

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.539 of 2020

R.Subramani

... Appellant

Vs.

1.The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

2.The Commissioner,
Arcot Municipality,
Arcot, Vellore District.

3.The Joint Director,
District Municipality,
Ezhilagam, Chennai - 600 005.

4.The Commissioner (General),
Arcot Municipality,
Arcot, Vellore District.

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 15.11.2019 made in W.P.No.15214 of 2014.

Prayer in W.P.No.15214 of 2014:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus Calling for the records of the 3rd respondent in Na.Ka. No.2503/2014/H2 dated 14.2.2014 bearing Na.Ka. No.11/2014/H1 dated 18.2.2014 on the file of the 4th respondent and Na.Ka. No.11/2014/H1 dated 15.4.2014 on the file of the 2nd respondent herein and quash the same abovesaid three proceedings and consequently to direct the respondents herein to appoint the petitioner in the post of Sweeper/ Sanitary Worker in the respondent Municipality in the regular time Scale of Pay with attendant service and monetary benefits till his date of superannuation with a further direction to pay pension and other retirement benefits within a short date that may be fixed by this Honourable Court.

For Appellant : Mr.K.S.Govinda Prasad

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and perused the impugned judgment dated 15.11.2019.

2. The contention raised by learned counsel for the appellant is that the appellant's mother was an employee and she sought retirement on medical invalidation, for which she presented herself before the Medical Board on 23.4.2007. As on that date, she was less than 53 years, but she was allowed to retire on medical grounds on 16.10.2007. It is submitted that she had been on leave during this period, after having appeared before the Medical Board on account of her medical invalidation and, therefore, her ward was entitled to seek compassionate appointment.

3. In our considered opinion, the aforesaid argument cannot be accepted, inasmuch as the claim of compassionate appointment under the Rule is admissible only if an employee is allowed to retire before the employee attains the age of 53 years on medical invalidation. In the instant case, the medical invalidation was examined in April, 2007, but the fact remains that the employee was made to retire only on 16.10.2007 by which time, she had already crossed the age of 53 years.

4. A scheme of compassionate appointment can be considered only before an employee attains the age of 53 years and therefore, if the argument of the learned counsel for the appellant is accepted, then this would be put the cart before the horse, and extending a benefit even before the contingency arises as per the Rule contained in the relevant Government Order No.168, Labour and Employment (Q1) Department, dated 19.10.2000 read with Government Order No.10, Labour and Employment (Q1) Department, dated 13.02.2009. The claim if accepted from the date of appearance before the Medical Board, would be virtually re-writing the Rule, which is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. The learned Single Judge, therefore, in our opinion, has rightly refused to exercise the discretion in the matter.

The appeal is, accordingly, rejected. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Municipal Administration,
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+1cc to Mr.K.S.Govind prasad , Advocate SR.No. 29056
+1 cc to Government Pleader Sr.No. 28972

W.A.No.539 of 2020

A.SK(11/09/2020)

सत्यमेव जयते
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