

IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

THE HON'BLE MR.JUSTICE B.VEERAPPA

AND

THE HON'BLE MR.JUSTICE P.G.M.PATIL

W.P.No.202056/2018 (S-KAT) DATED: 02-01-2019

Mehboob s/ o Syed Hussain Vs. The State of Karnataka By its Secretary Department of Personal and Administrative Reforms, (Service Rules- 1) Vidhana Soudha, Bangalore-560001 and Others

ORDER

B.VEERAPPA, J.,

The present petitioner who is the son of Syed Hussain, ' D ' Group employee, Department of Animal Husbandry and Veterinary Services, Tikota, Vijayapur District is before this court against the order passed by the Karnataka State Administrative Tribunal at Bangalore (for short the Tribunal ') dated 28.06.2017 made in Application No. 1440/2012, dismissing the application on merits.

I. Facts of the case:

2. The petitioner's father Syed Hussain filed an application on 16.02.2012 before the Tribunal to set aside the order dated 31.01.2012 passed by the Commissioner of Animal Husbandry and Veterinary Services, Bangalore vide Annexure-A7 and to direct the respondents to permit the applicant to retire from the service on medical grounds with effect from the date of his application dated 22.12.2011 and further to direct the respondents to provide an appointment to his son Mehaboob (present petitioner) on compassionate ground as provided under Rule 3A of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules, 2011.

3. It was the case of the petitioner's father before the Tribunal that the applicant was working as ' D ' Group Employee in the office of fourth respondent i.e., Assistant Director of Animal Husbandry and Veterinary Services, Tikota, Vijayapur Taluk and District.The applicant put a lengthy unblemished service in the department.Unfortunately, the applicant (the father of the petitioner) fell ill due to Parkinson's disease and due to which he lost 85% of the working capacity.He could not move alone without the help of any person and was unable to discharge his duties.As such he made an application on 22.12.2011 requesting the concerned to permit him to take voluntary retirement from service (VRS) on medical grounds.

4. It was further case of the applicant that District Surgeon, District Hospital, Vijayapur has issued medical certificate stating that the applicant has lost 85% of the working capacity due to Parkinson's disease. Therefore, he made representation before the jurisdictional Authority for permission to retire from service on medical grounds.The authorities, by an endorsement dated 31.01.2012 rejected the application on the ground that the date of birth of applicant was 20.02.1952 and he would retire from the service on 29.02.2012 on

attaining the age of superannuation. Therefore, application filed by the applicant for voluntary retirement on medical grounds, would not arise and that was subject matter of the application before the Tribunal. The Tribunal after hearing both the parties by impugned order dated 28.06.2017 dismissed the application.

5. It is also stated at the Bar that during the pendency of application before Tribunal, the original applicant died and the present petitioner has not filed any application to come on record as legal representative within the time. Therefore, the present application is filed for permission. Even assuming that he is the only legal representative and a permission granted to file the present writ petition, still the petitioner is not entitled for any relief.

II. Arguments advanced by the learned counsel for the parties:

6. We have heard the learned counsel for the parties to the lis.

7. Sri G.G.Chagashetti, learned counsel appearing for petitioner would contend that the impugned order passed by the Tribunal, dismissing the application confirming the order passed by second respondent is erroneous, contrary to material on record. He would further contend that the material on record clearly depicts that the deceased i.e., father of the petitioner was unable to discharge his duties, as he had lost 85% of working capacity. Though the document was produced before the Tribunal as well as authority concerned, both second respondent as well as Tribunal have not considered the same. Therefore, he submits that impugned order passed by the Tribunal affirming the orders passed by the second respondent cannot be sustained.

8. He would further contend that the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules 2011 came into force on 13.10.2011 and the application was filed on 22.12.2011. The authority instead of considering the application, rejected it erroneously. Therefore, he sought to quash the impugned order passed by the Tribunal, which affirmed the endorsement issued by the second respondent by allowing the writ petition.

9. Per contra Sri K.M.Ghate, learned Additional Government Advocate sought to justify the impugned order passed by the Tribunal as well as endorsement issued by second respondent dated 31.01.2012. He further contend that admittedly the date of birth of the original applicant was 20.02.1952, the applicant in the normal circumstances would have been retired on 29.02.2012. Taking into consideration the advantage of the Rules the original applicant filed an application. The authorities as well as Tribunal considering the entire material on record rightly rejected the application on the ground that the original applicant has not produced any material document to show that he was incapacitated permanently while on duty for public purpose as required under Rule 3A of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules, 2011. Therefore, he sought to dismiss the petition.

