



W.A.No.1672 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1672/2019 and CMP.No.11304/2019

1. The Principal Director Office (Highways),
Guindy, Chennai-600 025.
 2. The Divisional Engineer Office (Highways),
Inspection Division, Salem-636 004.
 3. The Chief Engineer (Highways),
Planning, Designing & Inspection,
Chennai-600 032.
- ... Appellants

VS

1. G.Thenmozhi
 2. The Secretary,
Labour and Employment Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 29.11.2018 made in W.P.No.19111/2018 by a learned Single Judge of this Court.

For Appellants : Mr.L.S.M.Hasan Fizal, AGP.

For 1st Respondent : Mr.G.Munuraj



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JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J.]

Aggrieved by the direction given by the writ court to employ the writ petitioner on compassionate grounds by relaxing the upper age limit, the State is on appeal.

2. The father of the writ petitioner Mr.V.Govindhamurali, who was working as a watchman in the office of the 2nd appellant, died in harness on 05.12.2015. The writ petitioner who is a divorcee was living with her father at the time of his death. She claimed an appointment under compassionate grounds on 03.06.2016. Her application was rejected by the authority on 15.12.2017 invoking Section 15 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, on the ground that she had crossed the upper age limit of 35 years on the date of her application. The Writ Court upon hearing the parties concluded that the appellants have a power to relax the upper age limit, particularly, in a case, where a person, who seeks compassionate appointment belongs to Scheduled Caste or Scheduled Tribe Community. The writ court also referred to a Division Bench judgment of this Court in **C.Jayapal v. The Director of Medical Education, Chennai-10 and two others** reported in **2005 (5) CTC 655**. The Division Bench has considered an exactly



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similar case where the applicant was overaged at the time of consideration of his application. The Division Bench relied upon the instructions issued by the Government in Letter No.46571/N1/82-3 dated 24.11.1982 wherein a provision was made for relaxation of the upper age limit in case of Scheduled Caste and Scheduled Tribe Candidates. The said letter has also been placed before us. It specifically provides for relaxation of upper age limit for Scheduled Caste/Scheduled Tribe candidates.

3. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants relying upon the Government Order in G.O.Ms.No.560, Labour and Employment Department, dated 03.08.1977 and subsequent Government Order in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well as the provisions of Section 15 of the Act would vehemently contend that the court has no power to direct the relaxation of upper age limit in cases of compassionate appointments.

4. We are unable to countenance his submissions for the following reasons:

The prohibition contained in G.O.Ms.No.560, Labour and Employment Department, dated 03-08-1977, deals with



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compassionate appointments in general and subsequently, the Letter No. 46571/N1/82-3 dated 24.11.1982 deals with relaxation in age, in particular, for persons belonging to Scheduled Caste/Scheduled Tribe Communities which is a benefit that is handed out by the Government to the persons belonging to suppressed classes. Therefore, it will be unfair on our part not to extend the benefits to a person who belongs to the suppressed community.

5. As regards the reliance placed on Section 15 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, we are constrained to observe that Section 15 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, cannot be made applicable to the case on hand since the cause of action for seeking compassionate appointment arose, in the case on hand, on 05.12.2015, when the father of the petitioner died and the petitioner made an application on 03.06.2016, the Act came into force only on 14.09.2016. Therefore, the provisions of Section 15 which are essentially prospective in nature cannot be made retrospective. Yet another fact that impels us to sustain the order of the writ court is that the provision made in G.O.Ms.No.18 which has consolidated the Government Orders issued in respect of compassionate appointments fixes the upper age limit as 40. The petitioner was admittedly below



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40 even on the date of the order of the writ court. Therefore, we do not see any reason to interfere with the order of the writ court.

6. In the result, the Writ Appeal fails and it is, accordingly dismissed. There will be a direction to the appellants to offer a suitable employment to the 1st respondent within a period of three months from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.M.,J.] [S.S.K.,J.]
02.01.2023

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Index: Yes/No

To

The Secretary,
Labour and Employment Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.



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**R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.**

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