

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

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THE HONOURABLE DR. JUSTICE S.VIMALA

W.P.No.19594 of 2004

T.Prabhu

.... Petitioner

versus

The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of certiorarified mandamus, to call for the records relating to the order in Letter No.134819/1339/G10/G102/Karu 144/2003-2 dated 15.05.2004, quash the same and consequently, to direct the respondent to provide the petitioner employment on compassionate ground due to the death of the father of the petitioner.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.P.R.Dhilip Kumar

ORDER

"18 years of age was not completed for you within a period of three years from the date of death of your father; therefore, according to the Rules of Tamil Nadu Electricity Board, your request for appointment on compassionate ground cannot be accepted" - this is the impugned order passed by the Chief Engineer, Tamil Nadu Electricity Board, Chennai, the respondent herein.

Brief facts:

2. The petitioner's father Thangaraj was employed in the office of the Assistant Engineer (O&M), Kumarapalayam, under the Superintending Engineer of Mettur Electricity Distribution Circle. On account of fall from the electric post, the petitioner's father died on 28.05.1999, which was out of and in the course of employment. He left behind the wife, daughter and son, petitioner herein as the legal heirs.

2.1. The petitioner's mother made an application on 29.06.2000, seeking appointment for her son, on compassionate ground. The date of birth of the petitioner is 30.05.1984. This application is made, within a period of one year one month from the date of death of the petitioner's father, i.e. 28.05.1999. A reply was sent on 22.07.2000 directing the mother to send the death certificate, legal heir certificate and the evidence of having received the terminal benefits. Again a reply was sent on 29.09.2000, directing the mother to seek compassionate appointment on the completion of 18 years for the petitioner.

2.2. This reply was sent by the Superintending Engineer, based on the memo dated 14.06.1997, i.e. the advise of the respondent

2.3. Again the mother made an application on 27.05.2002 seeking employment for the petitioner, stating that her son has completed the age of 18 years on 29.05.2002.. Even thereafter, the Superintending Engineer sent a letter dated 02.08.2002 and 28.01.2004, requesting the petitioner to send certain certificates and also to send a No objection letter from the mother along with annual income certificate. After the fulfillment of requirements, as demanded by the respondents, the application for compassionate appointment was rejected on 25.05.2004, on the ground that the petitioner did not complete 18 years before completion of three years from the date of the death of his father. Challenging this order, the writ petition has been filed.

3. It is relevant to point out the Board Standing Order No.46 dated 13.10.1995, under which, the applicant seeks appointment on compassionate ground provides that to

a) apply for the same within a period of three years from the date of death of the employee;

b) the applicant should have completed 18 years of age within the period of three years from the date of death of the deceased.

c) the applicant should have a pass in 8th standard.

4. Pointing out these rules, the learned counsel for the Electricity Board contended that the stand taken by the respondent is in accordance with Board Standing Order No.46 and therefore, the order passed by the respondent is legal and therefore, no interference is called for with the impugned order.

5. No doubt, Board Standing Order stipulates certain conditions and in accordance with those conditions, the petitioner had not completed 18 years of age, when the application was made for his appointment. But, the question is when the conditions are very plain and clear, what made the respondent to reject the claim of the petitioner after making him to wait for several years and after making him to submit certain documents. If Board Standing Order is the only criteria for having rejected the claim, this should have been done either on the date of first application, i.e. on 29.06.2000 or reasonably thereafter. What made the respondent to reject the application on 25.05.2004, i.e. on the very same grounds. What made the respondent to ask for certificates of the petitioner, income certificate of the petitioner and No Objection Certificate from the mother in respect of a case, which has to be rejected outright as per the Board Standing Order.

6. Learned counsel for the petitioner submitted that the respondent has passed two contradictory orders, i.e. a) one order asking the mother (as the guardian) to apply after the minor son attaining majority and b) another order passed (after the son attaining majority) stating that the petitioner had not attained the requisite qualification within a period of three years from the date of death of the petitioner's father and therefore, the petitioner's claim is barred by limitation. The respondent having made the petitioner to wait till the attainment of majority cannot now turn down the request of the petitioner and the respondent is liable to consider the claim of the petitioner for compassionate appointment.

7. The date of birth of the petitioner is 30.05.1984. By the year 2019, the petitioner would lose the eligibility for consideration for appointment in Government service, i.e. at the age of 35. This writ petition is taken up for hearing in the year 2018, i.e. 14 years after the writ petition is filed. This petition ought to have been taken up on a priority basis. Admittedly, the petitioner had waited for all these 18 years only on account of the earlier order passed by the respondent directing the petitioner to apply after the completion of 18 years. In the first reply itself, if the respondent had stated that according to Board Standing Order No.46, the petitioner is not qualified to seek appointment on compassionate ground, perhaps, the petitioner would not have been waiting for such a long time. At the fag end of the expiry of the eligibility of age (for consideration of appointment in Government Service/Public Sector Undertaking), the petitioner cannot be thrown/left stranded in the open market seeking for appointment.

8. The contention of the learned counsel for the respondent is that the scheme of compassionate appointment, being an exception, cannot be implemented after long years from the date of demise of the deceased employee.

8.1. This proposition has got its own limitation. This proposition may be correct in cases where an eligible major/adult person sleeps over his right and makes an application after the period of limitation or long after the demise of the deceased employee.

8.2. But, here is a case where, the minor had an inherent disability on account of the Law/Rule operating and it was not out of his own mistake. To help those who are lingering with disability, the aid may be taken from Section 6 of the Limitation Act.

8.3. Section 6 of the Limitation Act, 1963 provides that where a person entitled to institute a suit or make an application for execution of the decree is, at the time from which the prescribed period is to be reckoned, a minor, he may institute the suit or make the application within the same period after the disability has ceased. Explanation to Section 6 reads thus:

"Explanation:-- For the purposes of this section, 'minor' includes a child in the womb."

