

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1465 of 2017

P. Velumani ... Appellant/Petitioner

-vs-

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Gopi Chettipalayam.
2. The Chief Engineer,
Tamil Nadu Electricity Board,
144, Anna salai,
Chennai - 600 002. Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P. No. 7949 of 2015 dated 18.01.2017 on the file of this Court. W.P.No.7949 of 2015 filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the proceedings of the first Respondent in Na. Ka. No. 59/NI B1 1/E NIV/KO Va. Vi/12 dated 29.08.2012 and direct the Respondents to appoint the son of the Appellant, viz., P. Velumani in a suitable post according to educational qualification based on compassionate grounds in Tamil Nadu Electricity Board.

For Appellant : Mr. C. Deivasigamani

For Respondents : Mr. P.R. Dhilipkumar

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The Appellant had filed W.P. No. 7949 of 2015 before this Court challenging the letter Ka. No. 59/NiPi1/ENiVu/12 dated 29.08.2012 rejecting her claim for compassionate appointment on

the death of her husband K.C. Palanisamy on 19.11.1990 on the ground that the office of the First Respondent had not received any application from her in that regard immediately after the demise of the deceased employee.

2. The Learned Judge, who heard the Writ Petition, on a perusal of the materials placed on record, noticed that the Appellant had made an application for compassionate appointment immediately after the death of her husband as seen from the letter dated 10.04.1991 sent by the Superintending Engineer, Tamil Nadu Electricity Board, Erode, requiring her to produce documents for such claim, but on perusal of the Legal Heirship certificate dated 14.12.1990 issued by the Tahsildar, Gopichettipalayam, found that the deceased employee, viz., K.C. Palanisamy was already married to one Angammal, who later died on 07.08.2005 and as such, the Appellant cannot be recognized as the legally wedded wife of that deceased employee. Taking into consideration the legal principles governing the grant of compassionate appointment in various decisions of the Hon'ble Supreme Court of India, the Learned Judge dismissed the Writ Petition, aggrieved by which the Appellant has preferred this intra-Court appeal.

3. We have heard Mr. C. Deivasigamani, Learned Counsel appearing for the Appellant and Mr. P.R. Dhilipkumar, Learned Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties. The Learned Counsel for the Appellant strenuously urged that the Appellant cannot be denied compassionate appointment on the ground that she is the second wife of the deceased employee and in support of that claim, he relied on the definition of 'domestic relationship' under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, apart from the Legal Heirship Certificate of the said K.C. Palanisamy dated 14.12.1990 issued by the Tahsildar, Gopichettipalayam, which specifically mentions the Appellant to be his legal heir.

4. There cannot be any quarrel regarding the proposition that law does not recognize a legal relationship of husband and wife between a man and a woman when either of them are already married to another. The circumstance that the name of the Appellant had been included in the Legal Heirship Certificate of the deceased K.C. Palanisamy dated 14.12.1990 issued by the Tahsildar, Gopichettipalayam, cannot, by itself, confer any status on the Appellant as the wife of the deceased K.C. Palanisamy in view of the dictum laid down by this Court in Thirumurthy E. -vs- Collector of Chennai [1998 WLR 347] that the Legal Heirship Certificate issued by the Tahsildar is neither conclusive or would it confer any right on the person in whose favour the same had been issued nor it would exclude the other

legal heirs if any of the deceased. Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, defines 'domestic relationship' as follows:-

"Section 2(f):- "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

The recognition of a live-in-relationship between two persons is only for the limited purpose of that enactment and cannot create any right in favour of the Appellant for treating her as wife of the deceased K.C. Palanisamy for grant of compassionate appointment. It is evident from the death certificate of the Angammal, who is shown to be the first wife of the deceased K.C. Palanisamy in the legal heir certificate dated 14.12.1990 that she was alive till 07.08.2005 and as such, there could not have been a valid marriage between the said K.C. Palanisamy and the Appellant during the life time of the said Angammal. In this incontrovertible fact situation, the Writ Court was absolutely justified in holding that the Appellant could not be recognized as the legally wedded wife of the deceased K.C. Palanisamy for appointing her on compassionate grounds.

5. Be that as it may, the legal position regarding appointment to the public services on compassionate grounds has been lucidly summarized by the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such

cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Recapitulating that compassionate appointment is an exception to the general rule, the Hon'ble Supreme Court of India in State of Jammu and Kashmir -vs- Sajad Ahmed Mir [(2006) 5 SCC 766], has held as follows:-

"11. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete

with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

Again, the Hon'ble Supreme Court of India in Local Administration Department -vs- M. Selvanayagam [(2011) 13 SCC 42], has held as follows:-

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

In a recent decision in Government of India -vs- P. Venkatesh (Judgment dated 01.03.2019 in Civil Appeal No. 2425 of 2019), the Hon'ble Supreme Court of India has reiterated the legal position as follows:-

"Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need."

6. On a conspectus of the legal principles in the aforesaid decisions, it is incumbent upon the Court to examine whether the claim of the Appellant for compassionate appointment survives for consideration at the time when the Writ Petition seeking such claim is taken up for final disposal. The deceased employee in this case, viz., K.C. Palanisamy died on 19.11.1990 and though the Appellant claims to have made the application for compassionate appointment immediately thereafter and was required to submit supporting documents on 10.04.1991, which was complied by her on 03.10.1991, there is nothing to show that the Appellant diligently pursued the matter subsequently. The Appellant claims to have received an order Ka. No. 59/NiPi1/ENiVu/12 dated 29.08.2012 rejecting her claim for compassionate appointment on the ground that the office of the First Respondent had not received the application, but she leisurely challenged the same after more than two years in W.P. No. 7949 of 2015 before this Court. The affidavit filed in support of that Writ Petition is conspicuously bereft of any

explanation for not expeditiously pursuing the claim for compassionate appointment throughout. It is inferred from the aforesaid indisputable facts borne out from the record that the Appellant had been able to tide over the crisis with the passage of time for almost three decades and if any indulgence is now shown at this distance of time brushing aside those germane aspects, it would unwittingly tantamount to unduly favouring the Appellant to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. In that view of the matter, we are not inclined to interfere with the order dated 20.07.2017 passed in W.P. No. 7949 of 2015, refusing to entertain her claim for compassionate appointment.

7. In the upshot, the Writ Appeal is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gobi Electricity Distribution Circle,
Gopi Chettipalayam.
2. The Chief Engineer,
Tamil Nadu Electricity Board,
144, Anna salai,
Chennai - 600 002.

+1 cc to Mr. C.Deivasigamani, Advocate Sr.No.41861
+1 cc to Mr. P.R.Dhilipkumar, Advocate Sr.No.40910

W.A. No. 1465 of 2017

kj(co)
mp(21/05/2019)