

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 08.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.29802 of 2012

and

M.P.No.1 of 2014

C.Kamalakshi

...Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chennai - 600 005.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai Division,
Madurai.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 15.10.2012 in Proceedings No.51261/PNP/A3/2009-4 passed by the 1st respondent and proceedings No.13964/A1/CE/Madurai/2012 dated 16.10.2012 passed by the 2nd respondent, appointing the petitioner to the post of Office Assistant on compassionate grounds and quashing the same as illegal, unwarranted and not sustainable in law and facts and contrary to the provisions of Constitution of India and further directing the 1st respondent to appoint the son of the petitioner Mr.K.Dinesh in the above post or in some other suitable post by duly considering his qualification and other eligibility conditions in accordance with law on compassionate grounds.

For Petitioner : Mr.Kalyanasundaram
Senior Counsel
For M/s.R.Vasudevan

For Respondents : Mr.S.Eraskine Leo
Standing Counsel for TWAD Board

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records pertaining to the order dated 15.10.2012 in Proceedings No.51261/PNP/A3/2009-4 passed by the first respondent and proceedings No.13964/A1/CE/Madurai/2012 dated 16.10.2012 passed by the second respondent, appointing the petitioner to the post of Office Assistant on compassionate grounds and quashing the same as illegal, unwarranted and not sustainable in law and facts and contrary to the provisions of Constitution of India and further directing the 1st respondent to appoint the son of the petitioner Mr.K.Dinesh in the above post or in some other suitable post by duly considering his qualification and other eligibility conditions in accordance with law on compassionate grounds.

2.The short facts which are required to be noticed for disposal of this writ petition are as follows:

(i) The petitioner's husband one Kuttappan was employed as Fitter at Pollachi Division of the respondent TWAD Board and during his service, he suddenly died on 27.05.1995 leaving behind the petitioner i.e., the wife and four children (three daughters and one son).

(ii) Since the deceased employee was the head of the family and was the only breadwinner of the family, because of his sudden death, the whole family was put in lurch, in order to get compassionate appointment, the petitioner i.e., the widow of the employee made an application to the respondents on 07.03.1996.

(iii) The said application had been processed and there had been correspondences to that effect between the respondents and the petitioner. However, no order of appointment on compassionate ground had been made to the petitioner even for some years.

(iv) In the meanwhile, the petitioner's son has attained the majority and he had been qualified with SSLC and therefore, in this context, it seems that, the very respondent Board had sent a communication on 03.08.2004 to the petitioner stating that, since the petitioner already reached 52 years, instead of the petitioner, an application seeking compassionate appointment to her son can be made with educational qualification as well as No Objection Certificate from all legal heirs and once such application is filed by the son of the petitioner with relevant documents as required, that would be considered by the respondents TWAD Board and appointment would be made on

compassionate ground to the petitioner son.

(v) Pursuant to the said communication, on 03.09.2004, the petitioner's son has given a request to the respondent Board seeking compassionate appointment. Having receipt of the said application and on processing of the same, the respondent TWAD Board, by communication dated 06.04.2010 addressed to the son of the petitioner viz., K.Dinesh to attend a certificate verification session with necessary certificates, as has been enumerated in the said communication dated 06.04.2010.

(vi) Accordingly, on 19.04.2010, as instructed, the petitioner son did attend the certificate verification session, where also, having verified the certificates produced by the petitioner's son with regard to his age, Educational qualification, legal heir Certificate, No Objection Certificate obtained from the other legal heirs of the deceased employee, the respondent Board seems to have conveyed to the petitioner son that appointment order would be made.

(vii) However, to the utter shock and surprise of the petitioner as well as her son, the respondent TWAD Board, by communication dated 15.10.2012, has issued appointment orders to a set of people numbering about 21, where, the name of the petitioner has been found at Serial No.4, as if that the petitioner was appointed as Office Assistant under the control of the Chief Engineer at Madurai.

(viii) Following which, consequential order has been passed by the Chief Engineer, Madurai of TWAD Board on 16.10.2012 giving posting orders to the petitioner as Office Assistant at Tirunelveli, Kanniyakumari Circle.

