

**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.8303 of 2016****and****W.M.P (MD) No.6727 of 2016**

M.Ravikumar

...Petitioner

Vs.

1.Tamilnadu Civil Supplies Corporation,
Rep., by its Managing Director,
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

2.The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation,
Thanjavur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent dated 07.03.2012 bearing Na.Ka.No.A9/14917/2012 and dated 24/06/2014 in Na.Ka.No.A9/14917/2012 and to quash the same and consequently direct the respondents to appoint the petitioner on compassionate basis in any suitable post.

For Petitioner : Mr.M.Gnanagurunathan

For Respondents : Mr.P.Seetharaman

O R D E R

The petitioner's father M.Murugesan, who had joined the services of the respondent Corporation as a daily worker in the year 1990 was regularized in his services with effect from 23.06.2000. After regularization, he died in harness, on 15.05.2007. The petitioner herein, was a minor at the time of the death of his father. After attaining majority, he made an application on 30.09.2011 seeking for compassionate appointment. His request for such appointment came to be rejected through the impugned order dated 24.06.2014, stating that the scheme of compassionate appointment is not available for the legal heirs of the regularized employee. The rejection order is under challenge in the present Writ Petition.



2. Heard Mr.M.Gnanagurunathan, learned counsel for the petitioner and Mr.P.Seetharaman, learned counsel appearing on behalf of the respondents.

3. This is an unfortunate case that just prior to the petitioner's father's death, his mother also died three months prior to that. During the death of both his parents, the petitioner was just 14 years old.

4. The only ground on which the request for compassionate appointment has been rejected is that legal heirs of the regularized workers are not entitled for the benefit, for which purpose the respondent Corporation has relied upon a Circular of the Head Office dated 23.06.2000.

5. In identical circumstances, arising out of the death of an employee of the respondent Corporation, the claim for compassionate appointment came to be rejected and when the same was challenged before this Court in the case of **S.Satish Kumar V. Tamil Nadu Civil Supplies Corporation rep. by its General Manager (Administration), 15, Thambusamy Road, Kilpauk, Chennai-600 010 in W.P.No.16230 of 2012 dated 23.04.2014**, this Court had considered various decisions of this Court and had passed a detailed order, substantiating that the legal heir of a regularized employee would be entitled for compassionate appointment. The said order of this Court reads as follows:

"9. The respondents do not dispute that the father of the petitioner was appointed in the regular post. The respondents also do not dispute the fact that the father of the petitioner was employed from 1987 onwards. He rendered service for 23 years before his death. Still the respondents Corporation, the State under Article 12 of the Constitution, takes such a technical plea that the petitioner is not entitled to compassionate appointment.

10. The respondent, being the State, should behave like a model employer. It has been held so in more than one judgment, as rightly contended by the learned counsel for the petitioner.

11. The First Bench of this Court in Tamil Nadu State Transport Corporation V. Lalitha, 2005 (2) CTC 246, in similar circumstances directed the transport corporation to provide compassionate appointment to the petitioner therein. Paragraphs 2, 3, 4 and 10 of Lalitha's case, is extracted hereunder:

"2. The respondent is a widow. Her late husband was a driver in the service of the appellant Corporation, who had been appointed in 1979. He had some heart ailment due to which he



WEB COPY

order dated 6.12.1995. Thereafter, on a representation made by him to the Corporation a settlement under section 18(1) of the Industrial Disputes Act was reached under which he was re-employed as a mazdoor trainee by order dated 6.2.1996. However, four days thereafter i.e. on 10.2.1996 at the age of 44 he passed away. He was the only breadwinner of the family and he left behind him his widow (respondent) and two daughters.

3. The Corporation refused to give compassionate appointment to the widow (respondent) taking a technical view of the matter. Learned counsel for the appellant Corporation relied on G.O. Ms. No. 680 Transport 4 Department dated December, 1977 and urged that under the said G.O. the respondent could not get compassionate appointment.

4. We do not agree with this submission. It must be understood that the aforesaid G.O. is a piece of beneficial legislation and hence should be liberally construed. There is no doubt that the respondent's husband had worked in the service of the appellant Corporation for 16 years and thereafter he developed heart ailment and died. Before his death he has been compulsorily retired by order dated 6.12.1995 due to his ailment, but on a representation made by him he was re-employed on 6.2.1996.

