

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.20473 of 2012

L.Venkatesaperumal

.. Petitioner

vs.

1.The Chairman,
(Tamil Nadu Electricity Board), TANGEDCO
N.P.K.R.R.Maligai,
No.144, Annasalai,
Chennai-600 002.

2.The Chief Engineer (Personnel),
TANGEDCO, (TNEB),
N.P.K.R.R. Maligai,
No.144, Annasalai,
Chennai-600 002.

3.The Superintending Engineer,
Ennore Thermal Power Station, TANGEDCO,
Cuddalore Electricity Distribution Circle,
Cuddalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 3rd respondent passed in Letter No.29228/Va.Ve/Karu./Nir.2(4)/2003-1 dated 12.02.2004, quash the same and direct the respondents to reconsider the appointment of the petitioner in any post as per his qualification on compassionate grounds as per the Board Proceedings in B.P.17 dated 01.11.2011 on the file of the 2nd respondent.

For Petitioner	:	Mr.S.Doraisamy
For Respondents	:	Mr.Fakkir Mohideen Standing Counsel for TNEB

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the third respondent passed in Letter No.29228/Va.Ve./Karu./Nir.2(4)/2003-1 dated 12.02.2004, quash the same and direct the respondents to reconsider the appointment of the petitioner in any post as per his qualification on compassionate grounds as per the Board Proceedings in B.P.17 dated 01.11.2011 on the file of the second respondent.

2. The father of the petitioner, namely A.Lakshmanan was working as a Wireman at the Office of Junior Engineer, Rural/North/Cuddalore Fort, Tamil Nadu Electricity Board and he died on 02.03.1992 due to ill health, leaving behind his wife and three children as Legal Heirs and the petitioner is the third child and he was aged about 8 years at the time of death of his father. After the demise of his father, his mother, namely L.Anandal preferred an application on 23.02.1995 as well as on 17.08.1997 to the third respondent for appointment in a suitable post on compassionate grounds. However, the third respondent did not pass any orders. The petitioner attained majority in the year 2003 and he preferred an application to the respondent seeking appointment on compassionate grounds and at that time, the petitioner had passed 8th Standard and in view of the indigent circumstances, he was unable to continue his studies and along with the application, the petitioner has enclosed fourteen documents in support of his claim. On 12.04.2003, the third respondent rejected his claim stating that his application was belated and there was a delay of 5 years and 21 days. Thereafter, the petitioner preferred several appeals to the first respondent and finally on 26.12.2011 and since no order was passed, came forward with this writ petition.

3. When the matter is taken up for consideration, Mr.S.Doraisamy, learned counsel appearing for the petitioner would submit that the petitioner was minor at the time of death of his father and therefore, he is not in a position to submit application seeking appointment on compassionate grounds and however, his mother has submitted application, which was not considered. The petitioner, after attaining majority, has filed application, which was also rejected and thereafter, the petitioner preferred appeal before the first respondent and it is kept pending and left with no other alternative, the petitioner has filed this writ petition. The learned counsel appearing for the petitioner has invited the attention of this Court to B.P.17 dated 01.11.2011 and would submit that the petitioner is entitled to appointment on compassionate grounds

as per the said Board Proceedings. The learned counsel appearing for the petitioner relied upon the decision of the Division Bench of this Court in W.A.(MD).No.1400 of 2011 dated 16.12.2015 [S.Velraj v. The Superintending Engineer, TNEB, Tirunelveli and another] wherein it has been observed that three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently based on the facts and thus in the said writ appeal, direction was issued to the respondents therein to dispose of the petitioner application for appointment on compassionate ground.

4. The learned Standing Counsel appearing for the respondents/Board would submit that only if the application is made within a period of 3 years from the date of death of the employee, it would be considered, but here there is an inordinate delay in making the application. The learned Standing Counsel appearing for the respondents, in support of his submissions, placed reliance upon the Division Bench decision of this Court in The Inspector General of Prisons, Tiruchirapalli District v. P.Marimuthu [2016 (5) CTC 125] wherein it has been held that for entry into any service in the State, the minimum age is 18 years and no minor can be appointed to any service and therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attain majority; posts which fall vacant have to be filled up as per the Recruitment Rules; Employment Assistance on Compassionate Appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which the Employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

