

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.09.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.26572 of 2019

C.Venkatesan

... Petitioner

Vs.

1.The Chairman

Tamil Nadu Electricity Board
800, Annasalai
Chennai - 600 002

2. The Chief Engineer (Personnel)

TANGEDCO
8th Floor, Eastern Wing
NPKRR Maaligai
144, Annasalai
Chennai - 2

3. The Superintending Engineer

Trichy Tamil Nadu Electricity Board
Distribution Division
Perambalur Corporation
Perambalur

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to appoint the petitioner to the post of Mazdoor on compassionate basis in the light of his representation dated 06.12.2018 and pass such further or other orders as his Hon'ble Court may deem fit and proper in the above circumstances.

For Petitioner : Mr.S.Sarvagan prabhu

For Respondents : Mr.K.S.Suresh
Government Advocate

O R D E R

Mr.K.S.Suresh, learned Government Advocate accepts notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner's father was working in the Electricity Department. Unfortunately he died on 07.03.2009 leaving the petitioner and his mother as legal heirs. The petitioner's mother applied for compassionate appointment in the Electricity Department on 24.11.2011 and on 27.01.2012, but her applications were rejected on the ground that she has not completed eight standard. The petitioner was minor at that relevant point of time. After attaining majority, the petitioner sent a representation dated 16.12.2018 seeking compassionate appointment in the post of Mazdoor. Since, the same was not considered, the petitioner has filed the present petition.

3.The learned counsel for the petitioner would submit that the respondents have not considered the petitioner's indigenous circumstances and have mechanically rejected the application is unsustainable.

4.The learned Government Advocate appearing for the respondents would submit that the application of the petitioner's mother for compassionate appointment was rejected on that ground that she has not passed eight standard. At that time the petitioner was minor. After lapse of nine years, the petitioner's application for compassionate appointment cannot be considered.

5.Heard the submissions made on either side.

6.No doubt, the appointing authority is competent to fix eligibility criteria for selection of compassionate appointment in a particular post. Normally, the Court while exercising discretionary jurisdiction cannot relax the educational qualification fixed by the appointing authority, unless the order of the appointing authority is arbitrary and not exercise the power available in the relevant rules or guidelines.

7.The very same issue was decided by the Hon'ble Supreme Court in Civil Appeal No.6468 of 2012 in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari and another, the relevant portions of which are extracted hereunder:

"7. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of

even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216; J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812).

8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

"The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."

9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object (s) sought to be achieved by the statute. Such

eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 436).

10. In State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.

Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1) SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

8.For the reasons above stated and applying the ratio laid down by the Hon'ble Apex Court, this Court is not inclined to interfere with the order passed by the respondent. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

rm

To

- 1.The Chairman
Tamil Nadu Electricity Board
800, Annasalai
Chennai - 600 002
2. The Chief Engineer (Personnel)
TANGEDCO
8th Floor, Eastern Wing
NPKRR Maaligai
144, Annasalai
Chennai - 2
3. The Superintending Engineer
Trichy Tamil Nadu Electricity Board
Distribution Division
Perambalur Corporation
Perambalur

+lcc to Mr.S.Sarvagan prabhu, Advocate sr.77090
+lcc to Mr.PR.Dilipkumar, Advocate sr.77181

W.P.No.26572 of 2019

mr(co)
nr 18/10/2019