

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00706/2017****Dated , the day of , 2019****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

V. Vijayabalan,
Son of Vijayarangam,
Hindu, aged 37 years, residing at
No.5 , Sakthi Nagar, II Corss,
Marie Oulgaret, Puducherry.

....Applicant

By Advocate M/s V.Ajayakumar

Vs

1. Union of India represented by the
Govt of Puducherry through the
Secretary to Govt. for Labour Department,
Chief Secretariat, Puducherry.
2. The Commissioner of Labour,
Labour Department, Puducherry.
3. The Director of School Education,
Education Department,
Puducherry.
4. The Secretary to Government,
Department of Personnel and Administrative
Reforms, Chief Secretariat,
Puducherry.

....Respondents

By Advocate Mr. R. Syed Mustafa

ORDER

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"I. To call for the records of the third respondent with No.1815/DES/Estt.I/D4/2016 dated 1.6.2016 and first respondent with No.951/LAB/SW/A2/2015/878 dated 14.6.2016 and to quash the same and consequently to direct the respondents to consider and appoint the applicant on regular basis on compassionate grounds with effect from the date on which the applicant was appointed on Part-time basis and to pass such other or further orders in the interest of justice and thus render justice"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's father was working as Attender in the Labour Department, Puducherry and died on 4.10.1999 while in service and so applied for compassionate appointment based on his qualification to any Group 'C or 'D' post. The second respondent issued an order on 28.10.2002 posting the applicant as Part-time Sanitary Assistant instead of appointing in regular establishment as prayed. Hence, the applicant filed an Original Application with No.187 of 2016 and an order was passed dated 27.1.2016 to consider the service of applicant in the light of DoPT orders governing compassionate appointment which was rejected by the first and third respondents. Hence, the applicant has filed this O.A seeking the above relief inter-alia on the following grounds:-

(i) The applicant is entitled to get appointment on compassionate grounds and denial of the same is most arbitrary and discriminatory.

- (ii) The applicant is entitled to get appointment on compassionate grounds as per the rules in 2002 itself and so the applicant is entitled to get regular appointment with effect from 2002 onwards.
- (iii) As per the DoPT as well as the law regarding the compassionate appointment, the compassionate appointment is given on regular establishment and giving appointment on compassionate grounds as part-time employee is only resorted to by-pass the law regarding compassionate appointment which is most arbitrary and discriminatory.
- (iv) The reasoning given by the respondents for rejecting the application for compassionate appointment on regular basis with effect from 2002 is that the applicant has voluntarily accepted the post of Sanitary Assistant on Part-time basis which is not legally sustainable because appointment on compassionate grounds has to be made on regular establishment and giving Part-time appointment is nothing but by-passing the law regarding the compassionate appointment and so is illegal.
- (v) The ground that the applicant has given his representation for regular appointment only in 2014 is also not legally sustainable because the applicant has several times made representation and it is further submitted that it is incumbent on the part of the Government to give appointment on regular establishment once the Department comes to the conclusion that a candidate is entitled to get appointment on compassionate grounds and so the same cannot be connected with the representation made by the applicant at all with a view to unsuit the applicant.
- (vi) The applicant is claiming appointment on compassionate grounds with effect from the date on which the applicant was appointed on Part-time basis and so the said claim cannot be denied to the applicant on the ground that the applicant has been given regular appointment after a period of 14 years.
- (vii) The argument of the respondents that there was no suitable post for the applicant to be accommodated in 2002 is most unfortunate and also is factually

incorrect because if the Labour Department cannot accommodate the applicant it is the general law that the same has to be referred to the Department of Personnel and Administrative Reforms and to accommodate the applicant in any post on the basis of his qualification.

3. The applicant has placed reliance on the order of this Tribunal in batch of OAs.No.P-9/93,144/93, 145/93, 147/93, 441/93, 450/93, 451/93, 141/93, 142/93 and 143/93 dated 24.10.1994.

4. The respondents have filed reply. The applicant was appointed by the Labour Department the first respondent herein on compassionate grounds in 2002. The Labour Department considered the applicant for appointment on Compassionate grounds. However, there were only two Group "D" posts, namely (i) Laboratory Attender and (2) Nursing Orderly in the Labour Department. The Laboratory Attender post was not vacant at that time and the Nursing Orderly posts are to be filled up only by female candidates as per the Recruitment Rules. The other Group "C" posts available in the Labour Department are purely technical in nature and the Applicant having studied only up to 10th std and lacking in technical qualification could not be appointed in any post in the Labour Department. Therefore, the request of the applicant for appointment in any Group "D" post could not be acceded to.

