



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P(MD).No. 20610 of 2017

P. Santhi : Petitioner

Vs.

1. The Chief Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
(TANGEDCO),
800, Anna Salai, Chennai - 2.

2. The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
(TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

: Respondents

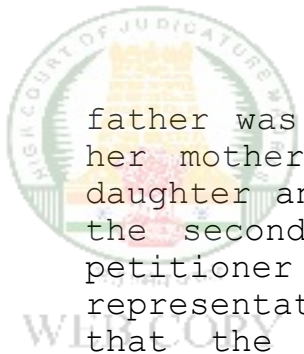
PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in Ka.No.022683/430/NiBi3/U.3/Ko.VA.VE/2015, dated 06.10.2015 and set aside the same as illegal and unconstitutional and consequently, direct the respondents to provide an appointment to the petitioner on compassionate ground in the respondent department, within a time stipulated by this Court.

For Petitioner : Mr.S.Selvakumar
For Respondents : Mr.G. Kasinatha Durai,
Standing Counsel for Respondents

ORDER

This Writ Petition has been filed to set aside the impugned order in Ka.No.022683/430/NiBi3/U.3/Ko.VA.VE/2015, dated 06.10.2015, passed by the second respondent and sought direction to the respondents to appoint the petitioner on compassionate ground, within the stipulated time fixed by this Court.

2. The grievance of the petitioner is that her father Pandaram joined as Helper in the respondents department. While, her



father was serving in Alwarkurichi circle not returned to home and her mother was already died on 23.07.2000. Since she is a only daughter and legal heir of his father, she made a representation to the second respondent, on 02.12.2014 seeking appointment to the petitioner on the compassionate ground. The above said representation was rejected by the second respondent on the ground that the petitioner has crossed the age limit of 35 years. Challenging the same, the petitioner has filed the instant writ petition before this Court.

3. The learned standing counsel appearing for the respondents would submit that the petitioner has crossed the age limit of 35-years, therefore, the second respondent has rightly rejected the petitioner's representation. He would further submit that the petitioner's father died on 06.01.2003 and the petitioner has made a representation only on 02.12.2014 and there is nearly a lapse of 11 years in approaching the respondents seeking appointment on compassionate ground.

4. On considering the aforesaid fact, admittedly the petitioner's representation was rejected by the second respondent stating that the petitioner was over aged at the time of submitting the representation. Further, it is seen from the records that the petitioner has submitted her representation, after a lapse of 11 years. The Hon'ble Supreme Court in number of cases, has held that the scheme of compassionate appointment cannot be granted after a lapse of several years. In this regard, it is relevant to state the judgment of the Hon'ble Supreme Court, in the case of **State of Himachal Pradesh and another vs. Shashi Kumar** reported in (2019) 3 SCC 653, The relevant paragraph :-

"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.

.....

.....

....In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place." "

5. 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.

In Umesh Kumar Nagpal Vs. State of Haryana, this Court held thus:

"2...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 nonmanual 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."

Bearing in mind the above principles, this Court held:

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable".

6. In the light of the Judgment of the Hon'ble Supreme Court, the instant writ petition is not maintainable and the same is liable to be dismissed.



7. With the above observations, this Writ Petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The Chief Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
(TANGEDCO),
800, Anna Salai, Chennai - 2.
2. The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
(TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

+1 CC to Mr.G.KASINATHA DURAI, Advocate SR-77536.

W.P(MD) .No. 20610 of 2017
24.07.2019

CS(16.09.2019) 5P 4C