

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :17.09.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.23011 of 2019
and
W.M.P. No.22685 of 2019

K. Govindaraj

..Petitioner

vs.

1. The Chairman cum Managing Director
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.
2. The Chief Engineer / Personal,
Tamilnadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Thirupattur Electricity Distribution Circle,
Thirupattur.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue orders, directions or writs in particular a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the third respondent in Lr. No.557/Ni.Pi.2/Ni.U.3/Ko.Va.Vay/2017, dated 27.12.2017, confirming the order dated in Lr. No.19968/Ni.Pi.2/Ni.U.3/Ko.va.Vay/2013, dated 31.07.2013, and quash the same and consequently direct the respondent to provide suitable employment to the petitioner on compassionate grounds by relaxing the age limit.

For Petitioner : Mr. S.N. Ravichandran
For Respondents : Mr. M. Fakkir Mohideen

ORDER

The case of the petitioner is that the petitioner's father S. Krishnamoorthi was working as a wireman in the office of the Assistant Engineer, Vaniyampadi/South Section, Thirupattur Division. While he was in service he died due to kidney failure on 25.08.1990, leaving behind his wife Rajeswari, two daughters and two sons as his legal heirs. To mitigate the hardship, the petitioner's mother made application on 16.04.1993 seeking appointment to the petitioner's brother, K. Venkatesan on compassionate ground. However, the third respondent rejected the application on the ground that he did not pass VIII standard. After that, the petitioner made representations to the third respondent seeking for appointment on compassionate grounds. However, by impugned letter dated 27.12.2017, the third respondent rejected his claim on the ground that he has not fulfilled the criterion for appointment on compassionate ground as per board proceedings. Hence, the petitioner has filed this present Writ Petition seeking for certiorari.

2. The learned counsel appearing for the petitioner submitted that the petitioner's father died in the year 1990 and the petitioner's mother made application seeking employment for his elder son within a period of three years on 16.04.1993, which was rejected on the ground that he has not completed VIII standard. After passing VIII standard, the petitioner's brother again made representation on 14.02.2007 for appointment on compassionate ground, which was rejected by the third respondent on 20.03.2007 on the ground that he has crossed the age limit of 30 years. Thereafter, The petitioner made representations on 18.02.2008, 10.12.2010 and 25.02.2013 and the said application was rejected on 31.07.2013 and again the petitioner made another representation to reconsider the order of rejection dated 31.07.2013 and the same was also rejected on 27.12.2017 on the ground that the application was not made within a period of three years and at the time of the petitioner's father demise, the petitioner had not attained majority and he was a minor.

3. On perusal, it is seen that the petitioner's father died on 25.08.1990 and in the earlier occasion petitioner's mother made application on 16.04.1993 and subsequently his brother made representations and the same were rejected by the third respondent on 20.03.2007. In the present case, the petitioner's mother did not challenge the earlier rejection order and the petitioner filed another application belatedly, without challenging earlier rejection order, which is not permissible.

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 educational qualification 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. The very same issue was dealt 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 closed.

सत्यमेव जयते

Sd/-

Asst.Registrar (CJ conf)

/true copy/

Sub Asst. Registrar

bga

copy to

1. The Chairman cum Managing Director
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Thirupattur.

+1 cc to Mr.S.N.Ravichandran Advocate sr79768

+1 cc to Mr.Fakkir Mohideen Advocate sr 80489

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mp(co)
aa04/11/2019



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