



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.09.2016

Pronounced on : 01.12.2016

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P. (MD) No.11713 of 2013

P.Jeyarani

... Petitioner

vs.

1. The General Manager,
Tamil Nadu State Transport Corporation,
Bye-pass Road, Madurai

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Bye-pass Road, Madurai

3. The Branch Manager,
Tamil Nadu State Transport Corporation,
Melur Branch, Madurai

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to give compassionate appointment to the petitioner on the account of the death of the petitioner's deceased husband, Pandi, Staff No.CV.76380, Melur Tamil Nadu Transport Corporation.

For Petitioner : Mr. C.Venkatesh Kumar, for,
M/s. Ajmal Associates

For Respondents : Mr. A.Jeyaram

O R D E R

This is a writ of mandamus directing the respondents to give compassionate appointment to the petitioner on account of the death of the petitioner's husband, Pandi (Staff No.CV.76380).

2. Brief facts:-

The petitioner was appointed as a conductor, as per the proceedings of the respondent dated 26.04.2010 as temporary reserve crew; later, he was appointed as daily wager; he completed more than 480 days of service within a span of 24 calender months; as such, he is eligible to claim benefits and privileges as a regular staff of the Transport Corporation, as per the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 (hereinafter referred to as "the Act"). In the identity card, issued by the Transport Corporation, the retirement date of the petitioner's husband has been shown as



31.05.2036. The petitioner's husband died in harness on account of suicide. The petitioner submitted a representation, seeking appointment on compassionate grounds. Since no action has been taken by the respondents, the writ petition has been filed.

3. In the counter affidavit filed by the respondents, it is admitted that the petitioner's husband was appointed as a Reserve conductor on 23.06.2010. Subsequently, he was employed as daily wage employee from 05.11.2012. **On 12.03.2013, the employee died.**

4. It is the contention of the learned counsel for the respondents that, at the time of death, the petitioner's husband was not in permanent service, but in a temporary service and therefore, the petitioner is not eligible for compassionate appointment. The learned counsel relies upon G.O.Ms.No.42, dated 12.03.2007, and especially, paragraph 2.7, in order to justify the claim that the petitioner is not entitled to the appointment on compassionate grounds. Para 2.7, referred to supra, reads thus:-

"2.7. Dependants of only regular Government Servants who died in harness shall be given appointment of compassionate grounds. **No appointment on compassionate grounds shall be given to dependants of casual or adhoc or temporary Government servants appointed under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate service Rules.**"

5. In view of the above Government Order, it is appropriate to consider Rule 10 (a) (i) of the Tamil Nadu State and Subordinate service Rules, which reads thus:-

"10. Temporary appointments:-a (i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

Provided further that the reserve list of successful candidates shall be in force until the regular list of successful candidates is drawn up subsequently; and that candidates shall be allotted from such reserve list for the vacancies in the place of those who have not joined duty.

Provided also that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring." (Emphasis supplied) Thus, it



is clear that qualified persons according to the recruitment rules can be appointed even temporarily to meet the emergent situation warranting immediate appointment and they shall be replaced by regularly selected candidates."

6. A perusal of Rule 10(a)(i) of the Rules reveals that, it enables the employers to make temporary appointments owing to public interest in case of an emergency, if there would be undue delay in making regular appointments in accordance with the rules.

7. In this case, it is not the case of the respondents that: (a) there was an emergency; (b) undue delay would occur in making regular appointments following the regular rules; and (c) there was a public interest involved in making appointment under Rule 10 (a) (i). Therefore, the contention that the appointment of the petitioner's husband was made only under Rule 10 (a) (i) of the said Rules and hence the petitioner's husband's appointment should be considered only as a temporary appointment cannot be accepted.

8. The learned counsel for the petitioner contended that the status of the petitioner is that of a permanent employee and he cannot be construed as adhoc / casual / temporary employee and in support of his contention, the learned counsel relied upon Section 3 (1) of the Act and contended that it is enough if the petitioner had completed 480 days of completed work within a span of 24 months and that the petitioner's husband has completed his regular employment for the period of 494 days and therefore he must be considered as an employee with a permanent status. Section 3 (1) of the Act reads as under:-

"Sec. 3. Conferment of permanent status to workmen- (1) Notwithstanding anything contained in any law for the time being in force **every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent.**

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lockout or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which period a substitute has been employed in his place by the employer, or a cessation of work which is not due to any fault on the part of the workman.

Explanation:- For the purposes of this section the number of days on which a workman has worked in an industrial establishment shall include the days on which (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other laws applicable to the industrial establishment; (ii) he has been on leave with full wages, earned in the previous years;

<https://hcservices.ecourts.gov.in/hcservices/>

9. This Court has held in the case of **S.Vijayalakshmi V. Tamil Nadu Water Supply & Drainage Board**, reported in 2005 (3) LLN 706,



that **the permanent status would be deemed to have been granted statutorily, on completion of 480 days of service in two years**, as per Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981.

10. In the case on hand, the Transport Corporation has furnished details regarding the employment of the petitioner's husband for the period from June 2010 to January 2012 (covering the period of two years), from which, it is evident that the petitioner's husband has worked for 485 days till January 2012, commencing from June 2010.

11. The learned counsel for the petitioner relied upon a decision of the Division Bench of this Court, in the case of **R.Lakshmi v. The Chief Engineer (Personnel), TNEB, reported in 2012 (3) LLJ 681 (DB)** wherein, it has been held as follows:-

"36. We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that **Section 3 (1) of the Act imposes an obligation upon the respondents / Electricity Board Authorities to confer permanent status of the petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calender months** and on that basis, we hold that the petitioner's husband deceased S.Raju is entitled to be made permanent by the respondents/Tamil Nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a Workman, who had completed 480 days of continuous service in a period of 24 calender months, would become automatically a permanent employee under the employer, even, if an employer had not conferred him with the permanent status or even if, no direction was issued by the Competent Authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the Reference."

12. Considering the nature of employment of the petitioner's husband and in the light of the legal position, cited supra, it is clear that the law has conferred permanent status upon the employment of the petitioner's husband. Therefore, the petitioner is justified in making the claim for compassionate appointment. The contention of the respondent that the petitioner is a temporary employee and therefore, his wife is not entitled to compassionate appointment is liable to be rejected and it is rejected accordingly.

13. As the petitioner's husband died while in service, as a permanent employee, the respondents are hereby directed to extend **the benefit of compassionate appointment to the petitioner who is the widow of the deceased, based on her qualification within a period of four weeks from the date of receipt of a copy of this**



order.

14. The writ petition is disposed of with the above directions.
No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-II)

/True Copy/

TO

Sub Assistant Registrar

1. The General Manager,
Tamil Nadu State Transport Corporation,
Bye-pass Road, Madurai
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Bye-pass Road, Madurai
3. The Branch Manager,
Tamil Nadu State Transport Corporation,
Melur Branch, Madurai

+1 cc to M/S. AJMAL ASSOCIATES Sr.No: 79148

srk

MAS/CM-MSA:08.03.2017:5P/5C

Pre-Delivery Order in
W.P. (MD) No.11713 of 2013
01.12.2016