

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27268 of 2003

T.K.Mukesh

... Petitioner

Vs.

Tamil Nadu Electricity Board,
rep. by its Chief Engineers,
800, Anna Salai,
Chennai 600 002.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus calling for the concerned records relating to the order of the respondent dated 11.04.2003 bearing letter No.030003/341/G8/G81/2003-1 and quash the same and consequently direct the respondent to consider the application of the petitioner for compassionate appointment.

For Petitioner : Mr.Balan Haridas
For Respondent : Mrs.Varalakshmi

ORDER

The petitioner has filed this writ petition challenging the order of the respondent dated 11.04.2003, wherein, he was denied compassionate appointment.

2. The brief facts of the case are as follows: The petitioner's father worked as Assistant Executive Engineer in the Tamil Nadu Electricity Board. On 05.12.1989, while he was travelling in the respondent Jeep, the said Jeep met with an accident and he died on the spot leaving behind his wife, two daughters and son/ the petitioner as legal heirs. Thereafter, the petitioner's mother made application seeking compassionate appointment for her daughter on 24.05.1990 and it was rejected by the Superintending Engineer, Dharmapuri vide letter dated 26.06.1990, on the ground that her daughter had not attained majority.

3. Thereafter, the petitioner's mother made application on 14.08.1992, requesting the respondent to cancel the earlier application, wherein she sought for compassionate appointment in favour of her daughter and further sought compassionate appointment for her son/ the petitioner. However, the respondent board vide letter dated 07.09.1992, offered compassionate appointment for the petitioner's sister as Office Helper in the Distribution Circle. In the meanwhile, before passing of the above said order, the petitioner's sister sent a representation to the respondent board stating that she is not interested to pursue the employment as arrangement for her marriage was going on. However, without considering her request, the respondent board offered compassionate appointment to her.

4. Whiles, the mother of the petitioner made a representation dated 17.03.2003, seeking for compassionate appointment in favour of the petitioner. However, the said request was rejected on the ground that the respondent board had already offered compassionate appointment for her daughter, one of the legal heir and on her own volition, she refused to accept the same and hence, the respondent board cannot give compassionate appointment in favour of her son, another legal heir.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

6. The learned counsel appearing for the petitioner would submit that till the year 1995, there is no limitation for grant of compassionate appointment and vide Board Proceedings dated 13.10.1995, the board fixed eligibility criteria regarding the three years limitation for making appointment. However, the petitioner's mother made representation for compassionate appointment in favour of the petitioner in the year 1992 itself. Hence, it is within the time limit.

7. The learned counsel appearing for the petitioner would further submit that the respondent grossly erred in rejecting the application on the ground that petitioner's sister was already offered employment in the Board without appreciating the fact that at the time of applying for appointment to the post she was only eligible and on the date of offering she had already got married and she became ineligible for compassionate appointment. He further submitted that the order of the respondent stating that only one member in the family could be offered compassionate appointment and since the petitioner's sister was already provided employment she is not entitled to the same is without any basis. He further submitted that when the petitioner's sister was ineligible for compassionate

appointment and when the petitioner's sister had informed about her ineligibility and when she had not taken the appointment offered by the respondent, the reasoning of the respondent to reject the request of the petitioner for offering compassionate appointment only demonstrate the total non application of mind on the part of the respondent.

8.The learned counsel appearing for the petitioner further submitted that it is admitted fact that the compassionate appointment earlier offered by the respondent board was not accepted by the petitioner's sister as she was not willing to join the duty. Hence, no family member was granted compassionate appointment. Accordingly, the rejection letter passed by the respondent board is not sustainable. Hence, the petitioner is entitled for grant of compassionate appointment. He further submitted that similarly placed persons were already granted compassionate appointment and rejecting the petitioner alone is not genuine. Accordingly, he sought for quashment of the impugned order.

9.In support of his contentions, the learned counsel appearing for the petitioner relied upon the decisions of the Hon'ble Supreme Court reported in 2011 (3) LLN 37 (SC) (Bhawani Prasad Sonkar Vs. Union of India & others), (2015) 7 SCC 412 (Canara Bank and another Vs. M.Mahesh Kumar) and an unreported decision of this Court made in W.P.No.28395 of 2005 dated 22.11.2007 (V.Shanthi Vs. The Chairman, Tamil Nadu Electricity Board and others).

10.Per contra, the learned counsel appearing for the respondent would submit that earlier the petitioner's sister was offered compassionate appointment. When she refused to accept the same, it is not a matter of right to grant compassionate appointment for any of the member of the family who have attained majority and the respondent board fixed some eligibility criteria and unless the person satisfies the eligibility criteria, the petitioner is not entitled to get compassionate appointment.

