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Court : Chennai

Decided On : Jun-11-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 14

Appeal No. : Writ Petition No.49393 of 2006 (O.A.No.7278 of 2001)

Appellant : G.Vanitha

Respondent : The Collector

Advocate for Def. : Mr.S.Navaneethan, Adv.

Advocate for Pet/Ap. : Mr.M.Veluswami, Adv.

Judgement :

PRAYER: This petition came to be numbered by transfer of O.A.No.7278 of 2001 from the file of the Tamil Nadu Administrative Tribunal, for issuance of a writ in the nature of Certiorari, to quash the proceedings vide N.K.No.631/2000/P, dated 30.10.2001 of the Collector, Namakkal District, Namakkal.

ORDER

1. The petitioner prays for issuance of a writ in the nature of Certiorari, for quashing the order vide N.K.No.631/2000/P, dated 30.10.2001 passed by the

Collector, Namakkal District, Namakkal.

2. The father of the petitioner P.Gunasekaran was working as Sanitary Supervisor at Velur Town Panchayat who died in harness after rendering 15 years of service. At the time of his death, he left behind his wife, daughter (the petitioner), nine years old son and sixty one years old mother.

3. In view of the fact that there was no earning member in the family, an application for compassionate appointment was made to give appointment to the petitioner. The request was accepted and the petitioner was appointed as Junior Assistant at the Velur Town Panchayat in the pay scale of 3200-4900.

4. The submission of the petitioner is that without issuing show cause notice or giving opportunity of hearing, the order dated 30.10.2001 was cancelled, and directions were issued to post the petitioner on a lower post.

5. The petitioner challenged the impugned order on the ground;

(i) That the impugned order though affecting the civil rights of the petitioner, has been passed in violation of the principles of natural justice.

(ii) That the impugned order is arbitrary and discriminatory, thus, violative of Article 14 and 16 of the [Constitution of India](#), as the petitioner has been discriminated with other similarly situated employees who were also given similar appointment on compassionate ground.

6. The learned Additional Government Pleader opposed this writ petition on the ground that as per the Government instructions issued by G.O.Ms.No.206, Municipal Administration and Water Supply Department dated 02.11.1995, the legal heirs of the deceased non-provincialised staff could be appointed on compassionate ground only in the local body service against the post of Record Clerk, Office Assistant, Night Watchman, etc., whereas the petitioner was appointed as Junior Assistant in contravention of the Government Order. The impugned order therefore was passed only to rectify the mistake. Therefore, the appointment of the petitioner being contrary to the instructions, was rightly cancelled, and in view of the fact that patent error was corrected, there was no

necessity to issue a show cause notice to the petitioner.

7. On consideration, I find this writ petition deserves to succeed. The G.O.Ms.No.206 dated 02.11.1995 on which reliance has been placed is merely a Government instructions, which cannot override the rules regarding compassionate appointment. The post of Junior Assistant is (Class III) post, and as per the policy of the State Government as approved by the Hon'ble Supreme Court, compassionate appointment can be made to Class III and Class IV posts.

8. The instructions issued by the Government being contrary to the statutory rules, therefore cannot be a basis to cancel the appointment. The action of the respondent also suffers from patent illegality, as it was the respondent who had appointed the petitioner on compassionate ground, without any misrepresentation on the part of the petitioner. The respondent cannot take benefit of his own wrong, that too after eight years of appointment.

9. The impugned order also cannot be sustained for the reason, that though it affects the civil rights of the petitioner, it was passed in violation of principle of natural justice.

10. The contention of the learned Addl. Govt. Pleader that the post of Junior Assistant could be filled up only on the recommendations of the Tamil Nadu Public Service Commission, also cannot be a ground to sustain the order, as it was always open to the State Government to pass an order to take the post out of purview of Tamil Nadu Public Service Commission, as the compassionate appointment is given to the family member of the deceased to overcome the immediate financial crisis arising on account of death of the only earning member.

11. For the reasons stated hereinabove, the writ petition is allowed. The impugned order is set aside. But no order as to cost.

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