

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7949 of 2015 and
M.P.No.1 of 2015

P.Velumani

Petitioner

Versus

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Gobi Chettipalayam

2. Chief Engineer,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-2.

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of CERTIORARIFIED MANDAMUS, calling for the records relating to the proceeding of the 1st respondent in Ka.No.59/N1 B1 1/E NIV/Ko. Va.Vi/12, dt.29.08.2012 to quash the same and consequently direct the respondents to appoint the son of the petitioner viz. P.Velumani in a suitable post according to his educational qualification based on compassionate grounds in the Tamilnadu Electricity Board.

For Petitioner : Mr.C.Deivasigamani

For Respondents : Mr.P.R.Dhilip Kumar

O R D E R

The relief sought for in this writ petition is for compassionate appointment.

2. The order of rejection, rejecting the claim of the writ petitioner seeking compassionate appointment issued in proceeding dated 29.08.2012 is under challenge.

3. The reason stated in the impugned order is that the employee of the Board passed away on 19.11.1990 and during the

relevant point of time, the terminal benefits and the family pension was settled to the family and all the benefits for which the deceased employee was eligible, were disbursed to the family of the writ petitioner.

4. However, the impugned order states that the office of the respondent had not received any application, seeking compassionate appointment, on that ground it was rejected.

5. The learned counsel appearing for the writ petitioner strenuously contended that the statement in the impugned order is erroneous, since the application seeking compassionate appointment was submitted in the year 1990 itself and in support of the statement, the learned counsel argued that even through letter dated 10.04.1991, it is admitted by the respondents that an application for compassionate appointment was submitted and certain certificates were directed to be submitted by the writ petitioner. Those certificates are Legal Heir certificate, Death certificate, Age proof certificate, Community certificate and educational qualification certificates.

6. Thus, the statement in the impugned order, that no application was submitted, cannot be accepted. However, on perusal of the legal heir certificate, which is enclosed in page No.6 of the typed set of papers filed along with this writ petition, this court is able to find that the legal heirs of the deceased employee is Sri Angalammal (Late) (first wife) and Tmt. Velumani, (second wife) two daughters and one son were born for the second wife of the deceased employee.

7. Admittedly, the writ petitioner is the second wife of the deceased Government employee. Further, it is admitted that the marriage between the deceased employee and the second wife was solemnized during the life time of the first wife. However, this Court is of the view that compassionate appointment is a scheme and it is not a regular recruitment process. All appointments to public posts should be undertaken only under the constitutional schemes and compassionate appointment is an exception to the regular route of recruitment.

8. Thus, the appointment on compassionate ground can never be a matter of right and other aspects and the circumstances, conditions of schemes, has to be taken into account, while appointing a person in a public post on compassionate ground.

9. Considering all these aspects, this Court has rendered a judgment in W.P.No.1207 of 2015 dated 18.01.2017 as follows:

"3. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

4. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that in spite of rapid strides of progress, the country has been making in all Sectors, Still there are several lakhs of families having a single breadwinner and on an average of 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanish suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. His savings would be hardly enough to see them through the next couple of months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever

marginally that would make a difference to the State Services and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them.

5. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependants of the Government servants. It is to avoid any such negative image gaining ground, the State Government, as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependants of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time, say, three years or at best five years. If the surviving members of the civil servant who died with the hardships of life, can get along and carry on their show for considerable length of time after the departure of the breadwinner by far in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to

feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, but, it has the social resources to carry on with the show in his absence as well.

6. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

7. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service--rather it is an exception to the normal constitutional norm of allowing all people to contest and compete--appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant"

10. In view of the discussion elaborately done by this Court in the above judgment and considering the factor that the writ petitioner is the second wife and the deceased employee of the Board expired on 19.11.1990 and now, after a lapse of twenty seven years, question on considering the writ petitioner for compassionate appointment does not rise at all.

11. Accordingly the writ petition stands dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cgi/svn

To

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Gobi Chettipalayam
2. Chief Engineer,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-2.

+1 cc to Mr.C.Deivasigamani Advocate sr 51734

W.P.No.7949 of 2015

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