

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-12-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30212 of 2012

A.Baskar

.. Petitioner

-vs-

1. The Tamil Nadu Electricity Generation and Distribution Corporation Ltd.,
Represented by The Chairman,
No.144, Annasalai,
Chennai-2.
2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation and Distribution Corporation Ltd.,
No.144, Annasalai,
Chennai-2.
3. The Superintending Engineer,
Tamil Nadu Electricity Generation and Distribution Corporation Ltd.,
Cuddalore Distribution Circle,
Capper Hills,
Cuddalore-4.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings in Letter No.019352/174/G3/G 81/2012-2, dated 25.8.2012 and quash the same and thereby direct the respondents to provide the petitioner employment in the respondent-Corporation on compassionate grounds and also to order costs.

For Petitioner - Mr.N.Suresh

For Respondents - Mr.M.Fakkir Mohideen

ORDER

The order of rejection passed by the second respondent in proceedings dated 25.8.2012 in respect of the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2. On a perusal of the order impugned in this writ petition, it is stated that the father of the writ petitioner late Shri Arikrishnan passed away on 14.6.2010 and at the time of the death, the deceased employee was employed as temporary casual labourer. Therefore, the scheme of compassionate appointment is inapplicable to the deceased employee.

3. The learned counsel, appearing on behalf of the writ petitioner, states that the father of the writ petitioner, no doubt, was appointed as temporary contract labourer. However, he had approached the Inspector of Labour, Cuddalore and considering the claim of the deceased employee, the Inspector of Labour, Cuddalore issued an order in proceedings dated 4.8.2005, granting the benefit of the Conferment of Permanent Status Act, 1981 and passed an order. The name of the deceased employee is also enclosed in the Annexure to the said order.

4. The learned counsel, appearing on behalf of the writ petitioner, further drawn the attention of this Court that the Board also issued proceedings in (Per) B.P.(FB) No.44, Administrative Branch, dated 6.9.2007 in respect of the absorption of the contract labourers identified as on 8.8.1998 into Board's service in a phased manner. The policy decision was taken by the respondent-Board to absorb the contract labourers in a phased manner.

5. The learned counsel for the writ petitioner states that the Inspector of Labour has already given a direction and pursuant to the direction, the Board also passed an order in (Per) B.P.(FB) No.44, Administrative Branch, dated 6.9.2007, taking a decision to absorb the contract labourers in a phased manner and thereafter, the Executive Engineer passed an order in proceedings dated 1.11.2008, appointing once again the deceased employee only as a temporary contract labourer.

6. On a perusal of the order of the Executive Engineer dated 1.11.2008, which is enclosed in page No.24 of the typed set of papers filed along with this writ petition, this Court is able to find that once again the deceased employee was engaged as temporary contract labourer and his services were not confirmed in accordance with the order of the Inspector of Labour.

7. The learned counsel for the writ petitioner has brought to the notice of this Court that the Board has taken a policy decision to absorb all those contract labourers within a period of one year in a phased manner. However, no order of permanent absorption was issued by the respondent-Board. Contrarily, the Executive Engineer, once again appointed the deceased employee as a temporary contract labourer.

8. The learned counsel for the writ petitioner is of the opinion that the implementation of the policy decision of the respondent-Board was not properly done by granting permanent absorption to the deceased employee. Such an erroneous implementation should not cause prejudice to the legal heirs of the deceased employee.

9. The learned counsel, appearing on behalf of the respondents, opposed the contentions by stating that as on the date of death of the deceased employee, the deceased employee was employed only as a temporary contract labourer and therefore, he would not be eligible to avail the benefit of the scheme of compassionate appointment. In view of the fact that the deceased employee was a contract labourer, the legal heirs are not entitled to seek any compassionate appointment, and also the terminal and retirement benefits in accordance with the Pension Rules in force.

10. The learned counsel for the respondents further states that the contention of the writ petitioner that an order was passed by the Inspector of Labour is correct. However, no order of permanent absorption has been passed by the Board and in the absence of passing any such order of permanent absorption, the scheme of compassionate appointment, cannot be extended to the contract labourer, who was employed on temporary basis.

11. The learned counsel for the writ petitioner cited an order passed by this Court in W.P.No.23101 of 2012 dated 9.9.2014, stating that even the contract labourers, whose services were not regularised or brought under permanent absorption, are also entitled for pension, gratuity, family pension and other terminal benefits, including the compassionate appointment. This Court is of the opinion that providing gratuity, family pension and the compassionate appointment to the deceased temporary contract labourer, is directly in contradiction with the Pension Rules as well as in violation of the judgments of the Hon'ble Supreme Court of India. The contract labourers cannot be treated on par with the permanent employees of the Board. The Pension Rules and other terms and conditions are inapplicable to those contract labourers. Undoubtedly, an order was passed by the Inspector of Labour. However, the order of permanent absorption has not been issued

in favour of the deceased employee.

12. This Court is of the opinion that in the order cited by the learned counsel for the writ petitioner, this Court has shown some leniency in respect of those petitioners, considering the facts and circumstances of that case. The Hon'ble Supreme Court of India has repeatedly held that showing leniency or displaced sympathy should not cause injustice to the millions of people, who are otherwise qualified and meritorious and aspiring to secure public employment through open competitive process.

