



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P. (MD) No. 11808 of 2020

(Through Video Conferencing)

S. Subesh

... Petitioner

Vs.

1. The Chairman and Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited, No. 144 Anna Salai
Chennai - 600 002.

2. The Chief Engineer (Establishment)
Tamilnadu Generation and Distribution
Corporation Limited,
No. 144, Anna Salai, Chennai.

3. The Superintending Engineer,
Tamilnadu Generation and Distribution
Corporation Limited,
Theni Electricity Distribution Circle,
Theni District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the impugned order in proceedings க.எண்.6014 /மே.பொ./தேனி/நி.அ./ நிபி.2/உ.2/கோ.வா.வே/2018 dated 06.07.2018 passed by the third respondent and quash the same and consequently direct the 3rd respondent to grant appointment on compassionate ground by considering the application dated 01.06.2018.

For Petitioner

: Mr. P. Arun Jayatram

For Respondents

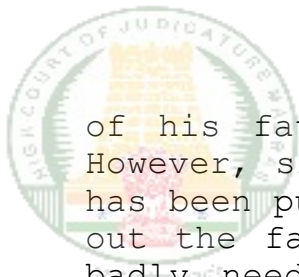
: Mr. T. Sakthikumaran

Standing Counsel

ORDER

The prayer sought for is for a Writ of Certiorarified Mandamus to call for the records in the impugned order in proceedings க.எண்.6014 /மே.பொ./தேனி/நி.அ./நிபி.2/உ.2/கோ.வா.வே/2018 dated 06.07.2018 passed by the third respondent and quash the same and consequently direct the 3rd respondent to grant appointment on compassionate ground by considering the application dated 01.06.2018.

2. The petitioner's father one Subbiah was working as Commercial Inspector at the respondent TANGEDCO and during service, he suddenly died on 10.06.2015 leaving behind his wife, mother, one son and daughter. The son Subesh (petitioner), at the time of death



of his father, was 15 years old and he was studying in School. However, since the head of the family died suddenly, the petitioner has been put in indigent circumstances. Therefore, in order to bail out the family of the deceased employee, some one from the family badly need of a job at the respondent TANGEDCO. Therefore, an application to that effect was made by the petitioner, on 01.06.2018, ie., within three years from the date of death of his father. However, the said application, having been considered, was rejected by the respondent TANGEDCO through the impugned order dated 06.07.2018 stating that, though the petitioner made an application within three years period, however, he become major only on 14.08.2018, as his date of birth is 15.08.2000 and therefore, 64 days after completion of three years period from the date of death of his father, since he has become major, he cannot be considered for compassionate appointment and accordingly, the request of the petitioner was rejected through the impugned order. Challenging the same, the present writ petition has been filed.

3. Heard the learned counsel for the petitioner, who would submit that, the only eligible person in the said family of the deceased employee is the petitioner herein and he is the elder son, but at the time of death of his father, he was only 15 years old and was studying in the School and he completed the 10th standard only in the year 2015. Therefore, he could not get a job as a minor at that time, nevertheless, he made an application within the three years limitation on 01.06.2018 and therefore, since he has become major within 64 days after the three years period from the date of death of his father, he can very well be considered for compassionate appointment, as the petitioner's family was still in indigent circumstances and penurious situation and in order to bail out the family as that of the petitioner, the scheme of compassionate appointment is being adopted by the respondents, like any other model employer.

4. The case of the petitioner can therefore very well be considered, since it was rejected through the impugned order for the said reason that, after three years period ie., 64 days after three years period, since the petitioner has become major, he would not be fit in in the relevant regulation of the TANGEDCO and therefore, the learned counsel for the petitioner seeks indulgence of this Court.

5. However, on the other hand, the learned standing counsel for the respondents, would submit that, no doubt, at the time of death of the father, who was an employee of TANGEDCO, the petitioner was only 15 years old, as his date of birth is 15.08.2000 and though he has made an application within three years period, ie., on 01.06.2018 at the end of three years period, ie., on 09.06.2018 the petitioner was short of 64 days to become major as admittedly, he has reached the attainment of majority only on 14.08.2018, ie.,



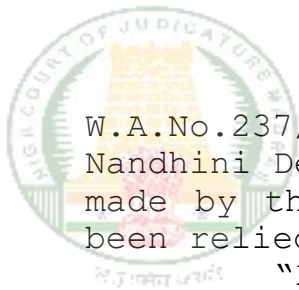
after 64 days of the three years period, hence he could not be considered for compassionate appointment, therefore, the said request of the petitioner was rejected by the respondent, of course, rightly.