5. Keeping the submissions made on either side, I have gone through the entire materials placed before it.

6. I am of the opinion that each case has to be decided based on its facts and circumstances and insofar as the petitioner herein is concerned, the petitioner's father died on 02.03.1992 and thereafter, the mother of the petitioner submitted application on 23.02.1995 i.e., within three years from the date of death of her husband to the third respondent seeking appointment on compassionate ground and preferred further application on 17.08.1997 and no orders were passed on both the applications. In this situation, the petitioner, after attaining majority, has submitted application, but the said application was rejected and he also preferred appeal before the first respondent dated 26.12.2011 and the said appeal was not disposed of. In the meanwhile, the Board

Proceedings was passed and accordingly he has applied for compassionate appointment as per B.P.17.

7. In the light of the above facts and circumstances, I am of the opinion that since the petitioner's mother has already approached the respondents within the limitation period of three years and even the petitioner also, after attaining majority, was continuously approaching the respondents seeking appointment on compassionate grounds, instead of quashing the impugned order, a direction may be given to the respondents to consider the claim of the petitioner afresh by taking note of B.P.17.

8. In the result, this Writ Petition is disposed of and the petitioner is permitted to give fresh application/representation to the respondents and the respondents, on receipt of the same, are directed to reconsider the application submitted by the petitioner and pass appropriate orders with regard to reviewing its earlier order, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

jvm

To

1.The Chairman,
(Tamil Nadu Electricity Board), TANGEDCO
N.P.K.R.R.Maligai,
No.144, Annasalai,
Chennai-600 002.

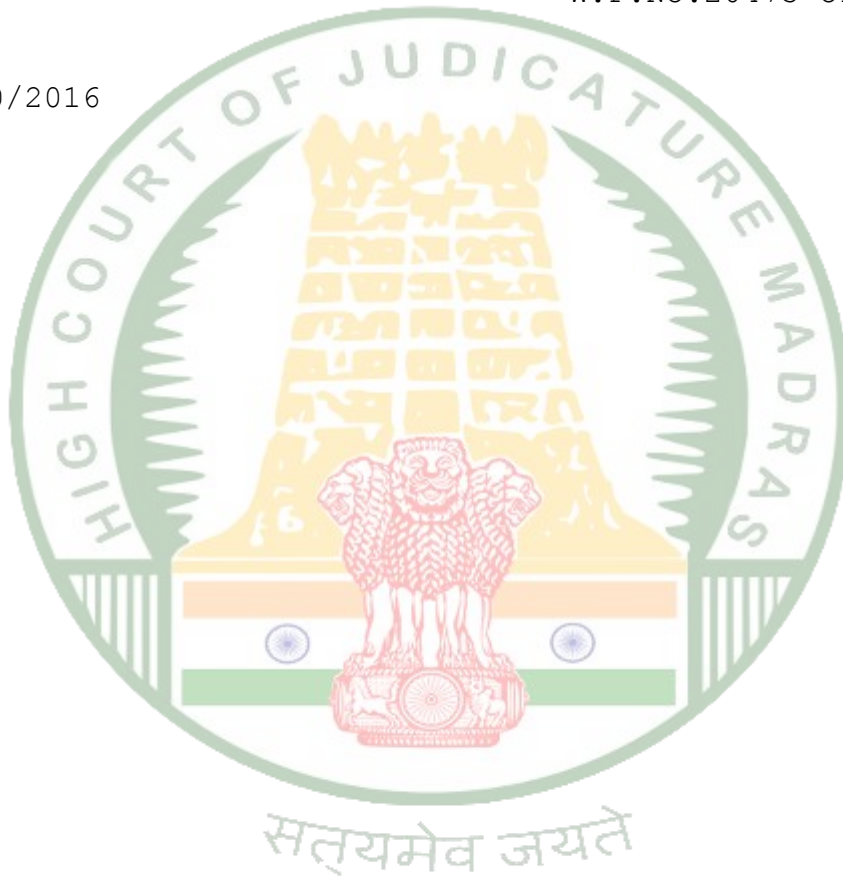
2.The Chief Engineer (Personnel),
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+1 CC to Mr. S. Duraisamy, Advocate Sr.No.54942

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SR (CO)
MD : 20/10/2016



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