
(2014) 01 MAD CK 0141
In the Madras High Court
Case No : Writ Petition No. 28670 of 2011

M. Manikandan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 15 16

Citation : (2014) 01 MAD CK 0141

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : C. Selvaraj, SC for C.S. Associates, for the Appellant; M.K. Subramanian, Spl. Govt. Pleader (Forest), for the Respondent

Final Decision : Disposed Off

Judgement

M. Venugopal, J.—The Petitioner has preferred the instant Writ of Mandamus praying for passing of an order of this Court in directing the Respondents to consider his case for appointment to the post of Forester on compassionate ground, considering the degree qualification possessed by him as per Letter Ma. No. 86/Q1/2010-2 Labour and Employment, dated 04.05.2010, by considering his Representation dated 15.07.2011. According to the Petitioner, his father P. Muniyan while serving as Forest Watcher died on 20.08.2008 leaving behind his mother, two sons (including himself) and one daughter. The daughter Menaka Gandhi was given in marriage. He is the elder of the two sons. At the time of demise of his father, he was pursuing his B.E. (Electrical and Electronics Engineering) final year course. He acquired B.E., Electrical and Electronics Engineering degree during April 2009. Later, he projected an application on 11.01.2010 seeking compassionate appointment for which the minimum educational qualification is not a Degree. The Third Respondent/District Forest Officer, Attur Division, Salem District directed him to produce all the certificates and documents in support of his claim for compassionate appointment such as death certificate, legal heir certificate, indigent certificate from Tahsildar. The

Petitioner also produced those documents.

2. The Forest department selected and published 23 candidates for compassionate appointment on 16.08.2010. However, his name had not found a place therein. On making enquiry, he was informed that the eligibility and consideration would be based on the age and qualification at the time of death of Government Servant. In his case, at the time of his father's death, he possessed only the qualification of Higher Secondary (plus two). He acquired B.E. Degree only during April 2009 that is after the death of his father. It appears that the department sought clarification from the Government as to whether he would be appointed as Forester. Pending clarification, they directed him to give consent for appointment to the post of Forest Guard for which the minimum qualification is Plus Two. Accordingly, they informed the same to him through communication dated 06.12.2010.

3. Immediately, he made a Representation dated 15.07.2011 requesting to consider his appointment to the post of Forester on the basis of Degree qualification addressed to the Chief Conservator of Forest, Chennai. He also stated that the Government had given three years time for making an application from the date of death of the Government servants. In the present case, before completion of three years, since he acquired a Degree and applied for the same, his request should be considered based on the qualification acquired by him. That apart, the Government had issued orders directing to give compassionate appointment immediately and thereafter, give posting according to their qualification. In the department itself, they gave appointment to the three persons who acquired the qualification after the demise of their parents and in this regard, he relied upon Government Letter No. 86/Q-1/2010-2 Labour and Employment dated 04.05.2010, wherein, while considering the compassionate appointment, the appointment shall be considered, according to the age and educational qualification which the claimant possesses if the application is made within three years.

4. As a matter of fact, based on the Government Letter, the following three candidates were duly considered for appointment for the post of Forester, after the demise of their parents:

1. V. Suresh Babu, Chennai Circle.
2. V. Muthuvel, Coimbatore Circle.
3. T. Selvamani, Virudhunagar Circle.

He is also similarly placed. At the time of demise of his father, he was a final year B.E. Student. He secured B.E. Degree in April 2009. His father expired on 20.08.2008. He applied for compassionate appointment on 11.01.2010 within three years, indeed, he had acquired qualification and projected the application. As such, he is entitled to the benefit of Government Letter No. 86/Q-1/2010-2 Labour and Employment dated 04.05.2010 and the same treatment is to be

meted out to him.

