

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2020

Pronounced on : 18.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.7960 of 2019

R.Bhavani

... Petitioner

-Vs-

1.The Chairman,
TANGEDCO,
144, Anna Salai,
Chennai - 2.

2.The Superintending Officer,
Electricity Distribution Circle,
TANGEDCO, Kalakurichi,
Villupuram District 606 202.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in proceedings Ka.No.3516/168/Adm.2/NU.5/Koo.Vaa.Va/2017 dated 10.08.2017 and Ka.No.2945/85/Adm.2/NU.5/Koo.Vaa.Va/2018 dated 03.07.2018, on the file of the 2nd respondent and quash the same and consequently, direct the respondents to provide job assistance on compassionate grounds.

For Petitioner : Mr.V.Vijay Shankar for
Ms.M.V.Rani Selvam

For Respondents : Mr.M.Fakkir Mohideen

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O R D E R

This writ petition has been filed to call for the records in proceedings Ka.No.3516/168/ Adm.2/NU.5/Koo.Vaa.Va/2017 dated 10.08.2017 and Ka.No.2945/85/Adm.2/NU.5/Koo.Vaa.Va/2018 dated 03.07.2018, on the file of the 2nd respondent and quash the same and consequently, direct the respondents to provide job assistance to the petitioner on compassionate grounds.

2. The case of the petitioner is that his father late
<https://hcservices.ecourts.gov.in/hcservices/> Shri.Kamasamy was originally employed as Contract Labour in

the respondent TANGEDCO and his service was regularised subsequently and was working as Wireman under the control of the respondent Board. While in service, the petitioner's father died on 31.05.2015, at the age of 45 years and at that time, the petitioner was minor and was studying in School. His father left behind the petitioner, his mother, his brother and grand mother.

3. On behalf of the petitioner, an application was made on 02.08.2017, seeking compassionate appointment. But, the application was rejected since the petitioner was minor at that point of time and not entitled to seek employment in Public Service. According to the petitioner, on attaining majority, he renewed his request by representation dated 26.06.2018. Unfortunately, the said request has been rejected by communication dated 03.07.2018, stating that the second application was made after the expiration of three years period from the date of death of the petitioner's father on 31.05.2015. According to the rejection order that as per the Board proceedings, any application made after the period of three years after the death of the employee, such application for compassionate appointment cannot be entertained. Challenging the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the rejection by the respondents is on untenable ground for the simple reason that on behalf of the petitioner, an application was submitted within the three years stipulated period on 02.08.2017, which was considered and rejected on the ground that the petitioner did not complete 18 years of age. When the second application was preferred after attaining majority on 26.06.2018, the same was rejected by the impugned order stating that the three years period has expired. Such action on the part of the authority is per se arbitrary, illegal and unjust and also appears to be preposterous for the reason that when the petitioner was not eligible to be considered for appointment within three years period of limitation, the period of limitation ought to commence from the date when the petitioner attains majority as only from that date, he becomes eligible for consideration in public employment.

5. The learned counsel would submit that unfortunately the authority has rejected the representation on untenable grounds. The learned counsel would submit that in this case, the petitioner was eligible after he became major on 09.06.2018, by his representation dated 26.06.2018, applied for the appointment. Therefore, the petitioner cannot be faulted with any laxity in claiming compassionate appointment. The learned counsel would also rely on two decisions of the learned Division Bench enclosed along with the typed set of papers in W.A.MD No.1400 of 2011 dated 16.12.2015 and W.A(MD) No.216 of 2017 dated 06.07.2017. In similar circumstances, the learned Division Bench of this Court has directed the same

Electricity Board to consider the case of the petitioner therein in W.A.MD No.1400 of 2011 dated 16.12.2015 in paragraph Nos. 3 and 4, which are extracted hereunder:

"3. It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula an each and every case has to be approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority, the respondents have to consider the appellant's application for appointment on compassionate ground.

4. In view of the above, the writ appeal is allowed and the order of the learned Single Judge and also the order of rejection for appointment on compassionate ground are set aside and the matter is remanded to the first respondent for fresh disposal, in the light of the judgment passed by this Court. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs."

Another decision of the learned Division Bench holding similar view was rendered in W.A(MD) No.216 of 2017 dated 06.07.2017. The relevant observation and the consideration in paragraph Nos.6 to 9 are extracted hereunder:

"6. We have carefully gone through the materials on record. We hold that when W.P (MD) No.11050 of 2013 was allowed, after giving a finding that the writ petitioner had substantiated the submission of her application on 21 November, 1994, it is not open to the first respondent herein to come to a contrary finding that the writ petitioner failed to submit application seeking employment on compassionate grounds within three years from the date of demise of her husband. The respondents herein did not file any writ appeal questioning the finding rendered in the order dated 11 July, 2013 in W.P.(MD) No.11050 of 2013.