6. The learned standing counsel for the respondent would also submit that, the issue as to whether this kind of cases, where applications have been made after three years period from the date of death of the employee and also making applications belatedly, after the legal heir become major, whether can be considered or not, despite the rule position or regulation in this regard strictly envisages that, only within three years period, that application should be made, has been decided by this Court, in number of cases where two Division Bench judgments were lead cases. One is that E.Ramasamy v. Tamilnadu Electricity Board and the Secretary to Government v. Renuka Devi and another one is A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board.

7. In the former two Division Bench judgments, the view taken was that, within the three years, applications should have been made and belated applications cannot be taken into account and merely because at the time of death of the employee that the legal heir was minor and after he/she become major, if any belated applications made, that cannot be taken into account. However, in another case in Kamatchi v. the Chairman, Tamilnadu Electricity Board, a contrary view was taken. Therefore, the matters have been referred to a Full Bench of this Court in W.P.No.7016/2017 in Nandhini Dev v. Secretary to Government, where, the Full Bench delivered a judgment, after exhaustively discussed all these issues by order dated 11.03.2020.

8. In paragraph 32 of the said judgment of the Full Bench, the view taken by the two Division Benches in E.Ramasamy's case and Renuka Devi's case were considered to be the judgments, which lay down correct law and the judgment of the Division Bench dated 06.08.2013 in Kamatchi's case does not lay down the correct proposition of law. Thereby, the Full Bench has come to the conclusion that, if belated application is made beyond three years period or belatedly after the legal heir becoming major, that cannot be considered within the meaning of the scheme framed by the employer to give compassionate appointment for the legal heir of the deceased employee and therefore, in view of the Full Bench judgment, the present plea raised by the petitioner cannot be countenanced. Therefore, the learned standing counsel would submit that, the impugned order not only is justifiable but also sustainable, in view of the law, having been laid down by the Full Bench, as referred to above.

9. The learned Standing counsel would also submit that, by a recent decision dated 01.09.2020, a Division Bench of this Court in



W.A.No.237/2020, having followed the said Full Bench decision in Nandhini Dev's case referred to above, has rejected the similar plea made by the appellant therein, one Kumari, and this case has also been relied upon by the standing counsel, which reads thus:

"Having heard Mr.Nissar Ahmed, learned counsel for the appellant and keeping in view the Full Bench decision, which has been delivered in **W.P. (MD) No.7016 of 2011 (Nandini Dev vs. Secretary to Government) dated 11.03.2020**, the relief prayed for by the appellant cannot be extended. We may gainfully extract paragraphs 31 and 32 of the judgment answering the reference as follows:-

"31. The Hon'ble Supreme Court in Sanjay Kumar Vs. State of Bihar, (2000) 7 SCC 192, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependant of the deceased employee filed after he attains majority cannot be entertained. Considering a belated application will be contrary to the scheme framed by the Government and will be also contrary to the judgments of the Supreme Court.

32. In view of the above, the reference is answered as under:-

a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

2.It was also further indicated in paragraph 13 of the judgment rendered by the Chief Justice and Abdul Quddhose, J., as follows:-

"13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down



in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

In view of the ratio of the aforesaid decision of the Full Bench, the relief prayed for by the appellant is unacceptable. The Writ Appeal is, accordingly, consigned to records. No costs."

10. By relying upon this decision, the learned standing counsel for the respondents TANGEDCO would submit that, in view of the settled legal position from the Full Bench as well as, following which, the Division Bench, by the recent order dated 01.09.2020, the reason cited in the impugned order by the respondent can very well be sustained and therefore, the impugned order does not require any interference from this Court.

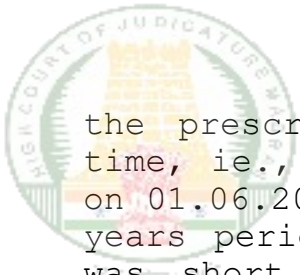
11. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned standing counsel for the respondent TANGEDCO.

12. Absolutely there can be no quarrel on the proposition laid down by the Full Bench of this Court.

13. In Paragraph 31 of the Full Bench judgment, which has already been considered and extracted by the Division Bench order dated 01.09.2020 in Kumari's case, the Full Bench, has taken into consideration the law laid down by the Hon'ble Supreme Court in **Sanjai Kumar v. State of Bihar (2000) 7 SCC 192**, wherein, it has been held that, when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependent of the deceased employee filed, after he attains majority cannot be entertained.

14. Insofar as the said principle is concerned, if the same is applied to the facts of this case, whether the rejection now made by the respondent TANGEDCO through the impugned order can be sustainable or not has to be looked into.

15. In the case in hand, the petitioner's father died on 10.06.2015, at that time, the petitioner was minor. However, as per



the prescription made in this regard, within three years period time, ie., on or before 09.06.2018, the petitioner made application on 01.06.2018. However, on 09.06.2018, ie., at the end of the three years period from the date of death of his father, the petitioner was short of 64 days to attain majority. After 64 days, the petitioner attained majority. Unfortunately, the respondents TANGEDCO has strictly considered the three years rule by stating that, even though application was made on 01.06.2018 i.e. within the three years period, since the petitioner, at the end of the three years period, ie, on 09.06.2018 could not complete 18 years, in other words, he has not attained the majority and still he is short of 64 days to attain the same, therefore, his application cannot be considered, that is the reason given in the impugned order.

