

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No. 299 of 2016

Ex LAC Sivan Nainar (711357 R)

..Appellant/Petitioner

-vs-

1.The Director,
Directorate General
Ordinance Factory Board Road,
10-A, S.K.Boase Road,
Kolkatta 700 001.

2.The Senior General Manager,
Heavy Vehicles Factory,
Avadi,
Chennai 600 054.

..Respondents/Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.17657 of 2009 dated 08.06.2010 on the file of the High Court of Judicature at Madras.

Prayer in WP.No.17657 of 2009 : Writ Petition filed under Article 226 of the Constitution of India praying for the issue of Writ of Certiorarified Mandamus to call for the records from 2nd respondent relating to the impugned order bearing No.1(1) ESTT/2005/NIE-DR/ACCS Heavy Vehicles Factory, Chennai -54 dated 09.01.2007 and quash the same and direct the respondents to reinstate the petitioner service with continuity of service and other service benefits.

For Appellant : Mr.S.Ayyathurai

For Respondents : Mr.A.Murugan,
Central Government Counsel

JUDGEMENT

[Judgement of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal is filed challenging the order in W.P.No.17657 of 2009, negating the prayer to set aside the termination of the services of the appellant.

2. The facts in brief are as follows:

(a) The appellant after being discharged from the service of the Indian Air Force had submitted an application to the respondents in response to their notification for appointment to the post of Assistant Cashier-cum-Supervisor in the 2nd respondent's factory. The appellant was called for a written test on 26.06.2005 and thereafter by communication dated 28.06.2005 he was asked to report to the office of the 2nd respondent with all his original certificates relating to his qualification, experience, etc. The appellant had submitted his application under the Ex-Serviceman category.

3. By letter dated 25.10.2005 he was offered appointment as Assistant Cashier-cum-Supervisor at the 2nd respondent's factory and as per the appointment order he was put on probation for a period of 2 years. Since the appellant had applied under the Ex-Serviceman category he was given an age relaxation. Therefore he was asked to produce the discharge certificate issued to him by the Indian Air Force, hereinafter called the IAF. However, the appellant despite taking time was unable to produce the requisite certificate since he had put in service of only 5 years and 32 days in the IAF and was discharged on medical grounds.

4. On 31.03.1997 in response to his request the IAF had issued him with a discharge certificate in which it was clearly mentioned that it is a discharge certificate issued to a person not falling within the category of Ex-Serviceman.

5. Thereafter on 27.12.2006, he was issued with a showcase notice by the respondents herein as to why his appointment to the Post of Assistant Cashier-cum-Supervisor under the Ex-serviceman category should not be cancelled. The appellant submitted his explanation stating that he has made out a Mercy application to the Honourable President of India for grant of disability pension and once the disability pension is given he would fall within the category of Ex-serviceman. However the 2nd respondent proceeded to terminate his services by order dated 09.01.2007. It is this order which was the subject matter of challenge in the Writ Petition.

6. The learned Single Judge dismissed the Writ Petition stating that once the appellant did not fall within the category of Ex-Serviceman then he would automatically become disqualified to hold the post as he was over aged. Challenging the said order the appellant is before this Court.

7. Heard the Learned counsels on either side.

8. Admittedly the appellant had applied to the post under the Ex-Serviceman quota and in view of the same age relaxation had been granted to him and as a result of which he was able to participate and finally appointed to the said post. If the appellant had applied in the general category his application would have been rejected at the very first instance as he was overaged. Therefore the order of the respondents cannot be found fault with. The learned Single Judge has also considered this factor while dismissing the Writ Petition.

9. We do not find any infirmity in the order passed by the learned Single Judge dismissing the Writ Petition. The Intra-Court appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director,
Directorate General
Ordinance Factory Board Road,
10-A, S.K.Boase Road,
Kolkatta 700 001.

2.The Senior General Manager,
Heavy Vehicles Factory,
Avadi,
Chennai 600 054.

+1 cc to M/s.S.Ayyathurai,Advocate Sr.No. 67451

+1 cc to M/s.A.Murugan,Central Government Counsel, Sr.No. 67792

AKM/30.10.19/3P- 5C /

W.A.No. 299 of 2016