However, due to the repeated representations and requests by the applicant, in view of the above circumstances, he was given an offer for appointment as Part Time Sanitary Assistant. The applicant accepted the offer and joined as Part Time Sanitary Assistant in Government ITI (Men), Mettupalayam, Puducherry in 2002 against the existing vacant post at that time. It is submitted that the applicant was absorbed by Department of Personnel and Administrative Reforms (DP&AR), the fourth

respondent herein under the "The Casual Labours (Engagement and Regularisation) Scheme, 2009".

5. The applicant was engaged as Full Time Casual Labourer with effect from 03.11.2010 in the Directorate of School Education, Puducherry from the panel of part time casual labourers notified/furnished by the DP&AR (PW) vide Memo No.A.12030/1/2010-DP&AR/GC/UII(ii)/pdy, dated 26.10.2010, Puducherry against the vacancies caused due to the absorption of daily rated staff on regular basis vide office Order dated 12.11.2010. Thereafter the applicant was transferred and posted in the Government Primary School, Ellaipillaichavady, Puducherry with effect from 28.01.2015. The applicant was offered the regular post of Multi Tasking Staff (Security) and posted in the Government Higher Secondary School, Kadhirkamam, Puducherry vide Order NoA.12011/I/2015-DP&AR/GC/UIV/S dated 05.02.2016 of the Under Secretary to Government, Department of Personnel and Administrative Reforms (Personnel Wing), Puducherry as per the said scheme of "The Government of Puducherry Casual Labours (Engagement and Regularization) Scheme, 2009" and the individual has accepted the offer and joined the post of Multi Tasking Staff (Security).

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on records.

7. This is the second round of litigation. After absorption in the regular establishment in the year 2010 by the Department of Personnel and Administrative Reforms, Puducherry the applicant had approached this Tribunal by filing

OA.No.187/2015 and prayed for regular appointment from the date of engagement of Part Time Sanitary Assistant. This Tribunal vide order dated 27.01.2016 directed the respondents to consider his request in the light of DoPT order governing the compassionate appointment which was rejected by the first and third respondents.

8. The fact remains that the applicant had represented before the Labour Department, Puducherry for appointment on compassionate grounds due to death of his father in harness 04.10.1999. The request of the applicant was taken up for consideration and it was noted that the Labour Department was having only 2 Group "D" regular posts viz. One is Laboratory Attender and another one is Nursing Orderly. Laboratory Attender post is not vacant at that point of time and the Nursing Orderly posts are to be filled by female candidates only as per the Recruitment Rules. All other Group "C" posts belongs to Labour Department are Technical posts with various technical qualifications as per the Recruitment Rules. The applicant had studied only up to 10th Std and did not possess any required educational and technical qualification to appoint him in any technical post in the Labour Department. Hence his request for full time regular appointment in any Group "D" post on compassionate grounds could not be considered. Due to his repeated representations he was given a Part Time Sanitary Assistant post in the Govt.ITI.(Men), Mettupalayam, Puducherry against the vacant post vide order No. 6003/Lab/A1/2002 dated 28.10.2002 and then, he was absorbed by Department of Personnel and Administrative Reforms (PW) under the provisions of "The Casual Labourers (Engagement and Regularisation) Schemes, 2009" of Government of Puducherry and as such he was appointed as Full

Time Casual Labourer in the Education Department, Puducherry with effect from 03.11.2010 and then he was offered the regular post of Multi Tasking Staff (security) in the Government. Higher Secondary School, Kadirkamam, Puducherry and the individual has accepted the offer and joined the post of Multi Tasking Staff (security).

