



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

WEB COPY

W.P(MD) No.362 of 2016

T. Stalin

.. Petitioner

Vs.

1. The Chairman

Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.800, Anna Salai,
Chennai - 2.

2. The Chief Engineer,

Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.800, Anna Salai,
Chennai - 2.

3. The Superintending Engineer,

Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
Nagercoil,
Kanyakumari District.

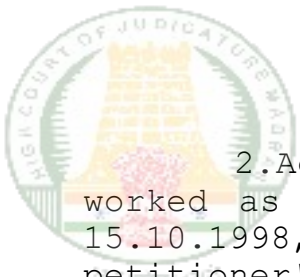
.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order in Letter No.023905/161 / G9/G91/2015-3 dated 06.10.2015 passed by the 2nd Respondent and quash the same as illegal and consequently direct the Respondent to give compassionate appointment to the Petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.V.M.Balamohan Thambi

For Respondents : Mr.E.P.Venkateshwar
for Mr.SMS.Johny Basha**ORDER**

This writ petition has been filed seeking to quash the impugned order in Letter No.023905/161 /G9/G91/2015-3 dated 06.10.2015 passed by the second respondent and consequently direct the respondents to give compassionate appointment to the petitioner.

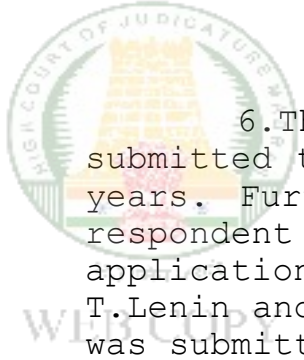


2. According to the petitioner, his father Thavamony, who worked as a Helper in the Tamil Nadu Electricity Board, died on 15.10.1998, while in service. At the time of death of the petitioner's father, the petitioner, his brother and sister were minors and therefore, they were not able to apply for appointment on compassionate ground. Therefore, after attaining majority, the petitioner made an application on 10.10.2011 to the respondents seeking appointment on compassionate ground. The said request of the petitioner was rejected on the ground that the application was not filed within a period of three years. Challenging the same, this writ petition has been filed.

3. The third respondent filed counter affidavit stating that the application dated 10.10.2011 was not given to the respondent office. The letter No.027159/Adm.1/B2/2002 dated 17.10.2002 issued by the third respondent to the petitioner's mother was tampered by correcting the petitioner's name in the place of the petitioner's brother name. Therefore, the petitioner has not approached the Court with clean hands. Further, it is stated in the counter affidavit that as per TANGEDCO Rules, the application seeking appointment on compassionate ground should be submitted within a period of three years from the date of death of the employee. The petitioner's mother made an application and the same was rejected vide Lr.No.017738/Adm.2/A.4/2000 dated 04.06.2000, on the ground that she does not have required educational qualification. Again the petitioner's mother made a representation during 2002, seeking appointment to her elder son T.Lenin and she was informed that her son has not attained majority and hence as per Rules, he cannot be considered for employment. Thereafter also, the petitioner's mother made a representation during 2004 for providing employment to her elder son, after attaining 18 years. But the same has not been considered, since the application was received after three years period from the date of death of the employee. The aforesaid rejection order was also communicated to the petitioner's mother. Thereafter, the petitioner made a representation to the Chief Minister's Cell on 22.08.2011. Without disclosing the aforesaid facts, the petitioner has filed the present writ petition before this Court. Since the petitioner has submitted the application beyond the three years limitation period, the same has been rightly rejected by the respondents. Therefore, the impugned order does not require any interference by this Court.

4. Heard the learned counsel appearing on either side.

5. In the affidavit filed by the writ petitioner it has been stated that the petitioner has submitted the application on 10.10.2011 after attaining majority and the petitioner's mother applied for appointment on compassionate ground in the year 1999 and the said application was rejected. The subsequent facts as stated in the counter affidavit have not been disclosed before this Court.



6. The petitioner's father died on 15.10.1998. The petitioner submitted the application on 10.10.2011, beyond the period of three years. Further, on a perusal of the counter affidavit, the third respondent has stated that the petitioner's mother made an application to the respondents, seeking appointment to her elder son T. Lenin and the same was rejected on the ground that the application was submitted after three years period from the date of death of the petitioner's father. The said order has not been challenged and the same has become final. Now, the petitioner, again made an application seeking employment on compassionate ground and the said application has been rejected. Challenging the rejection order, the present writ petition is filed before this Court.

7. In **The Inspector of Prisons, Tiruchirapalli District, Tiruchirapalli and Anr. Vs. P. Marimuthu**, decided on 22.04.2016, this Court has held as follows:

"36. In *National Institute of Technology v. Niraj Kumar Singh* reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of



the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. and Ors., (2005) 12 SCC 1].

37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is

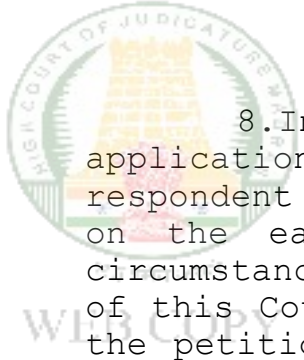


one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468."



8. In the case on hand, the petitioner has filed the application beyond the period of three years and the second respondent has already rejected the claim of the petitioner's mother on the earlier occasion. Therefore, considering the facts and circumstances of the case and in the light of the aforesaid decision of this Court, this Court is of the view that the relief sought by the petitioner cannot be granted. Hence, the present writ petition is liable to be dismissed.

9. Under the facts and circumstances of the case, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.800, Anna Salai,
Chennai - 2.
2. The Chief Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.800, Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
Nagercoil,
Kanyakumari District.

W.P(MD) No.362 of 2016
24.07.2019

MJ
JM/16.08.2019/6P/4C