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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

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

Writ Appeal No.2767 of 2021

R.Murugan

...Appellant/Petitioner

vs.

The Deputy Director of Public Health  
and Preventive Medicine,  
Institute of Public Health,  
Poonamallee,  
Chennai 600 056.

...Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 17.06.2020 passed by this Court in W.P.No.18787 of 2015.

Prayer in W.P.No.18787 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of respondents termination order under reference Na.Ka. No.7856/P.Tho2/1998 dated 15.6.2015 and to quash the same as illegal and invalid and consequently direct the respondent to forthwith reinstate the petitioner in service as a Mazdoor in the respondent Department along with all attendant and monetary benefits and continuity of service and also regularize the petitioner service.

For Appellant : Mr.B.Balachandar  
for M/s.Ashok Menon

For Respondent : Mr.P.Ananda Kumar,  
Government Advocate

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

Aggrieved by the order dated 17.06.2020 passed by the learned Single Judge in W.P.No.18787 of 2015, the Writ Petitioner has come up with this Writ Appeal.



2. The Writ Petitioner is the Appellant. His father died on 19.05.1975 while in service and based on the representations made by his mother, the case of the Writ Petitioner was considered for appointment on compassionate ground to the post of Mazdoor. Though, the Writ Petitioner worked in the said post for almost a decade, he was abruptly terminated from service by an order dated 15.06.2015 passed by the Respondent on the ground that, his appointment was on temporary basis apart from the fact that, compassionate appointment was granted to him after a lapse of more than 20 years since his father's demise on 19.05.1975 and that, the same is contrary to the Guidelines, which prescribe the outer limit of 3 years to make an Application for compassionate appointment from the date of demise of the employee. Challenging the order of dismissal, the Writ Petitioner approached this Court in W.P.No.18787 of 2015.

3. Before the learned Single Judge, it was pointed out by the Respondent that, in the appointment order, it has been mentioned that, the Writ Petitioner's appointment is on temporary basis and that, he could be terminated at any time, as the Application made by him for compassionate appointment is beyond the prescribed time limit of three years from the date of demise of his father. According to the Respondent, the Writ Petitioner does not have any right to claim employment on permanent basis and that, he has rightly been ousted from service.

4. It has been further stated by the Respondent that, the Writ Petitioner's service has not been regularized and after taking into account his reply dated 11.06.2015 to the Show Cause Notice dated 03.06.2015, he was disengaged from service. The contention of the Respondents is that, while, in terms of G.O.Ms.No.120, dated 26.06.1995, compassionate appointment has to be granted within three years from the date of demise of the employee, the Writ Petitioner made a request for compassionate appointment after 23 years from the date of demise of his father and the length of nine years of service rendered by him cannot be a ground to claim continuity of service, more so, when his appointment order is specific to the extent that, his appointment is on temporary basis.

5. Learned Single Judge, after taking into account the averments of the learned counsel on either side and the scheme of compassionate appointment, came to the conclusion that, the Writ Petitioner is debarred from seeking compassionate appointment on the ground of delay. The observation of the learned Single Judge would be perfectly justified, had the Respondent denied compassionate appointment to the Writ Petitioner on the ground of delay in making the Application. But, the fact remains that, the Respondent has granted



appointment to the Writ Petitioner on compassionate ground in spite of delay of 23 years in making the Application, since the demise of his father, and allowed him to work for more than 9 years.

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

7. Undoubtedly, compassionate appointment to the legal heir of the deceased employee is granted to get over the immediate crisis on account of loss of the breadwinner of the family. In the case on hand, having allowed the Writ Petitioner to work for more than nine years and thereafter divesting off his duties on the ground that, the Respondent has wrongly provided him employment after 23 years since the date of demise of his father, may not be correct.

