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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.9816 of 2014

and

W.M.P. (MD) No.1 of 2014

A.Dhanraj

... Petitioner

Vs.

1. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 005.

2. The District Collector,
(Rural Development),
Thanjavur District,
Thanjavur.

3. The Commissioner,
Panchayat Union,
Sethubava Chathiram,
Pookkollai,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.6563/2009/N1, dated 09.05.2014, quash the same and consequently direct the respondents to appoint the petitioner in a suitable port on compassionate ground.

For Petitioner	: Mr.M.Veilkani Raju,
For R1 and R2	: Mr.N.S.Karthikeyan, Additional Government Pleader
For R3	: Mrs.Bhrathi

ORDER

This Writ Petition has been filed by the petitioner, challenging the impugned order of the second respondent, dated 09.05.2014 rejecting the petitioner's representation for seeking appointment on compassionate ground. The petitioner's father died on 03.10.1985, while he was in service. The petitioner's mother



filed an application, dated 12.12.1985 for getting appointment on compassionate ground. The application of the petitioner's mother was not considered, because the service of the father of the petitioner was not regularized by then.

2. Thereafter, the petitioner's mother wanted appointment for her elder son on compassionate ground. Even this time, the application was not considered, it was thereafter the services of the petitioner's father was regularized by proceedings dated 13.11.2006. In the meanwhile, the petitioner filed an application seeking appointment on compassionate ground and there was no objection from his family members. The application of the petitioner was rejected on the ground that the original application filed by the petitioner's mother in the year 1985, and that the petitioner cannot be appointed in continuation of the earlier application filed by the petitioner's mother. This position is considered by the Honourable Division of this Court in the case of **J. Jebamary v. The Chairman, Tamil Nadu Electricity Board and others** reported in **2011 (3) LLN 405 (Mad.)**. The relevant portion is extracted below:

"...10. In the above circumstances, the application submitted by the petitioner on 8.4.2005 has to be treated as an application submitted in continuation of petitioner's mother's application as the earlier application submitted by the petitioner's mother has not been considered or rejected till the application dated 8.4.2005 submitted by the petitioner. The impugned order nowhere states that the application submitted by the petitioner's mother was earlier rejected.

11. It is also a fact that from 26.11.2001 to 28.2.2006 there was a ban order issued by the Government of Tamil Nadu in G.O.Ms.No.212 P&AR Department, dated 28.11.2001 prohibiting the appointment of staff in any of the Government/Government Undertakings. The said ban order was lifted by the Government only during February, 2006.

12. (a) Similar issue as to whether an application seeking compassionate appointment can be rejected on the ground that the application was not submitted within three years from the date of death of the deceased employee and whether completion of 18 years within three years, is a mandatory requirement when earlier application submitted by other claimant is kept pending, was considered by this Court in the decision reported in 2004 (3) CTC 120 (T. Meer Ismail Ali v. The Tamil Nadu Electricity Board) (F.M. Ibrahim Kalifullah, J (as he then was)). In the said case the deceased Board employee died on 13.4.1993 and the application submitted by one of his children on 5.8.1997 was rejected on the ground that she had not completed 18 years of age and after completing 18 years of age when an application was made on 4.7.2000



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which was rejected on the ground that the application was not made within three years from the date when the Board Proceedings dated 13.10.1995 was issued. This Court considering the technical plea raised by the respondent Board set aside the said order and remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in W.A.No.4008 of 2004 before the First Bench of this Court (consisting of the Hon'ble Mr.Justice Markandey Katju,C.J. (as he then was) and N.V.Balasubramanian,J.) dismissed the writ appeal on 1.12.2004. The respondents herein filed SLP No.6387 of 2005 against the said order which was also dismissed on 1.4.2005 by the Honourable Supreme Court and consequently the said writ petitioner was given compassionate appointment.

(b) Another writ petition in W.P.No.41459 of 2005 was considered by me on the same set of facts. The said writ petition was allowed following the earlier order of the Division Bench of this Court made in W.A.No.4008 of 2004 dated 1.12.2004 and the said decision is reported in (2006) 2 MLJ 200 (Selvi R.Anbarasi v. Chief Engineer (Personnel), TNEB, Chennai). The said order was challenged by the TNEB before the First Bench in W.A.No.988 of 2006. However, the said petitioner was given appointment on compassionate ground by implementing the order and therefore the writ appeal was dismissed as infructuous on 15.9.2006 by recording the statement made by the Standing Counsel for the TNEB.

(c) In W.P.No.21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned single Judge dismissed the writ petition by order dated 4.8.2003 against which the petitioner therein filed W.A.No.3050 of 2003 and the said writ appeal was allowed by the Division Bench (consisting of the Hon'ble Mr.Justice P.Sathasivam (as he then was) & S.K.Krishnan,J) by order dated 8.3.2005 following the earlier judgments as well as the Supreme Court Judgment reported in (2000) 6 SCC 493 (Balbir Kaur v. Steel Authority of India Ltd). Against the said decision Civil Appeal No.2039 of 2006 was filed by the respondent Board herein which was dismissed by the Honourable Supreme Court on 30.3.2010.

