

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21/03/2019

DATED : 28.03.2019
CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.26906 of 2012
And
M.P.No. 1 of 2012

S.Saravanakumar ... Petitioner

Versus

1. The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
800, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer
Trichy Electricity Distribution Circle
Tamil Nadu Electricity Board
Metro
Trichy - 621 020. ... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letters dated 15.02.2012 and 20.06.2012 issued by the third respondent in his office Letter No. 001325/756/Ni.Pi.1 E.Ni.Vu.1/Ko. Compassionate Appointment/2012, and in Letter No. 111906/116/Ni.Pi.1/E.Ni.Vu/Ko. Compassionate Appointment/2012, quash the same and direct the respondents to reconsider the request of the petitioner's mother Sampooranam and the petitioner for compassionate appointment to the petitioner in the light of B.P.No. 17 dated 01.11.2011.

For Petitioner :: Mr.P.Mani

For Respondents :: Mr. M.Fakkir Mohideen

ORDER

The Writ Petition had been filed by the petitioner in the nature of a Certiorarified Mandamus, calling for the records relating to the impugned letters dated 15.02.2012 and 20.06.2012 issued by the third respondent in his office Letter No. 001325/756/Ni.Pi.1 E.Ni.Vu.1/Ko. Compassionate Appointment/2012, and in Letter No. 111906/116/Ni.Pi.1/E.Ni.Vu/Ko. Compassionate Appointment/2012, quash the same and direct the respondents to reconsider the request of the petitioner's mother Sampooranam and the petitioner for compassionate appointment to the petitioner in the light of B.P.No. 17 dated 01.11.2011.

2. The father of the writ petitioner by name Shanmugam was working as Foreman in the office of the Assistant Engineer, O & M, TNEB at Puthunatham. He died on 30.08.1989. He left behind his wife, two sons and daughter. The petitioner herein was 9 years at the time of death of his father. His mother submitted an application seeking compassionate employment on 08.02.1990. She also gave another representation on 04.02.1999. This was rejected by letter dated 15.06.1999 on the ground that the application was not submitted within three years from the date of death. His mother sent a further representation to the Chief Minister's Cell. That representation was rejected on 16.10.1999. His mother then filed W.P.No. 8322 of 2001. This Court was pleased to allow the Writ Petition and quashed the letters rejecting her representation and directed the third respondent to also include the name of the petitioner in the register maintained for compassionate appointment. This was by order dated 09.10.2002. Thereafter the third respondent filed W.A.No. 1507 of 2005. The Division Bench of this Court allowed the Writ Appeal. The relevant portion of the order in the Writ Appeal is as follows:-

"4. It is seen that while the respondent's husband died on 30.08.1989, the application for compassionate appointment for her son was made only on 04.02.1999 and it is also sated that at the time of death of the respondent's husband, her son was only 9 years old. The learned Judge proceeded on the basis that the respondent's application is dated 04.02.1990 and therefore, her subsequent request for appoint for her son dated 04.02.1999 should be considered as one of the requests made at the earlier stage. This premises is totally erroneous because

on 04.02.1990, the respondent could not have made any application as at that time, her son was minor and would have been ineligible to make an application in that regard.

5. In this context, it is necessary to refer to the decision of this Court dated 18.09.2006 in W.A.No. 336 of 2003, etc., batch wherein all the orders issued by the appellant Board have been considered and necessary interpretation has been given. Since the learned Judge had not considered the relevant criteria for granting direction to the Board regarding grant of appointment to the son of the respondent on compassionate ground and since the action of the Board was in terms of the order of the Division Bench of this Court dated 18.09.2006 referred to above, we have no hesitation to set aside the order passed by the learned Judge."

3. Thereafter the present petitioner had given a representation on 18.01.2011 seeking compassionate appointment. The third respondent sent a reply dated 31.05.2011. By the said reply, the representation of the petitioner was rejected only on the ground that the Writ Appeal filed by the mother seeking compassionate employment had been dismissed. The petitioner gave a further representation on 06.02.2012. In the said representation, he enclosed the legal heirship certificate obtained at the time of the death of his father to point out that he was aged 9 years on that date. He also pointed out that subsequently there had been decisions rendered by this Court granting compassionate employment to similarly placed applicants. The third respondent once again issued a reply dated 15.02.2012 which is practically a repetition of the earlier reply dated 01.11.2011. In the said reply, it was stated that since the Writ Appeal filed by the mother had been dismissed, it was not possible to grant employment. This order dated 15.02.2012 is one of the orders impugned in this Writ Petition. The petitioner then gave a further representation on 14.03.2012. In this representation, the petitioner again sought compassionate employment. This representation was rejected by letter dated 20.06.2012 which is also impugned in the present Writ Petition.

4. The learned counsel for the respondents vehemently opposed grant of any relief in the Writ Petition.

5. Heard Mr.P.Mani, learned counsel for the writ petitioner and Mr.M.Fakkir Mohideen, learned counsel for the respondents.

