

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2021

Delivered On: 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.5577 of 2015

S.Tamilselvan @ S.Tamilselvam

... Petitioner

...vs...

1. The Chairman,
Tamilnadu Electricity Board,
144 Anna Salai, Chennai 600 002.

2. The Superintending Engineer,
CEDC/North, TANGEDCO,
Tamilnadu Generation and Distribution Company,
144 Anna Salai, Chennai 60002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the Orders in Ka.No.012713/Ni.Bi II/Oo 4/2012 dated 06.11.2012 on the file of the Second Respondent, to quash the same and to consider the case of the petitioner for Compassionate ground employment in place of petitioner father who died in harness, as Helper in TANGEDCO Naapaalayam, Thiruvallur District, on 16.01.1998, in pursuant to the petitioner representation dated 27.08.2012.

For Petitioner : Mr.R.Selvakumar

For R1 & R2 : Mr.M.Karthik Raja

ORDER

Challenging the order dated 06.11.2012 passed by the second respondent rejecting the petitioner's application seeking employment on compassionate ground, the present writ petition has been filed. A consequential direction has also been sought to the respondents to consider the petitioner's representation dated 27.08.2012 for appointment.

2. The facts leading to the filing of this writ petition, in brief, would run thus:

The Petitioner's father by name, E.Sankar, was appointed as

Helper in the office of the Assistant Engineer, Periyapalayam and he died on 16.01.1998, while he was working at Naapalayam EB Office, Tondiarpet Division, Chennai 600 103. After his death, the petitioner's mother applied for Compassionate job, as the petitioner was aged 9 years. Subsequently, on 09.02.2002, the second respondent called upon the petitioner's mother to produce the certificate relating to her educational qualification. Since she did not qualify 8th standard, she was unable to produce the documents as called for by the second respondent. Immediately, she made application seeking compassionate appointment for her son, which was rejected citing his ineligibility due to age, by communication dated 02.12.2003. However, after attaining the age of majority, the petitioner submitted application seeking employment on compassionate ground, which was rejected by the second respondent on 14.08.2007. Even the petitioner's last representation dated 27.08.2012 referring to B.P.No.17 was rejected by the second respondent on 06.11.2012, which is impugned herein.

3.The learned counsel for the petitioner submitted that without considering the fact that at the time of death of his father, the petitioner was only a minor and that, immediately after attaining majority, he applied for compassionate ground employment, the second respondent rejected the petitioner's application on the ground that the same was made belatedly, which is arbitrary, illegal and against the object of the Scheme.

4.On the other hand, the learned counsel for the respondents submitted that as per the Government order in existence, compassionate appointment will be provided to the legal heirs of the deceased Government Servant, only if the legal heirs of the deceased Government Servant submitted their application to the competent authority within 3 years from the date of death of Government Servant, whereas the petitioner submitted the representation seeking compassionate appointment, after a lapse of 9 years from the date of death of his father and hence, he is not eligible for the appointment on compassionate ground. Hence, according to the learned counsel, the order passed by the second respondent, rejecting the petitioner's application, does not require any interference by this Court.

5.Heard both sides and perused the materials brought on record.

6.Admittedly, the petitioner made representation seeking appointment on compassionate ground, belatedly, that too, after a lapse of 9 years from the date of death of his father. Whereas, the recent G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020, which supersedes all the Government

Order earlier passed from the year 1972, makes it very clear that the application seeking compassionate appointment should be made within a period of three years from the date of death of the Government servant. When such being the position, this Court is of the opinion that the appointment on compassionate ground cannot be made after the lapse of a period specified in the rules, as it is not a vested right to exercise at any time in future. Hence, the rejection of the petitioner's representation seeking such appointment is perfectly right and the same need not be interfered with.

7. At this juncture, it is noteworthy to mention the observation of the Supreme Court in Chief Commissioner, Central Excise and Customs and others v. Prabhat Singh [(2012) 13 SCC 412] that "the Court should not fall prey to any sympathy syndrome of issue direction for compassionate appointment dehors prescribed norms".

8. It is also apropos to point out that the issue involved herein came up for consideration in WP.(MD)No.7016 of 2011 by way of reference to the Full Bench of this Court, which answered the same by order dated 11.03.2020, paragraph 32(a) of which is profitably extracted hereunder:

"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 permissible."

9. Paragraph 31 of the aforesaid Full Bench decision is with respect to belated submission of application, which reads as follows:

"The Hon'ble Supreme Court in Sanjay Kumar v. 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 dependent 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."

10. Therefore, this Court cannot take a different stand contrary to the recent G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well the decision of the Full Bench of this Court in WP.(MD).N0.7016 of 2011 dated 11.03.2020.

11. In such view of the matter, this writ petition sans

merits and is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

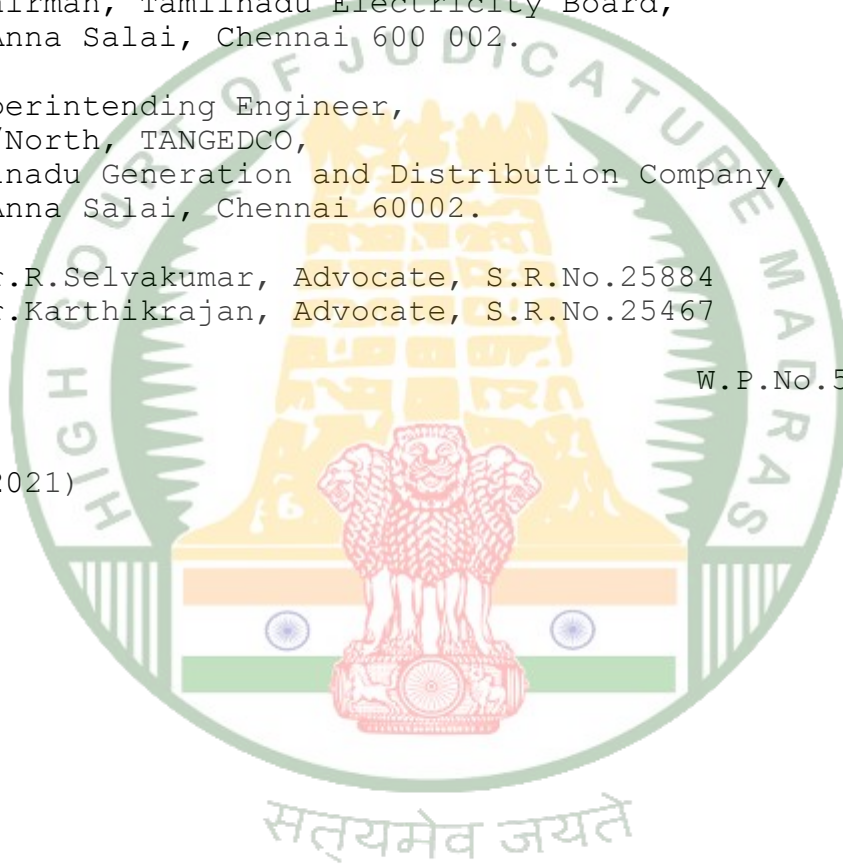
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+1cc to Mr.R.Selvakumar, Advocate, S.R.No.25884

+1cc to Mr.Karthikrajan, Advocate, S.R.No.25467

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SR(CO)
CB(05/07/2021)



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