

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.10.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE S.K. KRISHNAN

W.P.No.744 OF 2003

C. Jayapal

..Petitioner

vs.

1. The Director of Medical Education
Chennai 10.

2. The Dean,
Madurai Medical College,
Madurai.

3. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus to call for the records pertaining to the order dated 18.6.2002 made in O.A.No.1844/2002 on the file of the Tamil Nadu Administrative Tribunal and Order of the 1st Respondent in O.Mu.No.104750/NP5(2)/94 dated 6.1.1996 and L.Dis.No.24734/E2/2/98 dated 19.11.2001 by the 2nd respondent and quash the same and consequently to direct the respondents to appoint the petitioner in any one of the vacancies on compassionate ground as stated therein.

For petitioner : Mr. G. Elanchezhiyan

For respondents 1: Mr. E. Sampathkumar
& 2 Government Advocate

ORDER

(ORDER of the Court was made by P.SATHASIVAM, J.)

Aggrieved by the order of the Director of Medical Education, Chennai-10 dated 06.01.1996, order dated 19.11.2001 of the Dean,

Madurai Medical College and the order of the Tamil Nadu Administrative Tribunal, Chennai dated 18.06.2002 made in O.A.No.1844 of 2002, the petitioner, C. Jayapal, filed the above writ petition to quash those orders and issue directions to respondents 1 and 2 to appoint him in any one of the vacancies on compassionate ground.

2. The case of the petitioner is briefly stated hereunder:

The father of the petitioner was working as Lab Technician Grade I in Government Rajaji Hospital, Madurai. On 06.01.1988, he died while in service. The deceased left behind his widow Manimekalai, two sons and two daughters. As his elder brother Rajkumar had already married and is living separately from their family, the petitioner made an application to the second respondent for appointment on compassionate ground in any one of the vacancies. The second respondent has rejected his request on the ground that his elder brother is employed and the petitioner is not eligible for appointment on compassionate ground. Thereafter, the petitioner made another representation to the respondents with a request to reconsider his claim for appointment on compassionate ground stating that his elder brother was employed in Central Government even before the death of his father and is also living separately after his marriage. He made the said representation based on G.O.Ms.No.155 L & E Department dated 16.07.1993. The second respondent rejected his claim on the ground that he had crossed the age limit for appointment on compassionate ground. Thereafter, he made a representation to the second respondent on 27.11.1998, based on G.O.Ms.No.9 L&E Department dated 19.01.1998. The petitioner furnished all necessary documents on 04.01.1999 and 23.02.1999. However, the second respondent on 19.11.2001, rejected his claim on the ground that the concession for the enhancement of age would come into force from the date of issuance of the Government Order and the same is not applicable to the case of the petitioner, since his father expired on 06.01.1988. In such a circumstance, having no other remedy, the petitioner filed O.A.No.1844 of 2002 before the Tamil Nadu Administrative Tribunal, which, by the impugned order dated 18.06.2002, dismissed the original application and upheld the rejection order. The said order is under challenge in this writ petition.

3. Heard Mr. G. Ilanchezhian, learned counsel for the petitioner and Mr. E. Sampathkumar, learned Government Advocate for respondents 1 and 2.

4. It is not in dispute that the applicant's father Chellasamy, working in the Madurai Medical College as Lab Technician Grade I, died in the year 1988. The applicant has placed death

