

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.1932 of 2019

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the 5th respondent in issuing the proceedings dated 09.01.2019 rejecting the petitioner's appointment on compassionate grounds without considering G.O.Ms.No.118 dated 18.08.1999 as arbitrary, illegal and unconstitutional and consequently set aside the said proceedings.

Heard Sri D.L.Pandu, counsel for the petitioner, and Government Pleader for Education.

It has been contended by the petitioner that his father was employed as a part-time worker with the respondents during the year 1980 and he has rendered more than 36 years of service with the respondents. The petitioner further contended that his father was fully qualified and eligible for regularization of service in terms of G.O.Ms.No.212 dated 22.04.1994, but because of administrative lapses, the services of his father could not be regularized. The petitioner also contended that *vide* G.O.Ms.No.118 dated 18.08.1990, the State Government has taken a policy decision to extend the scheme of compassionate appointment to the dependents of the deceased daily wage or NMR or consolidated pay person or contingent worker on full time basis/part-time basis who could not be regularized due to administrative reasons. It is also stated by the petitioner that his father was eligible for regularization, but due to

administrative lapses, his services could not be regularized and in the meantime, he expired on 20.11.2016 while discharging duties with the respondents. Thereafter, the petitioner has submitted an application seeking compassionate appointment in terms of the policy of the State Government in G.O.Ms.No.118 dated 18.08.1999. When the case of the petitioner was not considered, he has earlier approached this Court by filing W.P.No.38851 of 2018 and this Court vide interim order dated 30.10.2018 directed the 3rd respondent to consider the petitioner's representation within a period of six weeks. The petitioner had contended that in pursuance of the orders dated 30.10.2018, the respondents have considered and rejected the case of the petitioner vide impugned order dated 09.01.2019 contending that the petitioner's father was not possessing the required educational qualification in terms of G.O.(P).No.112 dated 23.07.1997. In the impugned rejection order, it is also observed that the petitioner's father never submitted 9th class pass certificate during his lifetime and after his demise, his son i.e., the petitioner has produced the 9th class pass certificate of his father. It is stated that since the petitioner's father was not qualified for regularization in terms of G.O.(P) No.112 dated 23.07.1997, the case of the petitioner was not considered and the same was rejected.

Counsel for the petitioner contended that the respondents have not considered the case of the petitioner's father during his lifetime and never the respondents have informed that the petitioner's father was not qualified for regularization in terms of G.O.(P) No.112 dated 23.07.1997. It is only after the death of the petitioner's father, the

respondents have come up with a theory that the petitioner's father was not holding 9th class pass certificate, therefore, the impugned rejection order is liable to be set aside and the respondents be directed to consider the case of the petitioner for appointment on compassionate grounds in terms of G.O.Ms.No.118 dated 18.08.1999.

Government Pleader appearing for the respondents had contended that the petitioner's father was not eligible for regularization of his service. Government Pleader further contended that though the petitioner's father had completed more than 10 years of service as on cut-off date specified in G.O.Ms.No.212 dated 22.04.1994, the case of the petitioner's father could not be considered for regularization as he was not possessing requisite qualification of 9th class pass certificate, and the policy of the State Government in G.O.Ms.No.118 dated 18.08.1999 is applicable only in respect of the deceased part-time workers or full time contingent workers whose services could not be regularized due to administrative reasons. But, in the instant case, the petitioner's father was not eligible for regularization for want of requisite qualification. Therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that admittedly in the instant case, the respondents could not annex any proceedings to the counter affidavit informing that the case of the petitioner's father for regularization was rejected for want of requisite

qualification. It is only after the death of the petitioner's father, the respondents are coming up with a theory that the petitioner's father was not eligible for regularization for want of requisite qualification. If the petitioner's father was not possessing requisite qualification, the respondents could not have continued him for more than 36 years. The fact that the petitioner's father was allowed to continue as part-time worker for 36 years itself would demonstrate that he was possessing requisite qualification to hold the post and no proceedings have been issued to the petitioner's father informing that he was not possessing qualification for regularization. Therefore, the contention of the respondents to the effect that the petitioner's father was not possessing requisite qualification for regularization is *non est* in the eye of law and the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. The respondents are directed to consider the case of the petitioner for appointment on compassionate grounds in terms of G.O.Ms.No.118 dated 18.08.1999 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

18th November 2019
v v

