

In the High Court of Judicature at Madras

Dated: 24/02/2004

Coram

The Hon'ble Mr. Justice R. Jayasimha Babu

and

The Hon'ble Mr. Justice M. Karpagavinayagam

Writ Petition No. 5449 of 2000

1. Union of India,
rep. by The Secretary,
Ordinance Factory Board,
10-A, S.K. Bose Road,
Calcutta - 1.

2. The General Manager,
Government of India,
Ministry of Defence,
Ordinance Factory,
Thiruchirapalli. ... Petitioners

-vs-

1. The Central Administrative Tribunal,
rep. by its Registrar,
High Court Building,
Chennai - 600 104.

2. R. Jothivelu,
No: 31, Anna Nagar,
Trichy - 26.

3. R. Minnal Kodi,
No: 31, Anna Nagar,
Trichy - 26. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a writ of certiorari by calling for the records of the 1st respondent, the Central Administrative Tribunal, Madras Bench, relating to its proceedings in O.A. No: 723 of 1998 dated 24.11.1999 and quash the same.

For petitioner : Mr. M. Vijayashankar

For 1st respondent : Mr. R. Singaravelan

For 2nd respondent : Mr. V.S. Jagadeesan

:O R D E R

(Order of the Court was
made by R. Jayasimha Babu, J.)

One Jothivelu who had worked in the Ordinance Factory at Tiruchirapalli from 01.10.1963 was, on medical examination conducted in April 19 95 at the Ordinance Factory Hospital, found to be a chronic case of diabetic and ulcer which had affected his foot and his movement and that treatment over a period of five years had not improved matters. He was therefore, on 26.04.1995, referred to a medical board to decide as to whether he was not fit for further service. The medical board comprising of three Doctors, after examining him thoroughly, issued a certificate on 08.05.1995 in which they stated that he was to be regarded as being completely and permanently incapacitated for further service of any kind from 02.05.1995, the date on which he had been admitted to the Tiruchirapalli Government Headquarters Hospital for observation. We may notice here that Jothivelu had stopped attending work from March and he did not rejoin duty at any point of time thereafter. After the receipt of the opinion of the medical board, the General Manager of the factory on 23.11.1995 made an order declaring that Jothivelu retired from service with effect from 23.6.1995 in view of the report of the medical board and that his name has been struck off the strength of the factory from that date 24.6.1995.

2. Even prior to that date, Jothivelu had made a representation, immediately after the medical board had opined that he was permanently incapacitated for further work with effect from 2.5.1995, seeking a compassionate appointment for any member of his family. That representation of his was made on 23rd May 1995. His family, as stated in that representation, consisted of his wife, a sixteen year old daughter and a thirteen year old son. That representation of his was rejected by the Works Manager acting on behalf of the General Manager on 09 .12.1995 on the ground that as he has crossed 57 years at the time of his retirement, the scheme of compassionate appointment could not be extended to him.

3. The scheme of compassionate appointment set out in the Government of India O.M. No: 14014 dated 30.06.1987 provides in para 1 (a) that it is applicable to son or daughter or near relative of a government servant who dies in harness when there is no other earning member in the family and the family is in immediate need of assistance. In para 1 (b), it is provided that in exceptional cases when a department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son or a daughter or near relative who has retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1 972, or corresponding provisions in the Central Civil Service Regulations before attaining the age of 55 years. It is further provided in paragraph 1 (b) that,

" In cases of Group 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on

medical grounds before attaining the age of 57 years."

The age of retirement of Jothivelu was sixty years and, therefore, the employer was of the view that the relevant clause applicable in his case was the one which prescribed the age of 57 as the age before which the person should have retired in order to make his family eligible for receiving compassionate appointment subject to the fulfilment of the other conditions of the scheme.

4. Jothivelu as also his wife approached the Tribunal seeking a direction to the petitioner to provide a compassionate appointment to the wife. That application was filed some time in the year 1998. A learned Member of the Tribunal allowed that application and directed that the wife be given an appointment if she is otherwise eligible and fit.

