

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.7517 of 2019

ORDER:

This writ petition is filed seeking the following relief :-

“ to issue a Writ, order or order more in the nature of Mandamus declare the impugned Proc.Pc.No.OP.1/ 5180/ 2016 dt.12.06.2018 issued by the 2nd respondent, which has no jurisdiction and cannot reject petitioner's case for compassionate appointment without approval of the Government on the ground that Government has been directed to reconsider my claim while setting aside the previous impugned Govt Memo dt.21.03.2017 is illegal, unfair and contrary to the specific findings in the judgment in W.P.No.13085/ 2018 dt.23.04.2018 and consequently direct the 1st respondent to accord permission for appointment of the petitioner under compassionate grounds in any suitable post to the 2nd respondent, if necessary, give relaxation or exemption in the interests of justice without giving room for gender discrimination for compassionate appointments under Article 14 of the Constitution of India with all consequential benefits”.

Heard Mr.N.Ramu, the learned counsel for petitioner and the learned Government Pleader for Services-I.

It has been contended by the petitioner that his father was employed as a Watchman with the respondents and while discharging duties, his father expired on 12.06.2015. Thereafter, the petitioner submitted an application on 04.08.2015 requesting the respondents to consider his case for appointment on compassionate grounds. But, the respondents rejected the case of the petitioner vide Memo dated 21.03.2017. Challenging the same, the petitioner filed W.P.No.13085 of 2018 and the same was allowed on 23.04.2018 setting aside the rejection order dated 21.03.2017 and the respondents were directed to re-consider the case of the petitioner for appointment on compassionate grounds strictly in terms of G.O.Ms.No.329 dated 27.07.2015. Thereafter, the 2nd

respondent has considered the case of the petitioner and once again rejected vide proceedings dated 12.06.2018 by observing as follows:-

“.....

An amendment was issued to the Andhra Pradesh State and Sub-Ordinate Service Rules, 1996 vide G.O.Ms.No.144, General Administration [Ser.D] Department, dated 15.06.2004 wherein the said rules, in rule 12 in sub rule (1) in clause (b) after sub-clause (iii) the following proviso has been added.

“Provided that, for compassionate appointment to the spouse of deceased Government employee, the upper age limit shall be 45 years irrespective of community”.

Hence, it is clearly evident that, from the above rule position that, the relaxation of age was amended in respect of spouse only, but not in case of dependents. Hence, the contention of Sri G.Muthaiah for compassionate appointment as per G.O.Ms.No.144, General Administration [Ser.D] Department, dated 15.06.2004 is not feasible.

Hence, the incumbent is not eligible for compassionate appointment in terms of G.O.Ms.No.329, G.A [Ser.A] Department, dated 27.07.2015 and G.O.Ms.No.144, General Administration [Ser.D] Department, dated 15.06.2004 as he has crossed the prescribed upper age limit of 34 years.

Therefore, his request is hereby rejected as not feasible for consideration.”

The learned counsel for the petitioner submits that the 2nd respondent has not considered the case of the petitioner in terms of G.O.Ms.No.329 dated 27.07.2015 as directed by this Court in W.P.No.13085 of 2018 dated 23.04.2018. The case of the petitioner was only considered in terms of G.O.Ms.No.144 dated 15.06.2004. The impugned rejection order is passed without application of mind and contrary to the earlier judgment rendered by this Court. Therefore, the impugned order is liable to be set aside and appropriate directions be given to the respondents to appoint the petitioner on compassionate grounds.

Learned Government Pleader appearing for the respondents has contended that the case of the petitioner was considered by the respondents and since the petitioner has crossed the upper age limit of 34 years, his case was rightly rejected by the respondents. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the 2nd respondent has passed the impugned order without taking into account the observations made by this Court in W.P.No.13085 of 2018 dated 23.04.2018 and also in terms of G.O.Ms.No.329 dated 27.07.2015. Therefore, the impugned rejection order is liable to be set aside and the same is accordingly set aside.

Accordingly, the writ petition is allowed. The respondents are directed to consider the case of the petitioner afresh for appointment on compassionate grounds taking into account the observations made by this Court in W.P.No.13085 of 2018 dated 23.04.2018 and also in terms of G.O.Ms.No.329 dated 27.07.2015 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 18-07-2019
Prv

