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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.856 of 2022

A.Santhamoorthy, ... Appellant/Petitioner

Vs.

1. The Director,
Department of Employment Training,
Guindy,
Chennai - 600 032.

2. The Deputy Director,
Ex-Serviceman's Welfare Office,
Krishnagiri District,
Krishnagiri.

3. The District Employment Officer,
Krishnagiri District,
Krishnagiri.

... Respondents/Respondents

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 13.12.2021 in W.P.No.16719 of 2015 and allow this Writ Appeal.

Prayer in WP.No.16719 of 2022:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the connected records in Na.Ka.No.1168/2015-A4 dated 30.03.2015 on the file of the Second Respondent herein and quash the same as illegal and direct the second respondent to consider the name of the petitioner under G.O.Ms.No.1218 (Ex-Serviceman) dated 03.09.1999 for suitable compassionate appointment/Job to the petitioner.

For Appellant : Mr.B.Nedunzhelian

For R1 to R3 : Mr.Mythreye Chandru
Special Government Pleader



J U D G M E N T

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

The present appeal has been preferred against the order dated 13.12.2021 in W.P.No.16719 of 2015.

2. The case of the petitioner is that his father is an Ex-Serviceman and has 70% disability, which was assessed by the Medical Authority by Sena Seva Corps Abilekh (Dakshin), A.S.C records (South) Bangalore and therefore, the Appellant falls in the category of Dependants / Disabled Defence Personnel. Hence, the Petitioner's name has to be included under the head of "Ex-Serviceman and Disabled Ex-Serviceman" in terms of G.O.(MS) No.1218 dated 03.09.1999. Hence he filed the writ petition. The learned Single Judge dismissed the writ petition on the ground that disability did not occur during the service period of the petitioner's father in the Armed Forces, rather, the disability was sustained in the regular course, while he was in service and the Government order does not intend to extend compassionate appointment to the dependants of such an Ex-Serviceman. Aggrieved by the same, the Appellant has filed the present appeal.

3. The learned counsel for the Appellant submitted that Appellant's father is an Ex-Serviceman and worked as Sepoy Soldier from 20.11.1968 to 14.04.1979. As his service was no longer required due to disability sustained by him, while in active service, he was discharged from service under Section 13 of Army Act. In view of the above, the Petitioner sought for a direction to 1st and 2nd respondents to consider his case as a special category in the light of G.O.Ms.No.1218 dated 03.09.1999 public (Ex-Serviceman) Department, Government of Tamil Nadu. Though the disability had not happened during his service in the Armed Force, learned Single Judge failed to consider that the Appellant's father comes under Disabled Ex-Serviceman and not under the dependant of Ex-Serviceman and therefore Na.Ka.No.1168/2015-A4 dated 30.03.2015 is liable to be quashed. Hence prayed for allowing the appeal.

4. Per contra, the learned Special Government Pleader contended that a person serving in the Armed Force cannot be simply termed as a Disabled Person, as long as he was in active service. In this case, the Appellant's father did not acquire disability during his service period, pursuant to which, the Appellant is not entitled to the relief sought for and hence, the order of the learned Single Judge is perfectly justified, warranting no interference by this Court.



5. Heard the learned counsel on either side and perused the material documents available on record.

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6. The Appellant has strenuously stated that his father, who was employed as Sepoy Soldier, became disabled, while on duty and his father entered Army Service on 20.11.1968 and was discharged from service on account of disability in terms of Section 13 of the Army Act, 1979. Therefore, he has come forward with the plea of considering his name for appointment on compassionate ground in terms of G.O.Ms.No.1218 dated 03.09.1999. In the affidavit, the Appellant has stated that his father was discharged from service in view of Section 13 of Army Act and his father's service conditions are governed by the provisions of Army Act. Thus, it is obvious that issues regarding recruitment, retirement including after retirement, compassionate appointment, etc., will have to be adjudicated only before the Armed Forces Tribunal that has been constituted, pursuant to the Act, namely, Armed Forces Tribunal Act, 2007. Hence, we are of the view that Writ Court has no jurisdiction to entertain any subject pertaining to persons employed under the Army in the light of the aforesaid Act.

7. In view of the above, we have no other option, but to dismiss the Writ Appeal, by giving liberty to the Appellant to approach the Armed Forces Tribunal, constituted pursuant to the Act 2007 and it is for the Tribunal to decide the claim of the Appellant independently, being uninfluenced by the observations made in the Writ Petition and this judgment. Any observation made by the Writ Court and this Court, touching upon the merits of the matter has no bearing on the Tribunal and the Tribunal has to decide it independently.

8. With the above observation, the Writ Appeal is dismissed with liberty. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dpq



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+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.26643

+1cc to the Government Pleader, S.R.No.27305

W.A.No.856 of 2022

CA(CO)
UMA(06/07/2022)