



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2020

PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.6308 of 2018

N.Samykannu

...Petitioner

vs.

1.The Secretary to Government,
Energy Department,
Fort St.George, Chennai 600009.

2.The District Collector,
Trichy District, Trichy.

3.The Superintending Engineer (TANGEDGO),
Perambalur Electricity Distribution Circle,
Perambalur, Perambalur District.

4.The Executive Engineer (TANGEDCO),
Trichy Electricity Distribution Circle,
Trichy, Trichy District.

...Respondents

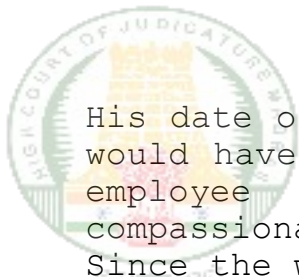
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 4th respondent in Ka.No.Mo.Po/Thi.me.Pa.Va/Ma/Tiruchy/Po.Th.Ah/Uo.Se.Po/Pothu/Mu.tha.Va/Ko.Th.Ah.Uo.Sa.No.10/17-18 Ah No.251/18 on 02.03.2018 and quash the same consequently directing the 4th respondent to pass an appropriate order of appointment to the petitioner on compassionate grounds within a specified time limit that may be fixed by this Court.

For Petitioner	:	Mr.M.Saravanan
For R1 & R2	:	Mr.R.Sethuraman
		Special Government Pleader
For R3 & R4	:	Mr.T.Sakthikumaran
		Standing Counsel

ORDER

The grievance of the petitioner is that his claim for appointment on compassionate ground has not been considered by the respondents. It is not in dispute that the petitioner herein is the legal heir of the deceased employee and as such, is entitled to seek for compassionate appointment, after the death of the said employee.

2. In the case in hand, the Government employee (petitioner's father) had died on 29.11.2002. The petitioner herein, who is the eldest son of the deceased employee, was 8 years old at that time.



His date of birth is claimed to be on 21.11.1994 and accordingly he would have become a major on 21.11.2012. The widow of the deceased employee claims to have made an application seeking for compassionate appointment on compassionate ground on 06.01.2003. Since the widow's application was not acted upon, her son, who was a minor at the time of his father's death had made an application on 02.11.2015, after attaining majority, which is within 3 years from the date of death of his father. The claim came to be rejected through the impugned order stating that the application seeking compassionate appointment was not made within a period of three years from the date of death of the Government employee, as per the Government Orders in vogue.

3. The reasoning of the respondent in rejecting the application cannot be sustained, in view of various judicial pronouncements of this Court, to the effect that when the claimant was a minor at the time of the death of his father and since the mother of the claimant applied within time, the Court is of the opinion that the claimant, after becoming major should have been granted compassionate appointment. One such order passed by this Court in **W.P.No.24964 of 2020** dated **03.12.2010** in the case of **Mohanambal vs. Director, Land and Survey Department, Kancheepuram District and Ors.**, reported in **2011 (1) CTC 349** has placed reliance on two judgments of the Hon'ble Supreme Court of India and ultimately held that when the claimant was a minor at the time of the death of her father and since the mother of the claimant applied within time, the Court is of the opinion that the claimant, after becoming major should have been granted compassionate appointment. The relevant portion of the order reads as follows:

'9. Similar issue was considered by the Supreme Court in the decision in Syed Khadim Hussain v. State of Bihar (2006) 9 SCC 195 wherein also the Supreme Court considered the fact that the wife of the deceased, having applied for compassionate appointment in time and as she was found not eligible, the application submitted by the other legal heir was directed to be considered even after the lapse of eleven years. In paragraphs 5 and 6 of the said decision the Supreme Court held thus,

5. We are unable to accept the contention of the counsel for the State, in the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a



denied to a person was not found traceable for seven years even thereafter within five years, no claim for compassionate appointment was made by the legal heir.

11. Similar claim of the deceased Tamil Nadu Electricity Board Employee was considered and relief granted by the Division Bench of this Court in Indirani Ammal vs. Chief Engineer, WEB W.A.No.3050 of 2003 dated 08.03.2005. The said decision was confirmed by the Supreme Court in Civil Appeal No.2039 of 2006 dated 30.03.2010. Another Division Bench of this Court in W.A.No.42 of 2007 dated 02.07.2009 also took the same view, which was also confirmed by the Supreme Court in S.L.P.(C) No.8305 of 2010 dated 06.07.2010. The contra view taken by another Division Bench of this Court was set aside by the Supreme Court in Civil Appeal No.2858-2859 of 2010 dated 30.03.2010. The said order reads as follows:

"Civil Appeal Nos.2858-2859 of 2010 (arising from S.L.P.(C)Nos.5068-5069 of 2009)

Leave granted.

