

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26764 of 2019

S.Anbarasi

... Petitioner

Vs.

- 1.The Principal Secretary to Government
Co-operation, Food and Consumer
Protection Department
Secretariat
Fort St. George
Chennai - 600 009.
- 2.The Joint Registrar
Finance and Banking Co-operative Societies
O/o the Registrar of Co-operative Societies
No.170, Periyar E.V.R.Road
Kilpauk, Chennai - 600 010.
- 3.The Deputy Registrar of Co-operative Societies
Villupuram.
- 4.Vazhudavoor Primary Agricultural Co-operative
Credit Society represented by its Secretary
Vazhudavoor
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 of the third respondent herein in Na.Ka.No.1998/2013/PAS, dated 19.04.2018 quash the same and consequently direct the respondents herein to issue compassionate appointment to the petitioner for the death of her father late M.Krishnamoorthy.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader.

O R D E R

Mr.L.P.Shanmugasundaram, learned Special Government Pleader, accepts notice on behalf of the respondents. By consent, this Writ Petition is taken up for final disposal.

2.The petitioner's father M.Krishnamoorthy has worked as Salesman in 4th respondent Society. He died while in service on 24.01.2009 leaving behind his wife and four children as his legal heirs. The petitioner is the third sibling in the family. The petitioner had completed schooling and has been unemployed whereas the other siblings were all uneducated and therefore could not seek for employment under compassionate grounds. The petitioner was aged 21 at the time of her father's death. Therefore, the petitioner submitted a representation dated 29.06.2016, to the 4th respondent seeking compassionate appointment and the same was rejected by the 4th respondent on 29.06.2016 on the ground that there is no vacancy in the said society. Later, the petitioner came to know that only the 2nd and 3rd respondent could recommend any appointment under compassionate grounds in any of the societies. Therefore, she made representation to the respondent on various dates. However, on 19.04.2018, the 3rd respondent had rejected the proposal by an impugned order dated 19.04.2018 refusing to issue order for compassionate appointment to the petitioner on the ground that the petitioner had not applied for the said post within the time limit. Challenging 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. In the present case, the petitioner's application is beyond the period of three years.

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. 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.

rm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Villupuram.

+1cc to Mr.R.Karthikeyan, Advocate, SR.No.77308
+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR.No.78026
+1cc to Special Govt.Pleader, (Co-op), Advocate, SR.No.77698

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Kak(15/10/2019)

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