certificate dated 20.01.1988; legal heir certificate dated 28.01.1988, which shows that the deceased has left his wife, two sons and two daughters. The community certificate dated 12.07.1989 shows that the applicant Jayapal S/o. C.R. Chellamy, belongs to Hindu "Pallan" community, which is recognised as a Scheduled Caste as per G.O.Ms.No.1773 SWD dated 23.06.1984. It is seen from the particulars furnished in the original application filed before the Tribunal that the applicant was the youngest person in the family and his elder brother Rajkumar is married and living separately. Therefore, the applicant made an application to the Dean, Madurai Medical College, Madurai for appointment on compassionate ground in any one of the vacancies as the widow/mother is residing along with him. His application was rejected on the ground that since his elder brother is employed, the applicant is not eligible for appointment on compassionate ground. He made further representation stating that his elder brother was an employee in the Central Government even before the death of his father and he is also residing separately after his marriage. This time, his representation was rejected on the ground that the applicant had crossed the age limit for appointment on compassionate ground. Again, the applicant made another representation to the very same authority on 27.11.1998, for which the Dean requested the applicant on 18.12.1998 to furnish certain documents. It is the case of the applicant that he had furnished all the necessary documents on 04.01.1999 and 23.02.1999. Thereafter, the Dean, by proceedings dated 19.11.2001, rejected the applicant's claim on the ground that enhancement of the age relaxation would come into force from the date of issuance of the order and since the father of the applicant died on 06.01.1988, the applicant is not eligible for the concession of age as per the Government order.

5. We have already observed that the applicant belongs to Scheduled Caste community. The Government of Tamil Nadu, Labour and Employment Department, by letter No.46571/N1/82-3 dated 24.11.1982, clarified the question of age relaxation in the case of Scheduled caste and Scheduled Tribe as under:-

"2. The Government have examined the above points and issued the clarifications as follows:

(i) The dependants of deceased Governments servants (belonging to Scheduled Caste / Scheduled Tribe) can be appointed on compassionate grounds in relaxation of age rule, even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual. "

Though the existence of the said instruction is not disputed, the fact remains, the respondents have not considered the relevant fact that in the case of appointment on compassionate ground, the age limit

prescribed in the special Rules can be relaxed if applicant belongs to SC/ST. As per G.O.No.1579 dated 21.07.1981, the maximum age as far as son or daughter is concerned is 30 and widow of the deceased is 31 years, in the case of employment on compassionate ground. In the letter dated 11.03.1982, the Government of Tamil Nadu has clarified that on the date of death of Government servant, the age of son or daughter/widow should not be more than 30/40 years. In G.O.Ms.No.155 L & E dated 16.7.1993, in para-3, it is stated that when a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and is already supporting the family; if the person was employed even before the death of the Government servant and was living separately without extending any help to the family, then the case of other eligible dependent should be considered.

6. In G.O.(I).No.785, dated 30.12.1996 issued in the case of one R.R.Chandrasekaran aged 38 years, after relaxing the age rule, he was appointed on compassionate ground as Junior Assistant in the Tamil Nadu Ministerial Service, Madurai District Revenue Unit. The said Government Order is available at page-13 of the typed-set of papers filed by the writ petitioner.

7. In G.O.Ms.No.9 L & E. Dept., dated 19.1.1998 the upper age limit in so far as son or daughter is concerned has been increased to 35 from 30. Inasmuch as the representation of the applicant was not considered by the Dean, Madurai Medical College and the Director of Medical Education, the applicant submitted a petition to the Hon'ble Chief Minister on 21.12.1998 and reminder on 6.1.1999 wherein he reiterated that though his brother is employed, he is living separately and he is not contributing anything to his mother and others. He also pointed out that as per the Government Letter No.2563/N1/82-2, dated 11.3.1982, on the date of death of his father, he was aged about 24 years only. As rightly stated by the learned counsel for the petitioner, the respondents ought to have considered the same. The proceedings of the Dean, Madurai Medical College dated 18.12.1998 shows that the applicant was asked to submit original legal heir certificate, the certificate relating to education, no objection certificate from other legal heirs and eligibility certificate from the officer concerned in original showing that the family is living below the poverty line.

8. It is the case of the petitioner that he submitted all the required details along with a letter, a copy of which is found at page Nos.21 and 22 of the typed-set of papers which shows that he complied with all requirements as required by the Dean, Madurai Medical College. It is seen that several reminders were also sent thereafter. However, by letter dated 19.11.2001, the Dean, Madurai Medical College

