

(2013) 02 MAD CK 0099
In the Madras High Court
Case No : W.A. No. 1623 of 2011

A. Illambharathi	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 2 MLJ 641

Hon'ble Judges : N. Paul Vasanthakumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; S. Ramesh, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is filed by the appellant against the order made by the learned single Judge in W.P. No.

27223 of 2010 dated 28.3.2011, wherein the rejection of the compassionate appointment of the appellant was upheld. The brief facts are that the

appellant's father, namely Anthony, was working as a Machine Minder in the Government Central Press, Chennai-600 079. He died on

10.8.1996, leaving behind the appellant's mother, appellant, another son and two daughters. The appellant's elder brother is a mentally challenged

person. The appellants two elder sisters are living as spinsters even though they are 40 years old and they are illiterates. The appellant's mother is

also an illiterate. The appellant studied upto VI Standard and he is the only person in the family eligible to seek employment on compassionate

ground due to the death of his father namely Anthony.

2. The appellant's mother applied for compassionate appointment for the

appellant on 12.2.1997 i.e., within one year from the date of the death of the appellant's father. The third respondent has given a certificate in July 1997, certifying that no job on compassionate ground has been given to any of the legal heirs of late Anthony. The appellant's mother was further directed to produce the original school certificate and community certificate pertaining to the appellant within 10 days, in the month of April, 1998. The said documents/certificates were also furnished. The

Tahsildar, Purasaiwakkam-Perambur Taluk, Chennai, gave certificate to the effect that the appellant's family is in an indigent position and the

appellant's mother alone is getting family pension of Rs. 2,800/- per month.

3. The appellant was directed to meet the Additional Personal Assistant to the District Collector, Chennai, on 12.9.2000 to verify the genuineness

of the community certificate obtained by him. The genuineness of the community certificate and the school certificate were verified and found to be

true.

4. The second respondent, on 14.3.2002, called upon the appellant to appear on 20.3.2002 before the Joint Director, Stationary and Printing

Department, Chennai, and to produce the legal heir certificate, copy of the family pension book, school transfer certificate and copy of the

community certificate and on that date, the same were also produced. Ultimately, the claim of the appellant was rejected on 18.11.2008 by stating

that as per Tamil Nadu Basic Services Rules, viz., Rule 5(2)(aa), a person seeking employment in Class IV cadre should know how to read and

write Tamil and the appellant was found to be not able to read and write Tamil. The said order was challenged before this Court by filing W.P.

No. 27223 of 2010 and the said writ petition was dismissed by the learned single Judge, against which, the present writ appeal is filed.

5. The learned counsel for the appellant argued that the appellant having studied upto VI standard, is able to read and write Tamil, which is the

qualification prescribed under Rule 5(2)(aa) of the Tamil Nadu Basic Services Rules and therefore, rejection of appellant's request seeking

compassionate appointment on the ground that the appellant was not able to read and write Tamil is unsustainable. The learned counsel also relied

on the unreported judgment of this Court in W.P. No. 21182 of 2010 dated 28.9.2010, passed by one of us (N. Paul Vasanthakumar, J.) wherein

a similar writ petition was considered and the said writ petition was allowed, issuing direction to give appointment on compassionate ground as

Lascar as the petitioner therein was able to read and write Tamil as he studied upto VII standard and granted liberty to the Department to submit

the proposal for relaxation if required and get relaxation as required under Rule 48 of the Tamil Nadu State and Subordinate Service Rules. The

learned counsel for the appellant submitted that the said order was implemented and that order has become final and thus writ appeal may be

allowed.

6. The learned Additional Government Pleader, on the other hand, submitted that the appellant was not able to read and write Tamil and a

proposal was sent for relaxation, which was returned by the Government in letter No. 29530/S & P. 1/2006 dated 31.7.2007 stating that for filling

up the appointment on compassionate grounds, a committee was constituted and after getting report from the Expert Committee, relaxation can be

considered and therefore, the petitioner cannot be given appointment on compassionate ground. The learned Additional Government Pleader

argued for upholding the order of the learned single Judge.

7. We have considered the rival submissions. It is the fact that the appellant's family is in indigent position as on date and the appellant's elder

brother is a mentally challenged person, and two elder sisters of the appellant have crossed the age of 40 and living as spinsters due to poverty and

the appellant's mother is getting meagre income of Rs. 2,800/- per month as family pension. The application seeking compassionate appointment

was submitted on behalf of the appellant by his mother within one year from the date of the death of the appellant's father. The eligibility to get

compassionate appointment i.e., one member from the family of the appellant, is not in dispute and the Scheme of the Government provides for the

said appointment The only objection raised is that the appellant is not able to read and write in Tamil for getting compassionate appointment

8. Rule 5(2)(aa) of the Tamil Nadu Basic Services Rules clearly states that candidates for appointment by direct recruitment to any of the

categories in class IV must be able to read and write in Tamil and in Clause (c), it is stated notwithstanding the provisions contained in Clause (aa),

appointment to the categories of posts in Class IV in all Directorates and Medical

Institutions under the administrative control of the Health and Family Welfare Department and the Tamil Nadu Secretariat may be made, out of persons who do not possess ability to read and write Tamil, if qualified persons are not available at the time of appointment

9. In this case, the petitioner is seeking appointment on compassionate ground Therefore, non-availability of candidates cannot be a ground for not providing compassionate ground appointment to the appellant's family The only question arises for consideration is as to whether the appellant is qualified The fact that the appellant has studied upto VI standard in the Government School is not denied The appellant also signed in Tamil in the affidavit and vakalat and not put his thumb impression We are satisfied that the appellant is able to read and write Therefore, the appellant is entitled to get employment on compassionate ground The Judgment relied on by the learned single Judge in Umesh Kumar Nagpal Vs. State of Haryana and Others, is not relevant to the issue raised in the writ petition The order of the learned single Judge is set aside. The writ appeal is allowed The second respondent is directed to issue appointment order to the appellant on compassionate ground, within a period of eight weeks from the date of the receipt of a copy of this order No costs.