

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.22036 of 2019

K.Lokesh

... Petitioner

vs.

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.
 2. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.
 3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore - 6.
 4. The Additional Chief Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore - 6.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus, calling for the entire records connected with the impugned order passed by the 4th Respondent in Lr.No.31307/722/Ku.Tha.Po./Vae/Ni.Pi3/U2/Va.Vay/2019, dated 25.02.2019, confirming the order of the 3rd Respondent passed in Lr.No.27336/Ni.Pi.3/U2/2013, dated 15.12.2013 and quash the same and consequently direct the Respondents to provide suitable employment to the Petitioner on compassionate grounds.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.Fakkir Mohideen

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order passed by the 4th Respondent in Lr.No.31307/722/Ku.Tha.Po./Vae/Ni.Pi3/U2/Va.Vay/2019, dated 25.02.2019, confirming the order of the 3rd Respondent passed in Lr.No.27336/Ni.Pi.3/U2/2013, dated 15.12.2013 and for a consequential direction to the Respondents to provide suitable employment to him on compassionate grounds.

2. According to the Petitioner, his father was working as a contract labourer for several years in the Respondent Board. After several years of continuous service, he was made permanent as Helper in the year 1997 and was subsequently promoted as Wireman and posted in the Office of Assistant Engineer (O & M) Gandhinagar/West, Vellore Electricity Distribution Circle. While he was in service, he died due to illness on 07.08.2011 at the age of 42 years and at that time, the Petitioner was aged about 12 years.

3. As the Petitioner's father was the only breadwinner of his family, after his demise, his mother was unable to maintain the family without any income. Hence, the Petitioner's mother made a representation to the 3rd Respondent in the prescribed format on 18.11.2013, requesting for compassionate appointment and the same was returned vide the 3rd Respondent's letter dated 15.12.2013, on the ground that the Petitioner was aged only about 14 years on the date of submission of the Application and that Compassionate Appointment can be provided only after completion of 18 years.

4. As the Petitioner's mother died due to illness on 31.10.2018, the Petitioner was constrained to make an Application to the 3rd Respondent on 27.11.2018, seeking compassionate appointment, as he had to take care of his 14 year old younger brother and his grandfather. However, his Application was rejected vide impugned letter dated 25.02.2019, on the ground that already the Application made by his mother seeking compassionate appointment was rejected. Hence, the Petitioner is before this Court.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. At this juncture, it is worth referring to the decision of the Apex Court in the case of Bhawani Prasad Sonkar vs. Union of India reported in (2011) 4 SCC 209, relevant portion of which, is extracted hereunder:

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largess irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

7. Further, in a similar circumstance, in W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD) Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai] decided on 24.09.2018, I have considered all the aspects pertaining to Compassionate Appointment and passed a detailed order by extending few

suggestions to the Government. Relevant portion of the same is extracted hereunder:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be considered only for Class-IV employment and that age can be relaxed and the qualifications can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019:

(i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

(ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain

category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether persons to be appointed to the post of Sweeper on compassionate ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

(iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore, it is clear that the request for appointment on compassionate ground for the child in the womb, by seeking reservation of one post till the child's majority cannot be entertained;

(iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of

representation is not a conclusive one for litigants, but a starting point of litigation;

(v) the documents sought by the concerned authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

(vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be reduced;

(vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that

25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

(viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

(ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

(x) the compassionate appointment shall not be considered as a back door entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to the age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case."

8. That apart, this Court has also held that back-door entry should be prevented. In the case on hand, the Petitioner is seeking Compassionate appointment not on account of the demise of his mother, but on account of his father's demise on 07.08.2011. According to the Petitioner, his mother did not seek for compassionate appointment within three years of the Petitioner's demise for the reason that she is an illiterate. When there is no educational qualification specified as mandatory for Class IV employment, it is clear that the Petitioner and his mother have knowingly missed the bus. While so, the Petitioner cannot belatedly make a representation to the authorities and seek compassionate appointment that he has attained majority now. Also, it is seen that the Petitioner's claim for compassionate appointment on 27.11.2018 has been rejected by the impugned letter dated 25.02.2019.

9. In view of the above, this Court does not find any reason warranting interference with the orders impugned in this Writ Petition. Hence, this Writ Petition stands dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
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+1cc to Mr.S.M.Ravichandran, Advocate, S.R.No.64576

W.P.No.22036 of 2019

KS (CO)

RRS (31/07/2019)

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