



W.P.No.32993 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32993 of 2017

Gowthami

... Petitioner

Vs.

The Chief Executive Engineer (Agricultural Department)
Agricultural Engineering Department
No.487, Anna salai, Nandanam,
Chennai – 600 035.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pertains to the impugned order bearing letter No.pension.2/37199/16 dated 06.11.2017 and quash the same as arbitrary, illegal and consequently direct the respondent to provide suitable employment to the petitioner on compassionate ground.

For Petitioner : M/s.P.R.Thiruneelakandan

ORDER

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 06.11.2017 is under challenge in the present Writ Petition.



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2.The petitioner states that his father Mr.N.Karunakaran, served in the Agriculture Engineering Department and was not well while in service. He appeared before the Medical Board and the Board issued a certificate stating that the petitioner was not fit to continue in Government services. Though, the Disability Certificate was issued on 01.07.2014, the petitioner was allowed to continue in service beyond the date of Certificate and the medical invalidation was accepted by the authorities in proceedings dated 30.09.2015 and accordingly, the petitioner was allowed to retire from service on the ground of medical invalidation. Thereafter, the father of the writ petitioner submitted an application seeking appointment to his daughter on compassionate ground. The said application was rejected on the ground that the scheme of compassionate appointment can be provided in respect of the employees who were medically invalidated before completion of the age of 53 years. In the case of the father of the writ petitioner, he was medically invalidated after the age of 53 years and at the age of 54 years. The department has taken the date of retirement as the criteria for the purpose of extending the benefit of the scheme of compassionate appointment. Accordingly, the father of the writ petitioner was allowed to retire from service on medical invalidation ground after completion of 53 years of age. Thus, the scheme of compassionate appointment was not extended in favour of



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the Writ Petitioner.

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3.The learned counsel for the petitioner mainly contended that the father of the Writ Petitioner was medically invalidated in the year 2014, more specifically, the Medical Board issued the Disability Certificate on 01.07.2014 and as on the said date, the father of the Writ Petitioner had not completed 53 years of age and therefore, the said date is to be taken into consideration for the purpose of extending the scheme of compassionate appointment. In support of the said contention the petitioner relied on the judgment of the Hon'ble Supreme Court in the case of ***V.Sivamurthy & Others vs. State of Andhra Pradesh & Others*** reported in ***CDJ 2008 SC 1397***, wherein the Hon'ble Supreme Court has held as follows:-

19.The 'five year left over period' is capable of being commenced with reference to any one of the following dates: (i) the date of application by the Government servant for medical invalidation; (ii) the date of report of the Medical Board certifying that the Government servant required to be medically invalidated; (iii) the date of recommendation by the State/District Level Committee in regard to medical invalidation; and (iv) the date of issue of orders of retirement on medical invalidation.



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4.Relying on the said judgment, the learned counsel for the petitioner reiterated that the five year left over period is capable of being commenced with reference to the date of report of the Medical Board certifying that the Government servant required to be medically invalidated. In the present case, the medical invalidation certificate was issued by the competent Board on 01.07.2014 and as on the said date, the father of the Writ Petitioner had not completed 53 years of age and therefore, the order impugned is liable to be set aside.

5.The ground raised by the petitioner deserves deeper consideration. As the scheme of compassionate appointment is a concession, appointment on compassionate ground is not an absolute right and a distinction is to be drawn between the right and concession extended to the Government servants. For example, allotment of quarters is a concession, so also the compassionate appointment. Right can be claimed by Government servant if it is infringed. However, concession cannot be equated with the right and therefore, the concessions are to be extended scrupulously in accordance with the terms and conditions stipulated. The Courts have repeatedly held that scheme of



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compassionate appointment being violative of Article 14 and 16 of the

