

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	14/2/2020
Orders pronounced on	11/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3899 of 2019

P. Poongodi

...Appellant

Vs

1. The Chairman
TANGEDCO
Anna Salai
Chennai 600 002.

2. The Chief Engineer
Salem Region
TANGEDCO
Kamaraj Nagar Colony
Salem 636 014.

...Respondents

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.33106 of 2018, dated 25/3/2019.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in proceedings Letter No.729/NP.II/U2/Ko.VA.V/2017 dated 22.08.2017 and Consequential Letter No. 729/NP.II/U2/Ko.VA.V/2018 dated 04.08.2018 and quash the Same and Consequently direct the Respondents to appoint the petitioner on Compassionate ground and pass such further order or orders as this Hon'ble Court may deem fit and proper and this render justice.

For appellant

...

Mr.Lourdu Paul Maurya

For respondents

...

Mr.N.Karthik Rajan
Standing Counsel
for TNEB

J U D G M E N T

SUBRAMONIUM PRASAD, J

The appellant challenges the dismissal of a writ petition, wherein she had prayed for a writ of certiorarified mandamus, calling for the records of the Chief Engineer, Salem Region, Salem, in Proceedings Letter No.729/NP.II/U2/Ko.VA.V/2018, dated 4/8/2018, rejecting her request for compassionate appointment and consequently, direct the respondents to appoint the appellant/petitioner on compassionate grounds.

2. The petitioner's father was employed in the office of the Chief Engineer, Salem Region, TANGEDCO, Salem. He died in harness on 29/9/2000. The petitioner states that on the date of death of her father, she was a minor. She states that her mother, filed an application for seeking appointment on compassionate ground, but the application submitted by the petitioner's mother was not considered on account of the fact that she was not possessing the requisite qualification for appointment. The petitioner states that on attaining majority, the petitioner made a request for being appointed on compassionate ground. In her representation, the petitioner had placed reliance on a Board Proceeding No.46, dated 13/10/1995. Application of the petitioner seeking appointment on compassionate ground was rejected by an order dated 22/8/2017 on the ground that she did not fulfill the requirements/conditions which are required to be fulfilled in Board Proceeding No.46 dated 13/10/1995. The requirements as placed by the respondent Board are:-

- (i). Application should be made within three years from the date of death of the deceased employee
- (ii). the applicant should have completed 18 years of age on the date of making of the application and
- (iii). At the time of making application for appointment to be given to the legal heirs, the applicant should have passed VIII Standard.

3. It is stated that the application of the mother of the appellant/petitioner had already been rejected and therefore, the request of the appellant/petitioner cannot be considered. The appellant/petitioner, thereafter, moved a representation, on 21/8/2018, stating that when her father passed away on 29/9/2000, she was only four years of age and she has cleared her X Standard examination and thereafter, has become a graduate. She states that she had been advised that she was entitled for appointment on compassionate basis, vide Board

Proceedings in B.P.No.46, dated 13/10/1995 and that she could apply for appointment on compassionate grounds, within three years, after attaining majority. The representation of the petitioner was rejected.

4. The petitioner has filed the present writ petition challenging the rejection of her application and for a mandamus to appoint her on compassionate basis. The learned Single Judge, has dismissed the writ petition on the ground that application for appointment on compassionate basis could not be entertained after a lapse of about seventeen years from the date of the death of the deceased employee. It was also stated that the petitioner's application filed within three years of her attaining majority cannot be considered under the terms and conditions of the scheme.

5. Challenging the dismissal of the writ petition by the impugned order, instant writ appeal has been filed stating that,

a. learned Single Judge has not considered the import of Permanent B.P.Ms.(FB) No.46 (Adm. Branch) dated 13/10/1995 issued by the Tamil Nadu Electricity Board and the subsequent clarifications dated 14/6/1997 and 6/4/2002, which permits applications to be made after attaining majority.

b. The learned Single Judge has not considered the effect of (PER) FB TANGEDCO Proceedings No.17, Administrative Branch, dated 1/11/2011 which lays down the criteria for appointment on compassionate basis.

