
(2013) 01 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 34677 of 2012 and M.P. No. 1 of 2012

C.K. Srinivasan

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2013) 136 FLR 1113 : (2013) 2 LLJ 33 : (2013) 1 LLN 200

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the son of late C.V. Krishnasamy, who was working as a Junior Engineer in Highways and Rural Works

Department at Villupuram Division. Unfortunately he passed away on 23.7.1996. At the relevant time, the petitioner had crossed the age limit of

30 years for entry into Government service. The petitioner on account of the death of his father was sending representation for considering his case

for appointment to the post of Junior Assistant on compassionate ground. After sending series of representations, the Chief Engineer, Highways

Department by a communication dated 18.11.2008 informed that the petitioner was not qualified for entry into Government employment and even

at the time of death of his father, he was overaged and as per Rule 54(A), he could not be provided with employment. The petitioner

notwithstanding the said rejection, did not choose to challenge the same either immediately or within the reasonable time after the impugned order

was communicated. Nevertheless, he sent a representation to the State

Government after one year after the said communication on 12.12.2009

and with reminder on 10.1.2010. Thereafter he had approached this Court challenging the order of the year 2008 and after getting the order set

aside also seeks for a direction to consider his case for compassionate appointment. Strong reliance is placed upon by the petitioner on Rule 48 of

the Tamil Nadu State and Subordinate Service Rules, by which the Governor of the State is entitled to relax any condition for entry into

Government service. However, this Court is not inclined to accept the said submission, as the scheme of compassionate appointment is an

exception to Articles 14 and 16 of the Constitution of India. The Courts have repeatedly held that the Scheme has to be construed strictly. Further,

in respect of the eligibility condition, the question of Court invoking the power of giving direction to grant relaxation does not arise, as very recently

the Supreme Court vide its judgment in *State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another*, had observed as follows:

8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of

recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions

governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an

exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment.

The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and

not to confer any status upon it. (Vide: *Union of India (UOI) and Another Vs. Shashank Goswami and Another*, .

9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that

may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional

norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfill the

eligibility criteria. (Vide: *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, .

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: The State of Haryana Vs. Subash Chander Marwaha and Others, ; J.C. Yadav and others Vs. State of Haryana and others, ; and Ashok Kumar Uppal and Others Vs. State of Jammu & Kashmir and Others, .

11. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of Madhya Pradesh and Another Vs. Dharam Bir, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the

object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscious" and "equity".

(Vide: State of Jammu & Kashmir Vs. Shiv Ram Sharma and Others, ; and Praveen Singh Vs. State of Punjab and Others, .

13. In State of Orissa and Another Vs. Mamata Mohanty, , this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Dr Prit Singh Vs. S.K. Mangal and Others, and Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, .

2. In the light of the same, the present Writ Petition filed by the petitioner is misconceived and lacks in merits and accordingly stands dismissed. No costs. The connected Miscellaneous Petition is closed.