

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26710 of 2019

S.Dhruvidaselvi

.. Petitioner

Vs..

1.The Director General of Police,
O/o. The Director General of Police,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.

.. 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 order passed by the 2nd respondent in Na.Ka.No.F1/12006/2019 dated 08.07.2019 and quash the same and further direct the respondents to appoint the petitioner's daughter namely Karthiga on compassionate appointment in the respondent Ministerial Department.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mrs.A.Srijayanthi,
Additional Government Pleader

ORDER

The writ petition has been filed seeking a writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in Na.Ka.No.F1/12006/2019 dated 08.07.2019 and quash the same and further direct the respondents to appoint the petitioner's daughter namely Karthiga on compassionate appointment in the respondent Ministerial Department.

2. The case of the petitioner is that the petitioner's husband died due to illness on 19.10.2008, while he was in employment as Police Constable. Accordingly, on 22.08.2011, the petitioner's mother made a representation for compassionate appointment to her daughter namely Karthiga. However, on 26.08.2011, the second respondent returned the papers of the

petitioner stating that the petitioner daughter had not crossed the age of 18 years. Again in the year 2018 and 2019, the petitioner made a representation to the respondents stating that her daughter had attained majority. On 11.04.2018, the second respondent recommended the petitioner's daughter for compassionate appointment. On 15.03.2019, the petitioner made another representation to the first respondent seeking compassionate appointment for her daughter Karthiga. On 08.07.2019, the second respondent passed the impugned order rejecting the request of the petitioner on the ground, the petitioner has not made application within a period of three years. Accordingly, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that though the petitioner's daughter was a minor at the relevant point of time, when the petitioner made application within a period of three years, however, after immediately attaining majority, the petitioner made a representation for compassionate appointment. However, the application was rejected as unsustainable one. Accordingly, he prays for allowing the writ petition.

4. Considering the facts and circumstances of the case, the petitioner's husband died in the year 2008. On 22.08.2011, the petitioner's application claiming compassionate appointment for her daughter was rejected on the ground that her daughter had not attained majority. However, after lapse of seven years, the petitioner made another representation for compassionate appointment and that was also rejected. Admittedly, no person was eligible for getting appointment at relevant point of time within a period of three years. Even the petitioner did not make any representation for compassionate appointment. She made application only for her daughter. At the relevant point of time the petitioner's daughter was a minor. Hence, I do not find any error in the impugned order passed by the second respondent.

5. The very same issue is 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 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. Accordingly, the writ petition stands dismissed.
No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Police,
O/o. The Director General of Police,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.

+1 cc to M/s.S.Parthasarathy,Advocate Sr.No. 78804

+1 cc to The Government Pleader Sr.No.79365

AKM/18.11.19/5P-5C /

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