

(2011) 02 MAD CK 0389

In the Madras High Court

Case No : Writ Appeal (MD) No. 116 of 2010 and M.P. (MD) No. 1 of 2010

The Joint Director of School Education, The Chief Educational Officer and The District Educational Officer APPELLANT

Vs

C. Lesley Jayaseelan RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 21

Citation : (2011) 02 MAD CK 0389

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Janakiramalu, Spl. G.P, for the Appellant; V. Panneerselvam, for C.S. Associates, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The present appeal is preferred against the order dated 21.07.2009 passed by a learned single Judge of this Court in W.P. (MD) No. 6758 of 2008, whereby the learned single Judge has allowed the writ petition filed by the Respondent herein by quashing the order passed by the 3rd Appellant and directed the Appellants to reinstate the Respondent and confer all consequential benefits to him.

2. It is the case of the Respondent/writ Petitioner that his father was working as a Higher Grade Teacher and he died while in service on 21.05.1985 in harness, leaving behind him three sons and two daughters. The Respondent is the eldest son and his mother got herself separated from the family and left for Kerala. The whereabouts of the mother is not known and his father alone brought up the children and only at the time of his father's death, his mother came from Kerala and after attending ceremonies, again she left for Kerala. Since his mother was not interested in getting compassionate appointment, she gave alerter seeking compassionate appointment for the Respondent and left the family.

3. It is the further case of the Respondent that he was given appointment on compassionate grounds as a Junior Assistant on 10.02.1986 and was posted at Government High School, Srirangapuram, and Madurai District. While so, a showcase notice dated 04.12.1992 was served on the Respondent to submit his explanation as to why he should not be removed from service on the ground that he furnished false information regarding her mother's employment at Kerala. It is the specific case of the Respondent that since his mother deserted the family when he was at his tender age, he did not know about her whereabouts and he was not in apposition to know about her employment details. Moreover, his mother was not living with his father and was separately living at Kerala. Hence, the Respondent requested the Appellants to furnish certain documents for submitting his explanation to the said show cause notice. But the department did not do so. In that situation, the Appellant approached the Tamil Nadu Administrative Tribunal by filing an application in O.A. No. 3692 of 1993 and due to the interim stay granted by the Tribunal, the Appellant continued in the post and the same was subsequently transferred to this Court and numbered as W.P. No. 14113 of 2006.

4. In the said writ petition, a direction was given to the Respondent to submit his explanation to the show cause notice and thereafter the authorities were directed to pass orders in the light of the orders issued by the Government in G.O. Ms. No. 155, Labour & Employment Department dated 16.07.1993. The Respondent submitted his explanation on by denying the allegations stated in the show cause notice and thereafter, the 3rd Appellant has passed the impugned order dated 21.04.2008, removing the Respondent from service. Challenging the same, the Respondent filed the writ petition.

5. Countering the case put forth by the Respondent, it has been stated by the Appellant Department that in the legal heir certificate issued by the Deputy Tahsildar, Uthamapalayam at the time of the death of the Respondent's father, the name of the mother was included along with other heirs. The Respondent's mother also got the pensioner benefits of his father and after joining the Government service, the Respondent has nominated his mother for Tamil Nadu Government Servants Family Benefit Scheme and Tamil Nadu Government Servants Special Provident Fund-Gratuity Scheme, 1984. Therefore, the contention of the Respondent that his mother had deserted the family and heist not aware of her employment, cannot be accepted. Under such circumstances, the Respondent was correctly removed from service on the ground of furnishing false information in getting compassionate appointment.

6. The learned single Judge, on a consideration of entire materials and the submissions of both sides, has allowed the writ petition by quashing the impugned order. Aggrieved over the same, the present appeal is filed by the Department.

7. Heard the learned Counsel for both sides.

8. The only question that arises for consideration in this appeal is, whether the order of removal passed by the 3rd Respondent, after lapse of several years, is sustainable?

9. Admittedly, the Respondent was appointed as Junior Assistant on 10.02.1986. A show cause notice was issued to the Respondent only on 25.06.1992 i.e. after a lapse of 6 1/2 years, stating that he has furnished false particulars to get the compassionate appointment. But, it is the explanation of the Respondent that since her mother deserted the family, he did not aware of her employment in Kerala; but irrespective of the explanation given by the Respondent, now, we have to see, whether the impugned order passed, after lapse of 18 years, on the ground that he has given false information at the time of appointment, is correct?

10. At this stage, it would be useful to rely on the judgment reported in 2009 W.L.R.593 in the case of *Bharathi v. The Secretary To Government and Anr.* delivered by one of us (N. Paul Vasanthakumar, J.), wherein it has been held as follows:

17. In this case also the doctrine of acquiescence is applicable as the Respondents after verifying the petitioner's claim ordered appointment of the petitioner. There is no suppression of fact alleged against the petitioner. If the impugned order is upheld the Petitioner's right will be seriously prejudiced. The Petitioner also settled in his life by virtue of the application given in the year 1992. It is also relevant to note that till date no one has raised any doubt about the Petitioner's adoption by the said late K. Sakkarai. So long as the said adoption is found valid, the Petitioner is entitled to get all his rights as an adopted son. If the impugned order is upheld, the Petitioner's right to livelihood guaranteed under Article 21 of the Constitution of India will be affected. The Petitioner on being appointed on compassionate ground at the age of 23 years due to the death of his adopted father, is entitled to continue in service till his date of superannuation unless he is removed from service due to any misconduct. On his appointment, he gets a right to get salary and by receiving his salary he earns his livelihood and on getting married, the salary becomes the livelihood of his family and on termination of his service without any misconduct, not only his right to livelihood, but also the livelihood of his entire family is affected. Thus, it is evident that by the action of the Respondents in terminating his service, the Respondents deprived the rights guaranteed under Article 21 of the Constitution of India.

