



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.2094 of 2019

J.Hariharan

... Appellant

vs.

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation/
TNEB, No.114, Anna Salai,
Chennai 600 002.
2. The Chief Engineer (Establishment)/
Administrative Branch,
Tamil Nadu Generation and Distribution Corporation,
TNEB, No.114, Anna Salai,
Chennai 600 002.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation/
TNEB, Cuddalore Electricity Distribution Circle,
Kepparmalai, Cuddalore - 4.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 18.03.2019 passed by this Court in W.P.No.31504 of 2018.

Prayer W.P.No.31504 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his proceeding Ka.No.001232/SE/Cud/Admin-2/U4/Ko.Va.Vo/2018 dated 23.04.2018 and NA.KA.NO.008441/522/CUD/ADMIN-2/U4/KO.VA/18 dated 28.08.2018 quash the same and consequently direct the respondents to forthwith appoint the petitioner on compassionate grounds according to his qualification.

For Appellant	:	Mr.K.Raja
For Respondents 1 to 3	:	Mr.P.Subramanian, Standing Counsel



J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

The present Writ Appeal has been preferred, challenging the order dated 18.03.2019 passed by the learned Single Judge in W.P.No.31504 of 2018.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. In the present case on hand, the Appellant herein is the son of the deceased employee. At the time of his father's death on 26.10.2013, the Appellant herein was a minor and therefore, he was not in a position to submit an Application on compassionate ground. As the Appellant's mother got dissolution of marriage from the deceased employee, she is not entitled to claim appointment on compassionate ground. Furthermore, the Appellant's mother abandoned her children, i.e. the Appellant herein and his sister.

4. The learned Single Judge has held that, the delay cannot be held against the Appellant herein, as the first Application made by him was submitted within the time limit and that, as he was a minor at that point of time, the same could not be considered. The learned Single Judge went on to hold that, compassionate appointment must be dealt with, as per the terms and conditions of the Scheme, and any Application by a minor seeking compassionate appointment is invalid, as, a minor cannot secure public employment as per the Service Rules in force.

5. There are a catena of Apex Court decisions holding that, compassionate appointment cannot be granted, when an Application is made beyond the time stipulated. In that regard, it is worth referring to an Apex Court decision in the case of Bhawani Prasad Sonkar vs. Union of India reported in (2011) 4 SCC 209, relevant portion of which, is extracted hereunder:

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

(ii) An application for compassionate



WEB COPY

employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largess irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

6. The Appellant herein, after attaining majority, again made an Application seeking appointment on compassionate ground to the Authority concerned. However, the same was rejected on the ground that, the said Application was made belatedly, which is beyond the period of limitation.

7. A narration of events in the case on hand makes it clear that, an application for compassionate appointment has to be made as per the Scheme within a period of three years and that, indigent circumstances should be shown. Though, the Electricity Board was right in holding that, an Application for compassionate appointment should be filed within three years from the date of death of the employee, they will have to take into account the indigent circumstances of the family of the deceased employee.

8. Though the Appellant's mother has abandoned the Appellant and his sister, after obtaining divorce during the lifetime of the Appellant's father, and is living separately, fortunately, their grandparents have taken care of them. This Court is of the view that, as an exceptional case, the request of the Appellant herein has to be considered for compassionate appointment. Whenever, compassionate appointment is sought for by an Applicant, 'No Objection' has to be obtained from the other legal heirs of the deceased employee. In the case on hand, there is no possibility of obtaining 'No Objection' from the Appellant's sister, who is a minor as of now. Also, the possibility of the Appellant's sister claiming compassionate



appointment by objecting to her brother's appointment, after attaining majority, cannot be ruled out.

9. Hence, in view of the foregoing discussion, this Court directs the Respondent/Electricity Board to consider the Appellant's Application for compassionate ground, if he is otherwise eligible, subject to the condition that, he gives an Undertaking that, 50% of his monthly income will be given to his sister, till she gets married and that, he will pave way for his sister to get employment on compassionate ground, in case, she objects to his employment, after she attains majority. If the Electricity Board provides employment to the Appellant on compassionate ground, then 50% of his salary shall be deducted and credited into the account of his sister viz. J.Harini.

10. Except the above direction, none of the observations made by the learned Single Judge is disturbed with regard to compassionate appointment.

11. It is made clear that, this order cannot be treated as a precedent, as compassionate appointment for the Appellant herein is directed to be considered, only by taking into account the peculiar facts and circumstances of the case.

In fine, the Writ Appeal is ordered accordingly. No costs. Consequently, connected C.M.P.No.14217 of 2019 is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

(vm/aeb)

To:

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation/
TNEB, No.114, Anna Salai, Chennai 600 002.
2. The Chief Engineer (Establishment)/
Administrative Branch,
Tamil Nadu Generation and Distribution Corporation,
TNEB, No.114, Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation/
TNEB, Cuddalore Electricity Distribution Circle,
Kepparmalai, Cuddalore - 4.

+1 cc to Mr.K.Raja, Advocate Sr.NO.45619

+1 cc to Mr.P.Subramanian, Advocate Sr.NO.45641

W.A. No.2094 of 2019

A.SK(11.10.2021)