5. The Respondents take a stand that the Writ Petition filed by the Petitioner is not maintainable either in law or on facts. In the Second Respondent/Principal Chief Conservator of Forest communication reference No. AB1/49409/2008 dated 16.08.2010, the Selection Committee at regional level was to be constituted in terms of the instructions issued and eligibility and fitness to the post of Forester under compassionate ground for 30 persons were to be verified. After completion of the required formalities for appointment to the post of Forester under compassionate ground, appointment allotment order to circle for appointment of 22 persons as Forester under compassionate ground was issued in Principal Chief Conservator of Forests Ref. No. AB1/49409/2008, dated 21.12.2010 with a direction that final verification of all the pre-requisite qualifications had to be done before appointing them as Forester. Accordingly, Mr. V. Suresh Babu and V. Muthuvel said to be appointed to the post of Forester as alleged by the Petitioner were actually disqualified from appointment to the post of Forester based on the eligibility criteria for the post of Forester. However, V. Suresh Babu passed Higher Secondary (Plus Two) course only at the time of death of deceased Government servant, as such he was not qualified for the post of Forester.

6. In regard to Mr. V. Suresh Babu S/o. Late S. Victor, Chennai Region who completed the Post Graduate Degree directly through Open University without completion of Under Graduate Course was not appointed to the post of Forester as reported in District Forest Officer, Tiruvallur Division vide Letter No. E/9591/2010, dated 18.01.2011. However, V. Muthuvel was not considered for appointment to the post of Forester. In respect of G. Chellamani not T. Selvamani as mentioned in the affidavit, the date of death of his father was 13.09.2007 whereas the individual had completed his B.Sc. Degree during November 2001 as per the Provisional Certificate Sl. No. 77974 issued by the Madurai Kamaraj University on 28.01.2002.

7. It is to be pointed out by this Court that the compassionate appointment being an exception to normal recruitment procedure, applicability of the scheme is strictly made. The scheme cannot be considered as a right to a ward of an employee to defeat other person's rights under Articles 14 and 16 of the Constitution of India, in the considered opinion of this Court.

8. It cannot be gainsaid that time is the essence in the case of compassionate appointment. Only such appointments cannot be made when this immediate exigency is removed from consideration. Further, it is to be kept in mind that "all law is the embodiment of all wisdom". Justice according to law is the principle as old as mountain. A Court of Law is to administer law as it finds it, however inconvenient it may be.

9. One cannot brush aside an important fact that an employee in public service, as a Rule can be made strictly based on open competition and merits. Any other basis will defeat Articles 14 and 16 of the Constitution and is fraught with

chances of malpractice and nepotism. But these are exceptions to this general Rules and these exceptions are there to meet the necessity of confirming to larger ideals of the State. As a matter of fact, the Government instructions on compassionate appointments, therefore is an exigency provision to relieve the family of a Government servant from poverty. No wonder, the appointment of compassionate ground is not a method of recruitment but a facility to provide for minimum rehabilitation of the family in distress/suffering.

10. Continuing further, in the decision of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, it is held that Courts or Tribunals cannot confer benedictions impelled by sympathetic consideration and direct compassionate appointments when regulations do not confer such appointments. It cannot be also lost sight of that a consideration for the compassionate appointment cannot brook delay. Further, if the family of the deceased could itself sustain and if they overcome the period of suffering, there may not be a need for grant of employment assistance on compassionate ground in the considered opinion of this Court.

11. At this stage, this Court worth recalls and recollects the decision of the Hon"ble Supreme Court in Dhalla Ram Vs. Union of India (UOI) and Others, wherein it is observed and held as follows:--

This SLP arises from the order of the Central Administrative Tribunal, made on 12.07.1998 dismissing petitioner's application for appointment on compassionate grounds. The father of the petitioner died on December 13, 1965 on which date the petitioner was below 6 years. He attained majority, on his own statement, on July 12, 1997, when he completed 18 years of age. He made an application on July 15, 1987 for his employment on compassionate grounds. The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty to consider an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987 and the application was rejected on July 14, 1988. He filed the OA on July 12, 1993. In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution.

12. Also, this Court aptly points out the decision of the Hon"ble Supreme Court reported in A.P.S.R.T.C. and another v. Dannina Rajeswari [1999 SC (Labour and Service)] at page 1182 wherein in para 3 it is observed as follows:

3. By the impugned judgment and order passed by the High Court, the appellant Corporation has been directed to appoint the respondent as a sweeper in a clear vacancy and if such a clear vacancy is not available, to create one such post and appoint her on the post on compassionate grounds. The appellant Corporation

challenges this direction/order on the ground that the High Court should not have given such a direction. This Court has by now made it clear that it would not be proper to direct the Government or government corporations and other authorities to create supernumerary posts to appoint persons on compassionate grounds. Such persons are to be given appointments provided vacant posts are available. We, therefore, allow this appeal and quash the order whereby the High Court has directed the Corporation to create a supernumerary post for the purpose of appointing the respondent as a sweeper. If any vacant post becomes available for her in the near future then the Corporation shall consider her case and appoint her as early as possible. If it is permissible, the Corporation may also consider her case for appointment under the Breadwinner Scheme.

