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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.NO.1935 OF 2021

AND

C.M.P.NO.12507 OF 2021

1. The State of Tamil Nadu,
Rep. By the Secretary to Government,
Health and Family Welfare (K1) Department,
Fort St. George,
Chennai - 600 009.

2. The Director of Medical
and Rural Health Services,
Chennai - 600 006.

... Appellants

.Vs.

M.Tamilselvi

... Respondent

PRAYER:-

Writ appeal is filed under clause 15 of the Letter Patent praying to allow the WA setting aside the order of the Honourable Court, dated 06.11.2020 made in W.P.No.27423 of 2005.

PRAYER IN W.P.NO.27423 OF 2005:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in connection with proceedings issued in Ref.No.84704/SCII/1/99-1 dated 23.09.2002 passed by the Director of Medical and Rural Health Servies, Chennai-6 and G.O.Ms.No.226 Health and Family Welfare (K-1) Department, dated 29.03.2005 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.



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For Appellants : Mr.K.T.S.Tippu Sultan
Government Advocate

For Respondent : Mr.R.Thirugnanam

JUDGMENT

(Judgement of the Court was made by S.VAIDYANATHAN, J.)

The present writ appeal has been preferred by the Government challenging the order in W.P.No.27423 of 2005 dated 06.11.2020.

2. The order passed by the respondents by which the punishment of removal from service imposed by the respondents has been converted into one of compulsory retirement and the relevant paragraphs of the order are extracted below:-

9. On a careful perusal of the records and the submission made by the learned counsel for the petitioner it is seen that the petitioner was aged about 12 years at the time of the death of her father and the submission that the petitioner has not suppressed any fact, is not acceptable. Therefore, under these circumstances, it cannot be stated that the petitioner is not aware of fact though she was working in the said Department for 10 years. Further, there is also a fault on the part of the Department that at the time of giving appointment, the Tahsildar, who had given certificate, should have verified the records properly. Hence, the petitioner alone cannot be blamed and the respondents also having played a part on the wrong committed by the petitioner. It means that the petitioner colluded with the officials got false certificate and obtained appointment. At one point of time, based on the complaint received from the Unemployed Pharmacist Union, on verification of the complaint, the officials in order to escape from their responsibility had taken action against the petitioner. However, this Court cannot encourage such action of the petitioner. There is no merit in the Writ petition and hence, the same is liable to be dismissed.



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10. However, this Court is of the opinion that the officials of the Department is also having some part in the wrong committed by the petitioner and the petitioner alone cannot be held responsible for that. Hence, the order of removal from service is modified as compulsory retirement".

3. According to the appellant, the respondent herein /writ petitioner suppressed the fact that the mother was in employment as a Staff Nurse in Government service and obtained compassionate appointment as her father Subramanian who was working as a Health Assistant in Primary Health Centre, Nallur died on 01.05.1984. It is stated that on coming to know that there was a suppression of fact, the employee was charge sheeted not only on the aforesaid scope but also that a false certificate has been produced regarding the employment and employment of family members obtained from the Thasildar, Virudhachalan. After due enquiry it was established that the writ petitioner suppressed the material fact that the mother was working in the Government service and therefore, the punishment of removal from service was awarded. It is also true that the respondent herein was 12 years old at the time of demise of her father but the factum that while seeking an appointment on compassionate ground as per the Government order no other person would be employed in the entire family to enable another person to get employment. In the present case on hand, as there is a suppression of fact which has been duly established in the domestic enquiry, the removal from service is perfectly valid and the learned Single Judge ought not to have converted the said punishment of dismissal from service into one of compulsory retirement.

4. The learned counsel for the respondent/writ petitioner submitted that the father was employed as a Health Assistant in Primary Health Centre, Nallur and the respondent/writ petitioner was 12 years old studying 8th standard at that time. It was stated that the mother was employed in the Government Hospital Virudhachalam but unfortunately she left with another man and that her siblings and she were brought up only by the paternal grandfather. The mother was receiving monthly pension and the same was handed over to the grandfather. The respondent also produced a certificate to the effect that a sum of Rs.4356/- was drawn by her mother as income which according to the respondent/writ petitioner is a yearly pension. In the income certificate the mother's wages have also not been included. He has also relied upon G.O.Ms.No.155 dated 16.07.1993 which is extracted as follows:-



GOVERNMENT OF TAMIL NADU

Abstract

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Public Services - Appointment on compassionate grounds - indigent circumstances of families of deceased Government Servant - Provident Fund & Death - cum - Retirement Gratuity not to be included - Appointment to one member if another member was already employed in the family of the deceased - Clarification - Issued

Labour and Employment Department

G.O.Ms.No.155

Dated: 16.07.1993

Read:

1.G.O.Ms.No.225 Labour &Employment dated: 15.02.1972

2.G.O.Ms.No.560 Labour &Employment dated: 03.08.1977

3.G.O.Ms.No.998, Labour &Employment dated: 02.05.1981

4.Govt.Lr.No.18274/N1/82-3 Labour &Employment dated: 09.07.1982

5.G.O.Ms.No.73 Employment Service dated: 26.10.1983

6.G.O.Ms.No.08 Employment Service dated: 07.01.1987

7.G.O.Ms.No.567 Labour &Employment dated: 11.04.1990

Read also:

8.G.O.Ms.No.23.Labour &Employment dated: 10.02.1993

ORDER

One of the conditions prescribed under the scheme of appointment on compassionate grounds formulated in the G.O.first read above is that the family of the deceased Government servant should be in "indigent circumstances". Another condition introduced in the G.O.third read above is that if there is already any earning member in the family of the Government servant who died in harness the other



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dependents of the deceased Government Servant will not be eligible for compassionate appointment.

