



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2020

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD)No.2747 of 2014

S. Yuvaraj

..

Petitioner

..vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam (H.O).,
Thanjore District.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Trichy Division,
Trichy District.

.. Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Ref.TNSTC/TRY/DS/ SM1/20115/2013, dated 28.01.2014 and quash the same as illegal and consequently, to direct the 1st respondent to consider the petitioner name for employment on compassionate ground taking into account of the petitioner's educational qualification within the period that may be stipulated by this Court.

For Petitioner : Ms. Sumitha
for M/s. Ajmal Assoicates

For Respondents : Mr. D. Sivaraman
Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 1st respondent in his proceeding Ref.TNSTC/TRY/DS/SM1/20115/2013, dated 28.01.2014 and direct the 1st respondent to consider the petitioner's name for employment on compassionate ground taking into account of his educational qualification within the time stipulated by this Court.



2. The learned counsel appearing for the petitioner submitted that the petitioner is entitled to get appointment on compassionate ground. The petitioner's father had worked as Senior Grade Driver in the respondent Corporation and he died on 13.01.2013 in harness. After the demise of his father, the petitioner has made a representation seeking appointment on compassionate ground taking into account of his educational qualification in any of the suitable post. He has also filed a writ petition before this Court in W.P (MD).No. 20115 of 2013 and the same has been disposed of with a direction to consider the representation of the petitioner dated 23.05.2013 within a period of eight weeks. Thereafter, the first respondent has passed the impugned proceeding dated 28.01.2014, rejecting the claim of the petitioner stating that his name stands in S.No. 296 in the waiting list and would be considered only by way of seniority. Challenging the same, the petitioner has filed the present Writ Petition before this Court.

3. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of this Court dated 20.02.2012 made in the case of ***P. Bhaskaran Vs. The Chairman, Tamil Nadu Electricity Board and another***, wherein at paragraph No.15, it is held as follows:

15. In (A. Mustha Iqbal Bash Vs. State of Tamil Nadu. Rep. by its Secretary to Government, Education Department and others) 2011 4 MLJ 438, this Court held that any delay in submission of application for compassionate grounds by reason of attaining a majority does not give an implication that the family of the deceased government servant has come over the indigent circumstances and therefore, rejecting the application seeking appointment on compassionate grounds is unsustainable. In para Nos. 12 , 13 and 14, it was held as follows:

"12.It is also worth referring to a decision in the case of Sushma Gosain and others Vs.Union of India and others. AIR 1989 SC 1976:(1989) 4 SCC 468: 1990 I LLJ 169 wherein, the Supreme Court on the principle of considering the mitigating circumstances and hardship has held as follows:

7.We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If

there is no suitable post for appointment,



supernumerary post should be created to accommodate the applicant.

13. Of course, there cannot be any reservation of vacancy till such time the petitioner becomes a major after a number of years. In the case on hand, since the sudden death of the government servant had left his family in penury and without any means of livelihood. I feel it justified that the petitioner can be accommodated in any suitable post as per his qualification as against the post held by his father."

The case on hand differs as there are no vacancy and there is a seniority list of persons waiting to be appointed.

4. He has also relied on the Judgment of the Hon'ble Supreme Court reported in **1989 (4) Supreme Court Case 468 (Smt. Sushma Gosain and others Vs. Union of India and others)**, wherein at paragraph No. 9 it has been held as follows:

9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds. There should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

No materials produced to show that the family is in the state without any money.

4. The learned standing counsel appearing for the respondents filed a counter affidavit and contended that the petitioner could be considered based on the seniority maintained by the Department taking into account the date of application made by the dependants of the deceased like the petitioner. In support of his contention, he has also produced a copy of the order passed by this Court in WP(MD).No. 5104 of 2015, dated 07.04.2015.

5. It is a concession given to the dissented families whose earning members died. The family in harness situation can approach the concerned authorities seeking for compassionate appointment as per their qualifications. Only when there is a vacancy the name can be considered. Hence, in view of number of persons are waiting for such concession, the petitioner has to wait for his turn as there are more number of families waiting in queue. The Judgment relied on by the petitioner is not applicable to the facts of the present case.



6. Though the prayer is innocuously worded and if the relief sought by the petitioner is granted by this Court, it would create a room for more litigation. Further, as the similarly placed persons who are in the seniority list maintained by the respondent corporation, may also approach this Court and seek similar relief, will once again disturb the seniority list. Hence, I am not inclined to grant the relief sought as such in this Writ Petition. However, this Court directs the respondent to follow due seniority to appoint the persons like the petitioner seeking compassionate appointment as and when vacancies arises which are to be filled up.

7. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam (H.O).,
Thanjore District.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Trichy Division,
Trichy District.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-12701[F] dated 20/03/2020)

+1 CC to Ms. Sumitha for M/s.AJMAL ASSOCIATES, Advocate(SR-12321[F] dated 18/03/2020)

W.P(MD)No.2747 of 2014

18.03.2020

NR (25.06.2020) 4P 5C