6. The petitioner also placed reliance on following judgments:- a) Division Bench judgment of this Court in P.PAVENTHAN Vs. TAMIL NADU ELECTRICITY BOARD AND ANOTHER (2012 SCC Online 5390), wherein a Hon'ble Division Bench of this Court directed the respondent therein to consider the claim of the writ petitioner who had filed an application after attaining majority, by interpreting Board Proceeding No.46 and Board Proceeding No.17, dated 13/10/1995 and 1/11/2011, respectively.

b) In the case of A. KAMATCHI Vs. 1. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD, 800 ANNA SALAI, CHENNAI AND TWO OTHERS (2013) SCC On line Madras 2372, whereagain, this Court, after relying on a number of judgments, directed the respondents therein to appoint legal heirs of the deceased employee when the application had been filed within three years after attaining majority.

c) Division Benches of this Court made in SECRETARY VS. C.YATHEESHVARAN AND OTHERS (2015 SCC ON LINE MADRAS 14006), which placed reliance on Kamatchi's case stated supra, and granted relief in a case where the application had been made after attaining majority.

d) A judgment dated 16/12/2015, made in S.VELRAJ Vs. 1. THE SUPERINTENDENT ENGINEER, TAMIL NADU ELECTRICITY BOARD, TIRUNELVELI AND ANOTHER (W.A.No.1400 of 2011), where again, on the date of death of the deceased employee, appellant in the said appeal was twelve years of age and that the appellant had filed an application on attaining majority which was accepted and this Court, which directed the Board to give appointment on compassionate basis.

e) A judgment of a learned Single Judge in M.TAMILARASAN Vs. 1. THE CHAIRMAN & MANAGING DIRECTOR, TAMIL NADU ELECTRICITY BOARD, CHENNAI AND TWO OTHERS (2017) SCC On line Madras 22675, wherein the learned Single Judge, after relying on Board Proceeding Nos.46 and 17, allowed the writ petition, in a case where application was filed very late.

f) Division Bench of Jammu & Kashmir High Court in GHULAM MOHAMMAD BANDAY Vs. STATE OF JAMMU & KASHMIR, THROUGH COMMISSIONER, SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT AND FOUR OTHERS (2015 SCC On line J & K 134), which held that the Rule applicable is the rule when cause of action has accrued, i.e., at the time of death of the Government employee and as per the earlier Rules prior to the issuance of SRO 43 of 1994, even a minor was entitled to compassionate appointment on attaining majority and only fact which had to be ascertained was whether the family of the the deceased employee continued to be in penury and compassionate appointment would mitigate such hardship.

7. On the other hand, the learned counsel for the respondents would contend that a perusal of Board Proceeding No.46 dated 13/10/1995 and Board Proceeding No.17 dated 1/11/2011 does not inure to the benefit of the petitioner who has made her application before three years after attaining majority. He would also placed reliance on 2016 4 Law Weekly 769 (1. THE INSPECTOR GENERAL OF PRISONS, TIRUCHIRAPALLI DISTRICT AND ANOTHER Vs. P. MARIMUTHU) and a judgment of the learned Single Judge made in W.A.(MD).No.307 of 2018 (A.ARIBASKARAN Vs. 1. THE CHIEF ENGINEER/PERSONNAL, TAMIL NADU ELECTRICITY BOARD, CHENNAI AND ANOTHER).

8. Heard Mr.Lourdu Paul Maurya, learned counsel for the appellant and Mr.N.Karthik Rajan, learned Standing Counsel for TNEB.

9. We called for the Board Proceeding No.46 dated 13/10/1995 with subsequent clarifications and Board Proceeding No.17, dated 1/11/2011.

10. Board Proceeding No.46, dated 13/10/1995, reads as follows:-

PROCEEDINGS

In the G.O cited, the Government of Tamil Nadu (Labour and Employment Department) have issued the following modifications to the scheme of compassionate grounds appointment to the dependants of the deceased employee:-

a. The application for appointment on compassionate grounds should be made within three years of the death of Government servant.

b. The maximum age limit, for such appointment be raised to 50 years in the case of widows of the deceased Govt. servants.