8.4. Section 8 of the Limitation Act provides an exception to Sections 6 and 7 and the maximum period that would be available from the cessation of disability would be three years. Under the employment assistance scheme also, the period provided for submitting an application in the case of a minor is three years after attaining majority. The cessation of disability under Section 6 of the Limitation Act in the case of a minor would take effect on the minor attaining majority and that the majority has to be reckoned with in accordance with to the provisions of the Indian Majority Act.

8.5. Clue can be taken, from Section 6 of the Limitation Act as to how to interpret the eligibility criteria as prescribed under Rule 46 of the Board Standing Order. When a minor suffers disability on account of reasons for which he is not responsible, till the disability ceases, the eligibility period would remain suspended and it would start running from the date on which the disability ceases.

9. It is relevant to refer the case of Sajeesh Babu v. State (1996 (2) KLT 542), wherein, the High Court of Kerala referred to the decisions of the Supreme Court in Umesh Kumar Nagpal v.

State of Haryana and Ors. ((1994) 2 SCC 138), Jagdish Prasad v. State of Bihar and Anr. and Haryana State Electricity Board v. Naresh Tanwar and Anr. and held thus:

"All these are cases relating to employment assistance to be given in government service or in the statutory Boards. All these cases relate to employment in public service or the service of the "State" covered by Article 14 and 16 of the Constitution of India. In all these cases, the scheme for employment assistance are non-statutory, by way of concession. Therefore, those decisions do not apply to the case on hand because in aided schools, the employment assistance is governed by a statutory provision. So, a valid right is created in a dependant. That statute does not contemplate any time limit. Therefore, the Manager cannot avoid his liability arising out of Rule 51B stating that six years have elapsed since the death of father of the petitioner."

10. Consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India, as it is only in the nature of concession and therefore, it does not create any vested right in favour of the claimant. The compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by a claimant to be enforced through writ proceedings. The compassionate appointment is justified when it is granted to provide immediate succor to the family of the deceased employee.

11. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules.

12. The scheme of compassionate appointment will have negative impacts on the good governance and further, it will affect the chances of the meritorious candidates, who can participate in the public administration in a better manner.

13. The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of compassionate appointment.

14. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet, cope up with and overcome the crisis, that a job is to be offered to the eligible member of the family.

15. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavor for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

16. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not the intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

17. Considering the totality of circumstances, considering the objectives of the compassionate appointment and also considering the long wait of the petitioner only because of the contradictory orders passed by the respondent, the impugned order is set aside. The respondents are directed to provide compassionate appointment to the petitioner in tune with his educational qualification. Even if there is no vacancy, the respondent shall create a supernumerary post and shall accommodate the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.

18. With the above direction, the writ petition is disposed of.
No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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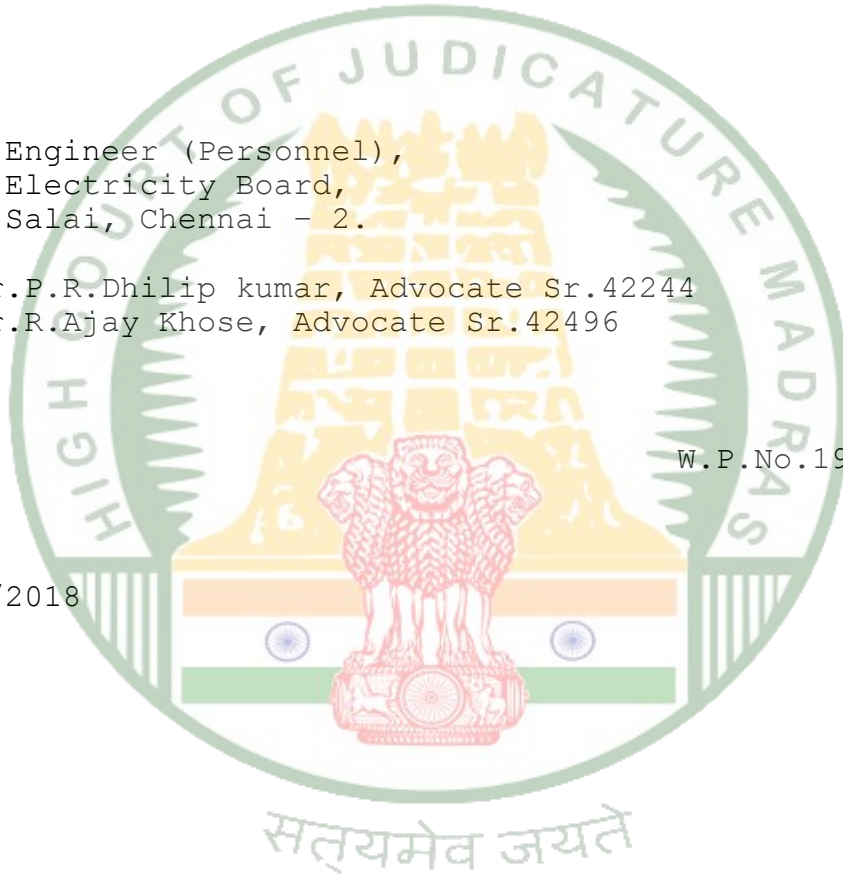
To

The Chief Engineer (Personnel),
Tamil Nau Electricity Board,
800, Anna Salai, Chennai - 2.

+1cc to Mr.P.R.Dhilip kumar, Advocate Sr.42244
+1cc to Mr.R.Ajay Khose, Advocate Sr.42496

W.P.No.19594 of 2004

srg 26/09/2018



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