



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.16319 of 2018

and

W.M.P. (MD) Nos.14503 & 14504 of 2018

M.Rajesh

... Petitioner

-VS-

1. The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation
and Distribution Corporation
No.144, Anna Salai, Chennai-2
2. The Superintending Engineer
Tamil Nadu Electricity Generation
and Distribution Corporation
Tirunelveli Electricity Distribution Circle
Tirunelveli
3. The Executive Engineer (Distribution)
Tamil Nadu Electricity Generation and
Distribution Corporation
Kadaiyanallur, Tirunelveli District
4. The Assistant Engineer, Rural/South
Tamil Nadu Electricity Generation and
Distribution Corporation
Puliyangudi, Tirunelveli District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the impugned order passed by the second respondent herein in his proceedings vide letter No.010504/178-1/VU.Ni.Aa/Ni.pi.3/Vu.3/Ko.Va.Velai/2015, dated 08.05.2015 and quash the same and consequently direct the respondents 2 to 4 herein to appoint the petitioner as part time sweeper or any other suitable post on compassionate ground in the regular timescale of pay with dearness allowance on the basis of his educational and other qualifications before the fourth respondent herein.

For Petitioner : Mr.B.Brijesh Kishore
For Respondents : Mr.T.Sakthi Kumaran
Standing Counsel



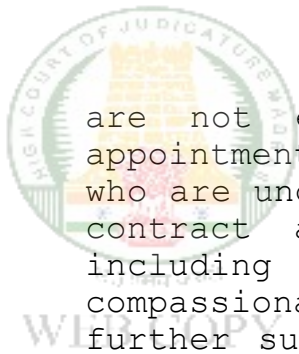
O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 08.05.2015, passed by the second respondent and to direct the respondents 2 to 4 to appoint the petitioner as part time sweeper or in any other suitable post on compassionate ground in the regular time scale of pay with dearness allowance on the basis of his educational and other qualifications before the fourth respondent herein.

2. The case of the petitioner is that his mother joined the service of the respondent Electricity Board as part time Sweeper on 01.07.1997 and completed 480 days of continuous service on 24.11.1998. The respondent Electricity Board, by proceedings No.11, dated 02.08.2011, created a post of part time Conservancy Worker and absorbed the part time sweepers and sanitary workers, as part time conservancy workers in a time scale of pay with dearness allowance. Based on the said proceedings, the petitioner's mother was absorbed as part time sweeper in the time scale of pay with dearness allowance by the third respondent vide proceedings dated 11.10.2011 and she was permitted to work in the office of the fourth respondent. Whilesso, on 02.04.2013, she died while she was in service. Thereafter, on 10.04.2013, the petitioner made a representation to the second respondent seeking appointment as Sweeper on compassionate ground. But, the same was not considered. Thereafter, the petitioner made another representation before the District Collector, Tirunelveli, on 02.02.2015 and it was forwarded to the second respondent for consideration. However, the second respondent rejected the same on the ground that there is no practice for giving compassionate appointment for the legal heirs of the part time employees, who died while in service. Challenging the same, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner's mother has served in the respondent Electricity Board for more than 16 years and she was absorbed in a regular time scale of pay with dearness allowance and therefore, the petitioner's mother was a regular employee and not a part time employee. Without considering this aspect, the second respondent has rejected the petitioner's request for compassionate appointment and hence, the impugned order is liable to be quashed.

4. The learned Standing Counsel appearing for the respondent Electricity Board submitted that the petitioner's mother was absorbed as part time conservancy worker in a regular time scale of pay with dearness allowance as per the TANGEDCO Proceedings No.11, dated 11.06.2020 and worked as part time worker. He drew the attention of this Court to the proceedings of the Electricity Board in (Per.) FB TANGEDCO Proceedings No.11, dated 11.06.2020. Clause-2 of the said proceedings deals with the persons, whose legal heirs



are not eligible for consideration under compassionate ground appointment. As per the sub-clause (ii) to Clause-2, the persons, who are under temporary appointments, consolidated pay, daily wages, contract appointments and whose services are not regularized, including part time conservancy workers, are not eligible for compassionate appointment. The learned Standing Counsel would further submit that the classification "permanent" does not amount to regularisation. In support of his contention, the learned Standing Counsel placed reliance upon the decision of the Honourable Supreme Court in the case of **State of Madhya Pradesh and others vs. Amit Shrivastava [(2020) 10 SCC 496]**. Therefore, according to the learned Standing Counsel, the order of rejection passed by the second respondent is perfectly valid and it does not warrant interference of this Court.

5. I have anxiously considered the rival submissions of the learned counsel for the parties and perused the materials placed on record.

6. According to the petitioner, his mother was originally appointed as part time Sweeper and subsequent to the proceedings of the respondent Electricity Board, she was absorbed in the regular time scale of pay with dearness allowance. On the other hand, according to the respondents, the petitioner's mother was not brought into the regular time scale of pay and she remained as a part time conservancy worker and paid time scale of pay. At this juncture, it would be relevant to refer Clause-2 of the proceedings of the respondent Electricity Board in (Per.) FB TANGEDCO Proceedings No.11, dated 11.06.2020, which is extracted hereunder:

"02. PERSONS WHOSE LEGAL HEIRS ARE NOT ELIGIBLE FOR CONSIDERATION UNDER COMPASSIONATE GROUND APPOINTMENT.

(i) ...

(ii) Persons who are under Temporary appointments, consolidated pay, daily wages, contract appointments and whose service are not regularized including part time conservancy workers.

(ii) ..."

7. In **Amit Shrivastava's** case, the Honourable Supreme Court, more particularly in Paragraph Nos.17, 20 to 22, has held as follows:

17. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular



employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

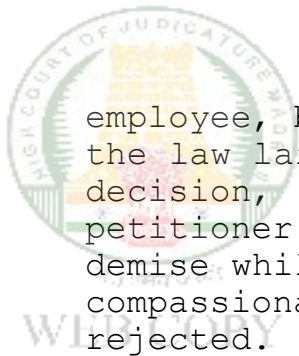
...
...

20. The conclusion to be drawn from the aforesaid is that attaining the status of permanent employee would entitle one only to a minimum of the pay-scale without any increments. It is this aspect which was sought to be emphasised by learned counsel for the respondent to contend that this would not apply, because in the present case, krammonati and increments were given. However, we may note that in the order dated 7-2-2002 granting the benefit of monetary krammonati to employees, including the respondent's father, it was specified that the same would not affect the posts of such employees.

21. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even "if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms." We say so, not with the objective of giving a licence to the appellants to withdraw any of the benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

22. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments."

8. In the case on hand, admittedly, the service of the petitioner's mother was not regularized and she was a part time



employee, but she received the time scale of pay. Therefore, as per the law laid down by the Honourable Supreme Court in the above cited decision, the contention of the petitioner that since the petitioner's mother was paid regular time scale of pay, after her demise while in service, her son (petitioner herein) is entitled for compassionate appointment cannot be accepted and it is liable to be rejected. Accordingly, the impugned order does not warrant any interference of this Court.

9. In fine, the writ petition is devoid of merits and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

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.

+1 CC to M/s.T.SAKTHI MUMARAN, Advocate (SR-25541[F] dated 06/08/2021)

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