

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.32798 of 2015

M.N.Sasikala

... Petitioner

Vs.

- 1.Tamil Nadu Generation and Distribution Corporation Ltd.,
rep. by its Chairman-cum-Managing Director,
N.P.K.K.R. Maligai,
Anna Salai,
Chennai-600 002.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
N.P.K.K.R. Maligai, Anna Salai,
Chennai-600 002.
- 3.The Superintending Engineer, (Metro),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Tatabad, Coimbatore Electricity Distribution Circle,
Coimbatore-12. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records from the file of the 3rd respondent in connection with the impugned order in Lr.No.13114/nipi 3/vu 1/Ko.Va.Ve/2015, dated 24.08.205, and to quash the same and to direct the respondents to consider the claim of the petitioner for compassionate appointment within the stipulated time fixed by this Court.

For Petitioners : Mr.V.Prakash, Senior Counsel
for K.Krishnamoorthy

For Respondents : Mr.P.R.Dhilipkumar

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Certiorarified Mandamus calling for the records from the file of the 3rd respondent in connection with the impugned order in Lr.No.13114/nipi 3/vu 1/Ko.Va.Ve/2015, dated 24.08.2015, and to quash the same and to direct the respondents to consider the claim of the petitioner for compassionate appointment within a time limit.

2.It is stated by the petitioner that her father Nagarajan was working as Accounts Officer in the respondent-Department and he died in harness on 24.10.2011 leaving behind his wife, two daughters and a son. The petitioner's younger brother is aged about 35 years and he is a mentally retarded person and also physically challenged to an extent of 80%. The petitioner's younger sister got married and settled with her husband. Though the petitioner got married, she was living in her parental home, due to the reason that she was abandoned by her husband. The petitioner's father was the sole bread winner of the family. It is also stated by the petitioner that while he was alive, the petitioner's father had lodged a police complaint on 18.08.2011 against the petitioner's husband and his family members with regard to the atrocities committed against the petitioner. At the time of the death of the petitioner's father, the petitioner was aged 32 years and she was under the obligation to take care of her mother, her brother and also her daughter aged about 8 years. After the death of her father, on 11.11.2011 the petitioner had personally visited the office where her father was working and represented before the Assistant Administrative Office (P.A. to the Superintending Engineer, CEDC/Coimbatore) for the job opportunity on compassionate ground. She was informed that for a married daughter, job opportunity would not be provided on compassionate ground. Thereafter, on 17.03.2014, the petitioner has given application before the respondents seeking compassionate appointment, within a period of three years from the date of death of her father. It is further stated by the petitioner that the petitioner obtained a decree of divorce on 29.04.2014. She is a B.Com Degree holder. Her younger sister has given consent to her for getting compassionate appointment. Her brother is physically handicapped and he also could not go for job. The petitioner has enclosed all the required documents along with her application dated 17.03.2014, including the certificate given by the Tahsildar to consider her claim for job under compassionate ground, to the 3rd respondent. The 3rd respondent forwarded the said application to the 2nd respondent. But, the petitioner's application was rejected by the 2nd respondent vide

Lr.No.019575/108/G9/G92/karu.08/2015-1, dated 26.06.2015 and in turn, the 3rd respondent issued the impugned rejection order viz., Lr.No.13114/nipi 3/vu 1/Ko.va.ve./2015 dated 24.08.2015. The application of the petitioner for compassionate appointment was rejected by the respondents assigning two reasons. Firstly, the maximum age limit for considering the appointment on compassionate ground is 35 years and the petitioner has crossed 35 years of age at the time of submitting her application; secondly, the petitioner got married during the life time of her father/employee and the decree of divorce was obtained only after the death of the her father; therefore, she is not entitled to get compassionate appointment. Aggrieved over the rejection of her application for compassionate appointment, the petitioner has come forward with the present writ petition before this Court.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner relied upon the standing orders of the Board, in Permanent B.P.Ms.(FB).No.46, (Adm.Branch), dated 13.10.1995 and submitted that as per the said Board Proceedings/order, the age of the divorced daughter of the deceased employee, who seeks compassionate appointment, should not be more than 30 years, on the date of death of the employee. Clause 2 of the said proceedings reads as follows -

