

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 05.02.2021

Judgment Delivered on : 05.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2847 of 2019

K.Lokesh,
S/o (late) S.Krishnamoorthy ... Appellant

Vs.

1. The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-02.

2. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-02.

3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore-6.

4. The Additional Chief Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore-6.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.07.2019 passed by the learned Single Judge in W.P.No.22036 of 2019, on the file of this Court.

Prayer in W.P.No.22036 of 2019:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus Calling for the entire records connected with the Impugned order passed by the 4th Respondent in LR.NO31307/722/KU.THA.PO/VAE/NI.PI3/U2/VA.VAY 2019 dated 25.2.2019 confirming the order of the 3rd Respondent passed in LR.NO 27336/NI.PI.3/U2/2013 dated 15.12.2013 and quash the same and consequently direct the Respondents to provide suitable employment to the Petitioner on compassionate grounds.

For appellant : Mr.S.N.Ravichandran
For respondents : Mr.Fakkir Mohideen

JUDGMENT

R.SUBBIAH, J

This Writ Appeal is filed as against the order dated 26.07.2019 passed by the learned Single Judge in the Writ Petition in W.P.No.22036 of 2019 which was filed for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the fourth respondent in Lr.No.31307 / 722 / Ku.Tha.Po. / Vae / Ni.Pi.3 / U2 / Va.Vay / 2019, dated 25.02.2019, which was confirmed by the order of the third respondent passed in Lr.No.27336/Ni.Pi.3/U2/2013, dated 15.12.2013, quash the same and consequently, direct the respondents to provide suitable employment to the appellant/writ petitioner on compassionate grounds.

2. The said Writ Petition was dismissed by the learned Single Judge on 26.07.2019, in and by which, while considering all the aspects pertaining to compassionate appointment, as delivered in W.P.(MD).Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD).Nos.19455 and 19530 of 2018 (S.Gowtham Balu Vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai), dated 24.09.2018 and also taking note of the decision of the Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of India, reported in 2011 (4) SCC 209, held as follows:

"8. That apart, this Court has also held that back-door entry should be prevented. In the case on hand, the Petitioner is seeking Compassionate appointment not on account of the demise of his mother, but on account of his father's demise on 07.08.2011. According to the Petitioner, his mother did not seek for compassionate appointment within three years of the Petitioner's demise for the reason that she is an illiterate. When there is no educational qualification specified as mandatory for Class IV employment, it is clear that the Petitioner and his mother have knowingly missed the bus. While so, the Petitioner cannot belatedly make a representation to the authorities and seek compassionate appointment that he has attained majority now. Also, it is seen that the Petitioner's claim for compassionate appointment on 27.11.2018 has been rejected by the impugned letter dated 25.02.2019.

9. In view of the above, this Court does not find any reason warranting interference with the orders impugned in this Writ Petition. Hence, this Writ Petition stands dismissed as devoid of merits. No costs."

3. Brief facts which are necessary for disposal of the present Writ Appeal are as follows:

(a) The appellant/writ petitioner's father was working as a contract labourer for several years in the respondent-TANGEDCO (Tamil Nadu Electricity Board). After several years of continuous service, he was made permanent as Helper in the year 1997 and was subsequently promoted as Wireman and posted in the Office of Assistant Engineer (O & M), Gandhinagar/West, Vellore Electricity Distribution Circle. While he was in service, he died due to illness on 07.08.2011 at the age of 42 years. On his demise, the appellant/writ petitioner's father left behind his parents, wife, two sons, including the appellant/writ petitioner as his legal heirs. At the time of the death of the appellant/writ petitioner's father, the appellant/writ petitioner was aged about 12 years.

(b) It is the further case of the appellant/writ petitioner that his father was the only bread-winner of his family. After his demise, the appellant/writ petitioner's mother was unable to maintain the family without any income and that his family had to struggle even for sustaining a living. Furthermore, the appellant/writ petitioner's mother is an illiterate. Hence, she made a representation, dated 14.11.2013 to the third respondent seeking compassionate appointment for the appellant/writ petitioner. On 18.11.2013, the said representation/application was submitted in the prescribed format. By letter dated 15.12.2013, the third respondent returned the proposal of the appellant/writ petitioner's mother on the ground that the appellant/writ petitioner was only aged about 14 years on the date of submission of the application form and that the compassionate appointment can be provided only after completion of 18 years. With great difficulty, the appellant/writ petitioner passed +2 in April 2017. The penurious circumstances became bad to worse, as his mother died due to illness on 31.10.2018. The appellant/writ petitioner was under the care and supervision of his grandfather, who was aged about 72 years. The appellant/writ petitioner has a 14-year old brother to take care.

(c) Hence, the appellant/writ petitioner made an application to the third respondent on 27.11.2018 seeking for compassionate appointment. The third respondent, by order dated 25.02.2019, perfunctorily rejected the claim of the appellant/writ petitioner on the ground that, already, the application submitted by the mother was rejected on 15.12.2013 and hence, the application submitted by the appellant/writ petitioner could

not be entertained. Therefore, the appellant/writ petitioner has filed the Writ Petition for the relief stated supra. The learned Single Judge by the order under challenge, dismissed the Writ Petition, against which, the present Writ Appeal is filed by the appellant/writ petitioner.

