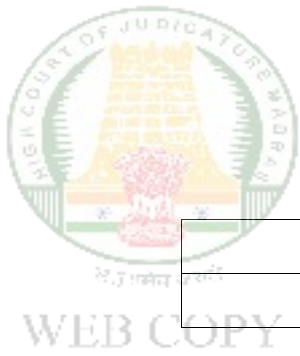




BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	28.02.2020
Pronounced on	29.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.12593 of 2016
and W.M.P. (MD) No.9508 of 2016

K.Arunagiri

...Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd,
Thambusamy Road,
Keelpauk,
Chennai-10.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Thanjavur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, challenging the order of the second respondent in Na.Ka.No.A9/354/2010 dated 11.04.2016 and to quash the same and consequently direct the respondents to appoint the petitioner on compassionate ground.

For Petitioner : Mr.V.Kathikeyan

For Respondents : Mr.P.Seetharaman

O R D E R

The petitioner's father , V.Gunasekaran, while holding the post of Superintendent in the respondent Corporation, died in harness, on 10.01.2010, leaving behind his wife and son, who is the petitioner herein, as his legal heirs. The petitioner was born on 10.02.1996 and was aged about 3 years when his father died. On 09.06.2010, the petitioner's mother made an application seeking for compassionate appointment for the petitioner. On attaining majority, on 10.06.2013, the petitioner himself made an application seeking for



compassionate appointment. Through the impugned order dated 11.04.2016, the request of the petitioner came to be rejected on the ground that the petitioner had not attained the age of 18 years when his application was made on 09.06.2010. The said rejection order is put under challenge in the present Writ Petition.

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2. Heard Mr.V.Karthikeyan, learned counsel for the petitioner and Mr.P.Seetharaman, learned counsel for the respondents.

3. The respondents had not properly construed the request made by the petitioner's mother on 09.06.2010 and the perusal of the representation reveals that the mother had stated that her son was only 15 years and therefore, had requested the respondents to consider the appointment for the petitioner after he becomes a major. I do not find any fault in such a request. Assuming that the petitioner makes a request after he becomes a major, the possibility of the request been rejected on the ground that he has not made the application within 3 years period from the date of death of his father was imminent. Apparently, the mother's request was to have her son's request kept pending on top of the list of candidates seeking for compassionate appointment.

4. This court in various decisions has held that a minor legal heir is entitled to make request for compassionate appointment within 3 years from the date he attains majority. One such order passed by 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 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



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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." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to



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consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the 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



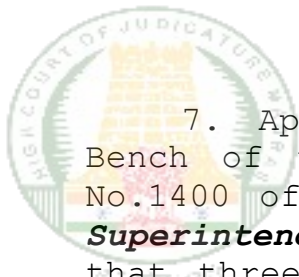
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for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in 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. '

5. 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.

6. In the instant case, the petitioner had become major on 10.02.2014. In view of the aforesaid findings he would be entitled to seek compassionate appointment till 10.02.2017. However, his application was already pending before the first respondent and the impugned order of rejection came to be passed in the year 2016, which is before the expiry of three years from the date on which the petitioner had attained majority.



7. Apart from the above observations, the Hon'ble Division Bench of this Court had earlier in an order passed in W.A.(MD) No.1400 of 2011 dated 16.12.2015 in the case of **S.Velraj Vs. The Superintendent Engineer, TNEB, Tirunelveli and another**, had held that three years limitations prescribed for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently, based on the facts. The Scheme for appointment on compassionate ground to the children of the deceased employee is a welfare scheme, to tide over the financial constraints of the bereaved family due to the sudden demise of the breadwinner of the family. As such, the mother's application on behalf of the petitioner, was deemed to be pending for atleast 3 years from the day on which the petitioner became a major and the pre-matured rejection order stating that the petitioner had not completed 18 years at the time of his application, cannot be sustained.

8. In view of all these reasons, the rejection itself is not proper and consequently, the petitioner would be entitled for appointment on compassionate grounds.

9. Accordingly, the impugned order passed by the second respondent dated 11.04.2016 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 eight weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sm/DP

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd,
Thambusamy Road,
Keelpauk,
Chennai-10.

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



2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Thanjavur.

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-9868[F] dated 03/03/2020)

Pre-Delivery Order made in
W.P. (MD) No.12593 of 2016
and
W.M.P. (MD) No.9508 of 2016

29.06.2020

SPU(10.07.2020) 7P 4C