



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD)No.18261 of 2020

B.Vignesh,

... Petitioner

Vs.

1.The Chief Engineer,
The Tamil Nadu Electricity Board,
5-A Block, Electricity Avenue,
144, Anna salai,
Chennai - 600 002.

2.The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Ltd,
Virudhunagar Distribution Circle,
Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Rejection letters LrNo.057529/289/G.9/G.91/Cont.53/2019 dated 12.05.2020 and Lr.No.7231/NP.2/Assisit.2/Compassionate Appt/2020, dated 18.06.2020 passed by the respondents 1 and 2 and quash the same and direct the respondents to provide compassionate appointment to the petitioner

For Petitioner : Mr.Lakshmi Gopinathan, for M/S.Polax
Legal Solutions

For Respondents : Mr.T.Sakthikumaran, Standing counsel

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Rejection letters LrNo.057529/289/G.9/G.91/Cont.53/2019 dated 12.05.2020 and Lr.No.7231/NP.2/Assisit.2/Compassionate Appt/2020, dated 18.06.2020 passed by the respondents 1 and 2 and quash the same and direct the respondents to provide compassionate appointment to the petitioner.



2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

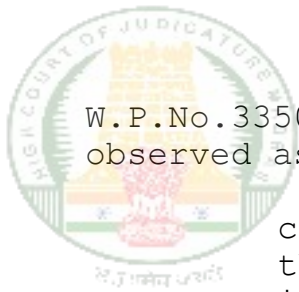
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4. According to the petitioner, his father, Late Bose, while working as Wireman in the Tamil Nadu Electricity Board, Virudhunagar Distribution Circle, Kariapatti South Division, died in harness on 06.10.2014 and at that time, the petitioner was a minor. On 29.07.2015, the petitioner applied for compassionate appointment and it was rejected by the 2nd respondent on 29.07.2015. He became major on 10.05.2018 and once again, he made an application on 14.05.2018 and since, it was not considered, the petitioner filed a Writ Petition in W.P.(MD) No.13513 of 2018, which was disposed of by this Court, directing the respondents to consider the petitioner's representation and dispose of the same on merits. Pursuant to the same, again the petitioner made a representation on 23.07.2018 along with a copy of the order. The 1st respondent, vide his impugned letter dated 12.05.2020, again rejected the claim of the petitioner on the ground that the petitioner had not completed 18 years of age within three years from the date of death of the petitioner's father. Aggrieved by the same, the petitioner has come forward with the present writ petition.

5. The learned counsel appearing for the petitioner would submit that the 1st respondent, without application of mind, has mechanically rejected the claim of the petitioner. He pointed out that though the earlier applications were rejected on the ground that the petitioner was minor, however, on attaining the majority, the petitioner made an application, even then also, the 1st respondent rejected the same by impugned order, which is liable to be set aside.

6. The learned Standing Counsel appearing for the respondents would oppose the writ petition on the ground that earlier, by order dated 29.07.2015, the 2nd respondent has rejected the claim of the petitioner and it has not been challenged by the petitioner and hence, it has become final. Even the present impugned order was passed by the 1st respondent in view of the fact that the application was belatedly made beyond the prescribed three years period. Hence, he prayed for dismissal of the writ petition.

7. Admittedly, when his father died on 06.10.2014, the petitioner was a minor and was not eligible for appointment. The petitioner made applications which were rejected on the ground that he was a minor. Later, attaining the majority, the petitioner made a representation on 23.07.2018, which was also rejected on the ground that it was made beyond the prescribed time limit of 3 years. In this regard, it is worthwhile to refer a decision of this Court in *Secretary, Tamil Nadu Electricity Board versus The Chairman, TNEB, Chennai and another* in



W.P.No.33500 of 2014, dated 11.10.2018, wherein, it has been observed as under:

"4. This Court is of an opinion that the compassionate appointment is a special scheme and the scheme of compassionate appointment was introduced to mitigate the penurious circumstances arising on account of the sudden death of the Government employee. Thus, the scheme of compassionate appointment must be extended to the legal heirs of the deceased employee to protect their livelihood, immediately after the death of the deceased employee. **Thus, the appointment to be granted on compassionate grounds within a reasonable period of three years or atleast within a period of five years. Beyond that, legal presumption would be that the penurious circumstances arising on account of the sudden death of the Government employee became vanished. It is not as if the compassionate appointment can be claimed as a matter of right to provide one appointment to one family of the deceased Government employee.** Such a scheme can never be accepted, in view of the fact that the scheme of appointment itself, is in violation of Article 14 and 16 of the Constitution of India. The scheme being a special one was introduced in violation of the constitutional principles. Therefore, the same must be implemented strictly in accordance with the terms and conditions....."

8. In fact, there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. In this regard, it is worthwhile to refer to a decision reported in **"State of Manipur vs. Md. Rajaodin"** {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The



above view was re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689) and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."

9. Therefore, the scheme of providing compassionate appointment can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

10. In the light of the above decisions supra, no relief can be granted be granted as there is no illegality in the impugned letters LrNo.057529/289/G.9/G.91/Cont.53/2019 dated 12.05.2020 and Lr.No.7231/NP.2/Assisit.2/Compassionate Appt/2020, dated 18.06.2020 of the respondents 1 and 2. Accordingly, this Writ Petition is dismissed. No costs.

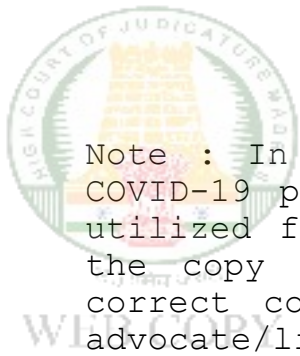
Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)



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:

- 1.The Chief Engineer,
The Tamil Nadu Electricity Board,
5-A Block, Electricity Avenue,
144, Anna salai,
Chennai - 600 002.
- 2.The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Ltd,
Virudhunagar Distribution Circle,
Virudhunagar.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-27423[F] dated 26/08/2021)

W.P (MD) No.18261 of 2020
25.08.2021

MGJ(13.09.2021) 5P 4C