

(2016) 12 MAD CK 0013

In the Madras High Court

Case No : W.A.(MD)No. 830 of 2010 and C.M.P(MD)No. 7583 of 2016

C. Manikandan

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2017) LIC 778 : (2017) 2 LLN 528

Hon'ble Judges : Mr. M. Sathyanarayanan and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. M. Ajmal Khan, Senior Counsel for Ms. T.K. Akalya, Advocate, for the Respondent Nos. 3 and 4; Mr. M. Saravanan, Advocate, for the Appellant; Mr. R. Velmurugan, Government Advocate, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J. - The appellant/writ petitioner sought an appointment on compassionate grounds on account of demise of his father who was employed as Artisan Grade-I in the services of the third respondent and the writ petition filed by him seeking for the said relief was dismissed on 27.10.2010. Challenging the legality of the same, the appellant/writ petitioner has filed this writ appeal.

2. The appellant/writ petitioner in the affidavit filed in support of the writ petition would aver among other things that he has completed the Diploma in Electrical and Electronic Engineering and he would further state that his father was employed as Arisan Grade - I in the services of the third respondent, which is the non-minority and aided Engineering College governed by the rules and regulations framed by the Government of Tamil Nadu.

Unfortunately, his father died in harness on 08.09.2000 and since the entire family consisting his wife, son (appellant/writ petitioner) and two daughters depends upon his income, met the respondents 3 and 4 in person and prayed for appointment on compassionate grounds and he was also called upon to produce

his certificates for verification and he also produced the same on 22.02.2007, however, was not given the appointment on compassionate grounds.

3. The grievance expressed by the appellant/writ petitioner was that four others who were similarly placed like that of the appellant/writ petitioner, namely, R. Kaleeswari, G. Arockiadoss, G. Tamilselvi and S. Darling Vijayarani were given appointment on the said grounds and in this regard, he has also submitted a representation dated 09.08.2009 and since no response is forthcoming, had filed the writ petition praying for appointment on compassionate grounds.

4. A counter affidavit was filed on behalf of the respondents 3 and 4, wherein it is stated that at the time of demise of the father of the appellant/writ petitioner, he was aged 56 years and was left with 2 years of service and even during his life time, one of the daughters, namely, Karpagam got married and at the time of his demise, the mother of the appellant/writ petitioner was aged about 52 years; the appellant/writ petitioner was aged 27 years and two other daughters were aged 26 and 21 respectively and denied the averments that immediately after the demise of the father of the appellant/writ petitioner, he approached the respondents 3 and 4.

5. It is further stated that the State Government had instructed not to fill up any vacant posts vide G.O.Ms.No.212 (Personnel & Administrative Reforms (P) Department), dated 29.11.2001 and it was lifted on 21.02.2006, vide G.O.Ms.No.16 (Personnel & Administrative Reforms (G) Department) of the same day. Insofar as the stand of the appellant/writ petitioner that the family on account of untimely demise of P. Chockalingam was in financial distress. It is stated that the appellant/writ petitioner who was aged 34 years, got married and gainfully employed and other three persons, namely, the wives of the deceased employees were given employment on compassionate grounds taking into consideration their financial position and family background. In sum and substance, the respondents 3 and 4 took a stand that the family of the appellant/writ petitioner is found to be well off financially and since the appointment on compassionate grounds is not an automatic right, particularly, in the third respondent - Private Engineering College, the claim made by the appellant/writ petitioner is wholly untenable and therefore, prayed for the dismissal of the writ petition.

6. The appellant/writ petitioner also filed a reply to the counter affidavit, reiterating his earlier stand.

7. The learned Judge after considering the rival submissions and by placing reliance upon the judgments in Life Insurance Corporation of India v. Asha Ramachandra Ambedkar (Mrs.) and another reported in 1994 (2) SCC 718 and Umesh Kumar Nagpal v. State of Haryana and others reported in 1994 (4) SCC 138, had found that the claim of the appellant/writ petitioner is unsustainable and therefore, dismissed the same, vide impugned order dated 27.10.2010 and challenging the same, the present appeal is filed.

