

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.21773 of 2016 and

WMP.No.18621 of 2016

P.Vijaya

... Petitioner

vs.

1. The Chairman-cum-Managing Director,
Tamil Nadu Electricity Board,
N.P.K.R.R.Maligai,
Old No.800, New No.144, Anna Salai,
Chennai-600 002.
2. The Chief Engineer (Personal),
TANGEDCO Limited,
N.P.K.R.R.Maligai,
Old No.800, New No.144, Anna Salai,
Chennai-600 002.
3. The Superintending Engineer,
Mettur Electricity Distribution Circle,
TANGEDCO Limited,
Tamil Nadu Electricity Board,
Mettur, Salem District.
4. The Executive Engineer,
Omalur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Omalur, Salem District.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the relevant records pertaining to the order passed by the 3rd respondent herein vide his Proceedings in Ka.No.MaPo/MaMePaVa/Ma/NiPi1/Ou.3/KoVaVe/No 951/2014 dated 30.08.2014 and quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice and thereby direct the respondents herein to appoint the petitioner on compassionate grounds in any suitable post commensurate with her qualification, consequent on the death of

her husband Late Palanimuthu on 15.06.2012 while serving as Casual Labour under the 4th respondent.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.P.R.Dhilip Kumar

ORDER

The Writ Petition has been filed, challenging the order passed by the 3rd respondent herein vide his Proceedings in Ka.No.MaPo/MaMePaVa/Ma/NiPi1/Ou.3/KoVaVe/No.951/2014, dated 30.08.2014 and quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice and thereby direct the respondents herein to appoint the petitioner on compassionate grounds in any suitable post commensurate with her qualification, consequent on the death of her husband Lat Palanimuthu on 15.06.2012 while serving as Casual Labour under the 4th respondent.

2. The case of the petitioner is as follows:

(a) The husband of the petitioner Late Palanimuthu was working as Contract Labour under the Erstwhile Tamilnadu Electricity Board (Now TANGEDCO) continuously and uninterruptedly without any break at Vellar O&M Section, Mettur Circle, Salem District, from 11.11.1996. But his service was not regularised and he had not been absorbed in regular establishment in regular time scale of pay even though he was eligible for such regularisation and absorption.

(b) An Industrial Dispute was raised by one of the Trade Unions, namely, C.O.T.E.E. to regularise the service of 21,000 Contract Labours, who have put 3 to 10 years of service. The respondent Board by a settlement dated 10.08.2007 agreed to initially absorb 6000 Casual Labourers out of 21,000 and paid ex-gratia payment for the year 2005-2006. Further, it was also agreed that the service of the contract labourers will be identified and appointed as casual labourers and remaining will be continued as contract labourers as temporary casual labourers and then as mazdoors in a phased manner. Accordingly, the TNEB issued order in (Per) B.P. (FB) No.44, Administrative Branch date 06.09.2007 to the above effect. Subsequently, through Board Proceedings in Per B.P. (Chairman), No.9, Administrative Branch, dated 09.01.2008 constituted a committee to examine cases of contract labourers not covered by 12(3) Settlement dated 10.08.2007 for absorption.

(c) In the meanwhile, the petitioner's husband along with 13 other contract labourers had moved the Inspector of Labour, Salem, in 2010 for absorption into TNEB vide Na.Ka.No.A3021/2009 in which after full fledged enquiry by order dated 22.10.2010, the Labour Court directed the respondents herein to absorb them into the TNEB's services. Accordingly, by orders dated 20.02.2008, 28.02.2008 and 10.03.2008, the 4th respondent appointed them as Casual Labourers including the petitioner's husband. Unfortunately, even before the regularisation of his service, he expired due to electrocution on 12.06.2012 leaving the petitioner, his daughter Biruntha and his mother Bakiyam as his legal heirs. Hence, the others who continued as Casual Labourers were regularised as Mazdoors vide independent proceedings dated 23.01.2014 on completion of 3 years.

