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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.26362 OF 2010 AND
M.P.NO.1 OF 2011

N.Selvaraj

... Petitioner

Vs.

1. The Chairman,
Tamilnadu Electricity Board,
Anna Salai, Chennai-2.
2. The Chief Engineer (Personnel),
Anna Salai, Chennai-2.
3. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore-1.

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the entire records connected with the impugned orders of the third respondent in Lr.No. 05555/039/Va.Ve/Nir 2(4) 2001-3 dated 18.03.2002 and Lr.No. 002120/ 14/ Me.Pa.Po/Kada/Ni.Ve/Nir.2/Vu4/Ko.Va.Ve/ 2007 dated 04.07.2007 and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground on the basis of the representation dated 23.10.2010 and in the light of the order in W.A.No.42 of 2007 dated 02.07.2009 in the case of "the Chief Engineer/Personnel - Vs. P.Venkatesan".

For petitioner : Mr.S.N.Ravichandran

For respondents : Mr.P.Subramanian, TNEB

ORDER

This writ petition has been filed to quash the impugned letters dated 18.03.2002 and 04.07.2007 and direct the respondents to provide suitable employment to the petitioner on



compassionate ground on the basis of the representation dated 23.10.2010 and in the light of the order passed in W.A.No.42 of 2007 dated 02.07.2009.

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2. The case of the petitioner is as follows:

The petitioner's father Narayanan was working as lineman in the Tamil Nadu Electricity Board and Cuddalore Electricity Distribution Circle, Thittakudi Section, Thozhudur. While he was in service, he died on 08.05.1986, at age of 39 years, due to illness, leaving behind the petitioner and his mother, sister and brother, as his legal heirs. On the date of demise of the petitioner's father, the petitioner was aged 5 years.

2.1. The petitioner's mother made a representation in the year 1991, requesting for compassionate appointment to her, but it was returned directing to submit in proper format. Hence, representation was submitted in proper format, however, it was informed that since the petitioner's mother did not possess minimum required qualification of 8th standard pass, compassionate appointment could not be provided to her. Thereafter, after attaining majority, the petitioner made a representation dated 22.02.2001 before the third respondent and the same was rejected on 18.03.2002 on the ground that the petitioner had not attained the age of 18 years on 12.10.1998 and he applied for compassionate appointment with a delay of 2 years and 4 months, as per Board B.P.FB.No.46 dated 13.10.1995.

2.2 According to the petitioner, due to poverty, he could not continue his further studies after 10th standard and also he could not approach the appropriate forum for getting compassionate appointment. In the meanwhile, the Board had issued B.P.(FB) No.3 dated 09.01.2007, relaxing the time limit for the past cases, prior to issuance of B.P.(FB)46 dated 13.10.1995 and also directed the dependants to make application for rejected cases also. Hence, the petitioner's mother made a representation dated 29.01.2007 to the third respondent requesting for compassionate appointment to the petitioner. The third respondent directed to fill up the application in format, accordingly, it was furnished by the petitioner on 24.02.2007 in format. But the third respondent, rejected the application by proceedings dated 04.07.2007, on the ground that compassionate appointment shall be provided to the legal heirs of the employees, who died in service prior to 13.10.1995 only, however, the same could not be considered in view of the Board proceedings.

2.3. It is the contention of the petitioner that at the time of death of his father, there was no limitation to apply for compassionate appointment, however the petitioner's mother



submitted application in the year 1991 itself. Since there was no response, after attaining majority, the petitioner had made a representation on 22.02.2001, which was rejected on 18.03.2002 on the ground that the same was not made within three years. Again he made a representation dated 24.02.2007, which was also rejected by the third respondent on 04.07.2007. Mercy petition filed by the petitioner dated 23.10.2010 before the respondents was also not considered. Hence, the writ petition has been filed.

3. The brief contention of the counter affidavit filed by the third respondent Board is as follows.

The Board Proceedings in BP (FB).No.46 dated 13.10.1995 and the memo No.038525/587/G8/G82/2001-2 dated 24.05.2001 issued by the Chief Engineer (Personnel) governs the case of the petitioner. As per the above said memo, the applicant should possess the minimum educational qualification of a pass in eighth standard. It is further stated that the father of the petitioner died on 08.05.1986 and petitioner's mother made representation on 12.07.1991. The third respondent sent an application form to the petitioner's mother, enabling her to make an application for compassionate appointment. According to the petitioner, the above said application was rejected, as the petitioner's mother did not possess the required educational qualification.