8. Mr. M. Saravanan, learned Counsel for the appellant/writ petitioner would contend that within the very few days from the date of demise of his father, the appellant/writ petitioner had approached the third respondent and he was called for certificate verification and he attended the same on 22.02.2007 and he was not favoured with any response, whereas the claim of three others, who were similarly placed that of the appellant/writ petitioner was considered and they were given appointment, however, the respondents 3 and 4 did not choose to pass any orders in the case of the appellant/writ petitioner.

9. It is the further submission of the appellant/writ petitioner that the averments made in the counter affidavit as to the financial status of the family of the appellant/writ petitioner is wholly untrue and even now, they are in financial difficulty and therefore, prays for setting aside the impugned order, with a further direction to direct the respondents 3 and 4 to give appointment on compassionate grounds.

10. Per contra, Mr. M. Ajmal Khan, learned Senior Counsel assisted by Ms. T.K. Akalya, learned Counsel for the respondents 3 and 4 would contend that on the demise of the father of the appellant/writ petitioner, the family of the appellant/writ petitioner was paid with a sum of Rs. 4,69,036/- (Rupees Four Lakhs Sixty Nine Thousand and Thirty Six only) being the terminal benefits.

11. The learned Senior Counsel appearing for the respondents 3 and 4 would further submit that it is not correct to state that the family of the appellant/writ petitioner is in financial difficulty or distress and admittedly, the appellant/writ petitioner is gainfully employed as Sales Area Manager in P.S. Medical Systems Pvt. Ltd., Chennai for the past 11 years and during the course of the said employment, he made an attempt to get employment on compassionate grounds in the services of the third respondent and he has also married and his wife is employed as Information Technology System Engineer at Aravind Eye Hospital, Madurai and she is earning a monthly salary of Rs. 40,000/- (Rupees Forty Thousand only) and his two other sisters were also given in marriage and as such, the claim of the appellant/writ petitioner lacks bona fide and merit.

12. The learned Senior Counsel appearing for the respondents 3 and 4, on a legal plea, would submit that the appointment on compassionate grounds cannot be claimed as a matter of right as it is an exception with regard to the general rule of appointment and unless the financial distress/difficulty is made out, it cannot be given as a matter of right and in support of his submission, he placed reliance upon the following judgments:

(i) Punjab National Bank and others v. Ashwini Kumar Taneja reported in (2004) 7 Supreme Court Cases 265;

(ii) General Manager (D&PB) and others v. Kunti Tiwary and another reported in (2004) 7 Supreme Court Cases 271;

(iii) Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra and others reported in

(2008) 11 Supreme Court Cases 384; and

(iv) Union of India and another v. Shashank Goswami and another reported in (2012) 11 Supreme Court Cases 307.

13. Heard the submissions of the learned Counsel for the respondents 1 and 2 also.

14. This Court has carefully considered the rival submissions and also perused the materials available on record as well as the judgments relied on by the learned Senior Counsel appearing for the respondents 3 and 4.

15. The judgments relied on by the learned Senior Counsel appearing for the respondents 3 and 4 lay down the following proposition:

(a) The claim for appointment on compassionate grounds can be considered as reasonable and permissible on the basis of sudden crisis occurred in the family of such employee who died in harness;

(b) The appointment on compassionate grounds is not another source of recruitment, but merely an exception to the aforesaid requirements taking into consideration the financial hardship/crisis;

(c) The appointment on compassionate grounds should be provided immediately to redeem the family in distress; and

(d) The terminal benefits received by the widow of the employee and the family pension should not be taken into account while considering the request for appointment on compassionate grounds. In the event of proof that in spite of the demise of the bread-winner, the family survived and substantial period is over, the appointment on compassionate grounds need not be given.

16. This Court keeping in mind the principles laid down and reiterated in a catena of judgments rendered by the Honourable Supreme Court, has carefully scanned through the materials placed on record and also considered the rival submissions made by the respective learned Counsel for the parties.