(d) Dismissal of another W.P.No.775 of 2004 by order dated 29.1.2005 on the ground of delay was considered by the Division Bench (F.M.Ibrahim Kalifullah,J. (as he then was) & P.Murugesan,J) in W.A(MD).No.29 of 2006 and by order dated 27.6.2006 the Division Bench allowed the writ appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on 15.11.1996. The said order of the Division Bench was



also challenged by the Board in SLP(C)No.15534 of 2007 which was also dismissed by the Apex Court on 8.4.2009.

(e) Three writ petitions were disposed of by me i.e., W.P.Nos.19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order dated 24.7.2006 wherein similar issue was considered. In respect of the above three writ petitions, which were allowed, writ appeal was filed against one writ petition in W.A.No.1206 of 2006 while implementing the order in respect of other two cases. The said writ appeal was allowed by the Division Bench on 29.9.2006. The respondent in the writ appeal viz., J.Karthick filed review application which was also rejected by the Division Bench on 25.8.2008. Against the dismissal of the writ appeal as well as rejection of review application, the said J.Karthick filed SLP(C) No.2004-2005/2009 and on 23.2.2009 the SLPs were tagged along with Civil Appeal No.2039 of 2006 viz., Indiraniammal case. Subsequently the said SLP was numbered as Civil Case Nos.5068-5069 of 2009 which was allowed on 30.3.2010 and the said order reads as follows:

"Leave granted.

Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order dated 25.8.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned single Judge only on the ground of delay who directed compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned single Judge. No costs."

(Emphasis Supplied) From the perusal of the above order it is evident that the order passed by the Division Bench in writ appeal and in the review petition were set aside and the order of the single Judge dated 29.9.2006 was restored.

(f) In W.P.No.18575 of 2006 I had an occasion to consider similar issue and allowed the writ petition on 20.6.2006 by following earlier orders. The said order was also challenged by the respondent in W.A.No.42 of 2007 and the Division Bench (D.Murugesan,J & K.Venkataraman,J) dismissed the writ appeal on 2.7.2009. The Board filed SLP(C)No.8305 of 2010 which was also dismissed by the Honourable Supreme Court on 6.7.2010. The said candidate



viz., P.Venkatesan was given compassionate appointment by order dated 18.8.2010.

(g) Again similar matter was considered by me in W.P.No.29059 of 2003 and relief granted by order dated 7.7.2006, against which also the Board filed W.A.No.1652 of 2006. The said writ appeal was dismissed by Division Bench (D.Murugesan,J. & S.Nagamuthu,J.) on 30.3.2009.

(h) W.P(MD).No.1335 of 2006 was disposed of by me on 10.8.2006. The said order was also confirmed by the Division Bench (consisting of the Hon'ble Mr.Justice P.D.Dinakaran (as he then was) & P.R.Shivakumar,J.) in W.A.No.309 of 2007 on 8.8.2007 and the same is reported in (2007) 6 MLJ 1011 (Superintending Engineer, Madurai Electricity Distribution Circle v. V.Jaya) and the said candidate viz., V.Jaya was given appointment order.

(i) Similar matter was again considered by me in W.P.No.4050 of 2006 and the said writ petition was allowed by order dated 29.6.2010 following the orders of the Division Bench and Supreme Court and the said judgment is reported in (2010) 7 MLJ 644 (M.Uma vs. Chief Engineer (Personnel), TNEB, Chennai). No appeal is filed against the said order.

13. From the above referred decisions passed by this Court in series of cases on the same ground, it is evident that the similar grounds raised by the respondents that the petitioner has not filed application seeking compassionate appointment within three years from the date of death of her father and that she has not completed 18 years of age within three years are not valid grounds to deny appointment on compassionate ground as no one in her family is employed and the family of the petitioner is in indigent circumstance even today as certified by the Revenue Officials. Petitioner's mother and petitioner are prosecuting the matter before the respondents right from July, 1992."

3.It has been repeatedly held by this Court in a number of cases, that such applications, which was filed by the other legal heirs in succession is maintainable provided, the person seeking appointment is entitled to be considered for compassionate appointment, and the earlier application filed was not rejected and the financial condition of the family justifies the appointment on compassionate ground.

4.Hence the impugned order rejecting the petitioner's application is unsustainable in law. The second respondent is directed to consider the petitioner's application for appointment on compassionate ground afresh and pass appropriate orders on merits and in accordance with law and in the light of the judgment of Honourable Division Bench referred to above within a period of six weeks from the date of receipt of a copy of this order.



5. With the above directions, the Writ Petition is disposed of. Consequently, the connected W.M.P.(MD) No.1 of 2014 is closed. No Costs.

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Sd/-

Assistant Registrar (CS-I)

Sub Assistant Registrar

To

1. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 005.
2. The District Collector,
(Rural Development),
Thanjavur District,
Thanjavur.
3. The Commissioner,
Panchayat Union,
Sethubava Chathiram,
Pookkollai,
Thanjavur District.

+1cc to Mr.M.Veilkani Raju, Advocate Sr.No.59674

CMR/GSP

VB/MR/SAR3/27.06.2017/6P/5C

**W.P. (MD) No.9816 of 2014
and
W.M.P. (MD) No.1 of 2014**

09.06.2017