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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.36481 of 2004
and W.P.M.P.No.43812 of 2004

S.Manivannan

-Vs-

... Petitioner

1. The Chief Engineer
Southern Command, Pune.

2. The Chief Engineer, Chennai Zone,
Island Grounds, Chennai.

3. The Commander Works Engineer
Pallavan Salai, Chennai.

... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the record on the file of the second respondent in Proceedings 10246/GEN/3923/EIA and dated 12.01.2002 and quash the same as illegal, incompetent, irregular and without jurisdiction and further direct the first respondent to consider the case of the petitioner on compassionate ground based on the representation made on 25.01.1999.

For Petitioner : Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondents : No Appearance

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the record on the file of the second respondent in Proceedings 10246/GEN/3923/EIA and dated 12.01.2002 and quash the same as illegal, incompetent, irregular and without jurisdiction and further direct the first respondent to consider the case of the petitioner on compassionate ground based on the representation made on 25.01.1999.

2. The petitioner's father, one Sundararaj was appointed in the office of the respondent in the year 1964, he had an



unblemished service for more than 34 years, however all of a sudden, he passed away on 18.08.1998. He lastly employed as Duftry in the Commander Works Engineer. Since the father of the petitioner was the head of the family and he was the only bread winner of the family, due to the sudden demise of the father of the petitioner, the family has been put into great hardship. Therefore, in order to bail out the family from indigent and penurious circumstances, the petitioner, who is the son of the deceased employee sought for an appointment on compassionate ground from the respondents, which plea since had been turned out in the impugned order, dated 12.01.2002 challenging the same, the present writ petition has been filed.

3. Heard Mr.Avinash Wadhwani, learned counsel appearing for the petitioner who would submit that, still the family is in indigent and penurious circumstances, therefore if at all any vacancy still available, a direction can be given to the respondent to consider the request of the petitioner.

4. First of all, in order to appreciate the reasons stated in the impugned order for rejecting the plea of the petitioner, the order impugned is extracted hereunder :

"Your application, dated 25 Jan 99 for a compassionate appointment under the Scheme of Employment Assistance to deserving dependents of deceased Govt employees for the post of Mazdoor has been considered by the Competent Authority in accordance with the various policy instructions of the Govt of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training and of the Ministry of Defence Office Memoranda issued from time to time which are currently in vogue.

2. Keeping in mind the above mentioned policy instructions as well as the various Rulings of the Hon'ble Supreme Court on the subject matter of the Competent Authority, duly assisted by a Board of Officers, has examined in detail the overall interse relative merit of your case as per laid down norms among all such applicants who are registered with this Headquarters and finalised / approved your position in the overall order of merit.

3. The very limited number of vacancies as per the DOP & T Policy instructions available with this Headquarters is being offered to all those deserving candidates



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strictly in accordance with their overall order of merit and your position in the overall interse relative merit is beyond the available number of very limited vacancies. Therefore it is deeply regretted that in spite of our best of intentions to help you, we are unable to offer you a suitable post under the said Scheme for want of adequate vacancies.

4. In view of foregoing, it is regretted that your case for a compassionate appointment is closed strictly in accordance with the various policy instructions of the Govt of India and the various Rulings of the Hon'ble Supreme Court of India.

5. Please acknowledge receipt."

5. This rejection was made in the year 2002, therefore after 18 years anything could be survived in this issue and still the petitioner can pursue the matter and pursuant to which, he would be entitled to get any direction by way of mandamus by this Court to the respondent to consider the request of the petitioner for compassionate appointment, is the issue.

6. In this context, this Court reminds that, time and again Courts have taken the view consistently, with regard to the issue of compassionate appointment.

7. Various Government and Governmental authorities framed schemes for compassionate appointment which in fact are in violation or derogation of the regular recruitment or service regulation and rules being implemented by such authorities.

8. Insofar as the compassionate appointment is concerned, it is mainly envisaged only to bail out the family, who has been left in lurch by the sudden demise of the head of the family or the sole breadwinner of the family, from the penurious circumstances, where the family is being put in.

9. Therefore, having this avowed object in mind only, those schemes are framed by various authorities. While interpreting this kind of schemes, Hon'ble Supreme Court of India as well as this Court have taken consistent view that, only in order to provide immediate solace to the family of the deceased employee to bail out the family from indigent circumstances, compassionate appointment scheme is framed and being implemented. Therefore, after very long years, it cannot be expected that, the gesture of compassionate appointment can be



shown by the employer to such family.

10. In this context, recently a Full Bench of this Court, before whom issues had been referred to, as to how the compassionate appointment can be made and what kind of indulgence can be shown by the Law Courts in this issue.

11. The Full Bench Judgment made in W.P.(MD).No.7016 of 2011 etc., batch consisting of Hon'ble Chief Justice and other two Hon'ble Judges of this Court, dated 11.03.2020 has given a complete answer to all these questions which has been also followed by a Division Bench of this Court of Hon'ble Chief Justice and other learned Judge in W.A.No.237 of 2020, dated 01.09.2020.

12. For easy reference, the order of the Division Bench referred to above is quoted hereunder :

"Having heard Mr.Nissar Ahmed, learned counsel for the appellant and keeping in view the Full Bench decision, which has been delivered in W.P. (MD) No.7016 of 2011 (Nandini Dev vs. Secretary to Government) dated 11.03.2020, the relief prayed for by the appellant cannot be extended. We may gainfully extract paragraphs 31 and 32 of the judgment answering the reference as follows:-

"31. The Hon'ble Supreme Court in Sanjay Kumar Vs. State of Bihar, (2000) 7 SCC 192, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependant of the deceased employee filed after he attains majority cannot be entertained. Considering a belated application will be contrary to the scheme framed by the Government and will be also contrary to the judgments of the Supreme Court. 32. In view of the above, the reference is answered as under:- a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer.

Any deviation from the scheme is not



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permissible.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

2.It was also further indicated in paragraph 13 of the judgment rendered by the Chief Justice and Abdul Quddhose, J., as follows:-

"13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

In view of the ratio of the aforesaid decision of the Full Bench, the relief prayed for by the appellant is unacceptable. The Writ Appeal is, accordingly, consigned to records. No costs."



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13.If we apply the said principle laid down by the Hon'ble Full Bench, of course following various Supreme Court Judgments in this regard as well as, the Division Bench referred to above, in the present facts of the case, this Court is not in a position to issue any direction by way of mandamus as has been sought for by this petitioner and the reasons cited in the impugned order, dated 12.01.2002 cannot be said to be an unjustifiable reason. Therefore this Court feel that, no plausible reason could be found out from this petition to successfully challenge the impugned order and the consequential relief. Accordingly, this writ petition fails, therefore it is liable to be dismissed.

14. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. While dismissing this writ petition, this Court observes that, it is open to the petitioner to make a request to the respondents afresh and establish before the respondents that, still the family of the petitioner is in indigent circumstances and if that request satisfies the respondents, it is open to them to consider the same and pass necessary orders on merits and in accordance with law as early as possible.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TSVN

To

1. The Chief Engineer
Southern Command, Pune.
2. The Chief Engineer, Chennai Zone,
Island Grounds, Chennai.
3. The Commander Works Engineer
Pallavan Salai, Chennai.

+1cc to Mr.V. RAGAVACHARI, Advocate, S.R.No.3458

W.P.No.36481 of 2004

AKII(CO)
BE(15/07/2021)