9. The above sequence of events would go to prove that notwithstanding the fact that the applicant initially applied for compassionate appointment in the wake of the sad demise of his father while in service, in the absence of vacancy in any regular group 'C' or 'D' posts, the applicant could not be given any compassionate appointment. His appointment as part time Sanitary Assistant thus stood independent of the procedure for compassionate appointment and as such, the claim of the applicant that on the strength of the fact that compassionate appointment shall be against the regular vacancy and as such the applicant is entitled to have regularization of service as Part time Sanitary Assistant right from the date of his initial appointment in 2002 has no merit. His appointment in that capacity is in one way out of the Rules as no specified method had been adopted while appointing him. And, the scheme for grant of even temporary status to part time employees at the material point of time, was not applicable as held by the Apex Court in the case of *Ministry of Communications v. Sakkubai*, (1997) 11 SCC 224. Of course, there was no bar for absorption in that post provided he fulfilled the qualifications for the said post, as even for regularization or absorption, as held in the case of *State of Karnataka vs M.L. Kesari*, (2010) 9 SCC 247, consideration could be given for regularisation in suitable posts fulfilling the requisite qualifications for any suitable

lower posts. This has been followed as stated earlier in para 7 above. Further, limitation too stares at the face of the applicant as the claim relates to the period of 2002 vintage and the first time he approached the Tribunal is only in 2015.

10. The Department of Personnel and Training Office Memorandum No. 14014/02/2012-Estt.(D) dated 16.01.2013, stipulates that (a) Appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration. (b) It is not the intention to restrict employment of a family member of the deceased or medically retired (erstwhile) Group 'D' Government servant to a erstwhile Group 'D' post only. As such, a family member of such erstwhile Group 'D' Government servant can be appointed to a Group 'C' post for which he/she is educationally qualified, provided a vacancy in Group 'C' post exists for this purpose. And also, the Supreme Court has ruled in the cases of Himachal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) S.C. 319] on May 7, 1996 and Hindustan Aeronautics Limited Vs. Smt. A.Radhika Thirumalai [JT 1996 (9) S.C. 197] on October 9, 1996 that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. In the case of Himachal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) S.C. 319] on May 7, 1996, the Hon'ble Supreme Court has held as under:

7. In both the cases the Tribunal has directed the Corporation to appoint the respondents as clerks on regular basis. According to the Corporation, no vacant post is available to

absorb the respondents immediately on permanent basis. Shri Dinesh Kumar is working on contract basis and his priority number to be appointed on regular basis is 16. Ms. Parveen Kumari is in waiting list, to be appointed on contract basis, and serial number is 10 in that list. Counsel for the Corporation submitted that in the absence of available posts the Administrative Tribunal acted illegally in directing that the respondents should be appointed on permanent basis forthwith. In the case of Ms. Parveen Kumari the Tribunal has gone further and has stated that a supernumerary post may be created to accommodate her to be appointed as a clerk.

8. We are of the view that the Himachal Pradesh Administrative Tribunal acted illegally and without jurisdiction, in passing the orders dated 27.3.1995 and 6.3.1995 and in directing that the respondents be appointed in the regular clerical posts forthwith. In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post. We are of the view that directions given by the Administrative Tribunal, in these two appeals, are totally unauthorised and illegal. We are, therefore, constrained to set aside the orders appealed against. We hereby do so and allow the appeals. There shall be no order as to costs.

11. At the time of submission of application on compassionate appointment by the individual, there was no regular Group "D" post available in Labour Department and the individual also did not fulfil the required educational and technical qualification

for any other Group "C" technical cadre posts available. Therefore, his case was carefully examined on humanitarian grounds and considered for Part Time Sanitary Assistant to meet the immediate requirement and then he was absorbed in the regular post of Multi Tasking Staff (security) by DP&AR, Puducherry. The individual has accepted the offer and joined the post of Multi Tasking Staff (security).

12. The individual seeking regular post from the date of appointment of Part Time Sanitary Assistant with all monetary benefits is not in accordance with law and against the orders of Department of Personnel and Training in its Office Memorandum No. 14014/02/2012-Estt.(D) dated 16.01.2013 and against the orders of the Supreme Court of India in the cases of Himachal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) S.C. 319] on May 7, 1996 and Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai [JT 19 B N V CD96 (9) S.C. 197] on October 9, 1996. According to the respondent, during 2002 when the present applicant was engaged as Part Time Staff and even at present there is no regular post to accommodate the applicant in the Labour Department which had appointed him. Therefore, the requisition made by the applicant Thiru. Vijayabalan, to offer any lower post based on his qualification in the regular establishment on compassionate grounds with effect from the date on which he was appointed as part-time Sanitary Assistant with all monetary benefits cannot be acceded to. Further the facts of the cases cited by the applicant are distinguishable from the facts of the present case. As such, I see no reason warranting interference.

13. In view of the above facts and circumstances of the case and the discussions

here in above the OA is liable to be dismissed and it is accordingly dismissed. No costs.

(T. Jacob)
Member (A)
-11-2019

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