

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2505 of 2004

N.Vellaiswamy

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Distribution System,
Pudukottai Road, Thanjavur.

2.The Chief Engineer,
Tamil Nadu Electricity Board,
Administrative Wing,
No.800, Anna Salai, Chennai - 600 002.

3.The Divisional Engineer, (O & M)
Tamil Nadu Electricity Board,
Myladuthurai.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in Ka.No.049231/481/G10/G102/2003-1, dated 23.05.2003 on the file of the second respondent and quash the same and direct the respondents to provide an employment to the petitioner on compassionate grounds.

For Petitioner : M/s.K.Sumathi

For Respondents : Mr.S.K.Rameshwar

सत्यमेव जयते
O R D E R

The petitioner has filed this writ petition seeking issuance of writ of Certiorarified Mandamus calling for the records in Ka.No.049231/ 481/G10/G102/2003-1, dated 23.05.2003 on the file of the second respondent and to quash the same and further to direct the respondents to provide employment to the petitioner on compassionate grounds.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

3.The case of the petitioner is that the petitioner's brother namely, Raja was appointed as Helper in the respondent Board on 08.01.1988. Thereafter, his services were confirmed

and he continued in service from 14.01.1988 for over a period of five years and he died on 23.11.1994 while he was in service as Field Assistant. He was the only bread winner of the family and the entire family was depending on the income of the said Raja. Hence, the petitioner's mother made application to the respondent board to provide compassionate appointment for anyone of the deceased's brother. The said representation was rejected by the respondent board vide order dated 23.05.1995, on the ground that there is no direct legal heir available to the deceased and there is no Scheme providing compassionate appointment to the brother of the deceased. Aggrieved by the same, the petitioner filed writ petition in W.P.No.11044 of 2003 and this Court vide order dated 09.04.2003, directed the respondents to pass appropriate orders, in accordance with law, within a period of four weeks from the date of receipt of a copy of that order. Thereafter, the impugned order came to be passed as against the petitioner reiterating the earlier ground of rejection, wherein the Scheme did not provide for any compassionate appointment to the brother of the deceased employee. Hence the present writ petition.

4.The learned counsel appearing for the petitioner would submit that the impugned order is wrong and has been passed without verifying the Government Order in G.O.Ms.No.134, Labour and Employment (G-1) Department, dated 22.10.1998, wherein, the Labour and Employment (G-1) Department has stated that the un-married brother and un-married sister of the deceased Government servant as 'near relative' is entitled for compassionate appointment and without considering the said Government Order, the impugned order was passed and prayed for allowing the writ petition.

5.The above said Government Order is passed by the Labour and Employment (G-1) Department. The said Government Order is not applicable to the Electricity Board. The Electricity Board have separate Guidelines and Schemes for providing compassionate appointment and unless the Electricity Board provide Scheme for providing compassionate appointment for un-married brother and un-married sister, this Court cannot interfere and interpret to provide compassionate appointment for the petitioner. The petitioner is also not able to show any Scheme of the Electricity Board providing compassionate appointment for the un-married sister or un-married brother of the employee who died in harness.

6.The Hon'ble Supreme Court has repeatedly held that compassionate appointment is not a matter of right unless the Scheme permits and harness is established.

7.It is also useful to refer hereunder the decision of the Hon'ble Supreme Court reported in (1994) 1 SCC 192 (Auditor General of India Vs. G.Ananta Rajeswara Rao):

"5.A reading of these various clauses in the memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the breadwinner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16 (5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion."

8.The writ petition is of the year 2004 and perusal of the Court records reveal that no interim order has been passed in favour of the petitioner. Hence, after a lapse of nearly 13 years, I do not find that anything would survive for adjudication in this writ petition.

9.Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Distribution System,
Pudukottai Road, Thanjavur.

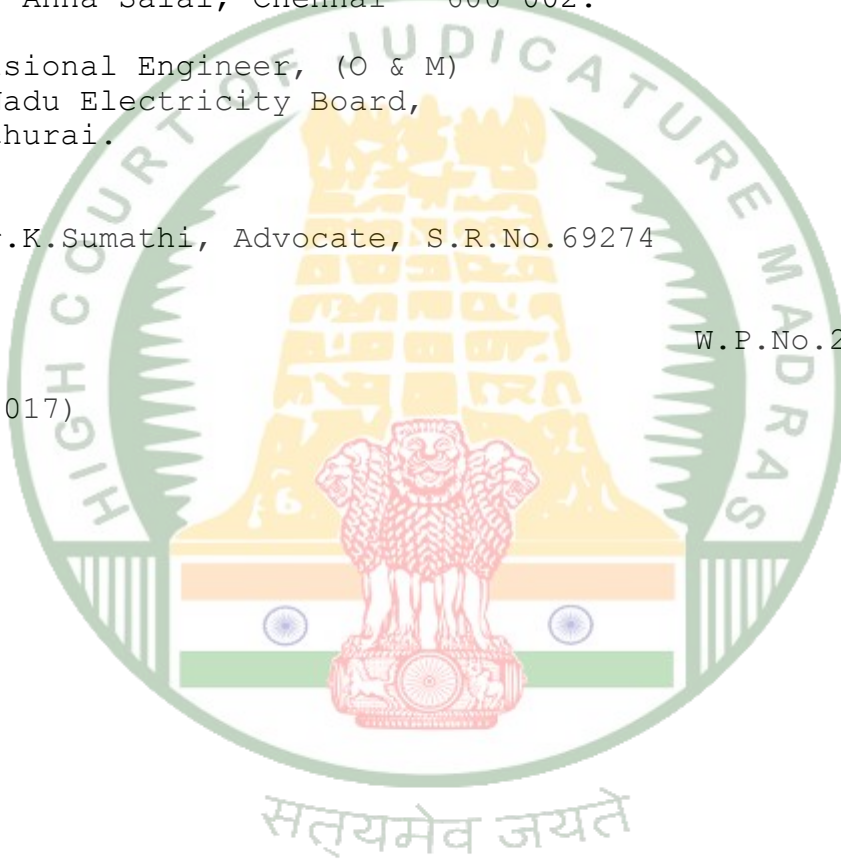
2.The Chief Engineer,
Tamil Nadu Electricity Board,
Administrative Wing,
No.800, Anna Salai, Chennai - 600 002.

3.The Divisional Engineer, (O & M)
Tamil Nadu Electricity Board,
Myladuthurai.

+1cc to Mr.K.Sumathi, Advocate, S.R.No.69274

W.P.No.2505 of 2004

VGI (CO)
GN(08/11/2017)



WEB COPY