



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.12.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) .No.16420 of 2013

M.Gunaseelan

... Petitioner

.Vs.

1.The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Represented by its Managing Director,
Bye-pass Road, Madurai - 625 010.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bye-pass Road, Madurai - 625 010.

3.The Assistant Manager (Personnel),
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bye-pass Road,
Madurai - 625 010.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in Ref.No.Th.Aa.Po.Ka/Ma.Thu.Ma/Niru/A2/1796/2012 dated 30.10.2012, quash the same and consequently direct the respondents to appoint the petitioner in the Tamil Nadu State Transport Corporation (Madurai) Ltd., in any suitable post on compassionate grounds depending upon the petitioner's qualification.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.A.Jeyaram (for R1 and R2)
No Appearance (for R3)

O R D E R

The instant Writ Petition is filed by the petitioner for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Ref.No.Th.Aa.Po.Ka/Ma.Thu.Ma/Niru/A2/1796/2012

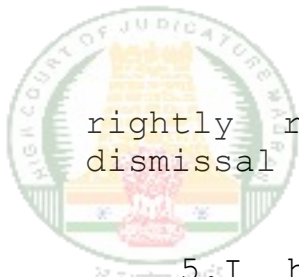


dated 30.10.2012 and quash the same and consequently appoint the petitioner in the Tamilnadu State Transport Corporation (Madurai) Ltd in any suitable post under the compassionate grounds.

2.The case of the petitioner is that his father namely late C.Manoharan was an employee worked as a senior driver in the 1st respondent corporation. During the course of his employment under the respondent corporation his father was died on 27.03.2003. The sudden demise of the petitioner's father caused severe financial burden on the petitioner's mother and put the petitioner's family upside down. Therefore an application for compassionate appointment was made by the petitioner's mother on 13.06.2003 to the 2nd respondent herein praying to appoint her in a suitable post. The said application made by the petitioner's mother was not at all considered by the respondent corporation, by holding that there is a ban for new appointments. Further the respondent officials assured that the application will be considered in near future, once the ban is lift.

3.In the meanwhile the petitioner has passed his SSLC exam in March 2008 and further passed diploma in I.T.I, Motor mechanics. Besides, the petitioner also got qualified and was issued with Conductor licence issued by the Assistant Licensing authority Madurai, South. Therefore the petitioner being eligible to be appointed as a conductor, made an application on 03.08.2010 before the respondents with a request to appoint him on Compassionate ground. Since the application remained heedless, the petitioner filed a Writ petition in W.P.(M.D)No.15741 of 2012 praying for a Mandamus directing the respondent to provide petitioner with appointment on Compassionate ground. In the mean time the counsel for the respondent served the petitioner with the impugned order herein, rejecting the petitioner's claim on the ground that the petitioner has not made the application within three years from the death of his father. Therefore with the liberty granted by this court, the petitioner has come up with the present writ petition challenging the above rejection order of the 2nd respondent and further petitioner prays for a direction to respondent to appoint the petitioner on Compassionate ground.

4.The respondents filed counter and contended that the petitioner's application is not liable to be considered, since it was made beyond the prescribed period of three years limitation, which will commence from the death of petitioner's father. The application is not made within the three years limitation as stipulated in G.O(MS)No.120 Labour and Employment Department dated 26.06.1995. The respondent has also disputed that the petitioner's mother has not made any application on 13.04.2006, as claimed by the petitioner. Hence the petitioner's application was



rightly rejected and therefore, the respondents prayed for dismissal of the writ petition.

5.I heard Mr.A.Rahul, learned counsel appearing for the petitioner and Mr.A.Jeyaram, learned counsel appearing for the respondents 1 and 2 and perused the records.

