

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	28.02.2020
Pronounced on	28.05.2020

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CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.8115 of 2016
and WMP (MD) No.6631 of 2016

Azarutheen

...Petitioner

Vs.

1.Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
rep. by its Managing Director,
Bye-Pass Road,
Madurai-625 010.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Dindigul Region,
Bye-Pass Road,
Chettinayakanpatti Post,
Dindigul.

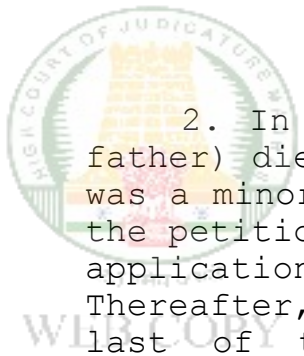
...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings in பார்வை/கூ.,ஈ, திண்டு/WP.(MD) No.130/2016 dated 05.04.2016 passed by the first respondent and to quash the same and consequently directing the first respondent to appoint the petitioner as Conductor in compassionate appointment.

For Petitioner : Mr.S.Saji Bino
For Respondents : Mr.J.Senthil Kumaraiah
Standing counsel

O R D E R

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) died on 17.05.2003, while he was in service. The petitioner was a minor at the time of the death of his father. On 07.04.2011, the petitioner had attained majority and accordingly, he had made an application on 22.04.2011, seeking for compassionate appointment. Thereafter, he claims to have made several representations and the last of the representation is dated 29.12.2015. Since his representations were not considered in time, the petitioner had preferred a Writ Petition before this Court in W.P.(MD)No.130 of 2016. By an order dated 06.01.2016, this Court had directed the authorities to consider the petitioner's claim for compassionate appointment within a stipulated period. Pursuant to the direction of this Court, the impugned order dated 05.04.2016 came to be passed, stating that the application seeking compassionate appointment was not made within a period of three years as per the regulations.

3. The reasoning of the respondents in rejecting the application cannot be sustained, in view of various judicial pronouncements of this Court, to the effect that an application made by the legal heir of the deceased employee, within three years from the date of his majority deemed to be made well within time. 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 V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on



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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 consider the application.



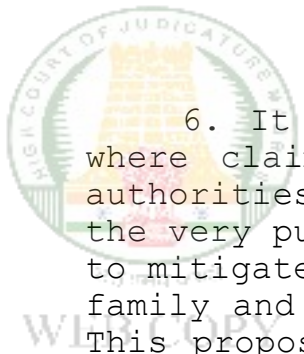
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maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This 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.'

4. 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 she had attained her majority.

5. In the instant case, the petitioner herein, had attained his majority on 07.04.2011 and he had made his application seeking for compassionate appointment on 22.04.2011, which is within a period of three years. By applying the ratio laid down in the aforesaid decision, the petitioner would be entitled for appointment on compassionate grounds.



6. It would be pertinent to point out here 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. This proposition was held by 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.'

7. 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**.

8. In the light of the above observations and findings, the impugned order passed by the first respondent in his proceedings in **பார்வைகூ,ச, /திண்டு** WP.(MD) No.130/2016 dated 05.04.2016 is set aside. Consequently, there shall be a direction to the first respondent to issue an appointment order to the petitioner herein, on compassionate ground, 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 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 (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)

DP



To

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye-Pass Road,
Madurai-625 010.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Dindigul Region,
Bye-Pass Road,
Chettinayakanpatti Post,
Dindigul.

Pre-Delivery Order made in
W.P.(MD) No.8115 of 2016
and
WMP.(MD) No.6631 of 2016
28.05.2020

AP(17/06/2020) 7P 3C