informed the applicant, C.Jeyapal that since his father expired on 6.1.1988 and the concession giving the enhancement of age would come into force only from the date of issue of the G.O.Ms.No.9, Health and Family Welfare Department, that is, from 19.1.1998, he is not eligible for the concession extended in the G.O., and rejected his application. As rightly pointed out, since the deceased Chellasamy died while in service on 6.1.1988, any one of the family members is eligible to be considered for appointment on compassionate ground. It is also not in dispute that on the date of application, the petitioner Jeyapal satisfied the age criterion and the reason for rejecting his request for appointment was that his elder brother is employed and the family is depending on him. Even in the application for appointment and the Proforma it is specifically stated that though the first son of the deceased is employed, his employment was prior to the death of the deceased and after his marriage he is living separately and he is not contributing anything to the deceased family. Other requirements, such as, community certificate, no objection letter from other family members, etc. were furnished by the petitioner to the authority concerned. Though at the initial stage the petitioner had not enclosed certificate to the effect that his elder brother is living separately from the family, it is not in dispute that the petitioner asserted the same in his application to the authority concerned as well as in the representation to the Hon'ble Chief Minister.

9. At the time of arguments, learned counsel appearing for the petitioner has produced a copy of the Certificate issued by the Tahsildar, Madurai South, dated 26.11.1998 which amply shows that except Rajkumar, the elder son of the deceased, no one in the family of the deceased is employed and the elder son is living away from the family of the deceased and he is living at Tirupattur. The said Certificate reads as under:

"மதுரை தெற்கு வட்டம், தெற்குவாசல், மஞ்சணக்காரத்தெரு, சிங்காரத் தோப்ப, கதவு எண். 14ஏ/ யில் வசிக்கும் ஜெயபால் த.பெ. (லேட்) செல்லச்சாமி என்பவர் குடும்பத்தில் ராஜ்குமார் என்பவரைத் தவிர வேறு எவரும் அரசு மற்றும் தனியார் துறையில் பணிபுரியவில்லை என்றும், ரூாதொரு அசையாச் சொத்து இல்லை என்றும், வீட்டில் அன்றாடம் உபயோகப்படுத்தும் பொருட்கள் தவிர வேறு அசையம் சொத்து இல்லை என்றும், குடும்ப ஓய்வூதியம் மாதம் ரூ.1800./ம், மனுதாரர் ஜெயபால் தனியார் நிறுவனத்தில் பணிபுரிவதன் மூலம் மாதம் ரூ.900./மும் சேர்த்து வருமானம் பெறுவதைத் தவிர வேறு வருமானமின்றி மனுதாரரின் குடும்பம் கஷ்ட நிலையில் உள்ளது எனச் சான்றளிக்கப்படுகிறது. திரு ராஜ்குமார் என்பவர் தனிக்குடித்தனமாக, திருப்பத்துரில் வசிக்கிறார் என்று சான்றளிக்கப்படுகிறது." (Emphasis Supplied)

In the light of the above information and of the fact that the petitioner being a Scheduled Caste is eligible for age relaxation as per the Government letter dated 24.11.1982 and also of the fact that his elder brother though employed, is living separately and he is not contributing anything to the family of the deceased, we are of the view that the respondents 1 and 2 ought to have considered the case of the petitioner and provided employment on compassionate ground to mitigate the sufferings of the deceased family. All the above mentioned relevant facts have not been considered by the Tribunal which has committed an error in dismissing the application filed by the petitioner.

Under these circumstances, the impugned order of the Tribunal dated 18.6.2002 made in O.A.No.1844 of 2002, the order of the Director of Medical Education, first respondent herein, dated 6.1.1999 and the order of the Dean, Madurai Medical College, second respondent herein, dated 19.11.2001 are quashed and a direction is issued to the respondents, particularly, to the second respondent to appoint the petitioner/applicant in any one of the vacancies depending on his qualification on compassionate ground and if no suitable vacancy is available for the present, his name shall be kept in wait list and he shall be given preference in the next vacancy. The writ petition is allowed with the above direction. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Director of Medical Education
Chennai 10.

2. The Dean,
Madurai Medical College,
Madurai.

3.The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai -104.

+1cc to Mr.G.Elanchezhian, Advocate Sr 43760

+1cc to Govt. Pleader Sr 43699

TEJ (CO)

km/8.11.

W.P.No.744 of 2003