4. The learned counsel for the appellant/writ petitioner submitted that any claim for compassionate appointment should be strictly in consonance with the Scheme in force. Moreover, the Scheme which was prevalent on the date of death of a deceased-employee, alone, will govern the appellant's appointment on compassionate grounds. He further contended that on the date of demise of the appellant/writ petitioner's father on 07.08.2011, the Board Proceedings in B.P.(FB).No.46, dated 13.10.1995 read with Memo issued by the Chief Engineer/Personnel, dated 14.06.1997 was in force. The relevant portion of the said Memo, dated 14.06.1997 reads as follows:

"(1) As per the B.P.(F.B).No.46, dated 13.10.1995, the legal heirs of the deceased employee shall give application within 3 years from the date of death of Board Employee as mentioned in the letter under reference cited.

(2) Board employees who died prior to implementation of B.P.No.46, dated 13.10.1995, the legal heirs of the deceased employee shall apply for employment assistance within three years from the date of issue of the said B.P.

(3) If the applicants who applied for employment assistance within 3 years from the date of death and not completed 18 years of age, such cases will be requested to apply again after completion of 18 years of age.

(4) If the applicants applied again after completion of 18 years of age, the applicants will be intimated that such applications will be examined as per the Board's Rules in force at that time."

5. The learned counsel for the appellant/writ petitioner further contended that, by way of another Circular dated 06.04.2002, the respondents sought to do away with paragraphs 3 and 4 of the aforesaid Memo, dated 14.06.1997. The subsequent Circular dated 06.04.2002, which restricts the dependants from making application for compassionate appointment on attaining majority, came up for hearing before this Court in W.P.No.21512 of 2003, which was dismissed by this Court on 04.08.2003, against which Writ Appeal was filed, in which the Division Bench

of this Court, relied on a decision in the case of Indiraniammal Vs. The Chief Engineer (Personnel) in W.A.No.3050 of 2003, dated 08.03.2005 and accordingly, the said order dated 04.08.2003 passed by the learned Single Judge in W.P.No.21512 of 2003 was set aside and a direction was issued to the Tamil Nadu Electricity Board to consider the claim of the appellant therein for compassionate appointment on the basis of the application submitted by him after attaining majority.

6. It is the further submission of the learned counsel appearing for the appellant/writ petitioner that, as against the above said order passed in Indiraniammal's case, the Board preferred Special Leave Petition (converted as Civil Appeal No.2039 of 2006) before the Supreme Court. That being so, one Thiru.J.Karthik filed a Writ Petition as against the rejection of his claim for appointment on compassionate grounds, which was allowed and the Board filed Writ Appeal No.1206 of 2006, which was also allowed by the Division Bench on 29.09.2006, following the order passed in E.Ramasamy's case reported in 2006 (4) MLJ 1080 (E.Ramasamy Vs. The Chairman, Tamil Nadu Electricity Board). Therefore, the said J.Karthik filed a Review Petition, which was dismissed by order dated 25.08.2008, against which, two Special Leave Petitions were filed before the Supreme Court in S.L.P.Nos.5068 and 5069 of 2009, one as against the order passed in the said Writ Appeal and the other as against the order passed in the Review Petition. The said S.L.P.Nos.5068 and 5069 of 2009 was converted as Civil Appeal Nos.2858 and 2859 of 2010 and they were tagged along with Indiraniammal's case which was pending in Civil Appeal No.2039 of 2006. By common order dated 30.03.2010, the Apex Court held as follows:

"Leave granted.

Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order dated 25.08.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned Single Judge only on the ground of delay who directed compassionate appointment to the Appellant. The Appellant was a minor at the time of death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these Appeals, set aside the impugned judgement of the Division Bench and restore the judgment of the learned Single Judge. No costs."

(emphasis supplied by us)

7. Similarly, in support of his submissions, the learned counsel for the appellant/writ petitioner relied on a decision of this Court in the case of J.Jeba Mary Vs. The Chairman, Tamil Nadu Electricity Board, reported in 2011 (3) LLN 405 (Madras) with regard to the proposition relating to the time limit seeking for compassionate appointment. The learned counsel for the appellant/writ petitioner also relied on a decision of a Division Bench of this Court in the case of Chief Engineer (Personnel), Tamil Nadu Electricity Board and two others Vs. P.Veeramani in Writ Appeal No.44 of 2016, which was dismissed on 20.10.2016.