"2. As per the existing scheme in the Board, the employment assistance is being considered to the dependants of the employees of the Board who died while in service without any time limit for the submission of the application for employment assistance. It is specified that the age of Sons/Unmarried daughters, widowed or deserted daughters, divorced daughters should not be more than 30 years and in the case of widow 40 years on the date of death of the Board employee."

But, subsequently, the said age limit was relaxed and increased to 35 years from 30 years by the proceedings of the Board in Permanent B.P.Ms.(FB).No.131, dated 19.06.1998. According to the learned senior counsel for the petitioner that age of the dependant of the deceased employee should be taken into account from the date of the death of the employee and not from the date of submitting the application for compassionate appointment. Thus, it is submitted by the learned senior counsel for the petitioner that the petitioner is entitled to the appointment on compassionate ground as she was only 32 years old on the date of death of her father.

4. With regard to the second reason assigned by the respondents for rejection of the petitioner's request, that

during the life time of her father, the petitioner got married and she obtained decree of divorce only after the death of her father, as such she is not entitled to the compassionate appointment, it is the submission of the learned counsel for the petitioner that a married daughter is also entitled to the compassionate appointment. In this regard, the learned counsel for the petitioner has also relied upon the decision of this Court in W.P.No.16153 of 2015, dated 09.06.2015, (S.Kavitha Vs. The District Collector and others), wherein this Court directed the respondents therein to give employment on compassionate ground to the married daughter of the deceased employee therein. It is also submitted by the learned counsel for the petitioner that in the instant case, the petitioner is a divorcee; therefore, there is no impediment in considering her request for compassionate appointment. Thus, the learned counsel for the petitioner sought for quashing the impugned order and to direct the respondents to give compassionate appointment to the petitioner.

5.The learned standing counsel appearing for the respondents vehemently opposed the prayer of the petitioner. He has also made a detailed argument in support of the reasons assigned in the impugned order rejecting the application of the petitioner.

6.Heard the learned counsel for the petitioner as well as the learned standing counsel appearing for the respondents and perused the materials available on record.

7.The petitioner's father Nagarajan was working as Accounts Officer in the respondent-Department and while he was in service, he died on 24.10.2011 leaving behind his wife, two daughters and a son. The petitioner's younger brother is aged about 35 years and is a mentally retard person and also physically challenged to an extent of 80%. The petitioner's younger sister got married and settled with her husband. Though the petitioner got married, she was living in her parental home due to the reason that she was abandoned by her husband. At the time of the death of the petitioner's father, the petitioner was aged 32 years and he was under the obligation to take care of her mother, her brother and also her daughter aged about 8 years. At the time of death of the petitioner's father, the petitioner did not cross the age of 35 years and she was only 32 years. The petitioner made her application on 17.03.2014, within the period of three years from the date of death of her father/employee. The reason assigned by the respondents for rejecting her claim that the petitioner crossed the age of 35 years at the time of making the application, cannot be sustained because as per the proceedings of the Board in Permanent B.P.Ms. (FB).No.46, (Adm.Branch), dated 13.10.1995, the age of the

dependent of the deceased employee who seeks compassionate appointment should be considered from the date of death of the employee. As such, it is clear that the age limit of the person, who seeks compassionate appointment should be taken into account only from the date of death of the employee and not from the date submitting the application. Admittedly, the petitioner has not crossed the age of 35 years on the date of death of her father.

