

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.31056 of 2012 and
M.P.No.2 of 2012

S.Afsal Baig

... Petitioner

Vs.

1.The Secretary to Government
Municipal Administration and Water
Supply Department
Fort St. George, Chennai.

2.The Director of Town Panchayats
Kuralagam, Chennai 108.

3.The Collector,
Krishnagiri District, Krishnagiri.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the proceedings of the third respondent in its Na.Ka.No.1031/2012/TP2 dated 23.8.2012 communicating the order of the first respondent in its Letter No.10959/TP-1/2010-10 dated 4.11.2011 and quash both orders.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mrs.K.Bhuvaneswari
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorari calling for the proceedings of the third respondent in its Na.Ka.No.1031/2012/TP2 dated 23.8.2012 communicating the order of the first respondent in its Letter No.10959/TP-1/2010-10 dated 04.11.2011 and quash both orders.

2.The petitioner's father one Mohammed Syifullah Baig was working as Head Clerk at Bargur Selection Grade Town Panchayat, Krishnagiri District. While so, he died in harness on 04.06.1996 leaving behind the legal heirs including the petitioner who is the son of the deceased employee.

3. Since the head of the family, who is the sole breadwinner of the family, suddenly died, the family of the deceased employee where the petitioner is the member was left in lurch, therefore, on 14.12.1998 an application was submitted by the petitioner for consideration of his candidature for compassionate appointment. No doubt, at that time, he passed only 8th standard.

4. The said application having been received was kept in process for longer time by the respondent Department and ultimately, the same was considered only in the year 2009, accordingly, the third respondent District Collector vide proceedings dated 27.08.2009 has given the compassionate appointment to the petitioner, whereby he was appointed as Junior Assistant at the vacant post of the Junior Assistant, which was available at the time in the same Town Panchayat viz., Bargur Town Panchayat.

5. Accordingly, the petitioner joined in the said service and had been working as such for two years. However, after working for two years, on 04.11.2011 the first respondent i.e., the Secretary to Government, Municipal Administration and Water Supply Department has communicated to the Director of Town Panchayats that the appointment on compassionate ground given to the petitioner to the post of Junior Assistant was irregular because at the time of application made by the petitioner, he was not having the qualification to hold the post of Junior Assistant. Therefore, while considering the compassionate appointment, of course at a later point of time, only based on the qualification that was available with the petitioner at the time of making application alone should have been taken into account. Accordingly, the compassionate appointment given to the petitioner to the post of Junior Assistant has to be rectified and he shall be given posting on compassionate ground only in consonance with the educational qualification that he was already having at the time of making the application.

6. Pursuant to the said directives issued by the first respondent vide proceedings dated 04.11.2011, the third respondent, by impugned order dated 23.08.2012, has cancelled the earlier appointment given to the petitioner to the post of Junior Assistant and he has been reappointed only as Office Assistant at the very same Town Panchayat.

7. Felt aggrieved over the said order of cancelling the earlier appointment and making the re-appointment to the petitioner to the post of Office Assistant by order dated 23.08.2012 passed by the third respondent, the petitioner has moved this writ petition with the aforesaid prayer.

8. Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner, who would submit that, though the application was made sometime in 1998 i.e., after the death of the father of the petitioner and at the time, the petitioner admittedly was having only the qualification of 8th standard, the application was not immediately considered and at the time of considering the application of the petitioner for making compassionate appointment in the year 2009, as in between the petitioner has cleared the other qualification of 10th standard (SSLC), that was also taken care of or taken into account by the third respondent who was the appointing authority and accordingly, as per the educational qualification or in commensurate with the same that the petitioner was holding at the time of consideration of his application for compassionate appointment, the third respondent has decided to appoint the petitioner to the post of Junior Assistant and accordingly, the appointment was given.

9. In the said post of Junior Assistant, the petitioner had been permitted to serve for two years and only thereafter all of a sudden probably because of the directive issued by the first respondent vide his proceedings dated 04.11.2011, the third respondent has passed the impugned order cancelling the earlier appointment given to the petitioner on compassionate appointment and has re-appointed the petitioner afresh as Office Assistant by only taking into account the qualification of 8th standard that the petitioner was holding at the time of making the application in the year 1998.

