



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P. (MD) No.11282 of 2014

D.Durga Devi : Petitioner

Vs.

1.Union of India,
Represented by Divisional Personal Officer,
Southern Railway,
Salem Division,
Salem.

2.Jothi : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings made in O.A.No.826 of 2011, on the file of the Central Administrative Tribunal, dated 24.06.2011, quash the same and further direct the first respondent herein to provide compassionate appointment to the petitioner in the light of her representation dated 18.06.2008, within a stipulated period as may be fixed by this Court.

For Petitioner : Mr.R.Subramanian,
For M/s.N.C.Ashok Kumar
For Respondent No.1 : Mr.S.Manohar
For Respondent No.2 : Mr.R.Narayanan,
For Mrs.T.Banumathy

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

The petitioner has filed the present Writ Petition seeking for the following relief:

"Writ of Certiorarified Mandamus, to call for the records relating to the proceedings made in O.A.No.826 of 2011, on the file of the Central Administrative Tribunal, dated 24.06.2011, quash the same and further direct the first respondent herein to provide



compassionate appointment to the petitioner in the light of her representation dated 18.06.2008, within a stipulated period as may be fixed by this Court."

2. The case of the petitioner is that her father Duraipandian was an employee of Indian Railway at Southern Railway Division. He worked in the designation as Diesel Loco Pilot at Erode. On 07.05.2008, in a train accident that took place at Madhukarai Railway Station Yard, her father died while in service. The father of the petitioner married one Lakshmi, who is the mother of the petitioner. When she was five months old, her mother passed away on 31.08.1986. Thereafter, her father married the second respondent herein and the petitioner was given under the care and custody of her paternal grandparents at Kulithalai. After the demise of paternal grandparents in the year 2002, on the intervention of elders and relatives, her father took her custody and thereafter, she had completed M.A. English Literature Course. Due to wedlock between her father and the second respondent, two sons were born, viz., Meganathan, aged about 22 years and Sankar, aged about 19 years.

3. The further case of the petitioner is that since her father died in harness, she preferred a representation dated 18.06.2008 to the first respondent seeking appointment on compassionate ground. In the said representation, she has narrated her difficulty in leading life as an orphan. However, the first respondent, through his proceedings dated 23.03.2009, informed that the wife of the deceased employee, namely, the second respondent herein also applied for employment on compassionate ground and it is not possible to offer appointment to both and her mother is the first eligible person for compassionate appointment. Thus, the petitioner's claim was rejected and the first respondent, by his proceedings dated 03.09.2009, also appointed the second respondent on compassionate ground. Hence, challenging the same, the petitioner filed O.A.No.826 of 2011 before the Central Administrative Tribunal, Madras. However, the Tribunal, by order dated 24.06.2011, dismissed the said O.A.No.826 of 2011 on the ground that once the wife of the deceased has already been granted appointment on compassionate ground, no other appointment shall be granted under law. Aggrieved over the same, the petitioner is before this Court with the present Writ Petition for the reliefs as stated *supra*.

4. Today, when the matter was taken up for consideration, it is submitted by the learned counsel for the petitioner that the petitioner's father died while he was in service on 07.05.2008. Immediately thereafter, the petitioner, who is the daughter of the deceased through his first wife, has made a representation seeking appointment on compassionate ground. Later on, the petitioner came to know that the second respondent, who is the second wife of the deceased employee, was provided with an appointment on

compassionate ground on 03.09.2009.