III. The point for determination:

10. In view of the above rival contentions urged by the learned counsel for the parties, the only point that arises for our consideration in the present writ petition is;

" Whether the original applicant applicant Syed Hussain has made out a case to permit him to retire from the service on medical grounds in terms of the application filed by him dated 22.12.2011 in the facts and circumstances of the present case? "

III. Consideration:

11. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

12. It is undisputed fact that the petitioner's father the original applicant Syed Hussain was working as Group ' D ' employee under fourth respondent, who made an application on 22.12.2011 to retire from service on medical ground that he had suffered 85% of working capacity due to Parkinson's disease as per the medical certificate issued by Medical Officer, Primary Health Centre, Tikota, Vijayapur District and another medical certificate issued by Dr.Bhagavati, Neuro Care Centre, Vijayapur.

13. The jurisdictional authorities considering the application and medical certificate, by endorsement dated 31.01.2012 rejected the application mainly on the ground that the applicant's date of birth is 20.02.1952 and in the normal circumstance applicant would have been retired from service on 29.02.2012 and therefore, the question of considering his application to retire from service on medical ground would not arise and the same is affirmed by the Tribunal in the impugned order.

14. In order to decide the controversy between the parties, it is relevant to consider the amended provisions of Rule 3A of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment), Rules 2011, which reads as under:

" 3A. Appointment of dependents of Government servant retired on medical grounds;

(1) Without prejudice to the generality of these rules, dependents of the Government servant retired on medical grounds shall be eligible for appointment on compassionate grounds.

(2) All conditions of eligibility conditions of appointment and the procedure of application and appointment except rule 9 as applicable to dependents of deceased Government servant under the rules shall mutatis mutandis apply to the dependents of the Government servant retired on medical grounds with effect from the date of his retirement on medical grounds.

Provided that all eligible dependents of Government servant retired on medical grounds on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules, 2011 may apply within one year from the date of commencement of the said rules.

Explanation For the purpose of these rules,

(i) " Government servant retired on medical grounds " means a Government servant who on the ground of bodily or mentally infirmity is permanently incapacitated while on duty for public service and retired on medical grounds as per the provisions of the Karnataka Civil Services Rules on or after the 1st day of January, 2010, as certified by the Medical Board constituted by the Department of Health and Family Welfare at District and taluk level.

(ii) The words " while on duty " includes his journey to and from his place of residence to the place of work.

(iii) The words " dependents " and " family members " defined in respect of deceased Government servant shall also be construed as dependents of a Government servant retired on medical grounds.

(iv) In these rules, wherever the words " widow " or " widower " occurs in respect of deceased Government servant, it shall be construed as " wife " or " husband " of the Government Servant retired on medical grounds.

15. A careful reading of the said Rule makes it clear that the appointment of dependents of Government servant retired on medical grounds shall be eligible for appointment on compassionate grounds, provided that all eligible dependents of Government servant retired on medical grounds on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules, 2011 may apply within one year from the date of commencement of the said Rules.

Explanation (1) clearly depicts that " Government servant retired on medical grounds " means a Government Servant who on the ground of bodily or mental infirmity is permanently incapacitated while on duty for public service and retired on medical grounds as per the provisions of the Karnataka Civil Services Rules on or after 1st day of January, 2010, as certified by the Medical Board constituted by the Department of Health and Family Welfare at the district and taluk level.

16. Admittedly in the present case as on date of amendment to Rules came into force with effect from 13.10.2011 the original applicant was not retired and admittedly he filed an application for retirement on medical grounds on 22.12.2011 and was about to retire from service on 29.02.2012.As on the date of the application filed the applicant was not retired.Though the application filed within the time, the fact remains that the applicant was in service and he was not certified by Medical Board constituted by the Department of Health and Family Welfare to the effect that the applicant was bodily or mentally infirm and was permanently incapacitated while on duty for public service.

17. Though the learned counsel for petitioner relied upon the certificates issued by the Medical Officer, Tikota and Dr.Bhagavati Neuro Care Centre, Vijayapur cannot be constituted as a Medical Board as defined in the amended Rules. Admittedly the applicant was not retired as on the date the Rules came into force and he was not certified by any Medical Board constituted by the Department of Health and Family Welfare that the applicant was bodily and mentally infirm and is permanently incapacitated while on duty for public service. For the reasons stated supra, the point raised in the present writ petition has to be answered in the negative holding that the original applicant Syed Hussain has not made out any case to permit him to retire from service on medical grounds.

V. Conclusion:

18. The Tribunal considering the entire material on record, recorded a finding that the very endorsement clearly depicts that the applicant is due to retire from service on 29.02.2012 on attaining the age of superannuation and he was not eligible for retirement on medical ground. Even he was advised to take leave, if he was not well. There are no grounds to show that he was permanently incapacitated while on duty for public service as required under Rule 3A of Karnataka Civil Services (Appointment on Compassionate Grounds) (Sixth Amendment) Rules, 2011. Accordingly, dismissed the application.

19. In view of the above, the petitioner has not made out any ground to interfere with the impugned order passed by the Tribunal affirming the endorsement issued by second respondent in exercise of powers under Articles 226 and 227 of the Constitution of India.

Accordingly, writ petition is dismissed.