

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

DELIVERED ON: 07.03.2019

C O R A M

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.21385 of 2017

and

WMP.No.22352 of 2017

- 1.Union of India
rep. by the Chief Post Master General,
Tamil Nadu Circle,
Chennai - 600 002.
- 2.The Senior Superintendent of Post Offices
Thanjavur Division,
Thanjavur - 613 001. Petitioners
- Vs
- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai - 600 014.
- 2.Shri.S.Sudhakar ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records of the First Respondent and quash the order passed by the First Respondent in O.A.No.310/1587 of 2015 dated 18.08.2016.

For Petitioner : Mr.C.V.Ramachandramurthy
SCGSC

For Respondent : Mr.S.Ramasamy Rajarajan
for R-2
R1- Tribunal

O R D E R

SENTHILKUMAR RAMAMOORTHY.J.,

This Writ Petition has been filed by the Union of India, rep. by the Chief Post Master General, Tamil Nadu Circle and the Senior Superintendent of Post Offices, Thanjavur Division, against the Registrar, Central Administrative Tribunal, Madras Bench, Chennai and S.Sudhakar, praying for a writ of certiorari calling for the records of the impugned order dated 18.08.2016 in O.A.No.310/1587 of 2015 on the file of the First Respondent and to quash the same.

2.The Applicant in O.A.No.1587 of 2015, S.Sudhakar(the 2nd respondent herein) is one of the two sons of late Shri M.Sivagnanam, Ex. Gramin Dak Sevaks(GDS). The late Shri M.Sivagnanam expired on 28.08.2013 while in service. Thereafter, his son S.Sudhakar made a request for appointment as Extra Departmental Agent/GDS on compassionate grounds. The application of Shri S.Sudhakar was examined by the Circle Relaxation Committee (CRC), which did not approve the application inter alia on the basis that the Second Respondent did not fulfill the minimum educational qualification. This decision was communicated to the Second Respondent by the Petitioners vide Letter No.BIII/RRR/01/2015, dated 14.08.2015. The Second Respondent challenged this communication by filing O.A.No.1587 of 2015 before the First Respondent. The case was heard by the First Respondent and by order dated 18.08.2016, O.A.No.1587 of 2015 was allowed. Consequently, the order dated 14.08.2015 of the Second Petitioner was quashed and the Petitioners herein were directed to reconsider the case of the Second Respondent/Applicant and grant him compassionate appointment, in the light of the letter of the Ministry of Communication and IT, Department of Posts No.17-17/2010-GDS, dated 17.12.2015, within a period of six months from the date of receipt of a copy of the order. The order dated 18.08.2016 of the First Respondent is impugned in this Writ Petition.

3.The Learned counsel for the Petitioners has raised two main grounds for consideration. The first is that the First Respondent had failed to consider the rules relating to appointment of GDS with regard to the prescribed educational qualifications for appointment on compassionate grounds and that the Second Respondent admittedly does not satisfy the educational qualification. In this connection, the learned counsel for the petitioners made a reference to paragraph Nos.3 to 5 of the additional affidavit of the petitioners dated 28.02.2019. In paragraph 3 of the said additional affidavit, the

petitioners state that the Directorate vide Letter No.17-1/2017-GDS dated 30.05.2017 has issued guidelines for review of scheme for engagement of a dependent of deceased Gramin Dak Sevaks on compassionate grounds and that the above mentioned guidelines do not provide for relaxation to the basic educational qualifications prescribed for the GDS post for which the Second Respondent was considered. In specific terms, the letter of the Directorate, viz., letter No.17-39/6/2012-GDS dated 14.01.2015 is referred to and it is stated that the Secondary School Examination Pass Certificate issued by a recognized board of school education in India is mandatory for all approved categories of GDS as per Gramin Dak Sevaks (Conduct and Engagement) Rules 2011 (the GDS Rules). It is also stated in the said additional affidavit that a widow of a deceased Government employee is entitled to exemption from educational qualification, provided the duties of the post can be performed without having the educational qualifications of middle standard prescribed in the Recruitment Rules. It is further pointed out in the additional affidavit that a clarification was requested for as to whether the exemption given to widows of deceased persons can be extended to other dependents/near relatives of deceased Extra Departmental Agents and that in response thereto it has been categorically clarified in Section XI of the GDS Rules that the relaxation is available only to the widow/widower of the deceased Extra Departmental Agents, provided the widow/widower is literate. The second ground of challenge relates to the alleged non-fulfillment of the Relative Merit Points (RMP) criterion by the Second Respondent but this ancillary ground was not the focus of the arguments of the learned counsel for the petitioner.

4. Per contra, the Learned counsel for the Second Respondent submitted that the instructions issued by the Department of Personnel and Training (DOP & T) would apply to compassionate appointment of Extra Departmental Agents such as the Second Respondent. In support of his contention, the Second Respondent referred to the clarification dated 30.05.2013 of the DOP & T, wherein it is stated that a person who does not fulfill the prescribed educational qualification may nevertheless be appointed as a trainee. In other words, the Learned counsel for the Second Respondent drew the attention of this Court to the clarification issued by the DOP & T in response to frequently asked questions (FAQ) regarding compassionate appointment. In specific terms, the Learned counsel for the Second Respondent invited the attention of this Court to questions 35 and 43 and the answers thereto at pages 8 and 9 of the additional typed set filed by the Second Respondent. The question at Sl.No.35 of this document is whether a person who does not fulfill educational qualification for the said post can be appointed on compassionate ground, and the answer is that such a person can

be appointed as a trainee as per DOPT OM No.14014/2/2009-Estt(D) dated 11.02.2009 and 03.04.2012. The Learned counsel for the Second Respondent also made a reference to the Relative Merit Points of the Second Respondent and contended that this was sufficient to merit appointment on compassionate grounds.

