

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.09.2019

Coram

The Honourable Mr. Justice M.DHANDAPANI

W.P.No.13948 of 2019

D. Bhakthavachalam

... Petitioner

vs.

1. The District Collector,
Kancheepuram District
Kancheepuram

2. The Thasildar,
Thirukazhukundram,
Kancheepuram District

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in Na.Ka.No.40680/2013/A4 dated 14.03.2019 and quash the same and further direct the respondents to appoint the petitioner in any of the post on compassionate ground.

For Petitioner : Mr.S. Parthasarathy

For respondents: Mr.C. Munusamy

Spl.G.P.

सत्यमेव जयते

ORDER

The petitioner has filed the writ petition seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in Na.Ka.No.40680/2013/A4 dated 14.03.2019 and quash the same and further direct the respondents to appoint the petitioner in any of the posts on compassionate ground.

2. The case of the petitioner is that he belongs to Hindu Adi Dravida Community, having three children and widow mother. His father Mr.M. Dhakshnamoorthy was working as Village Assistant in the Revenue Department, while in service on 21.11.1995 he died and at that time, the petitioner was aged about 14 years. The petitioner's mother by name Chinna Ponnu, applied for petitioner's employment in the month of December 1995 on compassionate ground. Since the petitioner was studying 9th standard, the respondent informed to approach after the petitioner became major.

3. It is the further case of the petitioner that the petitioner, after attaining majority on 21.03.2000, approached the respondents and sought compassionate appointment, but no orders was passed. Thereafter, the petitioner's mother sent a representation on 18.09.2001 seeking compassionate appointment. On 13.06.2013, the first respondent forwarded the Transfer Certificate of the petitioner to the District Educational Officer, Chengalpet to test the veracity of the documents. Thereafter, there was no response from the respondents. Therefore, on 22.09.2018, the petitioner sent a representation to the respondents stating the above said facts and sought for compassionate appointment, but no order has been passed. Thereafter, the petitioner sent another representation on 01.03.2019 to the Chief Minister Cell and forwarded a copy of the same to the respondents. The first respondent by impugned order dated 14.03.2019 in Na.Ka.No.40680/2013/A4, rejected the request of the petitioner for compassionate appointment stating that the representation was not made within three years of the death of the petitioner's father. Therefore, the petitioner has filed the writ petition seeking for the above relief.

4. The learned counsel for the petitioner would submit that the petitioner's father died on 21.11.1995, however, the petitioner made a representation on 21.03.2000 and he submitted all the records to the respondents enabling the petitioner to get appointment on compassionate ground. However, the present impugned order was passed rejecting the application on the ground that the said application was not made within three years from the death of petitioner's father.

5. It appears that the respondents have already called for an interview and after conducting enquiry, rejected the application citing the reason of submitting the application belatedly. Admittedly, the petitioner's father worked as Village Assistant in the Revenue Department and he died on 21.11.1995 while in service and at the relevant point of time, the petitioner was minor and hence, he has not come forward to file an application within three years. However, he made an application in the year 2000 and the same was rejected on the ground that the application was filed belatedly.

6. The appointing authority is competent to fix eligibility criteria for selection of compassionate appointment to a particular post. Normally the Court while exercising discretionary jurisdiction cannot relax the condition fixed by the appointing authority, unless the order of the appointing authority is arbitrary and not exercised the power available in the relevant rules or guidelines.

7. The very same issue was considered by this Court and this Court's view is supported by the judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.6468 of 2012 in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari and another, the relevant portions of which are extracted hereunder:

"7. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power

should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216; J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812).

8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

"The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."

9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial

review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 436).

10. In State of Orissa & Anr. v. Manta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.

Lacking eligibility for the post cannot be cured at any stage and appointing such a

person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1) SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

8. For the reasons stated above and applying the ratio laid down by the Hon'ble Apex Court, this Court is not inclined to interfere with the order passed by the respondent. Accordingly, the writ petition is dismissed. No costs. However, the original records possessed by the authority may be returned to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sr
To

1. The District Collector,
Kancheepuram District
Kancheepuram

2. The Thasildar,
Thirukazhukundram,
Kancheepuram District

+1 cc to Government Pleader Sr.No. 76858

+1cc to Mr.S.Parthasarathy , Advocate SR.No. 76475

W.P.No.13948/2019

kk A.SK(09/10/2019)