17. The father of the appellant/writ petitioner while employed as Artisan Grade - I died in harness on 08.09.2000 and according to the learned Counsel for the appellant/writ petitioner, he participated in the certificate verification on 22.02.2007 and however, he was not favoured with any response, whereas the claims made by the similarly placed persons were considered and they were accommodated. However, no material has been placed in support of the said averment and the fact remains that the legal heir certificate was issued on 18.09.2000 and thereafter, the appellant/writ petitioner submitted a representation only on 09.08.2009 seeking appointment on compassionate grounds.

18. It is the specific stand of the respondent 3 and 4 in their counter affidavit filed in the writ petition as well as in this writ appeal that even at the time of

submitting the application, the appellant/writ petitioner was employed in a private firm and earning a decent salary and got married and his wife is also employed as Information Technology System Engineer at Aravind Eye Hospital, Madurai and is earning a monthly salary of Rs. 40,000/- (Rupees Forty Thousand only). Though the appellant/writ petitioner has filed the reply, it was only a bare denial.

19. In MGB Gramin Bank v. Chakrawarti reported in 2013 (10) SCALE 223 : (2014) 13 Supreme Court Cases 583, the order directing the appellant, namely, MGB Gramin Bank to provide appointment to the respondent was put to challenge. The Honourable Supreme Court after taking into consideration its earlier decisions, has allowed the appeal and thereby, set aside the order directing the appellant therein to give appointment on compassionate grounds and it is relevant to extract hereunder paragraph 13:

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In St. 661, this Court held that in such a situation, the case under the new Scheme has to be considered."

20. In Canara Bank v. M. Mahesh Kumar reported in (2015) 7 Supreme Court Cases 412, the question that arose before the Honourable Supreme Court was whether dependent family members of the deceased employee of the Canara Bank were entitled to seek appointment on compassionate grounds on the basis of "Dying in Harness Scheme" which was passed vide Circular No.154 of 1993, with effect from 08.05.1993. The claim for appointment on compassionate grounds was resisted by the appellant, namely, Canara Bank on the ground that the financial condition of the family members of the deceased employee was good. The Honourable Supreme Court has also taken into consideration the decision in MGB Gramin Bank v. Chakrawarti reported in 2013 (10) SCALE 223 : (2014) 13 Supreme Court Cases 583 and also other decisions and had enumerated the factors to be borne in mind while considering the claim for appointment on compassionate grounds and it is relevant to extract hereunder paragraph 20:

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion

as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

(emphasis supplied.)

21. The appellant/writ petitioner was aged about 27 years on 18.09.2000 - the date of issuance of the legal heir certificate and admittedly, the application for appointment on compassionate grounds was submitted only on 09.08.2009, nearly 9 years after the demise of his father on 08.09.2000. The respondents 3 and 4 are also categorical that the appellant/writ petitioner is gainfully employed as Sales Area Manager in P.S.Medical Systems Pvt. Ltd., Chennai for the past 11 years and his spouse is also employed as Information Technology System Engineer at Aravind Eye Hospital, Madurai and is earning a monthly salary of Rs. 40,000/- (Rupees Forty Thousand only) and that apart, his two other sisters were also given in marriage. Therefore, in the light of the factual circumstances and the legal position, this Court is of the considered view that the family of the appellant/writ petitioner is not in financial distress or difficulty and in fact, tide over the alleged financial crisis and survive for nearly 16 years.

22. Since the appointment on compassionate grounds is an exception to the normal rule of recruitment, coupled with the fact that it cannot be claimed as a matter of right, which is not a vested right, the request made by the appellant/writ petitioner seeking appointment on compassionate ground in the services of the third respondent College, lacks merit and substance and the learned Judge has correctly applied the legal principles and dismissed the writ petition.

23. This Court, on an independent application of mind to the entire materials placed on record, is of the view that there is no infirmity or error apparent in the reasons assigned for dismissing the writ petition.

24. In the result, this writ appeal is dismissed, confirming the order dated 27.10.2010, passed in W.P(MD)No.14193 of 2009. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.