

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3078 of 2019

R.Arul ... Appellant/Petitioner

Vs.

1. The Chairman,
TANGEDCO, 144, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel)
TANGEDCO, 144, Anna Salai, Chennai - 2.
3. The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
TANGEDCO, Kancheepuram.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 11.10.2017 made in WP.No.22101 of 2012.

WP.No.22101 of 2012:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to Calling for the records in Ka.No.0072826/Ni.Pi.2/E.Ni.2/Kho.Vaa.Vae.Vaa/2011 dated 3.1.2012 and Ka.No.0072826/ Ni.Pi.2/E.Ni.2/Kho.Vaa.Vae.Vaa/2012 dated 05.05.2012 and quash the same and consequently to direct the respondents herein to consider petitioner claim of job assistance on compassionate ground by extending the Board Proceeding (Pre) F.B.TANGEDCO in B.P.No.12 dated 02.07.2012

For Appellant : Mr.V.Prakash, Sr. Counsel
for Mr.K.Krishnamoorthy

For Respondents: Mr.P.R.Dhilip Kumar
Standing Counsel for TNEB

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order made in WP No.22101 of 2012 dated 11.10.2017, by which the writ Court rejected the request of the petitioner to grant appointment on compassionate grounds.

2. Short facts leading to the filing of the writ appeal are as follows:

(i) Father of the writ petitioner / appellant, serving the respondent-TANGEDCO died on 27.05.2010, while in service. Appellant/writ petitioner submitted an application dated 01.06.2011 seeking employment assistance on compassionate grounds. Though, respondent-TANGEDCO settled the monetary benefits, refused to provide job assistance on compassionate grounds and the Superintending Engineer, Kancheepuram Electricity Distribution Circle, TANGEDCO, vide letter dated 03.01.2012, rejected the claim.

(ii) Writ petitioner /appellant has studied upto Plus Two (Vocation-Commerce) and completed Senior Grade in English Typing and Junior Grade in Tamil Typing. It is the case of the appellant that claim of similarly placed person was rejected on the ground of over age and thereafter, based on G.O.Ms.No.114 P&AR (S) Department dated 11.08.2010 and an order of this Court dated 22.06.2011 made in WP No.11059 of 2011, his case was reconsidered by the respondent-TANGEDCO vide Board's Proceedings No.12 dated 02.12.2012. Appellant filed WP No.22102 of 2012, for the following relief.

"for issuance of a writ of certiorarified mandamus, to call for the records in Ka.No.007826/Ni.P2/E.Nee.2/Govaveva/2011 dated 03.11.2012 and Ka.No.007826/Ni.P2 / E.Nee.2/Govaveva/2012 dated 05.05.2012 and quash the same and consequently, direct the respondents herein to consider petitioner's claim of job assistance on compassionate ground by extending the Board Proceeding (Pre) F.B.TANGEDCO in B.P.No.12 dated 02.07.2012."

(iii) After hearing the learned counsel for both parties and perusing the materials available on record, writ Court at paragraph Nos.2 of the order dated 11.10.2017 made in WP No.22101 of 2012, observed as follows:

"2. In the case on hand, the writ petitioner was born on 10.03.1972 and the father of the writ petitioner expired on 27.05.2010. The application seeking compassionate appointment was filed on 01.06.2011 and therefore, the writ petitioner as on the date of the impugned order of rejection had

completed 39 years of age. Thus, the authorities cannot consider the case of the petitioner for providing appointment on compassionate grounds. This Court do not find any infirmity in the reasoning given by the respondents in the order impugned. Further, this Court is of the view that now, after a lapse of seven yuears from the date of the demise of the deceased employee and when the application was not submitted in time and when the writ petitioner even, at the time of filing of the writ petition was aged about 41 years and the present age would be about 46 years, the question of extending the benefit of the Scheme of Compassionate appointment does not arise at all."

(iv) Citing various judgments of the Hon'ble Supreme Court, the writ petition was dismissed vide order dated 11.10.2017. Relevant portion of the order reads thus.

"37. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and by the Hon'ble Division Bench, this Court is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of that scheme, the grounds raised in this writ petition deserve no further consideration.

38. Accordingly, the writ petition stands dismissed. ..."

(v) Aggrieved by the abovesaid order, writ petitioner has filed the instant writ appeal on the following grounds:

(a) writ Court has not discussed the case of the writ petitioner and the indigenous condition of the petitioner's family was not taken into account.

(b) writ Court has erred in concluding the case of the petitioner in para 2 of the judgment itself even before appreciating the case on hand.

(c) writ Court did not consider the aspect of discrimination in the matter of appointment on compassionate ground while the respondents in compliance of the orders pronounced by this Court had given appointment to one Mr.R.Manickavasakan, who is similarly placed as that of the writ petitioner.

(d) writ Court ought to have appreciated the fact that on the sudden demise of the petitioner's father, family of the petitioner is under penury till and the only reason that the petitioner is over aged at the time of his father's demise could not curtail the very spirit of the scheme which is to tender immediate support to the family who lost the source of their livelihood.