2. As per the existing scheme in the Board, the employment assistance is being considered to the dependants of the employee of the Board who died while in service without any time limit for the submission of the application for employment assistance. It is specified that the age of sons/unmarried daughters, widowed or deserted daughters, divorced daughters should not be more than 30 years and in the case of widow 40 years on the date of death of the Board employee.

3. The Board has decided to adopt the orders of the Government. Accordingly, the following modification of the existing scheme of providing employment assistance to the dependants of the deceased employee of the Board is ordered.

(1). The application for appointment on compassionate grounds should be made within three years from the date of death of employee of the Board.

(2). The maximum age limit, for such appointment be raised to 50 years in the case of widows of the deceased employees of the Board.

(3). In the case of already expired staff while in service the dependants should apply for employment assistance within three years from the date of issue of this order.

11. Memo No.14794/921/R6 (2)/96, dated 14/6/1997 read as follows:-

"In respect of employees died while in service

referred to in the letter cited, for seeking employment assistance by the legal heirs, as per B.P.No.46, they have to make an application to the Board within 3 years from the date of employee's death.

2. In respect of legal heirs of employees died while in service before coming into force of B.P.No.46, dated 13/10/1995 for getting employment assistance, they have to again make an application within 3 years from the date of coming into force of B.P.No.46.

3. In case on the date of application made within 3 years from the date of death of employee but before completion of 18 years of age, it will be informed that an application has to be made again after completion of 18 years.

4. In case the applicants make application again on completion of 18 years, it is informed that their applications will be considered as per the Board Proceedings in force on that date."

12. Board Proceeding No.17, dated 1/11/2011 reads as follows:-

PROCEEDINGS

In the Government letter first read above, clarification has been issued in respect of appointment on compassionate grounds. Based on that, in the meeting of the Board of Tamil Nadu Generation and Distribution Corporation Limited, it was decided to implement the Government letter in the Tamil Nadu Generation and Distribution Corporation Limited, the Tamil Nadu Transmission Corporation Limited and in the TNEB Limited.

2. Accordingly, the following clarifications are issued in the matter of appointment on compassionate grounds to the legal heirs of the deceased employees of the Tamil Nadu Generation and Distribution Corporation Limited, the Tamil Nadu Transmission Corporation Limited and in the TNEB Limited, who died while in service.

a. The applications for appointment on compassionate grounds received within three years limitation prior to 23/8/2005, even when not completed 18 years of age, if all other criteria prescribed for appointment on compassionate grounds are satisfied, to be treated as eligible.

b. As 18 years of age has been fixed for appointment on compassionate grounds from 23/8/2005 after 23/8/2005, the legal heirs who has completed 18 years of age alone is to be treated as eligible for appointment on compassionate grounds.

c. As per reference (3) cited, for appointments on compassionate grounds, the age and educational qualifications have to be with reference to the date of application of the applicants made within three years of death of employees of the Tamil Nadu Generation and Distribution Corporation Limited, the Tamil Nadu Transmission Corporation Limited and in the TNEB Limited.

d. The clarification issued in para 2 (c) above will take effect in the Tamil Nadu Generation and Distribution Corporation Limited, the Tamil Nadu Transmission Corporation Limited and in the TNEB Limited, from the date of Government letter.

3. It is hereby ordered that the above Government letter will take effect in the Tamil Nadu Generation and Distribution Corporation Limited, the Tamil Nadu Transmission Corporation Limited and in the TNEB Limited, from 4/5/2010.