(d) Thereafter, the petitioner submitted a representation dated 18.08.2014 to the 3rd respondent along with the death certificate of her husband and Legal Heirs Certificate seeking appointment on compassionate ground for her daughter. The 3rd respondent by his impugned order dated 30.08.2014 rejected the same on the sole ground that there is no order for providing appointment on compassionate ground for the legal heirs of the deceased who were working on contract basis. Challenging the same, the petitioner preferred an appeal before the 2nd respondent on 28.04.2015. But no orders have been passed on the same so far. Hence the present Writ Petition.

3. When the matter was taken up for hearing, the learned Counsel for the petitioner made his submissions adverting to the averments in the affidavit and also submitted that in an identical circumstance, a Division Bench of this Court in W.P.No.5980 of 2004 in *R.Lakshmi Vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai* and another reported in (2012) 6 MLJ 480 has directed the respondents to consider and dispose of the representation of the petitioner therein within a period of four weeks from the date of receipt of a copy of that Order for compassionate appointment being provided to her daughter.

4. Disputing the claim of the petitioner, the learned Counsel for the respondents has filed a detailed counter in which inter alia it has been stated that the deceased was not engaged directly by the TANGEDCO and he was engaged by the Contractor and the payments were made by Contractor. So they are not eligible for absorption into Board's services. It has also been averred that only on humanitarian ground, the respondent Board has reached a 12(3) Settlement under I.D. Act between 6000 Contract Labourers initially and left out were absorbed in a phased manner vide (Per) BP (FB) No.44 (Adm.Branch) dated 06.09.2007 and further the respondent Board

has issued orders to constitute a Committee to examine the left out cases in 12(3) Settlement. The name of the petitioner's husband deceased G.Palanimuthu was not found in the said list. Further, it is stated that though the Inspector of Labour, Salem has passed an award to absorb G.Palanimuthu into Board Services, appeal has been filed against the same and the same is pending. Further, according to the respondent Board, there is no provision in the Board's Rules to appoint the legal heirs of the deceased Contract Labourers on compassionate grounds. Hence, the learned Counsel for the respondents prays for dismissal of the present Writ Petition.

5. Heard the submissions made on either side and I have also perused the records carefully.

6. As contended by the learned Counsel for the petitioner, in an identical circumstance, the Division Bench of this Court in R.Lakshmi Vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another reported in (2012) 6 MLJ 480 has held as follows:

''34. On going through the ingredients of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, we are of the considered view that the petitioner's husband completed 480 days of work in a period of 24 calendar months (During his life time), and would become automatically a permanent employee under the respondents/Tamilnadu Electricity Board, because of the simple fact that the Section mandates the respondents to confer permanent status on the petitioner's husband S.Raju and the conferment of permanent status to the petitioner's husband S.Raju/Employee/Workman would not depend upon his employer on his own or on a direction given by the competent authority under the Act.

35. The words ''employed'' in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, are not directory in nature, in our considered opinion. Per contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the petitioner's husband late Raju satisfied the essential condition of, being a worker and the Tamil Nadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularisation was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be

necessarily granted to him by the respondent/Tamil Nadu Electricity Board.''

After discussing the said issue-in-question, the Division Bench, directed the respondents to consider the representation of the petitioner seeking compassionate ground appointment for her daughter as per rules and in accordance with law.

7. Considering the facts and circumstances of this case, this Court is of the view that the petitioner herein also stands on the same footing and therefore, the impugned order of the 3rd respondent in Ka.No.MaPo/MaMePaVa/Ma/NiPi1/Ou.3/KoVaVe/No.951/2014, dated 30.08.2014 is liable to be quashed and the respondents are directed to consider the claim of the petitioner afresh with regard to providing of compassionate appointment in the light of the judgment passed by the Division Bench of this Court in W.P.No.5980 of 2004 dated 03.08.2012 and pass an appropriate order within a period of six weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman-cum-Managing Director,
Tamil Nadu Electricity Board,
N.P.K.R.R.Maligai,
Old No.800, New No.144, Anna Salai,
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Mettur, Salem District.

4. The Executive Engineer,
Omalur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Omalur, Salem District.

+1cc to Mr.A.R.Suresh, Advocate sr.56655
+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.56991

W.P.No.21773 of 2016

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srg 03/11/2016



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