

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.7283 OF 2019

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in not considering the candidature of the petitioner for compassionate appointment consequent to his father's medical invalidation and in taking steps to appoint the 5th respondent on compassionate grounds as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and to consequently hold that the petitioner is entitled to be considered for appointment on compassionate grounds consequent to his father's medical invalidation, with all consequential benefits.

Heard the learned counsel for the parties.

It has been contended by the petitioner that he is the son of legally wedded wife of one Yellaiah, The petitioner had further contended that his father, who is an employee with the respondents, had taken retirement on medical invalidation ground. The petitioner also contended that his father had sought compassionate appointment in favour of his second wife's son, who is the 5th respondent herein, and the respondents are taking steps to appoint the 5th respondent ignoring the case of the petitioner.

Learned counsel for the petitioner contended that whenever compassionate appointment is made, as per the scheme only the cases of the children of the legally wedded wife are to be considered for compassionate appointment, but in the instant case, the 5th respondent is born out of second marriage of the employee who had retired on medical invalidation ground and, as such, the 5th respondent is not entitled for compassionate appointment. Learned counsel for the petitioner further

contended that the petitioner is more qualified and suitable for compassionate appointment than the 5th respondent, therefore, appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for compassionate appointment consequent to his father's retirement on medical invalidation ground and to further declare the action of the respondents in considering the case of the 5th respondent for appointment on compassionate ground, as illegal and arbitrary.

Learned Standing Counsel appearing for the respondents 2 to 4 had contended that the employee, who is the father of the petitioner and the 5th respondent, had been declared medically unfit and consequently he has taken retirement on medical invalidation ground and, at the instance of the employee only, the case of the 5th respondent is being considered and that the employee has not proposed the name of the petitioner. Learned Standing Counsel further submits that if there are any disputes among the family members of the employee who retired on medical invalidation, it is for the petitioner and the 5th respondent to sort out such differences with their father, who retired on medical invalidation ground. It is also stated that in the absence of any proposal being submitted by the employee, who had retired on medical invalidation ground, to consider the case of the petitioner, the respondents cannot consider the case of the petitioner, thus, there are no merits in the writ petitioner and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by the parties, is of the considered view that the issue whether the petitioner is born out of legal wedlock or not, is not the issue to be dealt with in the present case. It is for the retired employee to submit the proposal for

consideration of compassionate appointment. In the present case, the employee, who had retired on medical invalidation ground, had proposed the name of the 5th respondent, who also happens to be his son through second marriage, and he had not proposed the name of the petitioner for compassionate appointment. Therefore, this Court cannot give any direction contrary to the will of the retired employee. In view of the same, there are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

8th April, 2019
v v

ABHINAND KUMAR SHAVILI, J