13. The father of the appellant passed away on 29/9/2000. On that date, Board Proceeding No.46, dated 13/10/1995 was in force. Under the said Board Proceeding, application for appointment on compassionate ground could be made only within three years from the date of death of the employee of the Board. The further clarifications on 14/6/1997, also provided that where the dependent of a deceased employee who had not yet attained the age of majority but had sought for appointment on compassionate basis, the dependent has to make one more application. A reading of the clarifications would indicate that what was permitted was that a dependent of a deceased employee who was about 15 years of age could make an application for appointment on compassionate grounds and on attaining the majority i.e., 18 years of age, his case would be again considered provided he makes another application. In the present case, the appellant did not make any application within three years from the date of death of her father and has made an application only after she attained majority and therefore, she does not come within the four corners of Board Proceeding No.46 and its subsequent modifications.

14. Board Proceeding was applicable at the time when she made an application which is B.P.No.17 quoted supra, also does not permit filing a fresh application on attaining majority.

15. Law relating to compassionate appointments is well settled. The Hon'ble Supreme Court in PUNJAB STATE POWER CORPORATION LTD Vs. NIRVAL SINGH (2019) 6 SCC - 774 observed as under:-

5. The fundamental principle which has to be kept in mind is that there is no inherent right to obtain a compassionate appointment and such compassionate appointment has to be in accordance with the existing policy as the objective is to ameliorate the condition of the family at the relevant stage of time and it is the deviation from the rule of merit.

6. The learned counsel for the appellants has also drawn our attention to the judgment of this Court in SBI v. Raj Kumar [SBI v. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] where paras 8 and 13 are as under: (SCC pp. 664-65)

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand, it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the

new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

16. The Hon'ble Supreme Court in State of Uttar Pradesh Vs. PANKAJ KUMAR VISHNOI (2013) 11 SCC - 178 has observed as under:-

10. Before we proceed to appreciate the entitlement of the respondent for a particular post on compassionate basis, we think it necessary to refer to certain pronouncements in the field pertaining to compassionate appointment itself.

11. In Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] while dealing with the concept of compassionate appointment the Court has observed that: (SCC p. 140, para 2)

"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. ... 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 then 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."

12. In *SAIL v. Madhusudan Das* [(2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] this Court reiterating the principle has stated thus: (SCC p. 566, para 15)

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread [winner] of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

13. In *SBI v. Anju Jain* [(2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724] it has been clearly stated that: (SCC p. 481, para 31)

"31. ... Appointment on compassionate ground is never considered [to be] a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates be considered alike. ... the State or its instrumentality making any appointment to public office, cannot ignore such mandate [of Article 14 of the Constitution]. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread [winner]. It is thus an exception to the general rule of equality and not

another independent and parallel source of employment."

(emphasis in original)

14. In Union of India v. Shashank Goswami [(2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] it has been observed that: (SCC p. 307, para 9)

"9. ... the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate grounds cannot be claimed as a matter of right."

15. In SBI v. Raj Kumar [(2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] it has been ruled that: (SCC p. 664, para 8)

"8. ... The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

17. In HARYANA STATE ELECTRICITY BOARD AND ANOTHER VS. HAKIM SINGH (1997) 8 SCC - 85, while dealing with an application made by a dependent who was at the time of the death of the employee on attaining majority, the Hon'ble Supreme Court, observed as under:-

"14. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of

the Board dated 1-10-1986. The respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

15. We, therefore, allow this appeal and set aside the impugned judgment of the High Court."

18. In SANJAY KUMAR Vs. STATE OF BIHAR (2000) 7 SCC - 192, the Hon'ble Supreme Court while dealing with an application made by a dependent who was a minor at the time of the death of the employee when an application was filed on attaining majority observed as under:-

3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar [(1998) 5 SCC 192 : 1998 SCC (L&S) 1302 : (1998) 2 Pat LJR 181] . It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

19. A reading of the above mentioned judgments would show that the claims for appointment on compassionate basis must be made without any delay. The purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to

help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly.

20. A perusal of the scheme framed by the Electricity Board cannot be extended to permit an applicant who was only two or three years of age when the employee died to make an application after fifteen years on attaining the age of majority. This was never an intention behind framing a scheme to provide appointment on compassionate basis.

21. The above said judgments of this Court, and the judgment passed by the Jammu & Kashmir High Court on which reliance has been placed by the respondent are all per incuriam and are contrary to the law laid down by the Hon'ble Supreme Court in the decisions quoted above.