7. The writ petitioner has enclosed in the typed set of papers the certificate issued by the

Tahsildar certifying that the writ petitioner continues to be in indigent circumstances. The writ petitioner has not remarried and continues to remain a widow. Merely because her husband passed away in the year 1993 and the writ petitioner has managed to survive all these years, it would not mean that her financial and economical condition has improved.

8. In view of the certificate issued by the Tahsildar, we have to hold that she continues to remain in indigent circumstances. Therefore, we have to necessarily set aside the order dated 21 August 2013 passed by the first respondent herein. We are constrained to observe that the order dated 21 August 2013 passed by the first respondent has not really taken note of the order dated 11 July 2013 made in W.P.(MD) No.11050 of 2013. The learned Judge was not right in dismissing in W.P. (MD) No.15054 of 2013, for the reasons set out above. We set aside the order dated 12 September 2013 made in W.P.(MD) No.15054 of 2013 and also quash the order bearing Na.Ka.No.P3/2890/2013 dated 21 August 2013 passed by the first respondent and allow this writ appeal.

9. The matter is remitted to the file of the first respondent for passing fresh orders in accordance with law. While so considering, it will not open to the first respondent to invoke any of the grounds of rejection set out in the order dated 21 August 2013 impugned in these proceedings. The first respondent shall take note of the materials available on record and if the petitioner is found eligible, grant her appointment to any one of the post based on her educational qualification."

6. After notice Mr.M.Fakkir Mohideen, learned Standing Counsel entered appearance on behalf of the respondents.

7. The rejection of the petitioner's claim was sought to be strongly defended by the learned Standing Counsel for the respondents. In fact, a number of decisions have been relied on by the learned Standing Counsel for the respondents as to how the petitioner is not entitled to be considered for compassionate appointment after a period of three years. The decisions include learned Division Bench, learned full Bench and also the decisions of the Hon'ble Supreme Court of India.

8. The learned counsel would strongly object to grant of any relief to the petitioner that various decisions of this Court have held clearly that the compassionate appointment cannot be granted to persons who submit their applications

after the expiry of three years period from the date of death of the deceased employee. According to the learned counsel, the learned Division Bench of this Court in a decision reported in 2016 SCC Online Mad 2501 dated 22.04.2016, has held that the compassionate appointment cannot be held up till the family member attains the age of majority.

9. At this, the learned counsel for the petitioner would rely on a latest decision of the learned Division Bench of this Court dated 11.03.2020 in W.A.No.3899 of 2019. In that case, the employee concerned died in 2000 and the application was made only in 2019. That application was also rejected on the same ground by the same TANGEDCO. The learned Judge heard the case and dismissed the writ petition against the petitioner therein. Thereafter, the learned Division Bench has considered the case on merits notwithstanding the period of limitation and found that the petitioner therein was not entitled to. However, it was not rejected on the basis of the decision taken by TANGEDCO. Therefore, he would submit that let the authorities take into consideration the indigent circumstances of the family and not to reject the claim of the petitioner summarily by mechanically applying the limitation of three years.

10. This Court has considered the rival submissions of the learned counsels representing the parties. It was rightly contended by the learned counsel for the petitioner that it is preposterous on the part of the respondents to reject the first application which was made on 02.08.2017 before the expiry of three years period on the ground that the petitioner did not complete 18 years of age and when the second application was made immediately after the petitioner became major on 26.06.2018, the same was rejected on the ground that the application was not made within a period of three years. Such incongruous position adopted by the respondents is antithesis to the spirit of the scheme which provides for consideration of compassionate appointment to the wards of the deceased employee. In circumstances like this, when applications are submitted within the period of limitation and the job seekers appeared to be minor at that time, it is incumbent upon the authority to consider the applications as soon as the seekers become major.

11. In this case, the petitioner has been very diligent in prosecuting his claim before the authority. In this case, the first application was made on 02.08.2017, within three year period of the death of the petitioner's father on 31.05.2015 and when the same could not be entertained for the reason that the petitioner did not complete 18 years, the second application was made immediately after the petitioner became major on 09.06.2018, by his representation dated 26.06.2018. By these facts, it is conclusively established that the petitioner cannot be treated to have applied belatedly, claiming compassionate appointment. There are

instances when such claims are made after delay of very many years, as a matter of right to compassionate appointment, regardless of the stale nature of the claim. But in this case, the claim arises close proximity to the death of the petitioner's father.

