

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 17243 of 2014
and WMP. Nos. 2 of 2014 and 8865 of 2017

S.Boopathi

..Petitioner

Vs

1. The Chairman and Managing Director,
TANGEDCO
Door No.844, Anna Salai,
Chennai-600002.

2.The Chief Engineer (Personnel)
TANGEDCO
Door No.844, Anna Salai,
Chennai-600002.

3.The Superintending Engineer
TANGEDCO (Kovai Distribution Zone)
Coimbatore South,
Coimbatore-641012

..Respondents

Prayer: 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 relating to the impugned letter of the 3rd respondent Letter No.Ka. A.C.348/Nibi-2(4)/Ko.V. 20/99 dated 30.7.99 and Letter NO.Ka.An. 004039/414/ Nibi-2/U1/Eniu/Ko.Va. Ve/2012 dated 20.9.2012 and quash the same consequently direct the respondents to appoint the petitioner as Office Assistant in the respondents TANGEDCO Board in the regular time scale of pay with attendant service and monetary benefits till the date of his superannuation with pension and other retirement benefits.

For Petitioner : M/s.K.S.Govindaprasad

For Respondents : Mr. Karthik Rajan

O R D E R

The case of the petitioner is that the petitioner's father who was working as Wireman in the respondent Board, died on

20.12.1988 while in service due to heart attack. The petitioner herein is one of the legal heirs. After the death of the his father, during the year 1989, his mother made application to the respondent board seeking appointment to her on compassionate grounds. The said request was not considered and orally informed by the official of the respondent board that her request for appointment could not be complied with because of non possessing of requisite educational qualification. Subsequently, on attaining majority, the petitioner made an application dated 19.07.1999 to the respondent. Board and the same was rejected by the 3rd respondent vide impugned letter dated 30.07.1999 by stating reason that the application for compassionate appointment is not made within a period of 3 years from the date of death of his father and the application was received only on 21.07.1999. Challenging the same, the present writ petition is filed.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

3. According to the learned counsel for the petitioner, at the time of death of the petitioner's father, the petitioner was a minor and he cannot make application for his appointment. Therefore the rejection order of the respondent on the ground that the petitioner has not made his application within a period of 3 years is illegal and arbitrary.

4. The learned counsel for the petitioner in support of his submissions, has produced a case law reported in (2012) 2 MLJ 211 in the case of R.Sridevi Vs.Secretary to Government, Labour and Employment Department, Chennai. The relevant portion is extracted below;

" 14. In view of the legal propositions laid down in the decisions referred to supra, this Court is of the opinion that the petitioner's claim for compassionate appointment cannot be denied and therefore, the impugned orders dated 08.10.2007 and 09.12.2007 passed by respondents 1 and 2, respectively are set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment to any suitable post without reference to the objection raised in the impugned orders i.e., the petitioner has not applied within three years from the date of death of her father, but taking into account the fact that the sudden death of her father has left his family in penury and without any means of livelihood, and pass appropriate orders within a period of two (2) months from the date of receipt of a copy of this order."

5. Per contra, the learned counsel for the respondents submitted that as per the Proceedings No.17, Admn. Branch/dated 01.11.2011 orders were issued that those who have applied for compassionate appointment prior to 23.08.2005 but their application within the stipulated period of three years are assumed to be eligible for compassionate appointment even though they have not completed 18 years of age but satisfying other conditions. As per the above proceedings, the request of the petitioner was again examined and rejected by the 3rd respondent vide his letter dated 20.09.2012 since the petitioner has not submitted his application within a period of three years from the date of death of his father and submitted only on 19.07.1999. Another representation received from the Chief Munster's Cell submitted by the petitioner was also rejected by the respondent on the same grounds vide letter dated 09.02.2011. Therefore, it is argued by the learned counsel for the respondent that the petitioner cannot seek the employment assistance under Compassionate ground since he did not fulfill the conditions prescribed under B.P. NO.46 dated 13.10.1995 and B.P. No. 17 dated 01.11.2011. The said employment assistance under the scheme of compassionate ground will be given only to overcome the family from the sudden financial crisis due to the death of the earning members, whereas in this case, the petitioner's family survived over a period of 25 years from the date of death of his father. Therefore, the claim of the petitioner in this writ petition cannot be considered and the same is liable to be dismissed.

6. In the said circumstance, it is relevant to refer the judgment of the Hon'ble Division Bench of this Court in W.A.No. 3241 of 2019, dated 17.09.2019, wherein the Division Bench of this Court had elaborately discussed the issue by citing various Judgments of other High Courts and the Supreme Court and dismissed the Writ Appeal, rejecting the request of the petitioner therein seeking compassionate appointment. The relevant portion of the judgment is extracted below;

7. Though several grounds have been raised by the appellant, challenging the order of the writ court, we are not inclined to accept the same, for the reason that the writ court while considering the case of the appellant has taken note of several decisions of the Hon'ble Supreme Court and High Court of Madras, on the aspect as to whether the appellant who was a minor at the time of death of the employee, has a right to seek for employment assistance on compassionate grounds, on attaining majority and the answer is a clear 'No'.

8. The Hon'ble Supreme Court has held that applications, seeking appointment on compassionate grounds cannot be considered after the lapse of many years. Appointment on compassionate ground cannot be claimed as a matter of

legal right. Writ Court has properly adverted to the facts and law. Added further there is a delay of 6 years in filing the writ petition.

9. In the light of the above decisions, we do not find any error in the order of the Writ Court. Therefore, writ appeal is dismissed. No costs."

7. Further, it is also relevant to extract the judgment of the Apex Court made in C.A.No. 6348 of 2013 dated 07.08.2013 in the case of MGB Gramin Bank Vs. Chakrawarti Singh. The relevant portion is extracted hereunder;

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment of compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family etc., the application has to be considered in accordance with the scheme...."

8. Admittedly, in the present case, originally, the mother of the petitioner had applied to the respondent seeking appointment to her on compassionate grounds and the same was rejected on the ground that she was having requisite qualification. Thereafter, the petitioner after attaining majority i.e. after 11 years from the date of death of his father, has made application seeking appointment on compassionate grounds, which was also rejected by the respondent vide impugned letter dated 30.07.1999 and 20.09.2012.

9. Considering the facts and circumstances of the case and also by relying upon the decisions rendered by the Hon'ble Supreme Court and the Division Bench of this Court cited supra, this Court is of the opinion that the petitioner is not entitled for appointment on compassionate grounds and the writ petition is liable to be dismissed as devoid of merits.

10. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
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Chennai-600 002.

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3.The Superintending Engineer
TANGEDCO (Kovai Distribution Zone)
Coimbatore South,
Coimbatore-641 012

+lcc to Mr.K.S.Govindaprasad, Advocate, S.R.No. 102350
+lcc to Mr.Karthick Raja, Advocate, S.R.No. 102058

W.P.No. 17243 of 2014
and
WMP. Nos. 2 of 2014 and
8865 of 2017

VD(CO)
GN(20/02/2020)



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