

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 24443 of 2019

&

W.M.P.No.24186 of 2019

Mr.M.Bujaiah

..Petitioner

vs

1.The Corporation of Chennai
Rep. by its Commissioner,
Rippon Buildings,
Chennai - 600 003.

2.The Zonal Officer,
New Zone XIII
Corporation of Chennai,
Adyar
Chennai - 600 020.

3.The Secretary to Government
Municipal Administration,
Water Supply Department,
Fort St.George,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records and Quash the impugned order Ma.Aa.9.Na.Ka.No.A8/3286/04 dated 17.04.2008 and Ma.Aa.13 Na.Ka.No.A9/6186/18 dated 10.12.2018 issued by the 2nd respondent and consequently direct the respondents to appoint the petitioner on compassionate Ground basis.

For Petitioner : Mr.Beulah John Selvaraj N

For Respondents 1 & 2 : Mrs.Karthika Ashok

For Respondent 3 : Mrs.A.Sri Jeyanthi
Special Government Pleader

O R D E R

The prayer sought for is call for the records and Quash the impugned order Ma.Aa.9.Na.Ka.No.A8/3286/04 dated 17.04.2008 and Ma.Aa.13 Na.Ka.No.A9/6186/18 dated 10.12.2018 issued by the 2nd respondent and consequently direct the respondents to appoint the petitioner on compassionate Ground basis.

2. The petitioner's mother one Pencilamma was employed as a Sweeper in Division - 134 Unit - 27, New Zone - XIII under the Corporation of Chennai. She died on 18.05.2002 while she was in service leaving behind her surviving legal heirs husband Mala Kondaiah, sons Kondaiah, Chinna Kondaiah, Bujaiah (Petitioner herein) and daughters Kondamma, Chinna Kondamma respectively. The petitioner gave an application for employment under compassionate ground on 24.06.2004 to the 1st respondent and gave another applications on 20.03.2006 & 23.11.2011 to the 1st respondent. The 2nd respondent sent a reply dated 17.04.2008, stating that his application was rejected on the ground that while at the time of his mother's death his father was working in Corporation.

3. Considering the facts and circumstances of the case that the petitioner's father viz., Mala Kondaiah was working in the Corporation till 01.07.2004 and his mother died in the year 2002 itself, I do not find any merits in the case after a lapse of 15 years.

4. The appointing authority is competent to fix eligibility criteria for selection of compassionate appointment in 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 exercise the power available in the relevant rules or guidelines.

5. This Court's view is supported by the Hon'ble Supreme Court by the judgment 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. Mamta 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)."

6. For the reasons above stated 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. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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Municipal Administration,
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Chennai - 600 009.

+1cc to Mr.Kavitha ashok , Advocate SR.No. 77281
+1 cc to Government Pleader Sr.No. 77372

W.P.No. 24443 of 2019 &
W.M.P.No.24186 of 2019
A.SK(12/11/2019)

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