Heard learned Counsel for the parties.

These appeals have been filed against the impugned judgment of the High Court of Madras dated 29.09.2006 and subsequent order dated 25.08.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned Single Judge only on the ground of delay who directed compassionate appointment to the Appellant. The Appellant was a minor at the time of the death of his father and since the mother of the Appellant applied within time, we are of the opinion that the appellant, after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned Single Judge. No costs"

12. Here in this case, the petitioner's



mother applied for compassionate appointment within one year and she was not given appointment due to want of minimum qualification of 8th standard and the petitioner being the only other legal heir, pursuing the matter and agitating her right for all these years. In the light of the present financial status of the petitioner, the decision in *Syed Khadim Hussain v. State of Bihar (supra)* applies to the facts of this case."

4. The aforesaid order is self explanatory. As such, the issue as to whether the claimant, who was minor at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is that whether the mother of the claimant (widow of the deceased employee) had made an application seeking for compassionate appointment within three years from the date of death of the employee.

5. In the instant case, the petitioner's mother had applied for compassionate appointment in 06.01.2003, which is well within the period of three years from the date of death of the Government employee. By applying the ratio laid down in the aforesaid decision, the petitioner would be entitled for appointment on compassionate grounds.

6. Furthermore, when the petitioner had made an application within three years from the date he became a major, the same is considered to be an application made within the period of limitation stipulated for making the application for compassionate appointment. This Court in **W.P.No.26343 of 2012** dated **23.11.2016** in the case of **M.Sathish Kumar vs. the Director of School Education and others**, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in *The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder* reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of *"Ramadoss.D. Vs. The Chief Engineer, T.N.E.B."*, this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining

the majority by placing reliance on the



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very same Circular in B.P.No.46, dated 13.10.1995.

5.Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6.Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.

7.Justice K.Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G.Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8.Justice F.M.Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9.Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr."



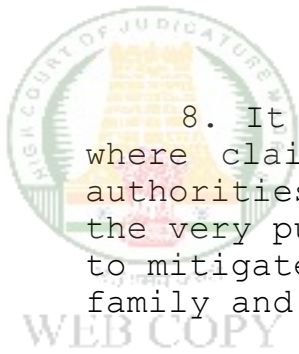
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Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.'

7. The aforesaid order is self explanatory. As such, the issue as to whether the widow or any other legal heir, who was major at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is as to whether the minor legal heir had made an application seeking for compassionate appointment within three years from the date he had attained his majority.



8. It would be pertinent to point out herein that in all cases where claim is made for compassionate appointment, the concerned authorities are required to act efficaciously and speedily, since the very purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family and that there should not be any delay in such appointments.

9. The Hon'ble Apex Court in the case of **Sushma Gosain vs. Union of India** reported in **1989 (4) SCC 468** had held as follows:

'It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

10. The same ratio was reiterated by the Hon'ble Apex Court in the case of **Canara Bank vs. M.Mahesh Kumar** reported in **2015 (7) SCC 412**.

11. In the light of the above observations and findings, the impugned order the 4th respondent in Ka.No.Mo.Po/Thi.me.Pa.Va/Ma/Tiruchy/Po.Th.Ah/Uo.Se.Po/Pothu/Mu.tha.Va/Ko.Th.Ah.Uo.Sa.No.10/17-18 Ah No.251/18 dated 08.03.2018 is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of four (4) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

sm/DP

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Secretary to Government,
Energy Department,
Fort St.George,
Chennai 600009.

2.The District Collector,
Trichy District,
Trichy.

3.The Superintending Engineer (TANGEDGO),
Perambalur Electricity Distribution Circle,
Perambalur, Perambalur District.

4.The Executive Engineer (TANGEDCO),
Trichy Electricity Distribution Circle,
Trichy, Trichy District.

+1 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-9464[F] dated 02/03/2020)

+2 CC to M/s.M.SARAVANAN, Advocate (SR-9583[F] dated 02/03/2020)

+1 CC to M/s.SPL.GP (SR-9600[F] dated 02/03/2020)

Order made in
W.P.(MD)No.6308 of 2018

Dated:
28.02.2020

SPU(06.08.2020) 10P 9C