.....

10. The respondent's husband had no doubt worked for more than 240 days before his demise. In fact he had worked for 16 years. Hence, in our opinion, the respondent (his widow) is entitled to the benefit of the said G.O. There is no force in this appeal and it is dismissed."

12. An identical situation was considered by a learned Single Judge of this Court in S.Gandhimathi V. The Deputy Registrar of Co-operative Society (Milk) Tirunelveli & 3 others, 2003 WLR 479. The petitioner's husband therein was engaged as a casual labour for more than four years along with casual labourers. All the labourers approached the Deputy Chief Inspector of Factories, who passed an order dated 04.03.1996 directing the respondents to regularize the service of all the 55 casual labourers including the husband of the petitioner. But before the order was complied with, the husband of the petitioner died on 16.01.1997. The petitioner therein



sought compassionate appointment. The same was declined. A learned Single Judge of this Court allowed the writ petition. In my view, the petitioner herein is better placed.

13. In another case, in *R.Lakshmi V. The Chief Engineer (Personnel), TNEB, 2012 (3) LLN 681 (DB) (Mad.)*, the petitioner's husband was working as a Contract Labour from 01.12.1991 to 30.04.1999 in the T.N. Electricity Board. Thereafter, after absorption on 01.05.1999, he worked as a Helper till his demise on 23.11.2003. The Electricity Board did not pass the order making the services of the petitioner's husband as a permanent employee. Taking into account, Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, as well as, the B.P.22, dated 14.05.1999, the petitioner therein claimed compassionate appointment. The same was not granted. The petitioner approached this Court.

14. A Division Bench of this Court in paragraph 22 of the judgment in 2012 (3) LLN 681 (DB) (Mad.) considered the earlier decisions of this Court as hereunder:

"22. Apart from the above, the Learned counsel for the petitioner relied on the following decisions:-

a. In the decision of this Court in *S. Gandhimathi Vs. The Deputy Registrar of Cooperative Society (Milk) Tirunelveli & 3 others* [2003 WLR 479 at page 484], this Court has held that "By applying the rule of fiction the deceased is deemed to have been regularised. In terms of The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, the deceased ceased to be a casual and deemed to be a regular employee with permanent status on his completing 480 days and on the date of death he was a permanent employee and therefore his son for whose benefit the writ petition has been filed is entitled to be considered for appointment on compassionate ground. The contention that the deceased always remained a casual labourer as no orders have been passed even though proposal was sent for regularisation cannot be sustained."

b. In the decision of *Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, and others Vs. Inspector of Labour, Perambalur and others* [2004 (3) L.L.N at page 598 and at special page 599 and 560], this Court has held as under:

"The fact about the engagement of the services of the concerned workmen was never disputed by the



Board. The only stand was that since they were all contract workmen, they were not entitled for any benefit to be conferred under the provisions of the Act. But even in respect of the said stand except the ipsi dixit of the stand taken in the counter nothing was placed before the Inspector of Labour. Even about the nonmaintenance of the required forms under the provisions of the Act, the stand of the Board was that since they were all contract labourers, the question of maintaining those records did not arise. It is pertinent to note that while it was contended that the persons were employed as contract labourers under certain guidelines, nothing was placed before the Inspector of Labour in support of the said stand. It can be safely held that by virtue of S.5 read along with rule 6(4), the Inspector of Labour can pass positive orders conferring permanent status to the workmen concerned after examining the representation made before him and after holding an enquiry. The Division Bench of this Court has also held so in the judgment in Metal Powder Company Ltd., case (1985 (2) L.L.N. 738). In spite of all these if it were to be held that irrespective of the said statutory stipulations the Inspector of Labour is not entitled to pass positive orders conferring permanent status, such powers vested with him under the provisions would only result in futility. It is true that under S.5 read with rule 6(4) of the Act, the Inspector of Labour can also direct in the event of any defects in the maintenance of 7 registers to rectify such defects and give appropriate directions to that effect. But, the same did not mean that, that is the only power vested in the Inspector of Labour and nothing more. The well known canon of construction is that no provision in a statute can be held to be redundant and therefore, when under S.5 of the Act specific powers have been provided to the effect that the Inspector of Labour can enter at all reasonable times into any industrial establishments, make necessary examinations of the records and record necessary evidence of such persons as he may deem necessary for carrying out the purposes of the Act and when the said provisions read along with rule 6 (4) which specifically provides that such exercise of powers provided under S.5 can be made while dealing with a representation and by passing a positive order conferring permanent status, it will have to be held that the Inspector of Labour would be fully competent to issue an order conferring permanent status to the