2. The Government have re-examined the above mentioned conditions. The expression "indigent circumstances" has not been precisely defined. It has been left mostly to the subjective satisfaction of the appointing authorities. Therefore the Service Associations have represented that this condition be deleted. The family of a deceased Government Servant is entitled to Provident Fund accumulations, family benefit, Death - cum -retirement Gratuity, Encashment of leave at credit at the time of death, etc. The Government consider that those amounts or the interest earnings that will accrue on depositing these amount need not be taken into consideration. It is therefore necessary to ascertain whether the family is having immovable property like houses, land, etc. the income from which is substantial to sustain the family without any extra help. The Government therefore direct that the criteria for indigent circumstances is that the family should not own any house or landed properties or if owned, the income from which is insufficient sustain the family. Certificate from the Tahsildar to this effect will have to be produced.

3. In regard to the second condition mentioned in para 1 above, it is considered that if a member of the family is already in employment and supports the family then the restriction may be applied. When a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family, If that person was employed even before the death of the government servant and was living separately without extending any help to the family, then the case of other eligible dependants will be considered.

4. However, the restriction that only one of the dependants will be entitled for appointment on compassionate grounds will continue.

5. Only the dependants of the deceased Government Servant Viz. wife/husband/son/unmarried daughter will be eligible for appointment. If the widow is not educationally qualified/eligible for appointment, she could be given a job like sweeper. The Government also direct that a married daughter who is deserted by her husband and living with the



family of the deceased Government servant and widowed or divorced daughter living with the family may be considered, if the widow of the deceased Government Servant gives her consent in writing".

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5. It is also further stated that the mother of the respondent herein has given No Objection Certificate to the respondent/writ petitioner. He contended that in terms of the G.O. when there are indigenous circumstances and that if any of the family member is already employed and living separately without extending any help in the family then the case of the other eligible dependents may be considered. According to the respondent/writ petitioner, she has not suppressed any fact about the mother's employment and only for the reason stated supra, it was not disclosed till the filing of the affidavit before this Court. He further submitted that the learned Single Judge has converted the punishment of removal from service into one of compulsory retirement and the same need not be interfered with.

6. Heard both sides and perused the materials available on record.

7. It is not in dispute that the writ petitioner/respondent herein joined the services on compassionate ground without disclosing the fact that the mother was employed and this fact has been admitted by the respondent/writ petitioner in the affidavit at paragraph No. 3. The contention of the respondent is that the grandparents were taking care of the children, including the respondent and the respondent's mother was handing over the pension amount to the paternal grandfather. It is no doubt true that compassionate appointment can be considered not only on the ground of indigenous circumstances, but also on the ground of family member who got the benefit of appointment on compassionate ground living separately. But in the present case on hand, this factum was not informed to the appellants. That apart, though the application for compassionate appointment itself was beyond three years on account of collusion between the officials and parties, as rightly held by the learned Single Judge, the said appointment was favourably considered earlier. Even though action has been initiated by the appellants as early as in 2002 there is no iota of evidence as to whether the person, who has issued a forged certificate has been proceeded with. The learned Single Judge's observation at paragraph No.9 that there could be a collusion between the officials who gave a false certificate and the writ petitioner for obtaining the appointment based thereon, cannot be ruled out. As corruption



has penetrated into the blood of many of the Government Officials, the observation made by the learned Single Judge on this score cannot be interfered with, as we are in entire agreement in this regard which could have been committed by both parties, namely, the appellants and the respondent.

8. The learned Single Judge clearly held that though the respondent/writ petitioner has committed fault, the officials of the department must have played some part in inducing the respondent to commit wrong by the respondent/writ petitioner and therefore, learned Single Judge ought not to have converted the removal from service into one compulsory retirement. Having completed more than 10 years of service, the Government may have to extend the pensionary benefits to the person provided if she had joined the services prior to introduction of New Provident Fund, and for the wrong doer, there is no need for the Government to extend the tax payers money by means of pensionary benefit. As there is suppression of fact in getting the employment, we are of the view that the order of the learned Single Judge need to be interfered with, with regard to paragraph No.10 alone and as a detailed enquiry has been conducted and the employer has been found guilty of the charges, in the opinion of this Court, the punishment imposed by the appellants stands restored. The Apex Court in the case of Director General of Police, Railway Protection Force vs. Rajendra Kumar Dubey (Civil Appeal No.3820 of 2020, dated 25.11.2020) with reference to its judgment rendered in the case of Union of India vs. P.Gunasekaran, reported in (2015) 2 SCC 610 has held that unless the punishment is disproportionate and shocks the conscience of the Court, the punishment imposed by the employer need not be interfered with. For the sake of convenience the relevant paragraph of the judgment is extracted below:-

"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;



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(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

9. In the present case on hand, as there is a suppression of fact and that there are materials produced in the enquiry and the department has established the charges, we are of the view that the order impugned in the writ petition is perfectly valid and the same is restored. If the errant officials are in service, it is needless to mention that the appellants must take action and show them the doors.

10. With the above observation writ petition is allowed and the order of the W.P.No.27423 of 2005 dated 06.11.2020 is hereby set aside. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare (K1) Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Medical
and Rural Health Services,
Chennai - 600 006.

+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.51322

W.A.NO.1935 OF 2021 AND
C.M.P.NO.12507 OF 2021

VSN-II (CO)
PBS/21/01/2022