5. Adding further, the learned counsel for the petitioner submitted that the second respondent is not the mother of the petitioner and she is the second wife of her father. Moreover, as per the board instructions issued in the proceedings No.E(NG) 111/78/RC-1/1, dated 03.02.1981 and No.E(NG)11/88/RC-1/1 Policy, dated 12.02.1990, order of priority in making appointment on compassionate ground has been laid down. As per the above said proceedings, son/daughter/widow/widower of the employees are eligible to be appointed on compassionate ground in the circumstances in which such appointments are permissible, where the widow cannot take up employment and the sons/daughters are minors, the case may be kept pending till the first son/daughter becomes a major. In the instant case, admittedly, the petitioner is eligible for appointment on compassionate ground, since the second respondent is only the second wife of her father. But, without considering the request of the petitioner by way of representation, the first respondent appointed the second respondent, which is not sustainable in law and the said appointment is contrary to the Board proceedings. The Central Administrative Tribunal also dismissed O.A.No.826 of 2011, without considering those aspects and hence, the said order is liable to be quashed.

6. Countering the said submission, the learned Standing Counsel for the first respondent, having adverted to the averments made in the counter-affidavit filed by the first respondent, submitted that the petitioner submitted a representation requesting for an appointment on compassionate ground on 29.07.2008. As per Master Circular No.16, Para III, when the widow of the deceased Railway employee is alive and claims compassionate appointment, she could be considered first in spite of rival claim from other members of the family and only when the widow cannot take up employment and if the sons/daughters are minors, the case may be kept pending till the first son/daughter becomes a major. In fact, the same was advised and communicated to the petitioner as early as on 23.03.2009. Thereafter, the second respondent, being the widow of the deceased employee, was appointed as Helper in Diesel Shed, Erode, on 03.09.2009. Furthermore, the petitioner has chosen to challenge the appointment order of the second respondent dated 03.09.2009, only in the year 2011 i.e., after a period of two years. Now, the second respondent has completed eight years of service. Therefore, at this juncture, the prayer of the petitioner is not maintainable and hence, the Writ Petition is liable to be dismissed. In support of his contention, he has also relied upon a judgment reported in **2011 (4) SCC 209** in the case of **Bhawani Prasad Sonkar v. Union of India**.

<https://hcservices.ecourts.gov.in/hcservices/>

7. We have also heard the learned counsel for the second respondent, who has submitted that the second respondent was



rightly appointed as she being the widow of the deceased employee, is working in the post for eight years and by this time, the same need not be interfered with.

8. Keeping in mind the submissions made on either side, we have carefully gone through the entire materials available on record.

9. It is the submission of the petitioner that she is the daughter born through the first wife of the deceased employee and, therefore, she is eligible to be appointed on compassionate ground, but, whereas, the second respondent, the second wife of the deceased employee, was appointed. However, as per the Master Circular No.16, Para III, when the widow of the deceased railway employee is alive, she should be considered first in spite of rival claim from the other members of the family and only when the widow cannot take up employment and the sons/daughters are minors, the case may be kept pending till the first son/daughter becomes a major. Therefore, in the instant case, as per the said circular, appointment was rightly given to the widow of the deceased employee. Moreover, the appointment was made as early as on 03.09.2009. However, knowing fully well the appointment given to the second respondent, the petitioner has chosen to challenge the same only after a period of two years. It is also to be noted that the second respondent has completed more than eight years of service. In view of the said position, we are not inclined to entertain the prayer made by the petitioner at this stage.

10. In this regard, a reference could be made on the judgment relied upon by the learned Standing Counsel for the first respondent in **Bhawani Prasad Sonkar's** case cited *supra*, wherein, at paragraph No.20, the Supreme Court observed thus:

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account



of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz., parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

11. Even, in this case, compassionate appointment was provided to the second respondent only in accordance with the governing Scheme. Therefore, we are not inclined to quash the order dated 24.06.2011, in O.A.No.826 of 2011 on the file of the Central Administrative Tribunal and hence, the Writ Petition is liable to be dismissed and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

+1 cc to M/S.N.C.ASHOK KUMAR, Advocate SR.No.9954

+1 cc to M/S.S.MANO HAR, Advocate SR.No.10558

+1 cc to M/S.T.BANUMATHY, Advocate SR.No.9620

Order made in
W.P. (MD) No.11282 of 2014
Dated: 22.02.2017

SMA/PM-PN/09.03.2017:5P/4C