

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.47126 of 2018

ORDER:

This writ petition is filed seeking the following relief :-

“.....to issue order or direction more particularly one in the Writ of Mandamus to declare that the petitioner is entitled to be appointed to the post of Junior Assistant or in any other equivalent post under compassionate appointment as the petitioner's father's whereabouts are not known for more than 7 years and consequently direct the respondents to appoint the petitioner as Junior Assistant or in any other equivalent post under compassionate appointment by holding the 1st respondent's Memo No.8153/ Agri.II(2)/ 2016-2 dated 1.2.2018 as improper and illegal”.

Heard Mr.G.Sva, learned counsel for the petitioner and the learned Government Pleader for Services-II.

It has been contended by the petitioner that his father was appointed as a Helper in the 3rd respondent's office and his father's whereabouts are not known since 28.01.2009. Therefore, the petitioner's brother filed a complaint before the Station House Officer, II Town Police Station, Nalgonda on 11.10.2014 and the police after investigation filed a final report before the Judicial First Class Magistrate at Nalgonda stating that his father was missing since 28.01.2009. Subsequently, the petitioner obtained Family Member Certificate on 07.09.2016 and submitted an application to the respondents seeking appointment on compassionate grounds on the ground that his father was missing since 28.01.2009 and on completion of seven years, it should be presumed that the missing person is legally dead and the case of the petitioner be considered for appointment on compassionate grounds. The respondents have

considered the case of the petitioner and rejected his request vide Memo dated 01.02.2018 observing as follows :-

“The Commissioner of Agriculture, Hyderabad, is therefore informed that the proposal for compassionate appointment to Sri A.Shiva Kumar, S/o.Kanaka Chary, Helper, O/o.DAO, Nalgonda (Missing Govt. Employee) is not in accordance with G.O.Ms.No.378, G.A.(Ser.A) Dept., dt.24.08.1999 and Circular Memo No.60681/ Ser.A/ 2013-1, G.A.(Ser.A) Dept., dated 12.08.2003, in which it is necessary to give police complaint and should lapse 7 years investigation to trace out and submit final report as per the rule stated above; and it is not a fit case to consider the request of the individual for providing compassionate appointment without completion of 7 years period from the date of filing of FIR, as per the rules in force.”

Challenging the rejection Memo dated 01.02.2018, the petitioner has filed the present writ petition.

Learned counsel for the petitioner contended that the police complaint was given by the family members of the petitioner on 11.10.2014 and the police have investigated the case and submitted a final report before the Judicial First Class Magistrate at Nalgonda to the effect that the petitioner's father is missing since 28.01.2009. Based upon the said police report, which ended in submitting final report before the Judicial First Class Magistrate, Nalgonda, the case of the petitioner should be considered since seven years have elapsed from the date of missing of the father of the petitioner on 28.01.2009 and the petitioner's case ought to have been considered for appointment on compassionate grounds.

The learned Government Pleader appearing for the respondents contended that since seven years have not been lapsed from the date of registration of FIR, the case of the petitioner was rightly rejected by the respondents and in retrospection, no report can be given by any person. A perusal of the final report

goes to show that the missing person could not be contacted by his wife and children and that itself would not mean that the missing person was untraceable or not seen by any person and it is only after registration of FIR and on completion of seven years from the date of registration of FIR, it can be presumed that a person is legally dead. But, in the instant case, the police complaint was lodged by the family members of the petitioner on 11.10.2014 and since seven years have not been lapsed from the date of registration of FIR, it cannot be presumed that the missing person is a dead person so as to hold that the children of the said missing person are entitled for appointment on compassionate grounds.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that the respondents have rightly rejected the case of the petitioner vide Memo dated 01.02.2018 on the ground that seven years have not been lapsed from the date of filing of FIR i.e., 11.10.2014. If at all, the said person is found missing upto the year 2021, then the case of the petitioner can be considered for appointment in any suitable post on compassionate grounds, but not before expiry of seven years from the date of registration of FIR. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

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

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILU, J

Date: 04-09-2019
Prv