12. When there is a prescription of three year period of limitation, the effective implementation of three years period must be considered to mean to commence from the date when the ward of the deceased employee completes 18 years of age. However, this cannot be taken to mean that in extreme cases, where the deceased employee's son or daughter was aged about one or two years, the compassionate appointment may not be considered after a period of 16 or 17 years. But, as far as the case on hand, the facts disclose the claim of the petitioner is well within the reasonable and permissible time. Moreover, when the application was made within the stipulated period and it could not be considered by the respondents due to the fact that the petitioner being minor at that time, it is legally imperative on the part of the respondents to consider the second application submitted by the petitioner on 26.06.2018, on merits as the petitioner admittedly became major and eligible. In the circumstances, the rejection of the second application vide impugned order dated 03.07.2018, is irrational, unreasonable, arbitrary and liable to be interfered with.

13. In fact, recently, this Court in consideration of a similar challenge in W.P.No.13601 of 2020 dated 04.11.2020, directed the authority therein to reconsider the claim of the petitioner therein afresh. The relevant observations of the decision rendered by this Court from Paragraph Nos.6 to 14, are extracted hereunder:

"6. Mr.P.Ganesan, learned counsel appearing for the petitioner would submit that the scheme of compassionate appointment which is enclosed in the typed set of documents has provided that any application seeking compassionate ground appointment has to be submitted within three years from the date of death of the government servant. However, the same scheme also provided that minimum age is 18 years for submission of application. Learned counsel for the petitioner would submit that both the provisions in the scheme as provided under G.O.Ms.No.18 dated 23.01.2020 suffer from contradiction in terms.

7. When the petitioner was not eligible to be considered for appointment within three years from the date of death of his father, the question of maintaining an application within three years did not rise at all. When the petitioner became major, he applied and unfortunately, the same came to be rejected by the impugned proceedings on the ground that the petitioner was originally not

eligible for appointment in 2015. Therefore, the order suffers from non-application of mind.

8. This Court is entirely in agreement with the submission made by the learned counsel for the petitioner.

9. On behalf of the respondents, Mr.P.Raja, learned Government Advocate appeared and reiterated the reason stated in the impugned proceedings.

10. This Court finds that the reasons stated in the impugned proceedings cannot be countenanced both in law and on facts. When the application was rightly made within 3 years, as per the stipulation in the scheme, the authority ought to have considered such application as and when the petitioner, on whose behalf the application was submitted, attained majority. Unfortunately, the 2nd respondent on a specious ground that the petitioner was not eligible for appointment in 2015 as he being the minor, rejected the petitioner's claim in 2020, when he attained the age of majority.

11. The reason therefore, disclose complete non-application of mind on the part of the 2nd respondent. When the petitioner has approached the authority after he attained the age of majority, it is incumbent on the part of the authority to consider the indigent circumstance of the family and other parameters and criteria that are provided in the Scheme for compassionate appointment and orders to be passed on such consideration.

12. On the other hand, it is certainly not open to the authority to summarily reject the application on an erroneous understanding of the Scheme or the Act. The order, in the opinion of this Court, suffers from grave illegality and cannot be upheld at all.

13. In the above circumstances, the order passed by the 2nd respondent in Na.K.No.479/a1/2020 dated 14.08.2020 is hereby set aside and the respondents are directed to consider the claim of the petitioner for compassionate appointment on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

14. It is clarified that the respondents shall take into consideration the indigent circumstances of the family and also the criteria laid down in the scheme for compassionate appointment, while taking a decision in the matter. On such consideration, if the petitioner is eligible for appointment on compassionate ground, the competent authority is directed to

issue suitable order."

14. This Court finds that the above decision of this Court would squarely be applicable to the facts and circumstances of this as well. In fact, this Court finds that the learned Division Bench order relied on by the learned counsel reported in 2016 SCC Online Mad 2501 has held that it is possible that the candidates within the age group of 15 to 18 can apply for compassionate appointment. Therefore, this Court is of the considered view that the summary rejection of the petitioner's claim on the cited grounds, cannot be countenanced either in law or on facts.

15. In these circumstances, the rejection order in proceedings Ka.No.3516/168/Adm.2/NU.5/Koo.Vaa.Va/2017 dated 10.08.2017 and Ka.No.2945/85/Adm.2/NU.5/Koo.Vaa.Va/2018 dated 03.07.2018, are set aside and the respondents are directed to reconsider the claim of the petitioner on merits and in accordance with law as per the scheme after taking into consideration the indigent and penurious circumstances of the family of the petitioner and pass appropriate orders. The respondents are directed to comply with the direction within a period of six weeks from the date of receipt of a copy of this order.

16. With the above direction, this writ petition is disposed of. No. costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Chairman,
TANGEDCO,
144, Anna Salai,
Chennai - 2.

2.The Superintending Officer,
Electricity Distribution Circle,
TANGEDCO, Kalakurichi,
Villupuram District 606 202.

+2ccs to Ms.M.V.Rani Selvam , Advocate SR.No. 42162
+1cc to Mr.M.Fakkir Mohideen , Advocate SR.No. 42316

W.P.No.7960 of 2019

A.SK(18.01.2021)