



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.1363 of 2017

and

WMP(MD)No.1119 of 2017

R.M.Shyam Sundar

... Petitioner

vs.

The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO, Sivangangai District.

... Respondent

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in K.No.011943/458/MEPO/SIMIPAVA/SIVA/NIA/NIBI2/VU1/KO.KATTU/2016 dated 21.12.2016 quash the same and consequently direct the respondent herein to consider the appointment of the petitioner on compassionate grounds.

For Petitioner : Mr.C.Jegannathan

For Respondent : Mr.D.Dhayalan

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in K.No.011943/458/MEPO/SIMIPAVA/SIVA/NIA/NIBI2/VU1/KO.KATTU/2016 dated 21.12.2016, quash the same and consequently direct the respondent herein to consider the appointment of the petitioner on compassionate grounds.

2.The petitioner's mother Suseela Devi was employed as Inspector of Assessment in Sivagangai Circle in Karaikudi Division under the respondent corporation. She died while in service on 13.06.2013, leaving behind her husband, petitioner/son, and one daughter namely, Durga Devi. The father of the petitioner retired as a Peon in the transport corporation on 30.06.2013. The petitioner made an application to the respondent seeking employment on compassionate grounds and the same has been rejected

vide impugned order. Hence, this writ petition.

3.The impugned order has been passed on the ground that the petitioner's father was employed on the date of demise of the petitioner's mother and therefore, as per G.O.No.330, dated 02.11.1993, the petitioner is not entitled to compassionate appointment.

4.The learned counsel for the respondent would contend that there was no indigent circumstances and that the family is receiving pensionary benefits. But, however, the receipt of family pension is not stated in the impugned order of rejection of the petitioner's application.

5.Admittedly, the petitioner's father retired on 30.06.2013. When father is alive, the other legal heirs are excluded from receiving family pension. That apart, in view of the judgment of the Apex Court in the case of **Mohinder Singh Gill vs. Chief Election Commissioner**, reported in (1978) 1 SCC 405, the respondents cannot add or improve reasons by way of counter affidavit or by making oral submissions. It is true that when there is already an earning member in the family, employment on compassionate grounds cannot be granted and that if the family is receiving pension that can be the disqualification for compassionate appointment stating that the family is not in indigent circumstances. But, actually it has got to be seen whether the petitioner is receiving family pension or not. In this case, the petitioner is not getting family pension, as the father is alive and that he is receiving family pension. Further, the petitioner is aged 23 years old.

6.Taking note of the aforesaid circumstances, since the petitioner fulfils the criteria for employment on compassionate grounds, this Court is of the view that the case of the petitioner for compassionate appointment can be considered.

7.Accordingly, the impugned order dated 21.12.2016 passed by the respondent, is set aside and the respondent is directed to provide employment on compassionate grounds, suitable to his educational qualification, if there are no legal impediments, within a period of two months from the date of receipt of a copy of this order.

8.This Court also makes it very clear that if there is any seniority list maintained in the respondent board for providing employment to the legal heirs/dependants of the deceased employees, on compassionate grounds, the case of the petitioner shall be provided compassionate appointment based on the seniority list maintained for that purpose.



In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, WMP(MD)No.1119 of 2017 is closed.

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Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Superintending Engineer,
Sivagangai Electricity Distribution Circle
TANGEDCO,
Sivangangai District.

+1 cc to VEERA ASSOCIATES, SR.NO.6848

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07.02.2017

SMA/PM-PN/22.02.2017:3P/3C