workmen based on the evidence available before it based on the enquiry held by him, if it was brought out that such a benefit should necessarily be conferred on the concerned workmen. It can only be said that to hold otherwise would only defeat the whole purpose of the enactment, the object of which was that wherever workmen are being kept under temporary rolls, thereby denied of various statutory as well as non-statutory benefits, which are extended to the permanent workers and wages are paid on consolidated basis far below the occupational wages without the benefit of dearness allowance, which is paid to the permanent employees, to defeat such deprivation and ensure that their real status is affirmed. While the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the 1947 Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act, the 8 Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the 1947 Act."

c. In the decision in *S. Vijayalakshmi Vs. Tamil Nadu Water Supply and Drainage Board* (represented by its Managing Director, Chennai [2005 (3) L.L.N. 706 at page 707]), this Court has held as follows:-

"A bare perusal of the S.3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, casts an obligation on the employer to confer permanent status on an employee who has completed 480 days work in course of two years. During the life time of the husband of the petitioner, no such permanent status was actually conferred by any order of the management. It is true that jurisdiction has been conferred on the Inspector to conduct enquiry if necessary to find out whether an employee has completed 480 days or not. However, merely because no such enquiry had been conducted by the Inspector, the petitioner's husband cannot be denied the benefits of the Act. In view of the mandatory nature of the provision, it shall be taken that an employee who had completed 480 days in a period of two years was permanent."

d. In the decision in *Hindustan Petroleum Corporation, Ltd.* (represented by its Chairman cum Managing Director), Mumbai and another Vs. Presiding Officer, Central Government Labour Court-cum-Industrial Tribunal, Chennai and another [2008 (4)



L.L.N. at Page 254], this Court has held as under:
"Once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years then, such workmen getting permanent status cannot be questioned by any management. Such conferment of permanent status to the workmen cannot be labelled as violation of Arts. 14 and 16 of the Constitution. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far."

e. The Learned Counsel for the Petitioner cites the order dated 04.04.2003 in W.P.Nos.20911 to 20916 of 1998 passed by this Court [(CDJ) 2003 MHC at page 753 in paragraph 12], wherein it is held that "The portion of the proceedings of the 2nd respondent in all these writ petitions holding that the workman is entitled for conferment of permanent status only from the date on which his proceedings are communicated is ordered to be deleted and this Court holds that each one of the workman for whose benefit the writ petition has been filed shall be deemed to have been conferred with permanent status from the date on which each employee completed 480 days of continuous service within a period of 25 calendar months."

f. Also, he relies on the order dated 27.07.2007 in W.A.No. 411 of 1998 and 2410 of 1999 passed by the Division Bench of this Court between The Tamil Nadu Handicrafts Development Corporation Limited, rep. by its Secretary, No.759, Anna Salai, Madras 2 and another Vs. The Inspector of Factories, Range No.II, Madurai 2 and two others, wherein in paragraphs 7 and 8, it is laid down as follows:- "7. It is not in dispute that 23+1, i.e., all the 24 workmen have completed more than 480 days of service in 24 calendar months. Details have been shown in the impugned order dated 4th July, 1996 and 9th April, 1997 and the list attached thereto. In this background, the appellant cannot deny the benefit to which such workmen are entitled under the law."