22. Board Proceeding No.46 and Board Proceeding No.17, does not permit the filing of an application after three years on attaining majority. The judgments relied on by the learned counsel for the appellant are contrary to the various clauses in the scheme and are also hit by the Doctrine of sub-silentio. Since the judgments of the learned counsel for the appellant hit by per incuriam and sub silentio and also contrary to the law laid down by the Hon'ble Supreme Court, we do not find it necessary or appropriate to refer this issue to the larger bench of this Court and therefore, this Court is not placing any reliance on the said judgment.

23. No doubt, the learned Single Judge has not discussed about applicability of Board Proceeding Nos.46 and 17, which are the schemes framed by the respondent Department for considering appointment on compassionate basis. Instead of remanding the matter back to the learned Single Judge, we have found it appropriate to discuss the scheme and pass a judgment more particularly the fate of the appeal is the same as that of the writ petition. The Writ Appeal is dismissed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs/pkn.

To

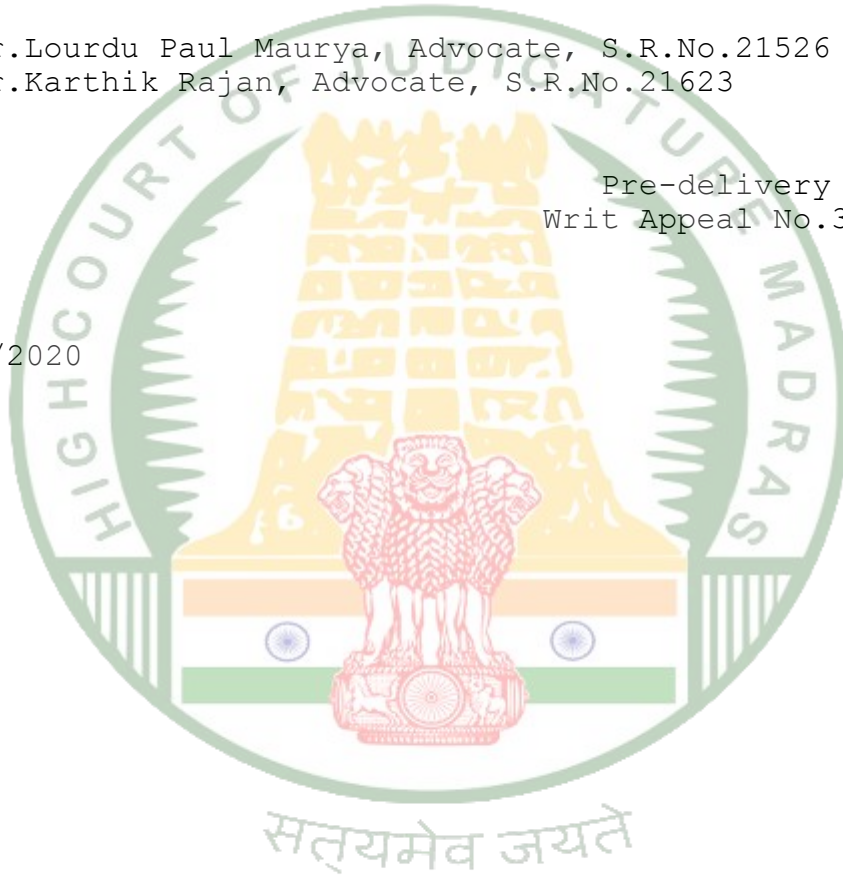
1. The Chairman
TANGEDCO
Anna Salai
Chennai 600 002.
2. The Chief Engineer
Salem Region
TANGEDCO
Kamaraj Nagar Colony
Salem 636 014.

+1cc to Mr.Lourdu Paul Maurya, Advocate, S.R.No.21526

+1cc to Mr.Karthik Rajan, Advocate, S.R.No.21623

Pre-delivery judgment in
Writ Appeal No.3899 of 2019

PM(CO)
KKV/12/08/2020



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