing which prevents the Appellant for competing to the appointment in any post in normal mode of recruitment as applicable to all other similarly placed persons, based on his eligibility and educational qualification and if he had not been successful in getting selected in that process, he has to only blame himself for the same.

9. We do not find any merits in the Writ Appeal and we confirm the well reasoned order dated 21.10.2018 in W.P. No. 5931 of 2017 of the Learned Judge. However, this would not preclude the right of the Appellant to invoke Section 20(4) of the Rights of Persons with Disabilities Act, 2016, which has come into force

with effect from 19.04.2017, in the manner recognized by law, if he is otherwise entitled to the benefits conferred by the same.

10. The Writ Appeal is dismissed with the aforesaid observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Principal Secretary to the Government of Tamil Nadu, Education Department, Secretariat, Fort St. George, Chennai - 600 009.
2. The Director of School Education, College Road, Chennai - 600 006.
3. The Joint Director of School Education (Personnel), College Road, Chennai - 600 006.
4. The District Elementary Educational Officer, Cuddalore, Cuddalore District.

+1 cc to Mr.S.Haja Mohideen Gisthi, Advocate Sr.No.14968

CSL/22.03.2019

सत्यमेव जयते

W.A. No. 299 of 2019

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