8. The other ground taken by the appellant is that no proper opportunity was given by the first respondent to the 10 appellant to defend its case, but such submission cannot be accepted in view of the communication between the parties and the counter affidavit filed by the first respondent. According to the first respondent, the appellant's factory is coming under the purview of the Factories Act and Rules and is an establishment as per Section 2(3) (a)



of the Permanent Status Act, 1981. The first respondent has specifically stated that opportunity was given to the appellant to explain itself and inspection was made in the premises of the appellant on 30th May, 1996 and the appellant was called for an enquiry on 10th June, 1996 at 10.00 a.m and enquiry under Rule 6 (4) was conducted on 10th June, 1996 at 11.00 a.m. in their presence. After going through the records, including form 25-B issued by the appellant, the respondent, the respondent could gather the date of entry of the workman in the service and also verified attendance particulars of 1993, 1994 and 1995 as were available in the office of the appellant. Letter No.E/1755/96 dated 3rd June, 1996, shows that the Manager of the appellant's Corporation at Madurai was asked to produce the attendance register of the year 1993, 1994 and 1995 at 3.00 p.m. on 7th June, 1996.

In respect of other 23 persons, a letter was issued to the Manager of the Corporation at Madurai vide No.NE/872/97 dated 17th March, 1997. The date was subsequently postponed to 7th April, 1997 at 11.00 a.m. And the appellant having been informed, its Superintendent, Pumpuhar Brass products, production Unit, Madurai, by his letter Na.Ka.No.178/Mahi/97 dated 5th April, 1997 requested to furnish letter dated 6th Feb., 1997, as was submitted by the General Secretary of the Workers' Union. Thus it will be evident that proper opportunity was given to the appellant and after detailed enquiry, the orders were passed by the first respondent, Inspector, who is the competent authority."

g. The Learned Counsel for the Petitioner cites the Division Bench Judgment of this Court dated 16.03.2006 in W.A.No. 845 of 2000 between M/s Hindustan Photo Films Vs. The Deputy Chief Inspector of Factories & Others [(CDJ) 2006 MHC at page 935], wherein paragraph 6, it is observed and held as follows: "6. Even before us, the learned counsel for the appellant, by drawing our attention to the order of the Division Bench dated 2.9.2003 made in W.A.Nos.1117 to 1132 of 1998, submitted that the management has no objection to pass a similar order as made therein. However, the learned counsel appearing for the respondent -workmen has brought to our notice that the workmen in that case were trainees and ousted from service at the instance of the management. In such circumstances, the direction



issued in respect of those persons cannot be applied to the respondents herein, who worked continuously for several years and after proper enquiry, their services were recognised by the competent authority and orders issued. In the light of the distinction and in view of the categorical finding by the authority, which was upheld by the learned single judge, we are unable to accept the only argument advanced by the learned counsel for the appellant."

h. He also relies on the Division Bench Judgment of this Court dated 23.02.2007 in W.A.No. 1186 of 2006 between The Lakshmi Mills Company Ltd., Palladam Branch, Coimbatore Vs. The Deputy Chief Inspector of Factories, Tiruppur & Another (CDJ) 2007 MHC 1303, wherein at paragraph 6, it is held that :-

"6. Regarding the second contention, it is clearly found that the appellant did not seriously dispute the length of service put in by the workmen, before the authority and the authority had sufficient evidence to come to the conclusion that the workmen had completed 480 days of service in 24 calendar months. Once that factum is proved, Section 3 of the Tamil Nadu Act 42 of 1981 makes the permanency automatic without any scope for further enquiry. Besides this, the power vested on the first respondent is of summary nature and he is not required to conduct any elaborate enquiry. In the present case, the length of service of the workmen is not disputed. Therefore, there is no further enquiry contemplated in the Act." "

15. In view of the aforesaid judgments, I am of the view that the impugned orders are liable to be set aside and accordingly, they are set aside and a direction is issued to the respondents to provide compassionate appointment to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order."

6. The aforesaid order is self explanatory. As such, the respondents are not justified in rejecting the claim for compassionate appointment and that the son of the regularised employee would be eligible for such an appointment.

7. In the result, the impugned orders passed by the second respondent dated 07.03.2012 bearing Na.Ka.No.A9/14917/2012 and dated 24/06/2014 in Na.Ka.No.A9/14917/2012 are 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.

WEB COPY

Sd/-

Deputy Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP

To

1.The Managing Director,
Tamilnadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

2.The Senior Regional Manager,
Tamilnadu Civil Supplies Corporation,
Thanjavur.

W.P.(MD) No.8303 of 2016
and

W.M.P (MD) No.6727 of 2016
29.06.2020

KK(17.07.2020) 10P 3C