6.On perusal of the typed set of papers filed in support of the Writ petition, this court finds that the petitioner was a minor at the time of death of his father. The petitioner's date of birth is 09.09.1991. It is needless to say that the right to apply and get appointed on compassionate ground accrued to the petitioner only on attaining majority. The application is found to be made by the petitioner on 03.08.2010, well within the stipulated period of three years that commences on attaining majority. Certainly the application is made within three years from the date of majority of the petitioner. It is further noticeable that the petitioner's mother vide a letter dated 30.09.2009 has submitted her consent before the respondents, to provide the petitioner herein with appointment. Though the respondent has denied that the petitioner's mother has not submitted any application on 13.04.2004, the records disclose that petitioner's mother has submitted an application on the said date and it was acknowledged and later, on 15.04.2004 came to be forwarded to the concerned department. Thus in the case on hand both the petitioner's mother as well as the petitioner have submitted their respective application well within the three years limitation, i.e the former submitted three years from the death of her husband and the latter submitted within three years on attaining majority. That apart the certificates of the petitioner reveal that he is a deserving candidate.

7.In this regard this court rely upon the decisions of this court reported in **(2004) 3 C.T.C.120** in the case of **T.Meer Ismail Ali - Vs - The Chairman TNEB & ors**, wherein in paragraph 3 it is held as follows:

"3.It is not in dispute that the petitioner completed 18 years of age only in the year 2000. When the petitioner's earlier application was rejected on the ground that he did not complete 18 years of age, it cannot be held that the petitioner was not diligent in seeking for compassionate appointment at the earliest point of time. In fact, immediately after attaining 18 years of age and also after qualifying himself, when the petitioner came forward with the present application on 04.07.2000, in all fairness, the respondent should have considered the petitioner's claim on merits. In fact in the application, the petitioner would claim that one of



his sister is mentally retarded and therefore, he is only bread winner of the family".

8.The other Judgments reported in **2002 (4) L.L.N.1132** in the case of **Ravi - Vs - The Chief Engineer, TNEB**, and orders made in **Writ Appeal No.3050 of 2003, Indirani Ammal vs Chief Engineer**, reported in **2001W.L.R 601**, in the case of **Ramadoss D -Vs- The Chief Engineer, TNEB** and **W.P(M.D).No3909 of 2009** in the case of **Elavarasan -Vs- The Chief Engineer, TNEB**, the above said all the Judgments are dealing with the issue of compassionate appointment of minors after attaining majority submitted application seeking for compassionate appointment within a period of three years are accepted and they were given appointment.

9.Admittedly there cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate ground would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

10.It is stated that this Court, the learned single Judge has very clearly held by considering the various judgments passed by this Court and the various Courts in a case in **N.Elavarasan v. The Chief Engineer, T.N.E.B.** held in **W.P(MD)No.3909 of 2009**, dated **13.11.2009** as follows:

"9.It is pertinent to note that thereafter, the mother of the petitioner also made a representation to the second respondent for appointment on compassionate ground to her son viz., the petitioner herein, as early as on **27.07.2004** and the said request was also not accepted. Thereafter, the petitioner attained majority on **14.07.2006** and immediately, within a week, i.e., on **19.07.2006** the petitioner preferred a representation and the same is well within the period of three years from the date of his attaining majority seeking for the relief of compassionate appointment. But the said request was rejected by the second respondent on the sole ground that he has not attained majority within three years from the date of death of his father. It is seen that in a catena of decisions, this Court has categorically held that the



period of limitation has to be reckoned only from the date of attaining majority and not from the date of the death of the deceased, who was in service in T.N.E.B.

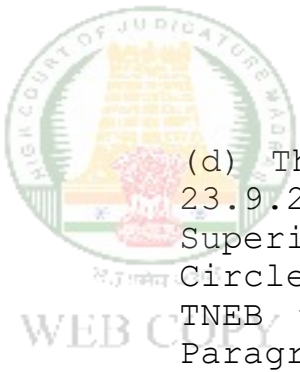
10.This Court in T.Meer Ismail Ali.T. Vs. The Tamil Nadu Electricity Board, Chennai reported in 2004 (3) CTC 120 was held as follows; "I am, therefore, of the view that the petitioner's case deserves consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified."