11.The learned counsel appearing for the respondent also relied upon paragraph nos.5 and 6 of the counter affidavit, which reads as follows:

"5.I deny the averments of the Petitioner in Para 2 of his affidavit, and humbly state that the Board after considering all aspects of the Petitioner's application for job on compassionate grounds, and for the reason that the Board had already offered a job to the legal heir and daughter of the deceased employee Late.Kalyanasundaram,

passed the impugned orders on merits. The impugned order has specifically mentioned that the sister of the petitioner, T.K.Kalaivani had been offered a job of Office Helper in the board and that on her own volition she had withdrawn her job application for the reason that she had married. The Board has acted in accordance with the rules of compassionate appointment and hence the impugned order is justified, legal and does not violate Article 14 of the Constitution of India.

6.I humbly submit and state that with regards to the averments in paras 3 to 6 the Petitioner is resorting to stating half-truths to justify his case. The actual fact being that the Board had complied with all provisions stated under Law, the Boards rules and as per the scheme and had accorded an opportunity for compassionate appointment in the Board to the Legal Heirs of deceased employee. The Board acted legally in giving a job to T.K.Kalaivani, daughter of deceased employee Kalyanasundaram, for the reason that the daughter Kalaivani had got married, and on her own volition she had rejected the offer of compassionate appointment to the Board. Further the Board rules does not permit transfer of compassionate appointment jobs nor does it permit multiple job offers in the scheme of Compassionate Appointment. I submit that the procedure is well laid out and is time bound and legal heirs, may be considered on satisfying the requirements."

12.It is useful to extract hereunder the relevant portions of the decisions cited supra, which are relied upon by the learned counsel appearing for the petitioner.

(i)2011 (3) LLN 37 (SC) (Bhawani Prasad Sonkar Vs. Union of India & others):

"21. The Circular/Letter dated 29th November, 2001, on which reliance was placed while rejecting appellant's claim has to be understood in its correct perspective. Evidently, it seeks to limit the benefit of compassionate employment to only those incapacitated employees who had been retired after 29th April, 1999, as in case of

employees who were found fit for performing services in a lower category, Circular dated 29th April, 1999 would be applicable, and the Railways was bound to offer alternative employment to such employees. It flows therefrom that after 29th April 1999, those employees who did not accept the alternative employment, and opted for voluntary retirement could not be given the benefit of compassionate employment for their wards.

22. In the instant case, the respondents have not placed any material on record to establish that the appellant's father was offered any alternative employment in terms of Circular dated 29th April, 1999. On the contrary, it appears that the Standing Committee recommended his retirement. Having denied appellant's father the benefit of Circular dated 29th April 1999, the respondents cannot claim that Circular dated 29th November, 2001 was applicable to appellant's father, disentitling him from seeking employment on compassionate ground for his son as he was not totally incapacitated and had sought voluntary retirement. It is clear from the retirement order dated 30th August, 1999 that the appellant's father was retired from service pursuant to the recommendation of the Standing Committee.

23. In light of the fact that Circular dated 29th November, 2001 was not applicable in the case of appellant's father, inasmuch as the benefit of the 29th April, 1999 Circular was not extended to him, and he was made to retire from service, we are of the opinion that the earlier circular dated 22nd September, 1995 is applicable in the instant case. Consequently, the appellant would be entitled to employment on compassionate ground as the said Circular contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being de-categorized, appellant's father had opted for voluntary retirement."

(ii) (2015) 7 SCC 412 (Canara Bank and another Vs. M.Mahesh Kumar):

"19. Insofar as the contention of the appellant Bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

20. In Balbir Kaur v. SAIL (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in para 13, this Court held as under:-

"13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

21. Referring to SAIL case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents family is having any other income to negate their claim for appointment on compassionate ground.

22. Considering the scope of the scheme "Dying in Harness Scheme 1993" then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference."

(iii) The decision of this Court made in W.P.No.28395 of 2005 dated 22.11.2007 (V.Shanthi Vs. The Chairman, Tamil Nadu Electricity Board and others):

"6. The entire stand of the respondent Board is misconceived. Firstly, the petitioner's application was well within time, viz., within three years from the date of death of her father. Secondly, in her application, she did not claim as a divorced daughter but as a daughter deserted by her husband. For that purpose, she has produced two documents viz., Agreement for dissolution of marriage and Divorce Deed. Though the legal value of the said documents may not be significant, but both the documents show that she had been deserted by her husband and was living with her mother. Further, even in her application in H.M.O.P.No.55 of 2001 filed before the Sub-Court, Dindigul, under the Hindu Marriage Act, her claim was that she was deserted and subjected to cruelty by her husband which fact was later agreed by the Court and decree of divorce was granted on 11.4.2002. But that fact will not preclude the petitioner from claiming the fact that she was deserted by her husband.

