

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	28.02.2020
Pronounced on	29.06.2020

WEB COPY

CORAM:**THE HONOURABLE MR. JUSTICE M.S.RAMESH****W.P. (MD) No.6710 of 2016**

M.Muthumani

... Petitioner

Vs.

1.The Chairman Cum Managing Director,
Tamil Nadu Electricity Generation & Distribution
Corporation Ltd.,
144, Anna Salai, Chennai - 2.

2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation & Distribution
Corporation Ltd.,
144, Anna Salai, Chennai - 2.

3.The Superintending Engineer,
Tamil Nadu Electricity Generation & Distribution
Corporation Ltd.,
Theni Electricity Distribution Circle,
Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus or any other writ or direction in the nature of writ calling for the records relating to the third respondent Lr.No.010/Me.Po/Theni Ni.A/Ni.Pi.2/ Ni, Ou.2/ Ko.Va.Ve/2016 dated 14.01.2016 to quash the same and consequently direct the respondents to provide compassionate appointment to the petitioner.

For Petitioner : Mr.R.Thangasamy

For Respondents : Mr.T.Sakthikumaran
Standing Counsel**O R D E R**

The petitioner's husband Late K.Eswaran, died in harness, on 10.07.2012, while he was employed as a Contract Labour under the
<https://hcservices.ecourts.gov.in/hcservices/>



respondent Corporation and his widow's claim for compassionate appointment has been rejected through the impugned order dated 14.01.2016.

2. It is claimed by the petitioner that her husband worked as a Contract Labourer continuously for the period of 17 years commencing from 1990. On 06.09.2007, the petitioner's husband along with 21,600 labour workers were absorbed as Contract labourers.

3. The petitioner in her affidavit raised grounds stating that her husband was in continuance employment under the respondent Corporation for a period of 480 days and though he was entitled to be given permanent status, the respondent have not done so. In view of the same, the learned counsel for the petitioner would submit that the employee must be deemed to have been in permanent employment and thereby, the petitioner would be entitled for compassionate appointment.

4. The learned Standing counsel for the respondent Corporation on the other hand, reiterated the averments in the impugned order and counter affidavit and submitted that there is no scheme under the respondent Corporation to grant compassionate appointment to the legal heir of a Contract employee and therefore, there is no infirmity in the impugned rejection order.

5. The respondents had filed their counter affidavit in which there is no denial with regard to the petitioner's claim that her husband was in continuous employment for more than 480 days. As such, in the absence of such denial, it has to be construed that the petitioner's husband was indeed in continuous employment for more than 480 days.

6. The issue as to whether a workman, who have completed 480 days of continuous employment for a period of 24 calendar months, would automatically become a permanent employee under the employer or he will fall on conferment of permanent status, was made as a question for reference before this Court and a Hon'ble Division Bench of this Court in the case of ***R.Lakshmi Vs. The Chief Engineer (Personnel), TNEB, Chennai-2 and another passed in W.P.No.5980 of 2004 dated 03.08.2012*** held that even when no order of regularization or conferment of permanent status is made, the workman who had completed 480 days of continuous service in a period of 24 calendar months would automatically became a permanent employee under the employer, even in the absence of an order of conferring him a permanent status. The relevant portion of the order reads as follows:

"35. The words "employed" in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, are not directory in nature, in our considered opinion. Per



contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the Petitioner's husband late Raju satisfied the essential condition of, being a worker and the Tamil nadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularization was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be necessarily granted to him by the Respondent/Tamil nadu Electricity Board.

36. We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the Petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the Respondents/Electricity Board Authorities to confer permanent status of the Petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calendar months and on that basis, we hold that the Petitioner's husband deceased S. Raju is entitled to be made permanent by the Respondents / Tamil nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the Petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if, an employer had not conferred him with the permanent status or even if, no direction was issued by the competent authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the Reference.

37. Also, on the basis of Equity, Fair play, Good Conscience and even a matter of prudence, we direct the Respondents/Tamil nadu Electricity Board Authorities to issue appropriate proceedings in making the petitioner's deceased husband Raju as a permanent employee of the Board and to pay the petitioner family pension, family benefit and other



terminal benefits including Gratuity as per Rules and regulations from time to time in force. The Respondents are further directed to consider and dispose of the representation of the Petitioner#s dated 08.12.2003 and 08.01.2004 wherein she had prayed for Compassionate Appointment being provided to her daughter Valarmathi as per Rules and in accordance with law within a period of four weeks from the date of receipt of copy this order, (if not already considered and disposed of.)

38. The Respondents are directed to pay the Petitioner's family pension and other terminal benefits including gratuity etc., due to be paid to the petitioner's deceased husband within a period of eight weeks from the date of receipt of copy of this order. As such, the writ petition is allowed in above terms. No costs."

7. The aforesaid order is self explanatory. As such, when the petitioner's husband has worked for a continuous period of 480 days in a period of 24 Calendar months, he deemed to be a permanent employee of the respondent Corporation and therefore, the only reasoning that there is no scheme for compassionate appointment to the legal heir of a contract employee is illegal. When there is a scheme available with the respondent Corporation for compassionate appointment to the legal heirs of the permanent employee, the petitioner would automatically be entitled to make such a claim.

8. In the light of the aforesaid decision, the impugned order passed by the respondent dated 14.01.2016 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 form the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Deputy Registrar (Accounts)

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/ /2020

Sub Assistant Registrar(CS)



To

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Corporation Ltd.,
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Theni.

Order made in
W.P. (MD) No.6710 of 2016
29.06.2020

DP
SDS (17.07.2020) 5P-4C