8. The learned counsel appearing for the appellant/writ petitioner further relied on the following decisions in support of his submissions:

(a) 2007 (6) MLJ 1011 (Superintending Engineer, Madurai Electricity Distribution Circle, Madurai Vs. V.Jaya);

(b) Chief Engineer/Personnel, TNEB Vs. S.Sundar in Writ Appeal No.1652 of 2006, dated 30.03.2009;

(c) Chief Engineer/Personnel Vs. P.Venkatesan in Writ Appeal No.42 of 2007, dated 02.07.2009;

(d) W.P.(MD).No.7016 of 2011, etc. batch (Full Bench), dated 11.03.2020;

(e) 2015 (4) MLJ 479 (SC) (Canara Bank and others Vs. M.Mahesh Kumar and others);

(f) W.A.No.2761 of 2019, dated 22.01.2021 (R.Kothandan Vs. State of Tamil Nadu), and

(g) Pradip Kumar Mehta Vs. Central Coal Fields Limited, (Jharkhand High Court) (2006 (4) JCR 184);

Thus, by relying upon the above decisions, learned counsel for the appellant prays to set aside the order passed by the learned Single Judge and to direct the respondents to grant compassionate appointment to the appellant/writ petitioner.

9. Countering the above submissions, the learned counsel appearing for the respondents/TANGEDCO/TNEB submitted that as per Permanent B.P.Ms.(F.B.).No.46, dated 13.10.1995, the application for compassionate appointment should be made within three years from the date of death of an employee. In the case of death of a Board-employee, the Department should apply for employment assistance within three years from the date of issuance of the Board Proceedings, i.e. before 12.10.1998. In this regard, the learned counsel appearing for the respondents/TANGEDCO had referred to clauses (1) to (3) of the Memo No.038525/587/G8/G82/2001-2, dated 24.05.2001 issued by the Chief Engineer (Personnel), and the same reads as follows:

"Clause (1): Any one of the legal heir of the deceased board employee, should apply in Form 1, within 3 years from the date of death of the board employee.

Clause (2): The applicant should have completed 18 years within 3 years from the date of death of the board's employee. In case of widow, she should be within 50 years of age.

Clause (3): The applicant should possess the minimum educational qualification of a pass in eighth standard."

10. It is the further submission of the learned counsel appearing for the respondents/TANGEDCO that the appellant's father S.Krishnamoorthy died in harness on 07.08.2011. The terminal benefits and family pension were given to the appellant's mother, which is evident from the representation dated 11/2013 of the appellant's mother. Further, during November 2013, the appellant's mother K.Rani made a representation to the third respondent seeking compassionate appointment for the appellant. On 15.12.2013, the third respondent had rejected the representation of the appellant seeking compassionate appointment on the reasoning that the appellant, by then, had not completed 18 years of age and the same is based on Memo No.038525/587/G8/G82/2001-2, dated 24.05.2001. The learned counsel appearing for the respondents/TANGEDCO further submitted that the date of death of the appellant's father is 07.08.2011 and the cut-off date prescribed by the Board for seeking compassionate appointment as per the Scheme is 06.08.2014. Before the cut-off date, the applicant should satisfy all the conditions prescribed in the Memo No.038525/587/G8/G82/2001-2, dated 24.05.2001. The date of birth of the appellant is 26.10.1999 and he attained majority only on 26.10.2017. Further, the cut-off date prescribed by the TANGEDCO for seeking compassionate appointment to the appellant is 06.08.2014.

11. The learned counsel appearing for the respondents/TANGEDCO also stated that the appellant/writ petitioner had made a representation to the third respondent seeking compassionate appointment. In fact, though he attained majority on 26.10.2017 itself, he chose to apply for compassionate appointment to the third respondent only on 27.11.2018, i.e. nearly after a period of one year and one month. Hence, the third respondent had rightly rejected the claim of the appellant on 25.02.2019 on the ground that,

already, the application made by the mother of the appellant seeking compassionate appointment for the appellant, was rejected as early as on 15.12.2013 itself. Thus, according to the learned counsel appearing for the respondents, the above said rejection order is in accordance with the Rules and Regulations of the respondents/TANGEDCO.

12. In support of his submissions, the learned counsel appearing for the respondents/TANGEDCO relied on the decision of the Supreme Court reported in 2011 (4) SCC 209 (Bhawani Prasad Sonkar Vs. Union of India), relevant portion of which reads as follows:

"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 or 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 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 be met 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."

13. The learned counsel appearing for the respondents/TANGEDCO submitted that the decision of a Full Bench of this Court in W.P.(MD).No.7016 of 2011, etc., dated 11.03.2020, had given a quietus to the matter by authoritative

pronouncement with regard to the compassionate appointment, and the relevant portion of the same reads as follows:

"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 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."

14. Keeping the submissions made on either side, we have carefully gone through the materials available on record.

15. No doubt, the Full Bench of this Court had resolved the issue by framing guidelines for grant of appointment on compassionate grounds and answered the reference accordingly, as extracted above.

16. Therefore, no useful purpose would be served in relying upon the decisions cited by the learned counsel on either side, in view of the above said Full Bench decision.

17. Hence, following the above said decision of the Full Bench of this Court, the present Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-02.

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Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore-6.

+1cc to Mr.M.Fakkir Mohideen , Advocate SR.No. 14297

+1cc to Mr.S.N.Ravichandran , Advocate SR.No. 14522

W.A.No.2847 of 2019

A.SK(30.03.2021)



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