3. On the above grounds, Mr.V.Prakash, learned Senior Counsel for the appellant made submissions.

4. Mr.P.R.Dhilip Kumar, learned Standing Counsel for the Respondents-TAANGEDCO, submitted that at the time of submission of the application for employment assistance on compassionate grounds, appellant was over aged. The contention of the appellant that his family is still in penury, after many years of his father's demise, cannot be accepted. Though the writ Court has observed that there is a delay in submitting the application, learned Counsel for TANGEDCO fairly admitted that there is no delay. He also admitted that writ Court had applied the cases to a minor on attaining majority, making an application, after a considerable period. Learned counsel for the respondent submitted that compassionate appointment given to another person was based on government order relaxing age, and that the same was done by the government, for the reason that the said individual crossed the maximum age during the ban period.

5. During the course of hearing, it was contended that Government vide G.O.Ms.No.114, Personnel and Administrative Reforms (S) Department dated 11.08.2010, amended Rule 54-B of the General Rules and granted 5 years of age relaxation due to the ban order issued by the Government for five years. Therefore, learned senior counsel appearing for the appellant prayed that age may be relaxed in the case of the appellant also.

6. Inviting the attention of this Court to Tamil Nadu Electricity Board Regulation No.111, learned Senior Counsel for the appellant submitted that when there is a power to relax the age, respondents have failed to exercise the same.

7. Earlier on 13.09.2019, when the instant writ appeal came up for hearing, this Court directed the learned counsel for the respondent-TANGEDCO to get the Board Proceedings / Regulations dealing with compassionate appointment and in particular prescription of age and regulations thereof.

8. Accordingly, today, when the matter came up for further hearing the Service Regulations [corrected upto 30.06.2000] of

the Tamilnadu Electricity Board, was produced and Regulation No.111 of the Service Regulations, reads thus.

"Notwithstanding anything contained in these regulations, the Board shall have the power to deal with the case of any person serving under the Board or any candidate for appointment to any class of service in such manner as may appear to it to be just and equitable;

Provided that, where any such Regulation is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that Regulation.

9. Perusal of the above Regulation makes it clear that the Board has power to relax the age . In the present case, the respondent-TANGEDCO has not exercised the said power.

10. In view of the above admission on the part of the respondents that the application for employment assistance on compassionate grounds was submitted in time and that reference has been made by the writ Court, to cases, not applicable to the facts and circumstances of the case, we deem it fit to set aside the order of the writ Court dated 11.10.2017 made in WP No.22101 of 2012, and remand the matter to the respondents-TANGEDCO, for fresh consideration. Appellant is also permitted to make a representation for relaxation of the age in exercise of the powers under Regulation No.111 of the Tamilnadu Electricity Board Service Regulations and such representation shall be made, accompanying the order made by this Court in the instant writ appeal. We also direct the respondents-TANGEDCO, to consider the appellant's case compassionately. No Costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
TANGEDCO, 144, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel)
TANGEDCO, 144, Anna Salai, Chennai - 2.

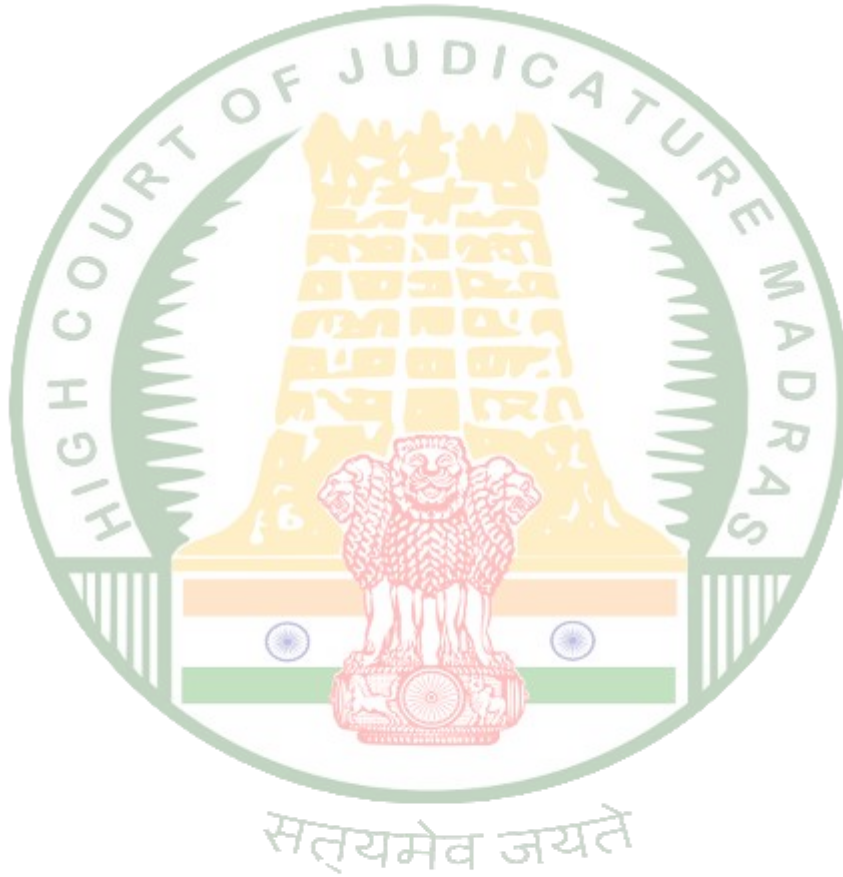
3. The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
TANGEDCO, Kancheepuram.

+1cc to Mr.K.Krishnamoorthy, Advocate, S.R.No.82850

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.82141

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NRJK(CO)
CS/11/10/2019



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