

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3300 of 2019

M.Selvamani

... Appellant

Vs

1. The Chairman
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Perambalur Electricity Distribution Circle,
Perambalur District.
3. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Perambalur District.

... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 25.10.2017 passed in W.P.No.5915 of 2014 by this Court.

Prayer in W.P.No.5915 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relevant to the order in Ka. No.Me.Po/Pay Mi Pa Va/Pa Ra/Vu Che Po/Ma Tho Aa/Ko Mu Tha Pi/Aa No./2013 dt 20.7.2013 passed by the 3rd respondent and quash the same as illegal improper unreasonable against the rule of law natural justice and probabilities of the case and thereby direct the respondents to appoint the petitioner in the respondents department in any one of the post according to his educational qualification under the Compassionate Ground without any delay.

For appellant : Mr.B.Gopalakrishnan

For Respondents : Mr.P.R.Dhilip Kumar

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR,J.)

Challenge in this writ appeal is to the order of the writ court dated 25.10.2017 made in W.P.No.5915 of 2014, by which the writ court declined to quash the proceedings in Ka.No.Me.Po/Pay Mi Pa Va/Pa Ra/Vu Che Po/MA Tho Aa/Ko Mu Tha Pi/Aa No.2013 dated 20.07.2013 dated 20.07.2013 passed by the third respondent/the Executive Engineer, Operation and Maintenance, Tamil Nadu Electricity Board, Perambalur District.

2. After advertng to the averments raised by the writ petitioner, writ court held that compassionate appointment has to be construed in a strict manner as it is an exception to Articles 14 and 16 of the Constitution of India and by following the decision of the Supreme Court in Bhawani Prasad Sonkar Vs. Union of India and others reported in (2011) 4 SCC 209.

3. Being aggrieved, the writ petitioner filed the instant writ appeal on several grounds.

4. In the case on hand, appellant's father, employed as a Lineman and subsequently promoted as a Line Inspector, died on 17.05.1996. At the time of death of his father, the petitioner was minor. Thereafter, the petitioner becoming major and also acquiring some educational qualification, made a representation, which was rejected by the third respondent.

5. Let us also consider a judgment of the Hon'ble Supreme Court, on the aspect of a person, on attaining majority and claiming appointment on compassionate grounds. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and

that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LR.s. and Ors., (2005) 12 SCC 1]"

6. Madurai Bench of Madras High Court, vide order dated 22.04.2016, in Writ Appeal (MD) No.329 of 2015 [(1) The Inspector General of Prisons, Tiruchirapalli District, Tiruchirapalli-1 (2) The Chief Director, Prison Department, Office of the Chief Director of Prison Department, Egmore, Chennai 600 008 Vs. P.Marimuthu], following the above principles, held that Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the

date of death and at paragraphs 37, 38, 39 and 40, as follows:-

"37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

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.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in Sushma Gosain v. Union of India reported in 1989 (4) SCC 468."

7. Under Article 141 of the Constitution of India, law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. Therefore, in view of the judgments of the Hon'ble Supreme Court, quoted supra, instant writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman
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