13. Further in the decision of the Hon"ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, , it is observed that "it is needless to emphasise that the provision of compassionate employment had necessarily to be made by the Rules or by examining the instructions issued by the Government or the public authority concerned etc."

14. The settled legal position is that the guarantee of equality before law is a positive concept and cannot be enforced in a negative fashion. Indeed, Article 14 of the Constitution is a genus in the sense that the clauses on lawful or protective discrimination and public employment as laid down in Articles 15 and 16 respectively provided for exceptions to that equity clause of Article 14. Hence, in appropriate cases, all the three Articles are to be read together as per the decision of the Hon"ble Supreme Court in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, .

15. In the decision of the Hon"ble Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, , it is held that "the writ petitioner has to establish his right or entitlement to a particular benefit. Where he fails to do that and only relies on the fact that a similarly situated person has been illegally granted that benefit, he cannot make it a ground for also granting such benefit".

16. Ordinarily, similarly situated employees in an Organisation/Institution, while discharging the same duties and responsibilities like that of other individuals, are to be treated equally as opined by this Court.

17. Generally, the compassionate appointments can only be made in lowest ranks of public service that is Group "C" and post against the direct recruitment quota up to a maximum of 5% of vacancies. Such appointments can be made only against existing vacancies and no directions could be made to create vacancies for such appointments.

18. It is seen from the compliance report filed by the First Respondent dated 07.10.2013 that this Court in the order dated 20.09.2013 in W.P. No. 28670 of 2011 was pleased to issue the following directions:--

3. In this context, it is relevant to extract clause 2.3 of the G.O.Ms. No. 42, dated

12.03.2007, which read as follows:

2.3. The observation of Supreme Court is that the posts in Class III and IV are the lowest level compassionate grounds. Accordingly, orders have been issued in G.O.Ms. No. 61 L & E, dated 19.07.2006 that compassionate appointments shall be made to the posts in "C" and "D" Groups only. The above orders shall be continued.

4. In these circumstances, the first respondent is directed to enquire into the matter as to how compassionate appointments were made to the post in Group "B" and report the same to this Court within a period of three weeks.

19. Further, the action emanated in the month of January 2009 itself involving 73 applications seeking compassionate ground appointments as Forester when the post was under Group "C". The applications were scrutinized and were in correspondence with Conservators of Forests concerned for want of particulars and were shortlisted to 22 persons as per eligibility. The Committee appointed for screening the selection of persons, eligible for appointment as Foresters on compassionate grounds gave its report on 06.08.2010 wherein, it received 30 applications for appointment. Action was pursued and finally, orders were issued for 22 persons by the Second Respondent/Principal Chief Conservator of Forests on 21.12.2010.

20. Till 25.08.2010, the scale of pay of Forester was 9300-34800+Grade Pay 4200. In G.O. (Ms) No. 280, Finance (Pay Cell) Department, dated 26.08.2010, it was revised as 9300-34800+Grade Pay 4400. The employees in posts drawing Grade Pay of Rs. 4400/- and above but below Rs. 6600/- come under Group "B" vide G.O. (Ms) No. 158, Personnel and Administrative Reform (A) Department dated 06.11.2009. Added further, it transpires from the records that the action emanated two years prior to the appointment and the selection of the eligible persons by the Committee was made on 06.08.2010. Based on the report of the Committee, 22 persons mentioned in para 7 of the status report were appointed for the post of Forester on compassionate ground appointment and the eligible candidates were allotted to the respective Conservator of Forests and they were requested to verify the genuineness of relevant records and send the selection list to the Second Respondent/Principal Chief Conservator of Forests. The reports have been received from Conservator of Forests between 27.09.2010 to 09.12.2010, finally, allotment orders were issued in Principal Chief Conservator of Forests/second Respondent communication Ref. No. AB1/49409/2008, dated 21.12.2010.