13. It is the duty of the Constitutional Courts to see that the misplaced sympathy or leniency shown to a particular class of people, should not cause any violation of constitutional rights to the larger sector of the people. In such an event, the Courts must be restrained from issuing any such orders based on displaced sympathy. The rule of law should prevail and the constitutional Courts, to see that the constitutional principles and perspectives are followed in its letter and spirit by the State and by all concerned.

14. No doubt, the family of the writ petitioner may be facing some difficulties and may have their own grievances, this Court can certainly show some concern. However, such continuance of indigence circumstances has to be considered only in accordance with the legal principles settled by the Hon'ble Supreme Court of India and the legal provisions enumerated in law. Large number of youth and meritorious candidates are burning their midnight lamps for securing public employments through open competitive process. The equality class enunciated in the Constitution provides them right. While filling up the post under the special schemes or on concessional schemes, should not deprive the right of those meritorious and other persons, who are longing to secure public employment. Certainly, they are also facing indigent circumstances and they are also poor people, who are struggling even to complete their education.

15. The Courts cannot shut its eyes in respect of those people, though they are not before this Court. It is the duty of the Constitutional Courts to consider all these aspects before granting the relief to any single or a class of persons. In the absence of taking note of all these aspects, this Court is of the opinion that an amount of injustice caused is in violation of the constitutional principles.

16. Thus, this Court, taking note of all these aspects, is

of an undoubted opinion that a scheme, which is an exception and a concessional one, cannot be enlarged or expanded, so as to cover the deceased employee, who was employed as temporary contract labourer. For permanent employees, the scheme is to be restricted and that the same cannot be expanded, so as to provide compassionate appointment to large number of people, by diluting the recruitment rules in force.

17. All public employments are to be carried out only by following the recruitment rules in force and the authorities competent are bound to follow the rules scrupulously and equally to all concerned, including the implementation of reservation in accordance with the Constitution.

18. The learned counsel for the writ petitioner contended that the competent authorities of the respondent, has not implemented the orders in its letter and spirit. However, these aspects need not be considered in this writ petition, as the same is not relevant to the issue relating to the scheme of compassionate appointment.

19. The scheme of compassionate appointment in respect of temporary contract labourers, cannot be extended and the terms and conditions of the respondent-Board also do not permit to provide appointment to the legal heirs of the temporary contract labourers. This being the factum of the case, this Court finds no infirmity in the order of rejection passed by the second respondent in proceedings in Letter No.019352/175/G3/G81/2012-2 dated 25.8.2012.

20. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Chairman,
Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
No.144, Annasalai,
Chennai-2.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
No.144, Annasalai,
Chennai-2.

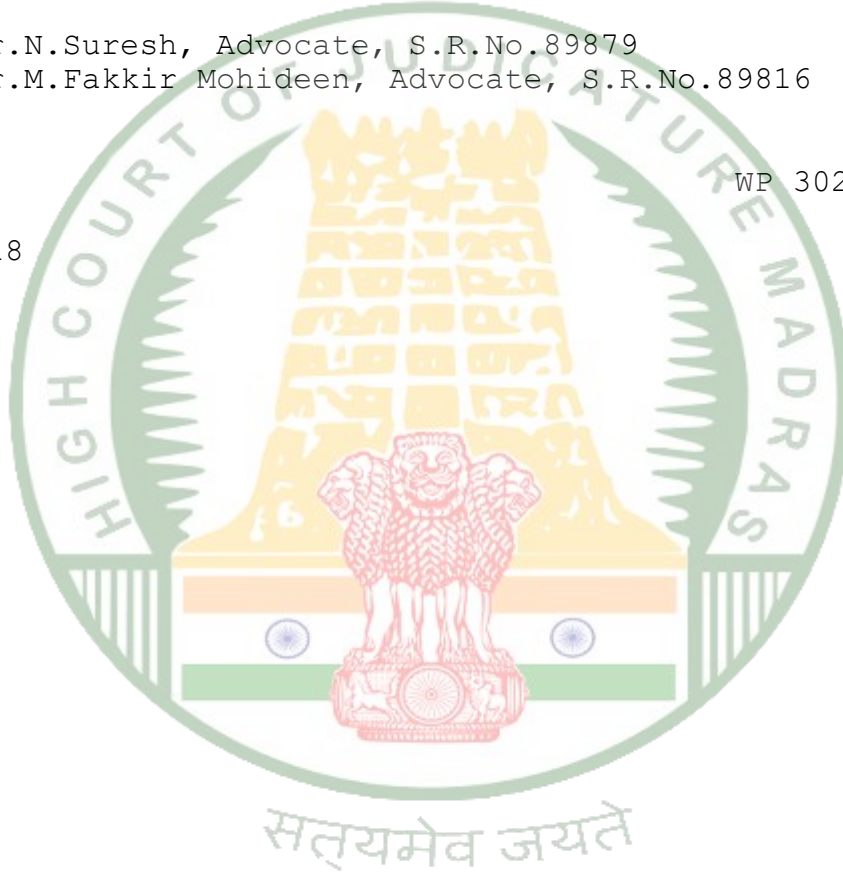
3. The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
Cuddalore Distribution Circle,
Capper Hills,
Cuddalore-4.

+1cc to Mr.N.Suresh, Advocate, S.R.No.89879

+1cc to Mr.M.Fakkir Mohideen, Advocate, S.R.No.89816 (22.01.18)

WP 30212 of 2012

CS/02/01/18



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