

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.285 of 2014
and W.M.P.No.11618 of 2016

K. Thilagavathi

... Petitioner

Vs.

1.The Chief Engineer (Personnel)
Tamilnadu Electricity Board,
Annasalai, Chennai-02.

2.The Superintending Engineer,
Kallakurichi Electricity Distribution Circle,
Kallakurichi,
Villupuram District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of a writ to call for the records of the 2nd respondent in connection with the impugned order pssed by him in Ka.No.5846/38/Nipi.2/00.2/Ko.court/2013 dated 21.03.2013 and to quash the same and consequently direct the respondents to pay pension and other terminal benefits to the petitioner and provide compassionate appointment to her son within a reasonable time.

For Petitioner : Mr. S. Sivakumar

For Respondents : Mr.M. Fakkir Mohideen

O R D E R

The order of rejection issued by the respondent in proceedings dated 21.03.2013 in respect of the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that the husband of the writ petitioner late Kamaraj was enrolled as contract Labourer in Tamil Nadu Electricity Board. However, the respondent board regularized the service of the contract labourer including the husband of the writ petitioner in the cadre of "Mazdoor" only on 25.10.2012. The learned counsel for the writ petitioner relying on the policy to regularize the service of the contract labourers issued by the board, contended that the benefit of regularization ought to have been extended the benefit to the husband of the writ petitioner also. Accordingly, the scheme of compassionate appointment also to be extended by appointing the writ petitioner.

3. However, the fact remains that the husband of the writ petitioner late Kamaraj passed away on 24.05.2012 and the common order of regularization was issued by the respondent board only on 25.10.2012 after a lapse of about five months from the death of the deceased employee. For all purposes, the husband of the writ petitioner passed away in his capacity as a contract labourer. The learned counsel urged this Court that earlier this Court has granted the same benefit of compassionate appointment in respect of the similarly placed person in W.P.No.5980 Of 2004 dated 03.08.2012. However, this Court is of the view that as on the date of demise, the husband of the writ petitioner continued only as contract labourer, therefore, order passed in the writ petition cited by the learned counsel for the writ petitioner in relation to the facts and circumstances of that case cannot be compared. There is no concept of automatic absorption or regularization. Any regularization of service is to be provided by way of passing an order and from the date on which the effect was given. Only after the regularization of service, the contract labourer will become a permanent employee and the scheme of compassionate appointment can be provided only to the legal heirs of the permanent employee, who died in the course of such service. The benefit of scheme of compassionate appointment has not been extended to the legal heirs of the contract labourers, who died in service. In this view of the matter the writ petitioner is not eligible to avail the scheme of compassionate appointment and therefore this Court is not inclined to consider the case of the writ petitioner.

4. The compassionate appointment being an exceptional scheme and the terms and conditions of the scheme has to be scrupulously implemented by the competent authority. Compassionate appointment is not a right and is a concession. The scope of concession cannot be enlarged by this Court and if the same is enlarged, it will affect the equality clause

provided under Articles 14 and 16 of the Constitution of India. The scheme of compassionate appointment is in the form of a special scheme that has to be provided in its terms and conditions and the competent authority cannot dilute, relax or provide appointment on compassionate ground based on any other consideration or on any displaced sympathy. Any such displaced sympathy shown in favour of the candidates will equally affect the right of all eligible candidate, who are waiting and longing for securing public employment. While granting relief under such kind of exceptional special scheme, the Courts have to consider the fact that the impact to be caused to the qualified and eligible candidates in the event of appointing persons under the special scheme. For instance, if hundred of appointments were granted on compassionate ground, the Court has to consider those appointment on compassionate ground are granted not following the recruitment rules and not following the rules of reservation not adhering to the principles and assessment of the meritorious candidates. Thus, certainly it will have an impact on the Constitutional mandate and perceptions. Thus, this Court has to restrict the scheme in respect of compassionate appointment in its terms and conditions and the authorities competent have to scrupulously follow the terms and conditions in this regard.

5. Thus, no further adjudication is required in this writ petition. Accordingly, this writ petition stands dismissed. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Engineer (Personnel)
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Annasalai, Chennai-02.

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Kallakurichi Electricity Distribution Circle,
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