



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No.16972 of 2021

M.K.Meenambika

... Petitioner

Vs.

The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation (TANGEDCO),
Tirunelveli.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the respondent in No.677/Nipi-I/U.3/Ko.Va.Ve/2020 dated 17.11.2020 and quash the same and further direct the respondent to provide employment on compassionate appointment to the petitioner, within the time fixed by this Court and pass such other and further orders as this Court.

For Petitioner	:	Mr.H.Arumugam
For Respondent	:	Mr.T.Sakthi Kumaran, Standing Counsel.

O R D E R

This Petition is filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the respondent in No.677/Nipi-I/U.3/Ko.Va.Ve/2020 dated 17.11.2020 and quash the same and further direct the respondent to provide employment on compassionate appointment to the petitioner, within the time fixed by this Court.

2. According to the petitioner, her husband was employed as Gauge Reader in the office of Assistant Engineer (Junior Division) in the Tamil Nadu Generation and Distribution Corporation (TANGEDCO) and her husband died in harness on 18.10.2014, while he was in service, leaving behind the petitioner and two minor children as legal representatives. The petitioner has submitted an application on 06.10.2015 seeking for appointment on compassionate grounds within an year from the date of death of her deceased husband. Thereafter, the petitioner has made repeated representations on 12.06.2018, 03.09.2019, 07.12.2019 and 21.10.2020. By communication dated 03.01.2020, it was informed by the respondent that the name of the petitioner seeks clarification as per the Legal Heir Certificate and the Community Certificate. The said mistake



was rectified by the petitioner and was also submitted to the authority.

3. On 10.03.2020, the respondent has sent a communication seeking consent letter from other legal heirs, 8th standard mark sheet and petitioner's undertaking affidavit signed before a Notary Public, for which the petitioner has sent a reply to the respondent attaching the required documents sought by the respondent on 08.06.2020 and 23.07.2020. But unfortunately, the aforesaid application was rejected by the respondent vide impugned order by stating that the application submitted by the petitioner on 06.10.2015 was returned and thereafter he has not resubmitted the said application. Further it has been stated that the instant application filed on 21.10.2020 is beyond three years period.

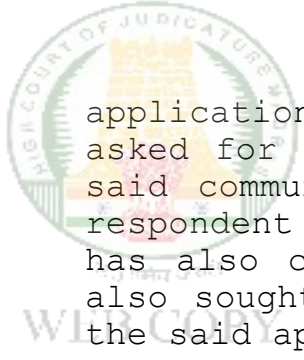
4. According to the petitioner, the aforesaid reasons stated in the impugned order is totally incorrect. The writ petitioner has submitted the application on 06.10.2015 itself and subsequently, another application was submitted by him and the receipt of the said representation was also enclosed in the typed set of papers. Further it is submitted that on 16.08.2019, the Tahsildar, Madurai Division has sent a communication to the respondent board informing about the certificate issued by the Tahsildar. Again he has made a representation dated 03.09.2019 by enclosing all the relevant documents including the legal heir certificate and other certificates. On 07.12.2019, he made a representation enclosing all the documents to the respondent through registered post acknowledgment due, but there was no response from the respondent and they asked further particulars from the petitioner. The said particulars was also furnished to the respondent but the respondent has rejected all the aforesaid applications on the ground of misconceived. According to the petitioner, there is no communication received from the respondent, in respect of the application dated 06.10.2015.

5. On the contrary, in the counter affidavit filed by the respondent, the respondent has stoutly objected to the contentions raised by the petitioner and denied that the writ petitioner has not received the communication and sought for dismissal of the writ petition.

6. This Court has considering the rival submissions and also perused the materials on record.

7. The point for consideration in this writ petition is whether the communication sent by the respondent vide letter dated 04.03.2016 is in accordance with law ?

8. The learned counsel for the respondent board has filed a typed set of papers enclosing the copies of the Despatch Register. On perusal of the said typed set of papers it could be seen that the

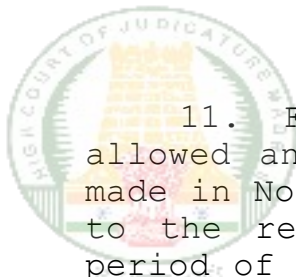


application of the petitioner was entertained by the respondent and asked for further particulars from the petitioner and based on the said communication, the petitioner has submitted documents to the respondent board for considering for compassionate appointment. He has also communicated all these particulars to the petitioner and also sought for clarification. Therefore the presumption is that the said application is pending before the respondent.

9. At this juncture, it is useful to refer to the decision in **UCAL Machine Tools Ltd., v. Special Deputy Collector (Stamps) reported in 2019(3)CTC 546**, wherein it was held as follows:

"12. Perusal of the above decisions would show that an order passed but not communicated to the aggrieved party cannot put against such party, as the party was effectively prevented from challenging such order before the Appellate/ Revisional Forum, which he is otherwise entitled to do. Unless and until the order is communicated in the manner known to and acceptable by law, the said order cannot have any force for its implementation. In other words, till such order was communicated in a manner known to law, the presumption would be that the proceedings before such authority, who passed the said order, is still pending and not reached its finality."

10. It is an undisputed fact that the petitioner has earlier submitted the application dated 06.10.2015, seeking appointment on compassionate ground. According to the respondent, the said application was returned pointing out certain defects and the same was not resubmitted and the fresh application was filed after a period of five years. Considering the aforesaid decision of this Court cited supra, there is no material placed before this Court to substantiate that the rejection order was communicated to the petitioner. As per General Clauses Act, mode of service has been clearly prescribed and therefore, the onus is on the respondent to prove that the said rejection order has been communicated to the petitioner. Therefore, this Court has no hesitation to hold that the said copy of the order has not been received by the petitioner as mentioned in the impugned order. The respondent could have acted in a vigilant manner to dispose of the application and returned to the petitioner. The subsequent application made in the year 2019 was returned and asked to furnish the particulars without stating the reasons as mentioned in the impugned order. Therefore this court is of the view that the stand taken by the respondent is totally unacceptable and hence this court has to interfere with the the impugned order passed by the respondent and it is liable to the quashed.



11. For the aforesaid reasons, this Writ Petition Stands allowed and the impugned order of the respondent dated 17.11.2020 made in No.677/Nipi-I/U.3/Ko.Va.Ve/2020 is quashed and remitted back to the respondent to consider afresh without insisting upon the period of limitation period and pass final orders on its own merits and in accordance with law as expeditiously as possible within a period of 12 weeks from the date of receipt of a copy of this order after giving liberty to the petitioner. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mnr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation (TANGEDCO), Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-33473[F] dated 01/11/2021)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-33496[F] dated 01/11/2021)

**W.P (MD) No.16972 of 2021
29.10.2021**

MGJ(02.12.2021) 4P 4C