6. It is an admitted case of both the parties that the father of the petitioner, by name M.Shanmugam was a permanent employee of the respondents and died while in service on 30.08.1989. On that date, the mother of the petitioner was aged 30 years and the petitioner was aged 9 years. The mother gave a representation seeking employment on compassionate grounds. This was rejected by the respondents. She then filed W.P.No. 8322 of 2001 and by order dated 09.10.2002, the Writ Petition was allowed and the respondents were also directed to include the name of the petitioner in the register to grant employment on compassionate basis. This order was challenged by the respondents in W.A.No. 1507 of 2005 and as stated above that was allowed. The petitioner, who attained the age of majority in and around the year 1997, then gave a representation on 18.1.2011. This was rejected by letter dated 31.05.2011. He gave a further representation on 06.02.2012. This was also rejected by letter dated 15.02.2012. He gave a further representation on 14.03.2012. This was also rejected by letter dated 20.06.2012.

7. The learned counsel for the respondents placed reliance on a Judgement of the Division Bench of this Court reported in 2016 (5) CTC 125 The Inspector General of Prisons - Appellants Vs. P.Marimuthu - Respondent wherein the Division Bench of this Court had held in a similar case where the son was a minor at the time of death of his father and who sought compassionate appointment as follows:-

"38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any Application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the Recruitment Rules.

Employment Assistance on Compassionate Appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the Employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority."

8. However, the learned counsel for the petitioner herein relied on B.P.No. 17 dated 01.11.2011 issued by the first and second respondents, namely, the Chairman, TNEB and the Chief Engineer (Personnel), TNEB, whereby guidelines have been given regarding the manner in which the applications for compassionate employment should be considered by the Electricity Board in the case of children of deceased employees, who were minors at the time of death of the employee.

9. It is the grievance of Mr.P.Mani, learned counsel for the petitioner that this circular in B.P.No. 17 dated 01.11.2011 was not at all considered by the respondents when they passed the impugned orders. The first impugned order dated 15.02.2012 was practically a repetition of the earlier order dated 31.05.2011 rejecting the representation of the petitioner. Evidently, this shows that there has been no independent application of mind to the averments made in the representation particularly stating that several Judgements have been rendered by this Court granting compassionate employment on similar facts.

10. In the second representation dated 14.03.2012, the petitioner had again sought compassionate employment and had specifically drawn attention to the circular dated 01.11.2011. This has been rejected by order dated 20.06.2012. In the said order it had been stated that the petitioner had not sought for employment within three years from the date of death of his father. Needless to point out the petitioner was aged only 9 years at the time of death of his father. Had he applied for employment within three years, he would not have crossed even 12 years of age. The petitioner had necessarily to educate himself to be eligible for employment. He had applied after he had attained the age of majority. His mother had earlier applied seeking compassionate employment. These factors have not been considered by the respondents in their impugned order dated 20.06.2012. As stated above, in the first impugned order, a repetition of the reasons given in the earlier letter had been repeated and the only reason given was that the Writ Appeal filed by the respondents against the order in Writ Petition filed by the mother had been allowed.

11. In the second impugned order dated 20.06.2012, there is no indication that there has been independent application of mind taking into consideration the facts of the case. The facts of the case show that the petitioner was aged just 9 years at the time of death of his father and subsequently applications have been filed seeking employment. The respondents have taken a stand that the petitioner should have applied for employment within three years from the date of death of his father. That would imply that the respondents have taken a very narrow view of their own circular in B.P.No. 17 dated 01.11.2011.

12. In A.Karthick Vs. The Government of Tamil Nadu, CDJ 2015 MHC 3405, the petitioner's father, working as Irrigation Engineer, died on 04.09.2002, while he was in service. At the time of death of his father, the petitioner was a minor and aged about 12 years. There was a ban between November 2001 to February 2006. He attained majority and made an application for compassionate appointment on 27.07.2009. Thereafter, his mother made a representation on 17.09.2009. The said application was rejected on the ground that it was submitted after seven years, from the date of death of the Government servant. Observing that the application filed by the petitioner therein, on attaining majority, cannot be treated as a belated application, as the petitioner therein, was a minor, at the time of death of petitioner's father, the Court has remitted the matter back to the concerned Authority to consider the claim of the petitioner therein, seeking Employment Assistance on Compassionate grounds.

13. In view of the above reasons, I hold that the respondents have to once again reconsider independently the representations of the petitioner taking into consideration the fact that there was an earlier representation of his mother and pass a detailed order also taking into account the scope of B.No. 17, dated 01.11.2011 issued by the first and second respondents.

14. In view of the above reasons, I hold that the impugned letters dated 15.02.2012 and 20.06.2012 issued by the third respondent in his office Letter No. 001325/756/Ni.Pi.1 E.Ni.Vu.1/Ko. Compassionate Appointment/2012, and in Letter No. 111906/116/Ni.Pi.1/E.Ni.Vu/Ko. Compassionate Appointment/2012 have to be necessarily quashed and set aside. The respondents are directed to examine the representation of the petitioner dated 14.03.2012 afresh taking into account of the entire circumstances surrounding the case and the scope of B.No. 17

dated 01.11.2011 and pass fresh orders within a period of three months from the date of receipt of a copy of this order.

15. With such observations, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai - 600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
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Chennai - 600 002.
3. The Superintending Engineer
Trichy Electricity Distribution Circle
Tamil Nadu Electricity Board
Metro
Trichy - 621 020.

+1cc to Mr.P.Mani, Advocate Sr.29999

W.P.No.26906 of 2012
And
M.P.No. 1 of 2012

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srg 8/5/2019

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