7. In fact, for a divorce, under Section 13(1)(ib) of the Hindu Marriage Act, there must have been an desertion for a period of two years immediately preceding the date of

presentation of the petition. Therefore, when a Matrimonial Court grants divorce, it only takes into account the prior existence of the fact which renders parties to have the benefit of the same. In any event, the petitioner filed two documents signed before the Community Panchayat, which may not have much value in the matter of granting divorce, but for the purpose of proving desertion by her husband, they can be sufficient material. Because, neither the Board nor the Government had prescribed any format or an authority for such certification. The petitioner has produced whatever material that was in her possession. Even in her application she had only claimed on the ground of a deserted daughter. It was the third respondent, by a communication dated 05.02.2002, who demanded production of a divorce decree from the Court. The petitioner has also obliged and produced the same. But this cannot be construed that the petitioner had applied only under the category of a divorced daughter. She merely complied with the requisition made by the third respondent."

13. It is also useful to extract hereunder the relevant portions of the decision reported in (2006) 9 SCC 195 (Syed Khadim Hussain Vs. State of Bihar and others):

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be

any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6.As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs."

14.On a perusal of the above judgments, if the Scheme is provided for compassionate appointment in the board to the legal heirs of the deceased employee, it cannot be rejected after a lapse of nearly 11 years on extraneous reason as if the petitioner's sister was offered employment and she did not avail the same which is not sustainable in view of the decisions cited supra.

15.It is admitted fact of the case that till the year 1995, there was no limitation for claiming compassionate appointment and the claim for compassionate appointment made by the petitioner's mother is well within the time. The petitioner's family did not get any compassionate appointment till date though his father died on 05.12.1989. However, they made the application seeking compassionate appointment within the time. No records were produced before this Court by the respondent to show that the petitioner is gainfully employed somewhere or got employment with the public/ Government organisations. Admittedly, similarly placed persons got employment with the respondent board and the petitioner alone has been left without giving compassionate appointment.

16.In view of the above, I am inclined to interfere with the impugned letter of the respondent dated 11.04.2003.

Accordingly, the same is set aside. The respondent board is directed to consider the claim of the petitioner within a period of three months from the date of receipt of a copy of this order.

17.The writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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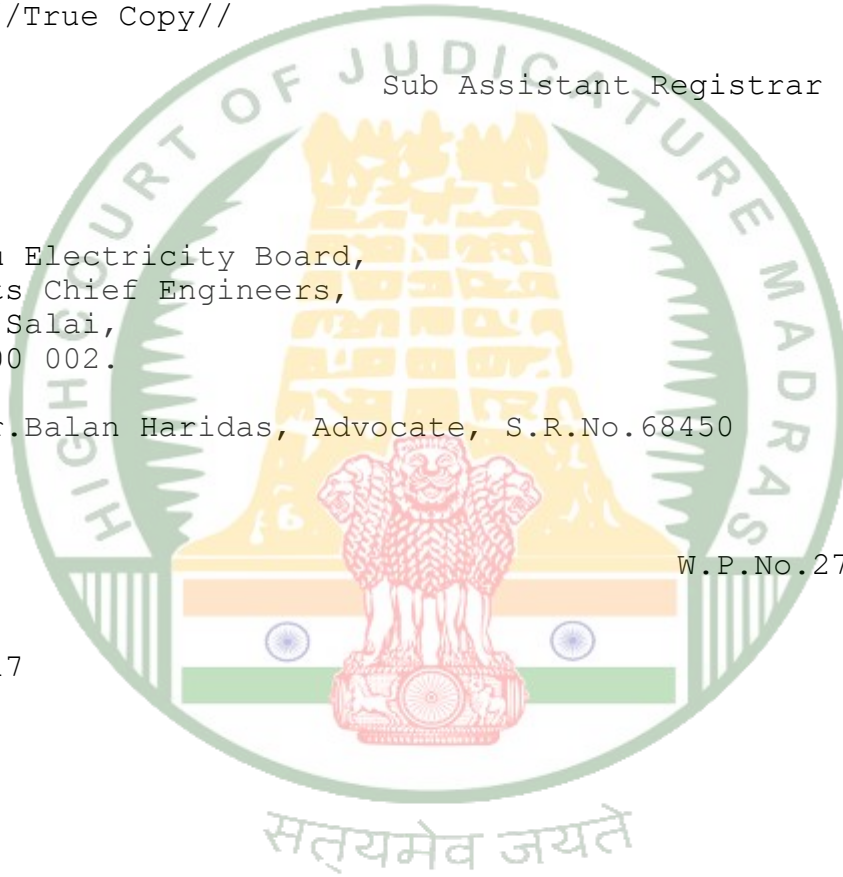
To

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+lcc to Mr.Balan Haridas, Advocate, S.R.No.68450

W.P.No.27268 of 2003

RR(CO)
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