The dictum laid down in the said judgment is clearly applicable to the facts of the case on hand. In the given case, admittedly, he was appointed in 1986 and the order of removal was passed in 2008 i.e. after 22 years.

11. In W.P. No. 42656/2006 order dated 26.03.2009 one of us (N.P.V.,J) set aside a similar order taking note of the continuation of the Petitioner therein in service for more than 16 years by following the judgments of the Supreme Court. Paragraphs 5 to 7 read as follows:

5. Similar issue was considered by the Supreme Court in the decision reported in AIR 2002 SCW 2684 (Union of India and others v. K.P. Tiara). Paragraph 4 and 5 of the Judgment reads as follows:

It is necessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the Respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the Respondent from his livelihood.

5. In that view of the matter, we decline to interfere with the order made by the High Court. The appeals are accordingly dismissed.

Following the said Judgment, in W.P. No. 2685 of 2006, dated 17.7.2008, this Court allowed a similar writ petition wherein also the compassionate appointment was cancelled on the ground that at the time of the death of the Petitioner's mother, the Petitioner's father was in employment. In W.P. No. 35002 of 2006 also a similar issue was considered wherein the Petitioner was given compassionate appointment due to the death of his father, even though Petitioner's brother was in employment.

6. In the decision reported in 2009 (2) SC 271 (D.M. Premkumari v. The Divisional Commissioner, Mysore Division and Ors.) also a similar issue arose with regard to the cancellation of community certificate. The Supreme Court in para 11 to 16 held as follows:

Having given our anxious consideration to the case pleaded by the learned Counsel for the parties, we are of the view, that it would not be desirable to decide this case on merits. If we have to do it, we might have to tell the Appellant that she might have to go out of the employment. This, in our opinion, would cause great hardship and injustice to the employment.

12. The Appellant, as we have noticed earlier, was appointed as a Primary School Teacher sometime in the year 1994. At the time of her appointment, she had produced the caste certificate issued by the Tahsildar. She might not have understood the nuances of legal terminologies like Group "B" Category, Group "D" Category etc., and therefore, now she is caught in the "cobweb".

13. The District Caste Verification Committee, which was asked to verify the Appellant's claim, is justified in informing the appointing authorities that, strictly going by the Government's orders issued in 1986, the Appellant could not have claimed any reservation under Group "B" category. We cannot find fault with their understanding of the Government Order. However, the learned Single Judge, may be taking a very sympathetic view of the matter, has come to the rescue of a poor primary school teacher. The Division Bench has strictly applied the true interpretation that requires to be placed while constituting Article 15(4) and Article 16(4) of the Constitution. Therefore, we cannot find fault with the orders passed by the Division Bench of the Karnataka High Court also.

14. This Court, while entertaining the special leave petition, had granted the status-quo order. By virtue of that order, the Appellants continuing to work as a primary schoolteacher. At this stage, if the appointment of the Appellant is struck down and if she is now asked to seek employment elsewhere, in our opinion, it would cause great hardship and injustice, for the reason by now she must have crossed the upper age limit for seeking public employment and she may not get any employment anywhere. It is not the case of the other side also, that if the Appellant's service is continued, it would cause any prejudice to any other applicant.

15. "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassionate should not exist in legal cases, especially not in judiciary. This, in our view, is a misunderstanding. Judiciary has very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.

16. In view of the above discussion and keeping in view the peculiar facts and circumstances of the case, we dispose of this appeal, without going into the merits of the case. In order to do completed justice, we direct the Respondents herein, not to dislodge the Appellant from the post of primary schoolteacher. This order of ours shall not be treated as a precedent in any other case."

7. Even though, in the said decision it is stated that the said order shall not to be treated as a precedent in any other case, the facts in this case are some what similar to the said case and the Petitioner having been allowed to continue for over 14 years in service and having regard to the fact that the Petitioner is age barred to get any other appointment in Government services, I am of the view that the impugned order is liable to be set aside on equitable grounds.

12. It is also useful to refer the judgment delivered by a Division Bench of this Court dated 03.11.2009 in W.A. No. 1559 of 2009 (V. Bal Krishnan v. The Joint Director of Agriculture, Tiruvannamalai and Ors.) (HLG, CJ (as he then was) and NPVJ) and the relevant paragraph reads as follows:

6. We have noted the submissions of both the parties. We quite see the force in the submission of the learned Government Pleader. Compassionate appointment is not meant for persons who do not infect face the difficulty. It is meant to tide over the immediate difficulty of the family. For a moment, we do not approve the manner in which he has obtained the employment. At the same time, it is also to be seen that in the instant case nearly after four years, the State Government has moved to cancel the appointment. Nothing is placed on recorders to what action was taken against the officers, who are responsible for the disputed appointment and delayed action on the part of the Government. Almost similar facts were there in the two matters which have been referred herein in the sense that the persons were sought to be removed after passing of good number of

years. Besides, by now, nearly 15years have gone since the time the Appellant has-been initially appointed, and, therefore, we do not think that it will be fair to disturb his employment.

The facts of the said judgment is also applicable to the case on hand in all force.

13. Therefore, we are of the opinion that the termination of service after a lapse of 22 years, would certainly affect the livelihood of his entire family at this length of time. Moreover, as observed by the learned single Judge, the appointment given to the Respondent is not against any statutory regulations and moreover, the removal is not based on any misconduct. Therefore, we are of the considered view that the Respondent, having been allowed to continue for over 22 years in Government service, will not be removed from service on the ground that he got employment on furnishing false information. Therefore, we do not find any infirmity in the order passed by the learned single Judge and under such circumstances, the writ appeal is liable to be dismissed.

Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected Map"s closed.