5. The scheme of compassionate appointment is intended to enable the family in need of assistance to have a bread winner, by providing employment to one of the members of the family of the employee who had either died in harness or who had been retired on medical grounds. In case of retirement on medical grounds what is material is the medical ground being the cause for the retirement. The scheme, obviously, is inapplicable to cases of voluntary retirement. Persons who are retired by the employer against the wishes of the employee on account of the health condition of the employee are regarded as persons who are likely to need immediate help. In cases where there is no other earning member in the family, this scheme enables the employer to offer employment to a member of the family of such persons. Where however the retirement is within a year from the mandatory age of retirement, the scheme is not to apply as such retirement within a year of the mandatory age is

equated with normal retirement and persons retiring in the normal course are not regarded as persons who are required to be provided with the benefits of the scheme of compassionate appointment.

6. In this case the dates are crucial. The employee stopped working from March 1995 on account of his health. He was referred by the Ordinance Hospital to the General Hospital for further examination in order to determine as to whether he is fit to be retained in employment. He was admitted for observation in the General Hospital on the Second day of May 1995 and on the 8th of May a medical board comprising of three Doctors certified that he was unfit for employment from 02.05.1995, the date on which he was admitted for observation and when he was under observation of the Doctors. The certificate issued on 08.05.1995 is a certificate which is based on the observation made on and after 02.05.1995 with regard to the medical condition of the patient, and the date on which the certificate is issued is only the date of the document which records what had been already observed and which provided the basis for the certification. These dates have been mentioned by us as it has been contended for the petitioner that the employee attained the age of 57 on 07.05.1995 and that the retirement ordered by the employer on 23.11.1995 was only with effect from 23.6.1995.

7. Though it is true that the retirement is as directed by the order

of 23.11.1995 and is one which is effective from 23.6.1995, nevertheless, the reason for that retirement being the medical incapacity of the employee, which medical incapacity had been determined much earlier, and which incapacity was found to be of such severity as to disable him from working altogether from 02.05.1995, it is that date with effect from which he was found to be medically unfit for work that would be material for the purpose of extending to his family the benefit of compassionate appointment, having regard to the object and purpose of that scheme. The prescription of the age 57 in that scheme is intended to remove from the scope of the scheme persons who had worked till the age of 57 and who in the last year of their service might have been medically found to be unfit to continue for further service for a few more months. That prescription of the age of 57 is not required to be regarded as merely the age with reference to the date of the order made by the employer, who had accepted the fact that the person had been medically found to be unfit for continued employment as recorded in the opinion of the medical board and that opinion of the medical board had clearly stated that that incapacity was from a date prior to the date on which the employee attained the age of 57.

8. The scope of the scheme and its applicability must be determined having regard to its object and purpose of the scheme. The scheme being one which is intended to extend a benefit it is to be construed in such a manner to ensure a flow of benefit to persons to whom it is intended. The words employed in that Government Order while, no doubt are not to be taken out of context or assigned a meaning which those words are incapable of conveying, if the relevant provision read as a whole in the context of the object and purpose of the scheme permits a construction, which would enable a person who merits the benefit intended to be given, the benefit is not to be denied by placing undue emphasis on the date of retirement as set out in the order of the employer and disregarding the fact that the medical invalidation had preceded the date and which medical invalidation also preceded the attainment of the age of 57 years by the employee.

9. We, therefore, hold that the family of Jothivelu is not to be denied compassionate appointment solely on the ground that the date of retirement mentioned in the order permitting him to retire is a date which is subsequent to his attaining the age of 57. As noted by us earlier his medical incapacity was with effect from 2.5.1995 and he had in fact stopped working even two months earlier from March 1995. Between March and April he was examined by the Doctors in the Factory hospital and later by the medical board in the Government Hospital. We, however, cannot uphold the direction given by the Tribunal that only the employee's wife be given the appointment. The representation of the employee was one which sought employment for any member of his family. If any member of his family was eligible for such compassionate appointment and if the other conditions set out in the scheme are satisfied, the petitioner shall consider the case for such appointment and make an appropriate order within four months from today. This writ petition is dismissed.

Index : Yes

Website : Yes

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To

The Registrar,
The Central Administrative Tribunal,
High Court Building,
Chennai - 600 104.

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