3.1. After several years, the petitioner, being one of the legal heirs of the deceased, made application seeking compassionate appointment on 22.02.2001, but it was rejected on the ground that he was not completed 18 years on the date of 12.10.1998 and further there is a delay of 2 years 4 months in giving the representation, as per the proceedings in B.P.(FB) No.46 dated 13.10.1995. Further, B.P.(FB) No.3 dated 09.01.2007 relaxing the time limit, has been cancelled vide proceedings issued as per B.P. Ms.(CH) No.116 dated 24.03.2007 and hence, the claim of the petitioner has been rightly rejected third respondent vide order dated 04.07.2007. Hence, the writ petitioner is not entitled to the relief, as prayed for and the writ petition is liable to be dismissed.

4. Heard the rival submissions made by the counsels on either side and perused the materials on record.

5. The learned counsel appearing for the petitioner submitted that the reasons stated in the impugned order for rejection of compassionate appointment is contrary to the decision rendered by a Division Bench this court in W.A.No.3050 of 2003(Indiraniammal Vs. The Chief Engineer Personnel), The Tamil Nadu Electricity Board, Anna Salai Chennai) dated 08.03.2005. According to him, the period of three years, would



not apply to the present case, since the deceased died prior to the Board Proceedings FB Ms.No.46 dated 13.10.1995 and Clarification Memorandum dated 14.06.1997. Therefore, in the light of the decisions of the Honourable Supreme Court as well as the above proceedings, the reasons stated by the Board to reject the claim of the petitioner is illegal and the same is contrary to the above said Board's proceedings and clarification.

6. The learned counsel appearing for the petitioner also relied upon the proceedings of the respondent Board in B.P.(FB) No.9 dated 09.10.2015, wherein, at Paragraph No.4(i), it is stated as follows.

4 (1) 23.08.2005 முதல் 03.05.2010 வரை கருணை அடிப்படையில் பணி நியமனம் வேண்டி விண்ணப்பம் அளித்தவர்கள் கருணை அடிப்படையிலான பணி நியமனத்திற்கான குறும வயதுத் தகுதி தவிர. அனைத்து பிற தகுதிகளை பணி கோரிய விண்ணப்ப நாளிலும். வயது தகுதி மட்டும் (10 ஆண்டுகள் நிறைவு,) பணி நியமன நாளிலும். நிறைவு, செய்திருந்தால் போதுமானதாகக் கருதப்படவேண்டும்.

7. Further, the learned counsel for the petitioner relied upon the decision of the Honorable Supreme Court in Syed Khadim Hussain Vs. State of Bihar and others reported in 2006(9) SCC 195, where, it is held thus:

Service Law-Compassionate appointment - Person working as peon in PWD died in harness in 1991 leaving behind widow and five minor children - Widow applied for compassionate appointment, within time in 1993 - Her application was rejected merely because it was not in the prescribed format - Appellant, son, then applied for compassionate appointment in 1995, but his application was rejected in 2001 on the ground that rejection of appellant's application was aged around 13 years - Held, rejection appellant had attained above 18 years of age - Authorities therefore, must consider his application and give him appropriate appointment within three months.

8. He also relied upon the decision rendered by a Division Bench of this Court in Writ Appeal No.29 of 2006 between P.Rajamani and The Chairman, Tamil Nadu Elec. Board and two others dated 27.06.2005. In the above W.A.No.29 of 2006, at paragraph No.7 it is held thus:

"7. For all the above reasons, we are convinced that the claim of the appellant for compassionate appointment for her younger son Navamani ought to have been favourably considered by the respondent



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Board. The rejection of the applicant's claim by the communication dated 24.09.2001 by the second respondent as well as the communication dated 12.07.2002 by the third respondent are therefore not justifiable and accordingly, the same are set aside. The writ appeal stands allowed. The respondents are directed to entertain the application of the appellant dated 11.11.1999 along with the application of the younger son Navamani dated 01.04.2000 and pass appropriate orders for granting compassionate appointment to the younger son of the appellant expeditiously, preferably within three months from the date of receipt of a copy of this order."

It is the contention of the learned counsel for petitioner that the above decision of the Division Bench of this court is squarely apply to the present case on hand and hence, the claim of the petitioner may be considered.

9. Further, he has also relied upon the another decision of the Division Bench of this Court in W.A.No.2220 of 2019 between J.Shoba and The Director General of Police/Inspector General of Prisons (I/c) Director General of Prisons, Egmore, Chennai and another dated 19.08.2019. Therefore, in view of the above judgments, the application filed by the petitioner, after attaining his majority, rejected by the respondents cannot be sustained and hence, the impugned order is liable to be set aside.

