

(2005) 04 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 22721 of 2003

U. Palanivel

APPELLANT

Vs

District Educational Officer and Registrar, Tamil Nadu
Administrative Tribunal

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 04 MAD CK 0138

Hon'ble Judges : T.V. Masilamani, J;R. Balasubramanian, J

Bench : Division Bench

Advocate : C. Selvaraju, SC, for the Appellant; R. Vijayakumar, GA for Respondent 1, for the Respondent

Judgement

R. Balasubramanian, J.—With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal. The writ petitioner unsuccessfully challenged his removal from service before the Tribunal, which by order dated 09.04.2003 in O.A.No.1237/2003 negatived his claim. Therefore he is before this court. Heard Mr. C. Selvaraju learned senior counsel appearing for the writ petitioner and Mr. R. Vijayakumar learned Government Advocate appearing for the State. Perused the order dated 21.03.2003 challenged before the Tribunal. After referring to the service of the writ petitioner's father and appointment of the writ petitioner on compassionate grounds, the order proceeds to state that since the writ petitioner had not disclosed to the Government the gainful employment of his mother on compassionate grounds after the death of his father, he has to be removed from service. Therefore the only question that comes up for decision is whether there was any wilful suppression on the part of the writ petitioner while he filed an application before the appropriate authority seeking appointment on compassionate grounds. The following dates are of relevance for the purpose of deciding this case:

08.10.1982 : The writ petitioner's father died while working as the Secondary

Grade Assistant in a Panchayat Union School at Ayyanarkulam.

27.06.1984 : The writ petitioner's mother Saroja got appointment as Secondary Grade Teacher in a Private School (Aided Management School).

25.04.1992 : The writ petitioner's mother died.

22.09.1995 : The writ petitioner submitted his application seeking appointment on compassionate grounds. 28.11.1995 : The writ petitioner was appointed as Junior Assistant and posted as Assistant Elementary Education Officer in Keezhapavur.

25.02.2003 : Show cause notice was served on the writ petitioner about the non-disclosure of the employment of his mother.

13.03.2003 : The writ petitioner submitted his explanation.

25.02.2003 : The writ petitioner filed O.A. No.791/2003.

05.03.2003 : Withdrew O.A. No.791/2003.

21.03.2003 : The writ petitioner was removed from service.

The rest is the court proceedings. We perused the file produced by the learned Government Advocate. In the application submitted by the writ petitioner seeking appointment on compassionate grounds, he had categorically disclosed his mother's employment as a Secondary Grade Teacher in a Private School for the relevant period. Therefore with eyes open on all the details given by the writ petitioner only, he was appointed on compassionate grounds and he is not guilty of suppressing any relevant material. It was open to the appointing authority to appoint or not to appoint on the materials placed by the writ petitioner before them. But however, they chose to appoint him. Almost eight years thereafter, the appointing authority had issued the show cause notice asking for an explanation about the non-disclosure of his mother's employment. By that time, the writ petitioner had passed his age of getting employment in the Government.

2. Having regard to the above facts, we are of the opinion that when the writ petitioner cannot be held to be guilty of suppressing any material before the appointing authority, the appointing authority cannot be allowed, at such a distance of time i.e., almost eight years after his appointment, to take up a non-existent cause namely, failure to disclose the writ petitioner's mother's employment as a ground for his removal. Had the writ petitioner been told even at the time when he filed the application for appointment on compassionate grounds that he would not be entitled to it, he would have looked for some other avenues. The writ petitioner is not at all at fault in this case. Except the ground of failure to disclose his mother's appointment, no other ground is put against him. The Government, by keeping quiet for such long years, had made the writ petitioner believe that his employment is secured and after a long lull, they cannot be allowed to turn around and tell him that he loses his employment, which would result in irreparable injury and injustice to the writ petitioner. As we

have already stated, all his avenues to get employment in the Government stand closed because he had already become over aged. The Hon"ble Supreme Court of India, in the case reported in AIR 2002 SCW 2684 (Union of India and Ors. v. K.P. Tiwari) had held that any delay (in that case five years) in reopening the entire issue in a case relating to appointment made on compassionate grounds, would not be allowed to be done since it would result in uprooting the concerned Government servant from his livelihood.

3. The learned Government Advocate relies upon G.O.Ms.No.998 dated 02.05.1981 to have the writ petitioner dismissed from service. That Government Order says that in the family of the Government servant, who died in harness, if there is already an earning member, irrespective of the fact that the member is employed in the Government or else where, the other dependant members of the deceased Government servant will not be eligible for the grant of concession. As we have already stated, the Government would have refused appointment on compassionate grounds after taking note of the fact that the writ petitioner's mother was employed for some time. She was dead on the date when the petitioner submitted his application. As we have noted, the Government did not decide to act on that disclosure against the interest of the writ petitioner but appointed him. We reiterate that the writ petitioner was not at fault at all at any stage in getting appointment on compassionate grounds. The judgment of the Hon"ble Supreme Court of India referred to above squarely applies to the case on hand. Consequently, the order of the Tribunal is set aside and the writ petition is allowed. The petitioner shall be reinstated within 15 days from the date of receipt of a copy of this order with all attendant monetary benefits, which stand restricted to 50% as agreed to graciously by Mr. C. Selvaraju learned senior counsel appearing for the writ petitioner. The connected W.P.M.P is closed.