16. In order to appreciate the same, the impugned order in entirety is extracted hereunder:

"பார்வையில் கண்ட விண்ணப்பம் வாயிலாக (லேட்) க.சுப்பையா (இறப்பு-நாள் 10.06.2015) வணிக ஆய்வாளர். கோம்பை பிரிவு என்பாரின் வாரிசு செல்வன் க.சுபே' என்பார் தனது தந்தை பணியிலிருக்கும் போது இறந்ததால் கருணை அடிப்படையில் வாரிசு வேலை வேண்டியுள்ளார்.

மேற்படி விண்ணப்பத்தை கூர்ந்து கவனித்ததில், இறந்த பணியாளரின் வாரிசு செல்வன் க.சுபே' என்பாரின் பிறந்த நாள் 15.08.2000 என்பது தெரியவருகிறது.

பார்வை 1-ல் கண்ட வாரிய விதிகளின்படி பணியாளர் இறந்த தேதியிலிருந்து மூன்று ஆண்டுகளுக்குள் வாரிசு வேலை கோரும் வாரிசுதாரர் குறைந்த பட்சம் கல்வித்தகுதி 8-ம் வகுப்பு தேர்ச்சி அடைந்து 18 வயது நிரம்பியவராக இருக்க வேண்டும் என்ற விபரம் தெரிவித்துக் கொள்ளப்படுகிறது.

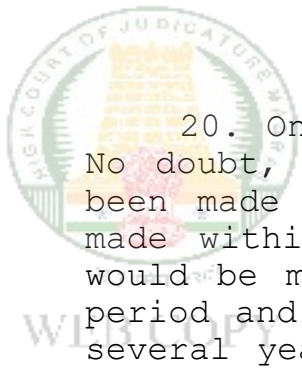
ஆகவே மேற்படி இறந்த பணியாளரின் வாரிசுதாரர் செல்வன் க.சுபே' என்பார் பணியாளர் இறந்த மூன்று ஆண்டுகளுக்குள் 18 வயது நிறைவு செய்யவில்லை என்பதால் வாரிய விதிகளின்படி கருணை அடிப்படையில் வாரிசு வேலை வழங்க பரிசீலிக்க இயலாது என்ற விபரம் தெரிவித்துக் கொள்ளப்படுகிறது."

Except this, no other reason has been given.

17. Time and again, Courts have also taken the view that, the scheme of compassionate appointment is against the regular recruitment and appointment procedure, that means, the appointment in Government and Governmental organization through compassionate appointment is made only in violation of the Service Rules, which is otherwise to be strictly followed for regular recruitment, selection and appointment.

18. Such a violation is permissible under law, because this appointment itself is a compassionate appointment.

19. The Courts also have taken the view that, while the scheme of compassionate appointment is made only to bail out the family of the deceased employee, who, being the head and breadwinner of the family, suddenly died leaving the entire family in indigent and penurious circumstances, from such a situation, the family of the deceased employee has to be bailed out.



20. Only in this regard, the three years rule has been framed. No doubt, within three years period, the applications should have been made and in number of cases, applications even could not be made within three years period. In number of cases, applications would be made very belatedly, after the completion of three years period and in some of the cases, applications would be made, after several years for the reason that, the legal heir, after attaining majority and after completing his education and having the educational qualifications, which are necessary to be considered for appointment on compassionate grounds.

21. If those applications are considered by the employer for compassionate appointment, after several years, the very purpose of providing compassionate appointment to the family of the deceased employee to give immediate solace to the applicant by way of bailing out the family from indigent and penurious circumstances would get defeated. Only in that situation, the three years rule invariably or uniformly adopted in most of the organizations, like the respondent TANGEDCO.

22. In the Full Bench judgment referred to above, at paragraph 31, which has been quoted in the Division Bench Judgment dated 01.09.2020 in Kumari's case cited supra, by following the judgment of the Hon'ble Apex Court in Sanjay Kumar's case, that compassionate appointment is to see that the family to get the immediate relief, it was held that, the application of the dependent of the deceased employee filed after he attaining majority cannot be entertained.

23. Here in the case in hand, the application was filed within three years period, of course, strictly speaking, on the date of application, the petitioner was still short of 64 days to attain the majority. This kind of cases, in the considered opinion of this Court, can be fit under the category of application not made belatedly, but within the time, however, some nominal shortage of few days to attain the majority.

24. Whether this kind of cases are also to be fit in under the straight jacket formula or Rule of three years, has not been specifically decided against any such applications.

