



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.4791 of 2015

and

M.P. (MD) No.1 of 2015

WEB COPY

M.Ramalakshmi

... Petitioner

-Vs-

The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order of the respondent in Ka.No.019131/108//Ne.Pi.2/U.2/Ko.Va.Velai/2014 dated 30.07.2014 and quash the same and further direct the respondent to provide the petitioner an employment on compassionate ground.

For Petitioner : Mr.H.Arumugam
For Respondent : Mr.S.Dhayalan,
Standing Counsel.

ORDER

The order of rejection dated 30.07.2014, rejecting the claim of the writ petitioner for compassionate appointment, is under challenge in the present Writ Petition.

2.The father of the writ petitioner, namely, D.Murugan was employed as Helper in the Tamil Nadu Electricity Board and died on 25.12.2003, while he was in service. At the time of death of the deceased employee, the writ petitioner was aged about 7 years and therefore, she was not in a position to submit her application, seeking appointment on compassionate ground. The mother of the writ petitioner submitted an application on 21.01.2004 and the said application was not considered and no appointment was provided even to the mother of the writ petitioner. However, on attaining the age of majority, the writ petitioner submitted an application in June, 2014, seeking appointment on compassionate grounds. The said application was rejected in the impugned proceedings dated 30.07.2014, stating that the writ petitioner has not submitted the application within a period of three years from the date of death of the deceased employee.



3.The learned counsel appearing on behalf of the writ petitioner states that the Hon'ble Supreme Court of India in the case of **Supriya Suresh Patil Vs. State of Maharashtra** reported in **2018 SCC Online SC 687** held that penurious circumstances also to be considered.

4.However, in the paragraph No.4 of the said judgment, it is stated that the order is passed in exercise of our jurisdiction under Article 142 of Constitution of India for doing complete justice and hence, it may not be treated as a precedent. When it is stated in clear terms by the Hon'ble Supreme Court of India that the judgment cannot be followed as a precedent, this Court is not inclined to consider the said judgment, now submitted by the learned counsel appearing on behalf of the writ petitioner.

5.As far as the case of the writ petitioner is concerned, the period of three years is to be reckoned from the date of attaining the majority and not from the date on which the deceased employee passed away. The said dispute was resolved by the Hon'ble Division Bench of this Court in many number of judgments and this Court also followed the principles that the period of three years is to be reckoned from the date of death of the deceased employee and the Electricity Board also passed a board proceedings, stating that three years period is to be reckoned from the date of death of the deceased employee and not from the date on which the legal heir attains the majority.

6.This being the settled principles and board also issued proceedings following the terms and conditions in the scheme, this Court cannot go beyond and provide contra interpretation so as to encourage the legal heirs for getting appointment on compassionate grounds. The plain interpretation of the board proceedings also clear that the period of three years is to be reckoned from the date of death of the deceased employee. This being the factum, the ground raised in this regard, deserves no merit consideration.

7.It is relevant to state the judgment of the Hon'ble Supreme Court of India, in the case of **State of Himachal Pradesh and another vs. Shashi Kumar** reported in **(2019) 3 SCC 653**, which reads as follows:-

"18.While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependents of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The



basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State."

8. In the case of the **Government of India Vs. P.Venkatesh (Civil Appeal No.2425 of 2019)**, the Hon'ble Supreme Court of India has held as follows:-

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: 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. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is



increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee."

9. In the present case, the father of the writ petitioner died on 25.12.2003, the application seeking appointment was submitted in June, 2014 and now, more than 16 years lapsed from the date of death of the deceased employee. This being the factum, the scheme of compassionate appointment cannot be extended to the writ petitioner.

10. With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To
The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-83106[F] dated 22/08/2019)

myr

W. P. (MD) No. 4791 of 2015
21.08.2019

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