
(2002) 02 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 19631 of 1994 and WMP. No. 29936 of 1994

G. Vanamathi

APPELLANT

Vs

The Chairman-cum-Managing Director, Tamil Nadu Leather
Development Corporation Limited

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Citation : (2002) 02 MAD CK 0099

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; S. Elamurugan, for the
Respondent

Judgement

A.K. Rajan, J.—This writ petition has been filed to issue a writ of certiorarified mandamus, directing the respondents to call for the records

relating to proceedings No.Roc.1943/P and A2/94 dated 30.09.1994 and 15.11.194 and quash the same.

2. The petitioner is a widow of a one C.Gunasekarn, workman before the respondent. He joined the respondent as Record Clerk on 18.04.1974.

Subsequently, he was promoted during the year 1980. The said Gunasekarn, husband of the petitioner died on 23.02.1994, when he was working

as a Junior Assistant - Store Keeper. After his death, the petitioner sought appointment on compassionate grounds. The petitioner's husband had

left four children. The first son is studying Civil Engineering in a Polytechnic at Tirupattur, second son is studying Mechanical Engineering and the

last son and daughters are studying +1 and 9th standard respectively. None of them were employed. On 26.3.1994, the petitioner made a

representation through the union requesting an appointment on Compassionate

grounds which was rejected by the respondent on the ground that

there are already excess employees in the corporation and the petitioner also exceeded the age of 40 which was the upper age limit in the

respondent Corporation. Again on 26.10.1994, the petitioner made a representation that to reconsider the earlier order, that was also rejected

without any reason. Aggrieved against that order of the respondent, the petitioner came forward to file the above writ petition.

3. From the writ petition, it is seen that the impugned order are two in number. One is dated 13.9.1994 and another is dated 15.11.1994. In the

order dated 13.09.1994, the claim for appointment for the wife has been rejected. In the order dated 15.11.1994, the claim for appointment of the

petitioner or her son was rejected.

4. The main prayer in this writ petition is to quash the order of the respondent and to direct the respondent to provide employment to the

`Petitioner". No counter has been filed by the respondent.

5. A perusal of the order dated 13.09.1994 would show that even on the date of presenting the petition, the petitioner was aged about forty six

years and the maximum age limit for appointment was only forty years. Therefore, there is no infirmity in this Order and this order further states that

already there are excess employees in the respondent's Corporation and therefore there is no possibility of providing employment for the

petitioner, wife of the deceased workman. Subsequently, when the petitioner represented by another application dated 26.10.1994, seeking for

employment for her son, even that application was rejected on the same ground, i.e., excess staff in the respondent's corporation.

6. The learned counsel for the petitioner relying upon a Judgment in Smt. Phoolwati Vs. Union of India and Others, , wherein the Supreme Court

has held that;

on death of breadwinner of the family - appointment must be given to the persons if eligible without any delay.

In the present case, the above cited decision does not help the petitioner as the petitioner was above 40 years of age.

7. The counsel has also relied on another Judgment of the Supreme Court in Smt. Sushma Gosain and others Vs. Union of India and others 1989

SC 1976 , wherein the Supreme Court has held that; ""Delay in appointment and

rejection of application in view of ban subsequently imposed was held arbitrary" , and therefore directed appointment. The counsel relies upon the last one sentence in Paragraph -9 of this Judgment wherein it is stated, ""If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."" The counsel further argued that order passed by the respondent is liable to be set aside and direction should be given to create supernumerary post for the purpose of accommodating the petitioner.

8. The learned counsel for the petitioner also relied upon another decision in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , wherein the Supreme Court has held in Paragraph 8, that there is an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution.

Have the lofty ideals which the founding fathers placed before us any effect in our daily life - the answer cannot however but be in the negative -

what happens to the constitutional philosophy as is available on to ourselves. The socialistic pattern of society as envisaged in the Constitution has

to be attributed its full meaning. A person dies while taking the wife to a hospital and cry of the lady for bare subsistence would go unheeded on a

certain technicality. The breadwinner is no longer available and prayer for compassionate appointment would be denied as ""it is likely to open a

Pandora's box"" - this is the resultant effect of our entry into the new millennium. Can the law courts be mute spectators in the matter of denial of

such a relief to the horrendous sufferings of an employee's family by reason of the death of the breadwinner?

Ultimately, the Steel Authority of India was directed to consider the case of compassionate appointments in so far as the appointments are

concerned. Therefore, the counsel argued that the respondent's order is liable to be set aside and the respondent shall be directed to consider the

request of the petitioner for the appointment.

9. The counsel for the respondent on the other hand, relies on a decision in *Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai*, , wherein

in Paragraph 9, the Supreme Court has held that;

..... In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the

powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere

misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under

the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the

light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a

post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post.

By relying upon the above judgment, the learned counsel for the respondent argued that authorities are not bound to create supernumerary post to

accommodate an appointment on compassionate ground. Therefore, the plea of the petitioner cannot be accepted either.

10. Considering the decision of the latest Supreme Court judgment in this aspect, the Principle laid down therein squarely is applicable to the

present also, if the petitioner was not eligible for appointment her son is eligible for appointment after passing the diploma or decree course. If the

respondent had appointed any person subsequent to the petitioner's representation in the year 1994, the petitioner's claim shall be considered by

the respondent for suitable appointment as per the rules.

11. The respondents are directed to consider the application given by the petitioner seeking for appointment for herself or for her son on

26.10.1994 and pass a fresh orders, taking into account the above observation.

12. With the above observation, the writ petition is disposed of , but without costs. Consequently, connected WMP is closed.