

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26577 of 2019

M.Kangeyan

... Petitioner

Vs.

1.The Chief Engineer - Personal
Tamil Nadu Generation and
Distribution Corporation
144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer
Tamil Nadu Generation and
Distribution Corporation
Villupuram Region
Villupuram.

3.The Superintending Engineer
Tamil Nadu Generation and
Distribution Corporation
Kallakurichy Distribution Taluk
Kallakurichy, Villupuram District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Ka.N.2627/Ni.B.2/Udavi 5/Ko.Va.Ve/2015, dated 16.07.2015 on the file of the third respondent and quash the same and direct the third respondent to provide appointment on compassionate ground.

For Petitioner : Mr.J.James

For Respondents : Mr.Fakkir Mohideen

O R D E R

Mr.Fakkir Mohideen, learned counsel takes notice on behalf of the respondents. By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner's father was working as lineman in the Tamilnadu Generation and Distribution Corporation, Kallakurichy Distribution Taluk, Sankarapuram Sub-station, Kallakurichy and he died in harness on 15.10.1993, when he was in service. At the time of his death, the petitioner was six years and he had four sisters. The petitioner's mother was uneducated. Since, the petitioner was minor at the time of his father's death, his mother approached the office of the third respondent for providing her any suitable job on compassionate ground. Her request was rejected by the 3rd respondent on the ground that she is uneducated, however advised her that her son, the petitioner herein will be provided job on compassionate ground once he attains the age of majority. In the year 2006, the petitioner became major and has completed eight standard. Therefore, the petitioner applied for a suitable job with the respondents based on his educational qualification on compassionate ground. The 3rd respondent refused to accept his application citing that the application has been filed belatedly i.e., after three years of attaining his majority of age. Once again, the petitioner applied for appointment on compassionate ground on 21.06.2015 to the second and third respondents. The third respondent without considering the educational qualification and the age of the petitioner simply rejected the request of the petitioner and passed orders in Ka.No.2627/Ni.B2/Udavi/Ko.Va.Ve/2015, dated 16.07.2015. Aggrieved by the said order, the petitioner has filed the present petition.

3.Heard both sides.

4.It is an admitted fact that the appointing authority is competent for selection of compassionate appointment in a particular post. Normally the Court while exercising discretionary jurisdiction cannot relax any norms as 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 similar issue was dealt and considered by the Hon'ble Supreme Court in Civil Appeal No.6468 of 2012 in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari and another, the relevant portion of the judgment is 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 dated 16.07.2015 passed by the 3rd respondent. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rm
To

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Kallakurichy Distribution Taluk
Kallakurichy, Villupuram District.

+1cc to Mr.J.James , Advocate SR.No. 77325

+1cc to Mr.Fakir MOhadeen , Advocate SR.No. 77184

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A.SK(23/10/2019)



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