(ix) On seeing the said orders passed by the respondent Board dated 15.10.2012 and 16.10.2012, the petitioner had sent a request on 22.10.2012 to the respondent Board stating that, the petitioner's date of birth is 12.04.1953. Therefore, on the date of this orders i.e., 15.10.2012 and 16.10.2012, the petitioner already completed 59 years and six months. Even as a last grade servant as per the Rules, which are in vogue, she can work as last grade servant i.e., O.A. only for six months and therefore, the said appointment made in favour of the petitioner would not serve the purpose that, the family of the deceased Government servant cannot be bailed out from the indigent circumstances and therefore, the petitioner sought for reconsideration of the same and accordingly, issue appointment order to the petitioner son Dinesh, who, in fact, had been interviewed and his certificates have already been verified pursuant to the communication dated 06.04.2010 of the respondent TWAD Board.

(x)However, despite the said request having been made by the petitioner, no action seems to have been taken and nothing was forthcoming from the respondents, therefore, having no other option, the petitioner filed this writ petition challenging the said order dated 15.10.2012 and consequential order dated 16.10.2012 giving appointment and posting to the petitioner as O.A. at the fag end of her superannuation age i.e., 59 years and six months and also seeks a consequential prayer to give a mandamus to the respondents to withdraw this order impugned and issue orders of appointment on compassionate ground to the petitioner son.

3.Reiterating the aforesaid facts, Mr.Kalyanasundaram, learned Senior Counsel appearing for the petitioner would submit that, having kept the application pending made by the petitioner from the year 1996 till 2012 i.e., for 16 years at last the present impugned orders have been passed.

4.In this regard, the learned Senior Counsel would point out that, had this appointment been given to the petitioner immediately on making such application either in the year 1996 or immediately thereafter, certainly, the petitioner would have been in a position to work as O.A. for nearly about 16 or 17 years and such gesture was not shown by the respondent Department, despite the fact that the family of the petitioner had been in continuous indigent circumstances because of the sudden demise of the head of the family.

5.In the meanwhile, as per the communication dated 03.08.2004, the respondents took a stand that as on that date, the petitioner already reached 52 years, therefore, she cannot be considered for compassionate appointment, instead her son can claim compassionate appointment and in this regard, if an application is made with necessary documents that would be considered.

6.Only pursuant to the said communication, further application was made by the petitioner son Dinesh on 03.09.2004 and thereafter, on 06.04.2010 communication was sent by TWAD Board to the petitioner for certificate verification and accordingly, that process also was over on 19.04.2010. Therefore, in all fairness, appointment should have been made in favour of the petitioner son, instead of the petitioner, as has been done in the impugned orders. Therefore, it is a clear arbitrary exercise on the part of the respondents and the very purpose of making a compassionate appointment in order to bail out the family which is in indigent circumstances is getting defeated, therefore, the learned Senior Counsel would seek indulgence of this Court as prayed for.

7. Per contra, Mr. S. Eraskine Leo, learned Standing Counsel appearing for the respondent TWAD Board would submit that, the application was made by the petitioner immediately within the stipulated period of three years i.e., on 07.03.1996, however, the same could not be processed immediately and in the meanwhile, she attained the age of 52 years, hence, the TWAD Board wanted to process the application of the petitioner son and in this regard, a certificate verification also had been done on 19.04.2010 and in this regard, when a clarification was sought for from the Government by the respondent TWAD Board, no such clarification was received and therefore, without waiting for further as the petitioner would reach the superannuation age, when similar persons' plea for compassionate appointment were considered, the plea of the petitioner was also considered and accordingly, the order dated 15.10.2012 was passed, where, not only the petitioner's candidature but also several other candidates who had been similarly placed were considered and accordingly, orders of appointment were given, therefore, the same cannot be found fault with and in this regard, what has been done by the respondent TWAD Board is based on the available vacancy and therefore, in this regard, once appointment on compassionate ground has been given to the petitioner, who is also the legal heir of the deceased employee, second appointment cannot be given on compassionate ground to the same family and therefore, in this regard, the request of the petitioner son could not be considered. However, the learned Standing Counsel appearing for the respondent Board would submit that, in view of the subsequent representation, having been made after the impugned orders were passed, dated 22.10.2012 by the petitioner on behalf of her son, that would be considered on merits and accordingly, suitable orders would be passed by the respondents on merits, within a time frame that may be stipulated by this Court.

