

(2011) 03 MAD CK 0371

In the Madras High Court

Case No : Writ Petition No. 7312 of 2010 and M.P. No. 1 of 2010

M. Baskaran

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport
Corporation (Salem Division) Ltd.

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2011) 03 MAD CK 0371

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; Ravi Bharathi, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner has filed the present writ petition seeking issuance of writ of certiorarified mandamus to call for the records relating to the order bearing No. E1/1320/TSTC(S)/2010, dated 23.02.2010 and quash the said order with a further direction to the Respondent to provide employment to the Petitioner on compassionate grounds.

2. The Petitioner's father Late K.C. Manickam was employed in the Respondent Corporation as a driver, but, unfortunately, he suffered paralytic attack and as a result, he died on 18.10.1992, leaving his family in distress. Thereafter, the Petitioner made an application seeking employment on compassionate ground. On receipt of the said application in the month of August, 1993, the Petitioner was asked to submit an application in the prescribed format on 27.08.93. After some time, in February, 1995, he received a letter dated 07.02.1995 from the Respondent stating that his application was under consideration, but, his claim would be considered only in accordance with the seniority. Some time later, the Petitioner was informed that there was a ban order on recruitment of new candidates in the Respondent Corporation. After waiting for a long time, the

Petitioner gave a petition to the District Collector for appointment on compassionate ground in the Respondent Corporation in the year 2001, subsequently, in the year 2007 as well. Only in October, 2009, the Petitioner received a letter dated 10.10.2009 to come for interview for appointment on compassionate ground. When the Petitioner attended the interview on 13.10.2009, 150 persons were also attended the interview for employment on compassionate ground. But after attending the interview, the Petitioner did not receive any communication. When he was waiting with a hope to get a appointment order, he has received the impugned order informing that he has crossed the age limit for appointment on compassionate ground. Aggrieved by the said order, the Petitioner has filed the present writ petition with the aforesaid prayer.

3. Mr. N.G.R. Prasad, the learned Counsel appearing for Petitioner assailed the said order on the ground that the Respondent Corporation, having received the application from the Petitioner for appointment on compassionate ground in the year 1993, followed by repeated representations from the Petitioner, has called the Petitioner to attend the interview on 13.10.2009 and even after his participation in the interview, declining to give employment to the Petitioner on compassionate ground for the reason that the Petitioner had crossed the age limit, is unfair, unreasonable and violative of Articles 14, 16 and 21 of the Constitution of India, since the Petitioner is seeking only compassionate appointment after the death of his father in the same Respondent Corporation and therefore, he added, the Respondent Corporation, in all fairness, should have appointed the Petitioner by giving age relaxation.

Secondly, he further contended that in view of the ban order prohibiting appointment for about five years, the Petitioner had to unnecessarily loose five years of his age, which resulted in crossing the age limit and on that basis, he further contended that it is not justifiable or reasonable on the part of the Respondent to non suit the Petitioner, who is waiting for compassionate appointment.

4. Opposing the said argument advanced by the learned Counsel for the Petitioner, Mr. M. Ravi Bharathi, the learned Counsel appearing for the Respondent submitted that after the death of the Petitioner's father on 18.10.1992, the Petitioner application dated 15.09.1993 for providing employment to him on compassionate ground was received by the Respondent Corporation, but no compassionate appointment was made in the Respondent Corporation from 1998 onwards due to want of vacancy and subsequently, the ban order on recruitments came into force for about five years. Thereafter, when the Petitioner's application was received, the age and qualification were not verified. Only during the year 2009, the Respondent Corporation decided to fill up the 30 vacancies among the dependants of the deceased employees having Decree/ITI/DME/BE/SSLC qualification. Therefore, the dependants of the deceased employees were called upon to participate in the interview by

producing certificates in proof of their qualification and age. As per the G.O. Ms. No. 9, Labour and Employment Department, dated 19.01.1998, the maximum age limit fixed for appointment on compassionate ground, in respect of the son of the deceased employees, is only 35 years. But, unfortunately, the Petitioner was found having crossed the age limit, as he is now 43 years of age. Therefore, he was found ineligible to be considered for appointment in the Respondent Corporation on compassionate ground. Further, it was submitted that he had studied only upto 6th standard, therefore, the Petitioner could not be considered, even on the ground of educational qualification.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. It is admitted fact that the father of the Petitioner died on 18.10.1992. Subsequently, the Petitioner's request for compassionate appointment was rejected on 23.02.2010 on the ground that he has crossed the age limit of 35 years. Now, the challenge made by the Petitioner is only against the impugned order declining to consider the Petitioner's request for compassionate appointment on the ground that he has crossed the age limit of 35 years. When G.O. Ms. No. 9, dated 19.01.1998, says that the requisite age qualification is only 35 years and admittedly, now the Petitioner has reached the age of 43 years, the challenge made by the Petitioner against the impugned order declining to consider his request for compassionate appointment, is untenable, as he has not challenged the G.O. Ms. No. 9, prescribing the age limit for compassionate appointment.

7. The Apex Court, with regard to grant of compassionate appointment, in cases like that of the present one, has categorically held in *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir*, to the following effect;

Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, here is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14.

8. Further, it is well settled law in a catena of decisions by the Apex Court as well as this Court that the compassionate appointment is a concession shown by the employer to the family of a deceased employee to rescue the family from penury. The very purpose of making appointment on compassionate grounds is to provide immediate sustenance to the dependent family members of the deceased employee. In the present case, after the death of the Petitioner's father way back on 18.10.1992, the Petitioner was able to sustain and eke out their livelihood till 2010, that is, for about 18 years. After such a long period of years, it is too difficult to hold that the family is still in penury. Further, the incumbent has to satisfy the conditions prescribed for compassionate appointment, like the educational qualification and the age qualification. If any one of the qualifications required for compassionate appointment is not fulfilled, then the incumbent,

seeking the benefit of compassionate appointment, cannot complain that the Respondent Corporation failed to extend the benefit of the scheme. In the present case, the Petitioner has studied only upto 6th standard, which is below that of the minimum qualification, and also crossed the age limit of 35 years, by virtue of which, his case cannot be considered at all in the light of the G.O. Ms. No. 9, dated 19.01.1998, as stated above, under these circumstance, I do not find any ground warranting interference with the impugned order passed by the Respondent Corporation. Accordingly, the present writ petition is dismissed. No Costs.

M.P. No. 1 of 2010 is closed.