

**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.8838 of 2016**

M.Sudalaivadivu

...Petitioner

Vs.

The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Region,
Tirunelveli.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order passed by the respondent in his proceedings in Ka.No.14897/No.3/TNSTC /Thili/2013, dated 31.07.2015 and to quash the same as illegal and consequently direct the respondent to provide appointment to the petitioner's daughter namely, Jayasathya under the compassionate Ground.

For Petitioner : Mr.T.Selvan
For Respondent : Mr.K.Sathiyasingh

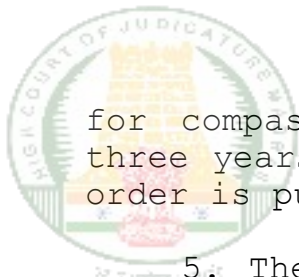
O R D E R

The grievance of the petitioner is that her claim for appointment on compassionate ground has not been considered by the respondent. 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. Heard Mr.T.Selvan, learned counsel for the petitioner and Mr.K.Sathiyasingh, learned counsel for the respondent.

3. The petitioner Late Mayilerum Perumal, who was employed as a Driver in the respondent Corporation, died in harness, on 27.03.2000. He was survived by the petitioner herein/who is his wife and three daughters. All the three daughters were minors at the time of the death of the employee.

4. On 12.07.2012 and 07.07.2015, the petitioner herein had gave representations seeking for compassionate appointment to any one of the legal heirs. The respondent had rejected the request on 31.07.2015, through the impugned order, stating that the application



for compassionate appointment should be made within a period of three years from the date of death of the employee. The rejection order is put under challenge in the present Writ Petition.

5. 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. In the present case, the petitioner's husband on 27.03.2000, while he was working as a Driver in the respondent Corporation. At the time of his death, he was survived by his wife and three daughters. The petitioner's claims to have made applications seeking for compassionate appointment on 12.07.2012 and 07.07.2015, for her third daughter namely, Jayasathya. Though the application was made beyond the period of three years from the date of death of the employee, the Hon'ble Division Bench in Velraj's case (*supra*) had held that three years period stipulated cannot be taken as a hard and fast rule and that, each case requires to be considered on the facts and circumstances. By applying the ratio laid down by the Hon'ble Division Bench in the aforesaid decision, this Court is of the view that, petitioner's case requires to be considered positively.

6. Even otherwise, when the petitioner's representation sought for any one of the legal heirs, three years period prescribed for making the application from the date of death of the employee will not apply insofar as the minor children are concerned, since they would be entitled to seek appointment within a period of three years from the date they attain majority. This 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



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(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 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:



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"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.

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



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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 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 she had attained her majority.

8. In the instant case, the petitioner's husband died on 27.03.2000 and as per the legal heir certificate, the petitioner was aged about 29 years, while his daughters were aged about 10 years, 8 years, 7 years respectively. Therefore, one of these children of the employee would be entitled to make an application within three years from the date they attain majority respectively.

9. In view of the aforesaid discussions, the respondent would not be entitled to reject the claim for compassionate appointment either on the ground of making an application within three years from the date of death of the employee or on the ground that the children are minors at the relevant point of time. Consequently, the petitioner or any of the three children of the deceased employee will be entitled to seek for compassionate appointment and as such, the impugned order cannot be sustained.

10. In the light of the above observations, the impugned order passed by the respondent dated 31.07.2015 is set aside and the matter is remanded back to the respondent herein for reconsideration. The respondent herein shall take into consideration all the observations made in this order and thereby, pass an appropriate speaking order on the petitioner's representation dated 12.07.2012 & 07.07.2015, atleast within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands ordered accordingly. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP/sm

To
The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Region, Tirunelveli.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-9709[F] dated 03/03/2020

Order made in

W.P. (MD) No.8838 of 2016

29.06.2020

SMA/17/07/2020/6P/3C

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