25. In this context, the relevant observation made by the Hon'ble Full Bench in the aforesaid decision can usefully be referred to hereunder:

"5. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. The argument that there are some exceptional cases where people hardly get information is a far-fetched argument raised to dilute a reasonable time that has been fixed under the rules and the scheme and, in our opinion, caters sufficiently to allow a dependent to



stake his/her claim for compassionate appointment. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground to establish the existence of indigence even after attaining the age of majority. This, in our opinion, has also been taken due care of by providing a period of three years for moving an application for compassionate appointment which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority."

26. Therefore, it was opined by the Full Bench that, the period of three years for moving application for compassionate appointment means that, if the dependent is only 15 years of age, he/she can apply immediately after attaining the age of majority. Here in the case in hand, at the time of death of his father, the petitioner was 15 years old and therefore, within the three years period, he has made application that has been an admitted fact. However, the only objection raised by the respondent TANGEDCO is that, on the date of completion of exactly three years period from the date of death of father of the petitioner, the petitioner was short of 64 days in attaining the majority. These kind of marginal or very short period to attain the majority can very well be taken care of by the employer provided if the application is filed by the legal heir within the three years limitation and also at the time of death of the employee, the legal heir was 15 years of age. This has been exactly viewed by the Hon'ble Full Bench in the aforesaid paragraph. Therefore, if the said principle is applied to the present facts of the case, exactly the petitioner's application which was filed within three years period and also the petitioner has attained the majority within 64 days from completion of three years from the date of death of his father, cannot be equated with other applications, which would have been filed either after the attainment of majority for several years from the date of death of the employee or there would not have been any application at all filed within the three years period.

27. Moreover, in this case, the only reason cited by the respondent through the impugned order is that, the petitioner attained the majority, after the three years period, i.e., 64 days after the three years period. It is not the case of the respondent that, the application was not submitted within the three years period, as envisaged in the scheme of compassionate appointment.

28. In view of the aforesaid facts, I am of the view that, the facts of the present case may not fall under the category of cases



dealt with and the reference answered by the Hon'ble Full Bench of this Court in Nandhini Dev's case referred to above. Therefore, this Court is of the considered view that, the present writ petition, for the very facts, as narrated above, cannot fall under the category, where, application was made belatedly or application was made after the legal heir attained majority or the application was made belatedly after several years by the legal heir, after becoming major.

29. If the application of the petitioner does not fall under any of the aforesaid three categories, this Court is also of the considered view that, the principle laid down by the Full Bench of this Court referred to above, may not stand in the way of considering the case of the petitioner, as the petitioner admittedly made an application within three years period and he was short of only 64 days at the end of three years period from the date of death of his father.

30. It is also to be noted that, this Court finds it from the legal heir certificate produced by the petitioner, that the deceased employee, who is the father of the petitioner, left the family with a widow, mother, two female children and one male child.

31. Though the mother and one female child already died, as of now, the remaining people in the family are the widow, son and daughter. The family of a widow, son and daughter including the petitioner have to survive in this society. In order to see that the family of a deceased employee, which has been placed under such a penurious circumstances, has to be bailed out, only for which, the very scheme of compassionate appointment is being implemented by the employer. Therefore, considering these circumstances, this Court feels that, certainly the family of the petitioner is in indigent circumstances and penurious situation. Therefore, the respondent TANGEDCO showing the good gesture for its deceased employee by lending a helping hand to the petitioner's family by offering the compassionate appointment would alone meet the ends of justice.

32. Therefore, for all these reasons and discussions made above, this Court is of the view that, the impugned order cannot be sustained and hence, it is liable to be interfered with.

33. In the result, the impugned order is quashed, the matter is remitted back to the respondent TANGEDCO for reconsideration. While reconsidering the same, the aforesaid discussion can be taken into account and accordingly, a pragmatic decision can be taken by the respondent TANGEDCO for providing of compassionate appointment to the petitioner by taking into account the penurious circumstances of the family of the petitioner and the needful as indicated above shall be undertaken by the respondent TANGEDCO within a period of twelve weeks from the date of receipt of a copy of this order.



34. With these observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chairman and Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited, No.144 Anna Salai
Chennai - 600 002.
- 2.The Chief Engineer (Establishment)
Tamilnadu Generation and Distribution
corporation Limited,
No.144, Anna Salai, Chennai.
- 3.The Superintending Engineer,
Tamilnadu Generation and Distribution
corporation Limited,
Theni Electricity Distribution Circle,
Theni District.

+1CC to Mr.P.Arun Jayatram, Advocate, SR.No.17218 dated 17/09/2020

+1CC to Mr.T.Sakthikumaran, Advocate, SR.No.17226 dated 17/09/2020

W.P. (MD) No.11808 of 2020
16.09.2020

PU(CO)
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