8.As regards the second reason assigned in the impugned order for rejecting the claim of the petitioner, that during the life time of her father, the petitioner got married and she obtained decree of divorce only after the death of her father, it would be appropriate to place a reference in the decision of this Court, relied upon by the learned counsel for the petitioner, in W.P.No.16153 of 2015, dated 09.06.2015, (S.Kavitha Vs. The District Collector and others), wherein this Court directed the respondents therein to give employment on compassionate ground to the married daughter of the deceased employee therein. The relevant observations made in the said decision read as follows:—

"7. I have Considered the entire issues including the validity of G.O.Ms.No.165, Labour & Employment Department, dated 30.02.2010 in detail in my order dated 13.04.2015 in W.P.No.10565 of 2015 (R.Govindammal Vs. The Principal Secretary or ors) and held that G.O.Ms.No.165 dated 30.02.2010, declining to provide compassionate appointment to married daughter is violative of the provisions of the Constitution. In that order, I have also considered the judgments 2008 (5) CTC 686 (G.Girija Vs. The Assistant Director (Panchayats), Kancheepuram District) and (2013) 8 MLJ 684 (Krishnaveni Vs. Superintending Engineer, Kadampari Electricity Generation Block, Coimbatore District), relied on by the learned counsel for the petitioner. It is useful to extract paragraphs 20 to 22 & 26 to 29 of the order dated 13.04.2015 in W.P.no.10565 of 2015, which are extracted hereunder:

"20.Thus,
Constitution makes it clear
that law could be made giving
certain concession to women.
But, women cannot be deprived
of certain rights, while the

same are extended to men. hence, G.O.Ms.560, L & E Department, dated 03.08.1977, which deprives compassionate appointment to married daughters is unconstitutional in the light of Preamble to Constitution and Articles 14, 15, 16, 39(a), 51(a)(k), 243D (3) and 343T(3) of the Constitution.

21.Later, the Government made certain improvements to G.O.Ms.No.560 by issuing G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993. The said Government Order i.e, G.O.Ms.No.155 provides compassionate appointment to daughters of a Government servant, if the daughter was abandoned by her husband or a divorcee or a widow. That is, apart from unmarried daughters, G.O.ms.No.155 has included certain categories of women to claim compassionate appointment. However, discriminatory treatment was not removed in total, ie., while marriage is not a condition prescribed in the matter of providing compassionate appointment to sons of a deceased Government Servant, the same was placed as a condition in the case of daughters.

22.Now a further improvement is made in the latest Government Order in G.O.Ms.No.165 dated 30.08.2010. As per the said Government Order, the married daughter could also claim compassionate appointment, if she was unmarried at the time of making application. In

the said Government Order, it is stated that taking into account the decisions of this Court, such relaxation was granted in providing compassionate appointment to the married daughters, who got married subsequent to the death of the father and more particularly after making application for compassionate appointment.

8.As far as this case is concerned, both the children of the deceased Government servant are daughters and both of them got married before the death of the Government servant and on the ground of marriage, compassionate appointment cannot be denied to the petitioner.

9.For the aforesaid reasons, the impugned order is quashed and a direction is issued to the first respondent to provide compassionate appointment to the petitioner, if she is otherwise eligible, without reference to marriage."

From the dictum laid down the above decision, it is clear that the married daughter of the deceased employee is also entitled for compassionate appointment. In the instant case, the petitioner is a divorcee. Therefore, there is no impediment in considering the claim of the petitioner for compassionate appointment. Hence, the impugned order is not legally sustainable.

For the foregoing reasons, the writ petition is allowed and the impugned order is set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment positively and pass orders, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSV

To

1.The Chairman-cum-Managing Director.
Tamil Nadu Generation and Distribution Corporation Ltd.,
N.P.K.K.R. Maligai,
Anna Salai,
Chennai-600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
N.P.K.K.R. Maligai, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer, (Metro),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Tatabad, Coimbatore Electricity Distribution Circle,
Coimbatore-12.

+1cc to Mr.K. Krishnamoorthy, Advocate, S.R.No.61101

+1cc to Mr.P.R. DHILIPKUMAR, Advocate, S.R.No.61626

NRJK (CO)

MD (14/11/2016)

W.P.No.32798 of 2015

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