8. I have considered those rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. As has been rightly pointed out by Mr. Kalyanasundaram, learned Senior Counsel appearing for the petitioner that, the employee was expired on 27.05.1995, immediately on 07.03.1996 application was filed by the petitioner, therefore, if at all the respondents wanted to give appointment to any legal heir of the deceased employee on compassionate ground, that should have been dealt with then and there itself, that too within a reasonable time of one or two years. The very purpose of having the Scheme of compassionate appointment is to bail out the family, who have been left in lurch, because of the sudden demise of the head of the family, from the penurious circumstances and therefore, such an object of having the Scheme

of compassionate appointment should not have been defeated at any cost by the employer. In this case, though such application made by the widow of the deceased employee is well within the time, the same was delayed for several years, for which, no acceptable reason has been given.

10. Moreover, at one point of time i.e., on 03.08.2004 the very respondents themselves thought it fit to take an application from the son of the petitioner in view of the fact that the petitioner already reached 52 years and therefore, to consider one of the family member of the deceased employee, they wanted an application from the son of the petitioner, which was also submitted by the son of the petitioner and on processing the same, he was called to attend the certificate verification session scheduled to be conducted on 19.04.2010, where, the petitioner did attend the session and produced all certificates. Having verified those certificates, of course, pursuant to the application submitted by him, which was in response to the view taken by the respondents, as reflected in the communication dated 03.08.2004, the respondent TWAD Board cannot go back once again and makes an appointment only in favour of the petitioner knowing well that the petitioner has already reached the superannuation age i.e., about 59 years and six months.

11. In the year 2004 itself, it was the stand of the respondents that, the petitioner already reached 52 years, therefore, she cannot be considered for compassionate appointment and on that ground, the petitioner son was directed to make an application, while so the respondents now cannot turn around and say in the year 2012 that, the petitioner can be appointed on compassionate ground.

12. On seeing the orders passed by the respondents, this Court feels that, only for the purpose of an eyewash, as if that the petitioner also has been given compassionate appointment, it has been given belatedly after 16 years i.e., in the year 2012, whereas the employee died in the year 1995. Therefore, the said move on the part of the respondents in giving such an appointment to the petitioner only for six months to serve by the petitioner, would not serve the purpose of bailing out the family, which is in indigent circumstances, of the deceased employee of the respondent Board. Therefore, the delay caused in this regard, is not attributable to the petitioner or his son, but only on the respondents. Therefore, the said order impugned, as has been challenged herein, would not stand in the legal scrutiny and therefore, this Court is inclined to dispose of this writ petition with the following order.

(i) That the impugned order insofar as the appointment made in respect of the petitioner and the

consequential order giving posting to the petitioner is hereby quashed.

(ii) As a sequel, there shall be a direction to the respondents to consider the request of the petitioner made in this regard dated 22.10.2012 and on considering the same, the respondents shall make an endeavour to give compassionate appointment to the petitioner son viz., K.Dinesh, pursuant to the communication dated 06.04.2010, where the petitioner son had been called for certificate verification, which was also taken place subsequently on 19.04.2010, where the respondents have verified all the certificates produced by the petitioner son K.Dinesh and accordingly, pass necessary orders giving appointment on compassionate ground to any suitable post in commensurate with his educational qualification, so that the family of the deceased employee of the respondent Board, who is none other than the husband of the petitioner and the father of the said K.Dinesh can be recovered or rescued from the indigent circumstances.

(iii) The aforesaid exercise shall be undertaken by the respondents Board within a period of eight weeks from the date of receipt of a copy of this order.

13. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sg1

WEB COPY

To

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chennai - 600 005.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai Division, Madurai.

+3cc to Mr.R.Vasudevan, Advocate, S.R.No.14451

W.P.No.29802 of 2012

GPL (CO)
RN (07/07/2021)



WEB COPY