

2020 SCC OnLine Mad 13602

In the High Court of Madras
(BEFORE A.P. SAHI, C.J. AND SENTHILKUMAR RAMAMOORTHY, J.)

Union of India Rep by its Secretary to the Government and Others
... Petitioners/Appellants;
Versus

Siva Lakshmi ... Respondent.

W.A. No. 595 of 2020 and CMP No. 8306 of 2020
Decided on August 4, 2020

Advocates who appeared in this case :

For Appellant: Ms. Sunita Kumari

The Judgment of the Court was delivered by

A.P. SAHI, C.J.:— Heard learned counsel for Union of India.

2. The challenge raised is to the impugned judgment dated 07.02.2020 of the learned Single Judge, whereby, a direction has been given to the appellants to consider the representation of the respondent/petitioner and pass an appropriate order taking into account the standing orders as well as the relevant provision of law offering the respondent/petitioner an appropriate job with the appellants.

3. The contention raised is that the respondent/petitioner admittedly was offered compassionate appointment after the death of her husband and therefore, the stage of offering of such appointment being over, she was sent on training, when it was discovered that she was suffering from HIV/AIDS and was turned positive. Accordingly, she was found unfit to even complete the basic training of the post of constable against which she was offered appointment. Hence treating her service to be temporary under the CCS (Temporary Service) Rules, 1966, the termination order was passed on 22.07.2019.

4. It is urged that the termination order is justified inasmuch as even as per the provisions of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 such a course was permissible, as according to the provisions of Section 3 of the said Act itself provides that if a person has been found to be unfit the services could be terminated.

5. The main contention of the learned counsel for the appellants is that the direction of the learned Single Judge by taking into account the Standing Orders dated 15.12.2008 is not capable of being complied with as the said Standing Orders do not contain any provision for offering such alternate appointment or changing the trade after the appointment has been made, that too, even when the candidate has been declared to be medically unfit to discharge the duties of the post against which the candidate was appointed.

6. We have considered the submissions raised and we find that the learned Single Judge, after having considered the facts and also taking into account a judgment of the learned Single Judge of Allahabad High Court in W.A. No. 10014 of 2018 decided on 16.05.2018, has proceeded to issue the direction for consideration of offering an alternate appointment to the respondent/petitioner.

7. We find no reason to disagree with the said conclusion, but, we may point out that firstly, the nature of employment of the respondent/petitioner was on compassionate basis. It has time and again been held that a compassionate appointment is not an adhoc appointment to be terminated at will. It is an offer of a

substantive appointment and the capacity of such appointee is substantive in nature. Reference may be had to the following decisions:—

- i) *Ravi Karan Singh v. State of U.P.*, reported in 1999 SCC OnLine All 132
- ii) *State of U.P. v. Abhishek Bharadwaj*, reported in (2018) 158 FLR 629 (paragraph 5).

8. Thus, a compassionate appointee under the relevant Rules after getting appointed, acquires the status at par with a direct recruit and which is substantive and, consequently the services can be dispensed with only in accordance with such Rules that are applicable. In the present case, CCS (Temporary Service) Rules, 1966, has been deployed to dispense with the services of the respondent/petitioner. The order dated 22.07.2019, terminating the services of the respondent/petitioner is extracted hereunder:—

OFFICE of THE DIGP, GROUP CENTRE, CRPF, AVADI, CHENNAI-65

No. D.II.01/2019-E.C.II.G.C. AVD Dated, the July 2019

OFFICE ORDER

Under the provisions contained in Rule-6 of CCS (Temporary Service) Rules, 1965, read with SDG, SZ, CRPF, Hyderabad Letter No. R.11.01/2019.SZ.DA. Int & Trg dated 21/03/2019 and IGP, SS, CRPF, Hyderabad Signal No. R.11.1/2019.SS. Adm.3 dated 28/06/2019, I hereby terminate the service of No. 165030178 RT/GD (Mahila) Siva Lakshmi of this GC forthwith as she was found to be medically unfit to undergo Basic Training.

2. Accordingly, she is struck off the strength of this GC with effect from the date of issue of this order. All Govt./Mess dues, if any, shall be recovered from the payable dues.

(D. VINCENT THOMAS)

Commandant.

9. After getting appointment, the respondent/writ petitioner was diagnosed to be possessed of HIV/AIDS which fact is undisputed. The provisions of Section 3 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 can be reproduced to understand the arguments that has been advanced on behalf of the learned counsel for the appellants. Section 3(a)(i) is extracted herein under:—

CHAPTER II

PROHIBITION of CERTAIN ACTS

3. No person shall discriminate against the protected person on any ground including any

(a)

(i) a copy of the written assessment of a qualified and independent health care provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and..

10. According to the impugned order of termination, the candidate was found to be medically unfit to undergo the basic training of the post of constable.

11. We are of the opinion that if the respondent/petitioner is unfit to be deployed as a General Constable and is unable to undergo the basic training appertaining to that post, then this is not a case of altering the trade or changing the nature of employment. Rather this is a case to reconsider the claim of compassionate appointment on a fresh basis where, the candidate can be offered a post that may not require any such basic training so as to ultimately render her unfit for employment. The purpose of compassionate appointment is to provide succour to the family of the deceased employee and in this case, the Page 7 of 11 of the following namely:—

aforesaid fact remained undisputed that the respondent/petitioner was found suitable enough to be offered compassionate appointment. Since the disclosure or discovery of the disease came later in point of time, the unusual and peculiar circumstances had arisen where, in our opinion, the learned Single Judge has rightly drawn a conclusion that the respondent/petitioner should be offered an alternate post or such employment that may be commensurate keeping in view the ailment possessed by her.

12. To dispense with her services altogether would be adding misery to her life instead of providing succour. We may also put on record that the medical advice from the hospital concerned on 11.05.2019 reads as under:—

"11.05.19

Reviewed & TMT & PFT Results as CPRT couldn't be done.

10.05.19

TMT negative for Myocardial Ischaemia

10.05.19

PPT: Shows restrictive Lung Function

Imp: In view of smaller volume of left lungs in CT Chest, Fibrotic Lesions RML Lingular and Restrictive Lungs Function, it is opined that the candidate may not be fit for rigorous training schedule as a CRPF recruit. She may be considered for lighter work like Administrative Staff.

13. Thus, medically also, she has been advised to be offered lighter work.

14. In the above circumstances, it would be a travesty of justice to deny employment to a claimant of compassionate appointment, that too, even after the appointment having been offered to her and the fact that she now faces some other medical problems.

15. Consequently, we do not find any error in the impugned judgment and in view of the additional reasons given herein above, we direct the appellants to comply with the directions of the learned Single Judge.

16. It is expected that even though the time limit extended by the learned Single Judge vide impugned judgment dated 07.02.2020 has expired, we provide that the orders may be passed within one month from today.

17. The writ appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.