10. In this context, the learned counsel also would submit that, there is no explicit bar available in any statute that, at the time of considering the application on compassionate appointment, based on the qualification, there should not have been any appointment, if at all appointment is made on compassionate ground, that shall date back only on the date of making the application by the employment seeker and the qualification that was available with the applicant at the time of making the application alone should be taken into account.

11. When such kind of provision is not available, there could be no impediment for the appointing authority to appoint any person seeking compassionate appointment by taking into account the qualification that was available with the employment seeker at the time of considering his/her application seeking for such compassionate appointment. He would also submit that, pursuant to the order passed by the third respondent in the year 2009 appointing the petitioner as Junior Assistant, he has joined in the service which is a substantive post, as such post was

sanctioned and available in the said Town Panchayat, he had been continuously working for two years and more and therefore, all of a sudden, the petitioner appointment cannot be cancelled as the petitioner's right to continue in the post has already accrued since he has been appointed in the substantive vacancy.

12.By making these submissions, the learned counsel appearing for the petitioner would seek indulgence of this Court against the impugned order and he would also submit that, because of the impugned order since there has been no stay of the order during the pendency of the writ petition, all along the petitioner had been driven to the post of O.A. where he has been working continuously. Therefore, the petitioner's loss of service as Junior Assistant for all these years is a great loss to the to the petitioner as even though he was having the qualification to the post of Junior Assistant even at the time of consideration of his application, the same was not considered before passing the impugned order by the third respondent, therefore, on that ground also, the impugned order is liable to be interfered with, he contended.

13.Per contra, Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing for the respondents has relied upon the following reasons given by the respondents in the counter affidavit.

"4.It is submitted that the 3rd respondent denies all the averments made in paragraph 3,4, 5 and 6 of the affidavit filed in support of the above writ petition are as incorrect. The petitioner's mother has made a representation on 07.03.1997 to the 2nd respondent, stating that the petitioner was studying in 8th standard and requested to give preference to the petitioner for appointment under compassionate ground when he attains majority. The petitioner has made a representation on 14.12.1998 to the 2nd respondent, stating that the petitioner has passed 8th standard only. But the petitioner has not passed 10th standard. Thereafter the petitioner was appointed as Junior Assistant on 27/08/2009 under compassionate ground. Subsequently the 2nd respondent vide his proceedings dated 27/03/2010 has recommended for approval of the said post for appointment under compassionate ground to the 1st respondent. The 1st respondent is the approving authority for giving appointment under the compassionate ground as per rules in force and the 1st respondent has passed orders rejecting the appointment under the compassionate ground since the petitioner was not having the necessary qualification for junior assistant. Thereafter on the advice of the 1st respondent, the 3rd respondent has passed an order

dated 23/08/2012 stating that the petitioner has to be reversed from the post of Junior Assistant to office Assistant because according to the petitioner's representation on 14/12/1998, the petitioner was passed only 8th but not 10th standard. Hence the petitioner was reversed from the post of junior assistant to office assistant as per his qualification on that date. Hence the above writ petition is liable to be dismissed on this sole ground only."

14. By relying upon these averments, the learned Additional Government Pleader would submit that, admittedly the petitioner had made an application only on 14.12.1998, at that time his qualification was only 8th standard. Therefore, based on which only the application was kept pending in the seniority list and depending upon the vacancy arises, the claim of the persons who are seeking compassionate appointment like the petitioner could be decided and when his turn comes in the year 2009, his application was taken up and was decided in his favour and accordingly, when posting was given, it was mistakenly considered by the third respondent appointing authority, the present qualification of the petitioner instead of the actual qualification that the petitioner was having at the time of making the application.

15. When this was pointed out by the first respondent vide his proceedings dated 04.11.2011, such appointment to the post of Junior Assistant given to the petitioner considering the qualification of the petitioner at the time of considering the application was found incorrect as the qualification should have been taken back only from the date of application and what was the qualification available to the petitioner at that time alone should be taken into account. According to the said directives issued by the first respondent, the third respondent appointing authority has rightly cancelled the appointment order and accordingly, as per the qualification or in commensurate with the qualification that the petitioner was having at the time of making the application i.e., in the year 1998, he was considered for the post of O.A. accordingly he was given the O.A. post through the impugned order dated 23.08.2012. Therefore, the learned Additional Government Pleader would submit that, the said order, which is impugned herein, is fully justifiable and sustainable and hence, it does not warrant any interference from this Court.

16. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

17. As has been rightly pointed out by the learned counsel appearing for the petitioner, there is no explicit bar to consider the qualification of the employment seeker through

compassionate appointment at the time of considering the application. Compassionate appointment itself is the deviation of the regular recruitment rules or procedures as regular recruitment in any sanctioned or substantive vacancy should be made only through the method of selection through competitive examination or other mode by the recruiting agency or the appointing authority alone.

18. But the appointment to the petitioner made on compassionate ground is concerned, it is completely a deviated procedure and this kind of compassionate appointment scheme, which is being envisaged and implemented by the employer, is only to bail out the family of the employee, who suddenly died leaving the family in indigent circumstances and for the said purpose, whatever the qualification that was available with any of the family member who is eligible and entitled to get such compassionate appointment, incommensurate with such qualification such compassionate appointment would be given. Even though there are restrictions that compassionate appointment should be confined only in Group C and D post and not in higher post, in the case in hand, the petitioner was considered for the post of Junior Assistant only, which is not a higher post, as he was having the qualification for Junior Assistant at the time of appointment in the year 2009. Had his application been considered immediately on making his application in the year 1998 itself based on the qualification that was available with the petitioner at that time, certainly the appointment to the post of Office Assistant alone would have been given.

19. The respondents have kept the application pending for whatever reasons and ultimately they considered it only in the year 2009, where, in the substantive vacancy of Junior Assistant, which was available in the very same Town Panchayat, where the petitioner's father worked and died in harness, the petitioner's name was considered on compassionate ground, accordingly, the appointment was given. Therefore, at the time of considering the application of the petitioner, what was the qualification that was available with the petitioner alone is the matter to be considered and contrary to that, it cannot be said that only at the time of making the application whatever his qualification, that alone should be taken into account for making such compassionate appointment. It is not the rule and there is no procedure as contemplated in the statutory rule which are made available before this Court for consideration to that effect, therefore, this Court feels that, the reason cited by the first respondent through the order dated 04.11.2011 followed by the order of the third respondent, which is impugned herein in his order dated 23.08.2012, in the considered opinion of this Court, are unsustainable. Therefore, on that ground, the

appointment given to the petitioner already to the post of Junior Assistant in the year 2009 should not have been cancelled.

20. Moreover, as rightly pointed out by the learned counsel appearing for the petitioner, the petitioner had been appointed in the year 2009 to the post of Junior Assistant and had been working in that post for nearly about two years or more and once the person has been appointed, even though through compassionate appointment, in substantive vacancy, the right has accrued on the date he got such appointment. Whatever been the appointment once he got appointed in the substantive vacancy, for which the qualification of the candidate at the time of considering the application was taken into account and he was appointed, it cannot be construed as illegal appointment. Therefore, the said reason given by the first respondent vide proceedings dated 04.11.2011, which is the basis for the cancellation of the compassionate appointment as Junior Assistant, through the impugned order, in the eye of law, cannot be sustained. Therefore, this Court has no hesitation to hold that the reason given by the respondents for cancelling the appointment to the petitioner for the post of Junior Assistant and re-appointed him in the post of O.A. through the impugned order would not be sustained and accordingly, the impugned order is liable to be interfered with.

21. In the result, the impugned order is quashed. The respondents are hereby directed to place the petitioner in the post of Junior Assistant. However, if the petitioner is posted in the post of Junior Assistant, his continuity of service from the date of original appointment should be permitted only for the notional benefits and not for the purpose of any monetary benefits. It is needless to mention that consequentially the first respondent shall approve the appointment to be made in this regard by the third respondent, as directed above.

22. With these directions, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George, Chennai.

2.The Director of Town Panchayats
Kuralagam, Chennai 108.

3.The Collector,
Krishnagiri District, Krishnagiri.

+1CC to Government Pleader Sr.No.15438

W.P.No.31056 of 2012

LN(CO)

A.SK (12.07.2021)



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