Constitution of India cannot be extended so as to provide compassionate appointment to the family of the deceased employee or the medically invalidated employee. Appointments are to be made only under the constitutional schemes through open competitive process. Scheme of compassionate appointment is an exception and implemented to tide over difficult circumstances arising on account of the sudden death of a Government employee or on account of medical invalidation. In fact, the medically invalidated employee is in a better position, since the medically invalidated employee get terminal benefits and pension and therefore, such employees cannot be equated with the employees who died while in service. Beyond the above distinction, the scheme of compassionate appointment and its scope cannot be extended by the Courts in exercise of power of judicial review under Article 226 of the Constitution of India. The scheme being the exception, the terms are to be interpreted in its spirit and thus, this Court is of the opinion that the changes underwent and the scope of scheme is to be considered in the context. The judgment of the Hon'ble Supreme Court of the year 2008 with reference to the facts and circumstances of that case cannot be directly applied in respect of the facts and circumstances of the present case. One reason is that scheme of compassionate appointment varies from State to State,



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employer to employer and organisation to organisation. Thus, the scheme

applicable to the writ petitioner on hand is to be taken into consideration for the purpose of considering the relief sought for. In the present case, the Government of Tamil Nadu issued the scheme by stipulating that an employee who was medically invalidated before completion of 53 years alone is eligible to avail the benefit of compassionate appointment to the eligible members of his family. In the present case, the learned counsel for the petitioner relied on the Certificate issued by the Medical Board on 01.07.2014, to establish that on the said date the father of the Writ Petitioner had not completed 53 years of age.

6.Question arises, whether the Certificate issued by the Board is to be taken into consideration for the purpose of implementation of the scheme of compassionate appointment. This Court is of the considered opinion that, as on the date of issuance of Disability Certificate, the petitioner was in service and even after the issuance of Disability Certificate, the father of the Writ Petitioner was allowed to continue in service. Thus, the factual inference is to be considered that the employee worked in the department and received salary for the period during which he served even after the issuance of the Certificate by the Medical Board on 01.07.2014. If the said date of 01.07.2014 is taken into consideration, then very purpose and scheme of compassionate appointment will



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be defeated. As on 01.07.2014, the father of the Writ Petitioner was in service, he was a Government employee and received salary and the scheme of compassionate appointment is to be employed only in the event of a death of an employee or an employee was medically invalidated.

7.Question arises, when a Government employee is medically invalidated, it is not as if a Disability Certificate is to be taken into consideration in this context. Though, the Medical Board declared an employee as not fit to continue in service, it is the prerogative of the employer to take a decision in respect of such invalidation. Even in recent days, even if the Government employees are declared not fit to hold a particular post under the Disabilities Act, the employers are providing alternate employment or light duty to mitigate the circumstances arose to the employees. Therefore, various factors have involved in such circumstances. In the present case, even after issuance of Medical Certificate the father of the Writ Petitioner was allowed to continue in service and he had received the salary of the said period. Finally, he was medically invalidated and relieved from service only on 27.02.2015. Thus, the said date alone is to be taken into consideration for the purpose of invalidation and employee concerned. The acceptance of Medical Certificate by the employer is the point which is to be taken into consideration for extending the benefit attached with the medical



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invalidation. In other words, the scheme of compassionate appointment is to be considered based on the date of invalidation order issued by the competent authority/employee. Therefore, the issuance of Medical Certificate is a ground to invalidate an employee, but not to be considered as medical invalidation. The date of acceptance of Medical Certificate by the employer is to be considered as a date of invalidation for all purposes and more so, for the purpose of extending the benefits under the medical invalidation. This being the scope of the medical invalidation and the scheme of compassionate appointment, the father of the Writ Petitioner was medically invalidated from service on 27.02.2015 and on the said date he had completed 53 years of age and the scheme of compassionate appointment cannot be extended to the family members if the employee was invalidated beyond the age of 53 years. Thus, the scope of the scheme cannot be extended by the Court as it is only a concession and not a right.

8. Accordingly, this writ petition stands dismissed. No Costs.

12.10.2022

Index : Yes
Internet : Yes
Speaking order : Yes
ep/ssr



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S.M. SUBRAMANIAM, J.

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