8. In this connection, it is worth referring to a decision of this Court in the case of S.Thangappan vs. The Government of Tamilnadu reported in 1986 TLNJ 153, wherein, it has been held as under:

"If there had been any irregularity committed by the Appointing Authority, it is the Appointing Authority, who should be proceeded against. It is because of the failure of the concerned superior authority in not taking a stern action against irregular appointment made by the Appointing Authorities, it results in innocent persons, who secures employment against considerable stress and odds and later on their service dispensed with as if the Appointing Authority, would at any time, arbitrarily terminate their services. The second respondent, having found that the third respondent had appointed the petitioners contrary to the rules, ought to have taken disciplinary proceedings against the third respondent. For errors and omissions committed by him, persons like that of the petitioners, who have secured the last grade post on permanent basis cannot be dealt with as if they could be dropped like hot cakes. Their future cannot be treated as light-heartedly. It is in this view, this Court, considering that even if the appointments had not been made through the Employment Exchange, or due to any other irregularity, taking note of the difficulties to which the petitioners would be placed by throwing out of their



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employment arbitrarily, these Petitions are allowed; committed authority could have exercised its powers of exempting the rules which they do not satisfy. Such orders of exemption are not a rarity. Therefore, instead of taking action against the person who is responsible for passing orders he had been allowed to arbitrarily and contrary to rules terminate the services of the petitioners. There is no rule enabling the third respondent to terminate the service of a permanently recruited municipal servant. He does not touch upon any rule to justify his order. The rules do not confer upon him such a power. He had acted in a manner which cannot find acceptance."

9. Under the Industrial Law, the Nagpur Bench of the Bombay High Court in the case of Dilip Hanumantrao Shirke vs. Zilla Parishad, Yavatmal reported in 1990 (I) LLJ 445 has held that, amended sub-clause (bb) of Section 2 of the Industrial Disputes Act, 1947 would apply to such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and bonafide. For better appreciation, relevant portion of the said decision is extracted hereunder:

"7. ... A stipulation in the contract that the employment would be for a specific period or till completion of the work may also fall within the scope and ambit of this sub-clause. But, if the employer resorts to contractual employment as a device to simply take it out of the principle clause (00) irrespective of the fact that the work continues or the nature of duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the anvil of the fairness, propriety and bona fides. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself confirmed as a permanent employee either under the Rules applicable to such employment or even under the Standing Orders. It is always open to the Court adjudicating the dispute to examine each and every case in its proper perspective and to protect the workman against the abuse of the amended provision. If this protection is not



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afforded, the benefit flowing from retrenchment, to which every termination succumbs, would be rendered nugatory. The amended sub-clause (bb) would apply only to such cases where the work ceased with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and bonafide. ..."

10. It is also worth referring to yet another decision under Industrial Law rendered by the Punjab & Haryana High Court in the case of Balbir Singh vs. Kurukshetra Central Co-op Bank reported in (1990) 1 LLJ 443, wherein, it is held that, the employer cannot resort to frustrate the claim of the employee to deny benefits. Relevant portion of the said decision is extracted hereunder:

"7. ... The contractual clause enshrined in Clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted as to enable an employer to resort to the policy of hire and fire and to confer unguided power on the employer to renew or not to renew the contract irrespective of circumstances in which it was entered into or ignore the nature and extent of work for, which he was employed. "

11. In support of his case, learned counsel for the Appellant has relied on an Apex Court decision in the case of Union of India vs. K.P.Tiwari reported in 2003 (9) SCC 129, wherein, a wrong appointment was made and the Respondent therein was allowed to serve for five years. When the employee was sought to be divested off his duties, the Apex Court held that, since the employee is already working, there is no need to disturb his job.

12. Hence, we are of the view that, the order dated 15.06.2015 passed by the Respondent herein, abruptly terminating the services of the Appellant/Writ Petitioner, is illegal and hence, the order dated 17.06.2020 passed by the learned Single Judge in W.P.No.18787 of 2015, is set aside.

13. Taking note of the fact that, the Appellant/Writ Petitioner has not worked under the Respondent from the date of termination and also taking into account the pandemic situation, we are not inclined to grant backwages to the Writ Petitioner.



However, the entire period of service of the Appellant/Writ Petitioner with the Respondent i.e. the date of his entry into service shall be taken into account for the purpose of granting other service benefits to him, including terminal benefits. Benefits shall be extended to the Appellant/Writ Petitioner within a period of four months from the date of receipt of a copy of this judgment.

The Writ Appeal is allowed on the above terms. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Deputy Director of Public Health  
and Preventive Medicine,  
Institute of Public Health,  
Poonamallee,  
Chennai 600 056.

+2ccs to Mr.Ashok Menon, Advocate SR. No.10393  
+1cc to Government Pleader SR. No.11097

W.A.No.2767 of 2021

JPL (CO)  
PR (16/03/2022)