10. The Primordial contention of the petitioner is that the deceased employee Narayanan, who died on 08.05.1986 leaving behind his wife, daughter and two sons as his legal heirs, including the petitioner. At the time of death of his father, the petitioner was aged 5 years. Admittedly, the petitioner's mother made an application seeking compassionate appointment on 12.07.1991 and the said application was not considered, since she did not possess the required qualification of 8th standard passed. Hence, the petitioner's mother is not eligible for compassionate appointment. Thereafter, the petitioner made an application on 22.02.2001, but it was rejected, as there was a delay in submitting the application, as per the Board Proceedings.

11. According to the petitioner, the Board Proceedings in B.P.(FB) No.46 dated 13.10.1995 came into effect only in the year 1995. But the petitioner's father died on 08.05.1986 itself. Thereafter, clarification on the issue of appointment on compassionate grounds was also issued by the Government vide G.O.Ms.No.1479 dated 09.11.1999, wherein it is clarified that



the three year rule would apply only to the legal heirs of the Government Servants, who died on or after 26.09.1995 and would not apply to the past cases. Further, it is also relied upon by the learned counsel for the petitioner that the Board Proceedings dated 09.10.2015 in B.P.(FB)No.9 and the decision of a Division Bench of this court in W.A.No.2220 of 2019 dated 19.08.2019.

12. It is to be noted that, the decision relied upon by the counsel for the petitioner in W.A.No.2220 of 2019 dated 19.08.2019 would not apply to the present case, since, in the above said case, there was a civil dispute among the legal heirs of the deceased employee. Hence, the facts of the above said case is entirely different to the facts of the present case.

13. More over, it is pertinent to note that, in an identical issue, a Division Bench of this court in W.A.No.1749 of 2019 (Sudhanthira Devi Vs. The State of Tamil Nadu and others) [in the said Judgment, myself (DKKJ) is one of the member] by its judgment dated 03.09.2019, following the decisions of the Hon'ble Supreme Court, held that applications for compassionate appointment submitted, beyond the period of three years cannot be entertained.

14. Here in this case, the petitioner's mother submitted application in the year 1991, after lapse of 4 years from the date of death of her husband, and it was not considered by the respondents on the ground that she did not possess required educational qualification of 8th standard pass. Subsequently, after passing of several years, the petitioner made an application seeking compassionate appointment on 22.02.2001, but it was rejected on the ground that he has not completed 18 years on the date of 12.10.1998, as per the proceedings in B.P.(FB) No.46 dated 13.10.1995 and further there is a delay of 2 years 4 months in giving the representation. Further, B.P.(FB) No.3 dated 09.01.2007 relaxing the time limit, has been cancelled vide Board proceedings in B.P. Ms.(CH) No.116 dated 24.03.2007.

15. The Hon'ble Supreme Court, in the case of Umesh Kumar Nagpal Vs. State of Haryana reported in 1994 SCC (4) 138, has held as follows.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crises which it faces at the time of the death of the sole 1989(4)



SCC 468: 1989 SCC (L & S) 662: 1989(4) SLR 327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

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16. That apart, in Government of India and another Vs. P.Venkatesh reported in (2019) 15 SCC 613, the Honourable Supreme Court has held as follows:

8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Court and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 09.08.2016, nearly twenty one years had elapsed since the date of the death of the employee.

9.

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

17. Further, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed the time limit to prefer application for compassionate appointment as three years from the date of death of the Government servants.

18. In the present case on hand, the petitioner's father died on 08.05.1986 and the petitioner, after attaining majority,



submitted application for compassionate appointment on 22.02.2001, nearly after 21 years. Further, the petitioner has not stated in the affidavit as to whether the other legal heirs of the deceased employee, namely sister and brother of the petitioner are eligible for compassionate appointment at that time. Therefore, in view of the above discussions and the settled position of law, the claim of the petitioner, made beyond the prescribed period of three years, cannot be entertained and hence, there is no ground to interfere with the impugned orders passed by the third respondent.

19. Accordingly, the writ petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Chairman,
Tamilnadu Electricity Board,
Anna Salai, Chennai-2.
2. The Chief Engineer (Personnel),
Anna Salai, Chennai-2.
3. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore-1.

+1cc to Mr.P.Subramanian, Advocate, S.R.No.58442
+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.58704

W.P.No.26362 of 2010

GPL (CO)
PM/13/12/2021