5. In response to this submission, the Learned counsel for the Petitioners made reference to the clarification dated 12.03.1993 with regard to the request for relaxation of educational qualification for compassionate appointment of dependents/near relatives of the deceased Extra Departmental Agents. The Learned counsel for the Petitioners also made reference to the communication dated 30.05.2017 bearing No.17-1/2017-GDS of the Ministry of Communication, Department of Posts (GDS Section), Government of India. The said communication dated 30.05.2017 relates to a review of the scheme for engagement of a dependent of deceased Gramin Dak Sevaks on compassionate grounds. The Learned counsel for the Petitioners drew the attention of this Court to Clause 6 of the revised scheme, which deals with exemption in the context of compassionate appointments. Clause 6-B(b) expressly stipulates that there shall be no relaxation in respect of basic educational qualifications prescribed for the GDS post. The said communication states that the scheme will come into effect from the date of issue of the letter and will be applicable to all cases pending and arising on or after the said date. Therefore, the said communication may not be applicable to the instant case.

6. This Court has considered the rival submissions and examined the documents on record and the relevant rules and clarifications. If the impugned order of the First Respondent is examined in this factual and legal context, it is clear that the First Respondent has largely focused on the issue of relative merit points which is discussed in paragraphs Nos.5 to 7 of the impugned order. However, the question relating to relative merit points would be relevant only if the Second Respondent fulfills the essential prerequisite, namely, with regard to educational qualification of 10th standard pass certificate. This issue has been dealt with by the First Respondent very briefly in paragraph No.8 by holding that the Second Respondent herein possessed 8th standard certificate and he is already working as GDS DA, on temporary basis, for which the above mentioned qualification (i.e., Secondary School Examination Pass Certificate) is not essential. In this connection, it is necessary to extract the relevant clarification from Section XI of the GDS Rules, which reads as under:-

"Clarifications:(1) and (2)_ The reply to the first part of the query is in the affirmative. However in conformity with the spirit of the orders of the Department of

Personnel under references, the relaxation would be available only to the widow/widower of the deceased ED Agent and that too only for appointment against such category of ED posts for which the prescribed minimum educational qualification is that of Group 'D', i.e., middle class pass. The claimant widows/widowers should, however, at least be a literate in cases when the minimum educational qualification is relaxed in his/her favour. In the absence of a vacancy at village post, compassionate appointment can be given in any other Post Office in the vicinity/neighbourhood of his/her place of residence. In this connection, instructions contained in Postal Directorate Letter No.14-25/91-ED & Trg., dated 05.08.1993, may also be kept in view. However, the condition for Matriculation qualification for EDBPMs/EDSPMs should be insisted upon in cases where the death of the incumbent has taken place on or after 01.04.1993."

7.This clarification is specifically with regard to the compassionate appointment of Extra Departmental Agents/GDS and, therefore, ought to have been considered while deciding the eligibility of the Second Respondent for appointment on compassionate grounds. The clarification dated 30.05.2013 of the Department of Personnel and Training (DOPT) is in the context of compassionate appointment of persons in the central civil services and not in the specific context of Extra Departmental Agents. Consequently, the specific Rules with regard to Extra Departmental Agents and the clarification in respect thereof would prevail. Consequently, the order of the First Respondent is vitiated by an error of law, which is apparent on the face of the record, and, therefore, is liable to be interfered with by this Court as held in a catena of cases, including that of the Hon'ble Supreme Court in Harjinder Singh Vs. Punjab State Warehousing Corporation [(2010) 3 SCC 637]. Therefore, this Court is of the view that the finding of the First Respondent in this regard is not sustainable, and is liable to be set aside.

8.In addition, it is settled law that compassionate appointment cannot be claimed unless the prescribed essential pre-requisites are fulfilled. In this regard, it is apposite to refer to the Judgments of the Hon'ble Supreme Court in A.Umarani Vs. Registrar, Co-operative Societies [(1994) 4 SCC 138] and MGB Gramin Bank Vs. Chakravarthi Singh [(2014) 13 SCC 583] wherein it was held that compassionate appointment cannot be granted unless the mandatory requirements of the applicable schemes/rules are fulfilled and that there is no vested or

accrued right to "Compassionate Appointment." Resultantly, the Writ Petition succeeds.

9. In the result, the Writ Petition is allowed. The impugned order dated 18.08.2016 in O.A.No.1587 of 2015 is set aside and consequently, the decision of the petitioners vide Order dated 14.08.2015 is held to be valid. There shall be no order as to costs. Consequently, connected WMP is closed.

rrg

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai - 600 014.

+1cc to Mr.S.Ramasamy Rajarajan, Advocate, SR.No. 22543

Kak(30/03/2019)

W.P.No.21385 of 2017

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