11.This Court in another decision in Selvi R.Anbarasi Vs. Chief Engineer (Personnel), T.N.E.B., Chennai reported in (2006) 2 M.L.J., 2006 held as follows;

"The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P.No.1584 of 2001 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be rejected on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T.Meer Ismail Ali Vs. Tamil Nadu Electricity Board through its Chairman, and others, (2004) 3 C.T.C. 120. This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein."

12.This Court in yet another decision in A.Neppolian Vs. The Chief Engineer (Personnel), T.N.E.B. Chennai and another reported in MANU/TN/9306/2006 held as hereunder;

"(c) In W.P.No.8154 of 2002 (A.Govindan v. The Chief Engineer (Personnel), TNEB, Chennai and Anr.) the Hon'ble Mr.Justice N.V.Balasubramaniam, by order dated 9.4.2002 directed the respondents to give compassionate appointment to the petitioner therein. In a similar writ petition with a direction to treat the application submitted as within the time."



(d) The Hon'ble Mr. Justice P.D.Dinakaran by order dated 23.9.2003 in W.P.No.19673 of 2003 (J.Jayakaran v. The Superintending Engineer, Theni Electricity Distribution Circle, Theni) allowed the writ petition and directed the TNEB to pass orders granting compassionate appointment. Paragraph 5 in the said order reads as under;

"It is true that when an application was made for employment of the petitioner, i.e., on 23.05.2002, the petitioner was only a minor, but not qualified. But he had attained majority on 02.06.2003 and therefore, the respondent Board, having kept the application of the petitioner for employment on compassionate ground under consideration, ought to have considered the case of the petitioner for suitable employment without rejecting the same on technical reason, by the impugned order dated 18.06.2003. Since B.P.No.146 dated 13.10.1995 prescribes only a maximum period of three years for consideration of the application for appointment on compassionate ground, the respondent shall consider the request of the petitioner for employment on compassionate ground and pass appropriate orders within twelve weeks from the date of receipt of copy of this order, if the petitioner is otherwise qualified for suitable post."

13.Lastly a Division Bench of this Court in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows;

"4.In the judgment reported in 2001 Writ L.R. 601 in the case of "Ramadoss. D. v. The Chief Engineer, T.N.E.B", this Court (D.Murugesan, J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5.Subsequently, in the judgment reported in 2002(4) L.L.N. 1132, (D.Murugesan, J.), in the case of "P.Ravi v. Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6.Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of 'J.Jayakaran v. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.



7. Justice K. Govindarajan has also taken the same view in Writ Petition No. 13099 of 2003, order dated 30.10.2003, in the case of "G. Muthamilselvan v. The Chief Engineer (Personnel) and Anr."

8. Justice F. M. Ibrahim Kalifulla has also taken the same view in the decision reported in Manu/TN/0337/2004, 2004 (3) CTC 120, (2004) 4 MLJ 238 in the case of "Meer Ismail Ali. T. v. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005.

9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal v. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the Office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on



B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12.As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

11.In view of the above said principle laid down by this court consistently in the above said decisions, this court has no hesitation to quash the impugned order as the petitioner preferred application within a period of three years from the date of attaining his majority.

12.In the result:

(a) this writ petition is allowed by setting aside the order passed by the 2nd respondent in Ref.No.Th.Aa.Po.Ka/Ma.Thu.Ma/Niru/A2/ 1796/2012 dated 30.10.2012;

(b) the respondents are hereby directed to appoint the petitioner in any suitable post under the compassionate ground;

(c) the respondents hereby directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

1.The Managing Director
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye-pass Road,
Madurai - 625 010.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bye-pass Road,
Madurai - 625 010.

3.The Assistant Manager (Personnel),
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bye-pass Road,
Madurai - 625 010.

+1 cc to Mr.A.Jeyaram, Advocate, SR.No.53640
+1 cc to Mr.A.Rahul, Advocate, SR.No. 75083

W.P. (MD) .No.16420 of 2013
01.12.2016

vs/skn

MKV-SKN-SAR 2/24.4.2017/9P-6C