

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.1058 of 2018 and
W.M.P.No.1278 of 2018 and
W.P.No.4771 of 2010

W.P.No.1058 of 2018:

B.Kathiravan Kantharaj

... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House,
P.B.No.390, Anna Salai,
Chennai - 600 002.

2.The Deputy Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House,
P.B.No.390, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records made in the impugned order in Letter No.584/PP(Eng)1/ MTC/2017 dated 5.7.2017 passed by the 2nd respondent, quash the same and further direct the respondents to provide employment to the petitioner on compassionate ground to the petitioner.

W.P.No.4771 of 2010:

B.Kamala

... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House, P.B.No.390, Anna Salai,
Chennai - 600 002.

2.The Deputy Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House,
P.B.No.390, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records in Notification No.14427/pp (Engineer) 3/MTC/2007 dated 10.12.2009 on the file of the 2nd respondent and quash the same and issue an order of direction directing the 1st respondent to register the name of the petitioner in the waiting list maintained for appointments to be made on compassionate ground in the respondent corporation.

For Petitioners : Mr.P.Srinivasan
in both WPs

For Respondents : Mr.M.Chidambaram
in both WPs

COMMON ORDER

The petitioner's (in W.P.No.1058 of 2018) father was appointed as Bus Conductor in 1980 in the respondent Corporation. While he was on duty in 1994, due to mob violence, the bus, in which he was employed, was set on fire and as a result of which, the petitioner's father suffered a severe injury. He was referred to the Medical Board and on 13.08.1996 he was discharged from service on medical grounds. Since the petitioner's father was the sole bread winner of the family consisting of petitioner's mother and three sisters, an application was made on 17.10.1996 requesting the Corporation to provide petitioner's father an alternate employment. In consideration of the representation, the petitioner's father was provided an alternate employment on 20.12.1996 by posting him as Junior Office Assistant. While in service, the petitioner's father died on 13.07.2006. After his death, the petitioner's mother submitted a representation in 2006, 2007 and 2009 to consider her claim for compassionate appointment. The request of the petitioner's mother came to be rejected on the ground that the petitioner's father was already shown concession and appointed on medical grounds and therefore, further concession would not be extended by way of compassionate appointment to the petitioner's mother. The said rejection order was challenged by the petitioner's mother in W.P.No.4771 of 2010.

2.This Court, in the said writ petition passed an interim direction, directing the 1st respondent to consider the representation dated 26.04.2017 made by the petitioner herein (in W.P.No.1058 of 2018) for his claim for compassionate appointment, since at the time of direction issued by this Court on 02.06.2017, the petitioner's mother was 56 years old. While giving interim direction, the learned Judge of this Court in paragraph 4 of the order has held that the appointment under the

provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was indeed a regular appointment and not on compassionate ground. The relevant paragraph is extracted hereunder:

"4. Admittedly, the husband of the petitioner was given an alternate employment on account of disability suffered and therefore under Sec.47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is squarely applicable to the facts and circumstances of the case and it should be deemed to be a regular employment and not on compassionate ground as cited by the respondent. It is brought to the knowledge of the Court by the learned counsel appearing for the petitioner that the petitioner - wife of the deceased employee, is now aged about 56 years and even for the sake of arguments that the impugned order is going to be set aside, it may not serve any purpose and therefore, her son viz., Kathiravan Kantharaj has submitted an application seeking for compassionate ground appointment to the first respondent vide representation dated 26.04.2017, which was also acknowledged and therefore, prays for appropriate direction, directing the said official to consider and dispose of the said representation."

3. In pursuance of the interim direction passed by this Court in the aforesaid W.P.No.4771 of 2010, an order was passed by the 2nd respondent on 05.07.2017, which is impugned in this writ petition, stating the same ground that the petitioner's father was already extended the concession by giving him an alternate employment, no further concession can be extended by way of compassionate appointment. The said order is put to challenge in this writ petition.

4. The learned counsel for the petitioner would submit that already this Court passed an interim direction that providing an alternative employment is a matter of right under the Disabilities Act, 1995 and therefore, it is not a compassionate appointment at all. While so, citing the same ground the petitioner's claim for compassionate appointment was rejected and not on any other ground. He would reiterate that by no stretch of imagination, the appointment of the petitioner's father as Junior Office Assistant can be construed as appointment on compassionate ground since the person suffers from disability during the period of employment has a statutory right to be considered for alternative employment.

5. The learned counsel for the respondent Corporation has filed a detailed counter affidavit and he would submit that already concession was shown to the petitioner's father by

giving him alternate employment and once such concession was shown during his service career, after his death, no further concession could be extended to the family of the deceased employee. Moreover, the learned counsel would also submit that the authority, who rejected the request, has also considered the indigent circumstances of the petitioner's family.

6.This Court is unable to appreciate as to how the above submission could be accepted that indigent circumstances of the family of the deceased was taken into consideration, as the order does not reflect any such consideration by the authority. The order merely takes into consideration the alternate employment offered to the petitioner's father during his service under the Disabilities Act and that alone was cited for non-consideration the representation of the petitioner for compassionate appointment.

7.As rightly contended by the learned counsel for the petitioner and also as rightly observed by the learned Judge of this Court in the above extracted portion, the offer of alternate employment can never be construed as an employment on compassionate ground when a right is vested with the citizens to be given alternate employment when an employee suffers from disability during the period of his service. Such offer of alternate employment is an outcome of the statutory right conferred on the citizens and can never be said to be a concession at all under any circumstances.

8.While so, this Court is unable to appreciate as to how the request of the petitioner herein could be rejected on the sole ground that his father was given alternate employment. The reason for the rejection is per se illegal, unjust, arbitrary and unreasonable and the same cannot be sustained at all.

9.In view of the same, W.P.No.1058 of 2018 is allowed and the impugned order in Letter No.584/PP(Eng)1/MTC/2017 dated 05.07.2017 is hereby set aside. The respondents are directed to consider the request of the petitioner for compassionate appointment after taking note of the indigent circumstances including economic conditions of the family and in terms of the scheme for compassionate appointment of the Corporation and pass appropriate orders.

10.It is made clear that the Corporation would not be influenced or guided by the factor that the petitioner's father was already given alternate employment during his period of service by the Corporation. The respondents are also directed to consider the claim of the petitioner sympathetically and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

11.In view of the orders being passed in W.P.No.1058 of 2018, no further orders are required to be passed in W.P.No.4771 of 2010 and the same stands closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Sgl
To

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House,
P.B.No.390, Anna Salai,
Chennai - 600 002.

2.The Deputy Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan House,
P.B.No.390, Anna Salai,
Chennai - 600 002.

+1 CC to Mr.P.Srinivasan, Advocate sr 52629.

+1 CC to Mr.M.Chidambaram, Advocate sr 52778

W.P.No.1058 of 2018 and
W.P.No.4771 of 2010

LN(CO)
SP(12/07/2019)

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