21. The Government Order was received in the office of the Second Respondent on 31.08.2010. The posting order was issued after the receipt of G.O.Ms. No. 280, Finance (Pay Cell) Department, dated 26.08.2010. The Government in G.O.Ms. No. 73, Environment and Forests (FR2) Department, dated 31.05.2010 had permitted the Second Respondent/Principal Chief Conservator of Forests (Head of Forest Force) to fill 25% in the direct vacancies for application of eligible

candidates waiting for compassionate appointment for the post of Forester. Based on the Government orders and report of Screening Committee, the eligible candidates were allotted to the respective Conservator of Forests. The then Principal Chief Conservator of Forests issued orders for appointing 22 persons as Forester under Compassionate grounds vide Ref. No. AB1/49409/2008, dated 21.12.2010.

22. The Learned counsel for the Respondents contends that the Writ Petitioner cannot claim appointment in a particular class/group of post and further appointments on compassionate ground are to be made in accordance with the rules etc. To lend support to his contention he relies on the decision of the Hon'ble Supreme Court in Union of India (UOI) and Another Vs. Shashank Goswami and Another, whereby and whereunder in para 9, it is observed as under:

9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

23. That apart, the Learned Special Government Pleader appearing for the Respondents submits that the Government in Letter No. 126/Q-1/2006 dated 16.09.2009 issued orders that the compassionate ground appointments shall be made to the post in C and D groups. Also in Government Letter dated No. 86/Q1/2010 dated 04.05.2010 issued further clarification that the compassionate ground appointment shall be considered based on the age, education and other qualifications on the date of applications made by the respective persons. The post of Forester is in B group as per the Government Orders issued in G.O. (Ms) No. 280, Finance Department dated 26.08.2010. The Petitioner made application on 11.01.2010 and he was informed of the position and he is eligible for the post of Forest Guard and he may make an application to the Conservator of Forests, Salem. As such, his application would be considered as per the provisions of

Tamil Nadu Forest Subordinate Service Rules.

24. It is not in dispute that Government Letter No. 126/Q-1/2006 dated 16.09.2006 issued orders that the compassionate ground appointments shall be made to the post of Group C and D. Furthermore, it is seen from the communication dated 06.12.2010 of the Second Respondent office at Chennai addressed to the Writ Petitioner that it is clearly admitted that he satisfies the eligibility requirements for the post of Forester, inasmuch as he had projected his application for compassionate appointment within three years from the date of death of the Government servant as per clarification letter issued by the Government in para 5 in Letter No. 86/Q1/2010, Labour and Employment Department dated 04.05.2010. Further, it is also made mentioned and that since these orders came into force only after 04.05.2010, a clarification has sought for from the Government only after obtaining the clarification, the appointment for the post of Forester would be considered.

25. As far as the present case is concerned, even though the Respondents place heavy reliance on Government Letter No. 126/Q-1/2006 dated 16.09.2006, as regards the compassionate ground appointments to be made to the post of C and D Groups and in view of the fact that the Government in Letter No. 86/Q1/2010 Labour and Employment Department dated 04.05.2010 issued further clarification that the compassionate ground appointment shall be considered based on the age, education and other qualifications on the date of application made by the respective persons and also this Court taking note of the fact that the Respondents had appointed 22 persons as Forester by referring to the Government Letter No. 86/Q1/2010 Labour and Employment Department dated 04.05.2010, is of the considered view that the Petitioner stands similarly placed and he cannot be treated differently. As such, to meet the ends of justice and also on the basis of Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the Second Respondent/Principal Chief Conservator of Forests, Saidapet, Chennai to consider the Petitioner's Representation dated 15.07.2011 for appointment to the post of Forester (subject to eligibility and suitability) afresh in a Just, Fair and dispassionate manner and to pass a reasoned speaking order on merits by taking into account the Rules and regulations in force (of course after providing necessary opportunity to the Petitioner) within a period of eight weeks from the date of receipt of a copy of this order. With the aforesaid observations, the Writ Petition is disposed of. No costs.