



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.01.2021

CORAM:

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.14660 of 2016

A.Chandra

...Petitioner

Vs

1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,
Tirunelveli Distribution Circle,
TANGEDCO, Maharaja Nagar,
Tirunelveli-11,
Tirunelveli District.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in Ka.No.004366/115/Ni.A/Ni.B.3/O.3/Koa Va.Velai/2016 dated 09.03.2016 on the file of the third respondent and quash the same as illegal and consequently to direct the respondents to provide the compassionate appointment to any last grade post to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mrs.S.Srimathy
for M/s.T.Sakthikumaran
Standing Counsel



ORDER

This Writ Petition has been filed to quash the impugned communication in Ka.No.004366/115/Ni.A/Ni.B.3/O.3/Koa Va.Velai/2016, dated 09.03.2016 on the file of the third respondent and consequently, to direct the respondents to provide compassionate appointment to any last grade post to the petitioner within the time stipulated by this Court.

2.The case of the petitioner is that her husband, who was working as the Wireman Grade-I in the respondent Electricity Board, died while in service on 14.08.014 leaving behind his two daughters and his mother and the petitioner. Thereafter, the petitioner made a request for compassionate appointment immediately after the death of her husband on 22.02.2016. However, the third respondent has passed the impugned communication dated 09.03.2016, rejecting the petitioner's request for compassionate appointment on the ground that the petitioner has not possessed 8th standard. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that admittedly, the petitioner has not possessed 8th standard qualification and there are several posts available in the Tamil Nadu Electricity Board without prescribing any minimum qualification. He would further submit that the very same issue came up for consideration before this Court in W.P(MD) No.20137 of 2015 in the case of **Thirumaniraja Vs. The Superintending Engineer, TANGEDCO**, wherein this Court held that the qualification of ability to read and write in Tamil prescribed for the post of Watchman, Gardener, Sweeper and Sanitary Worker will not be applicable to the appointment of the dependents of the deceased employee, who died in harness. In more proceedings, for some of the posts like Watchman Gardener, Sweeper and Sanitary Worker there is no minimum qualification prescribed and the qualification is only the ability to read and write. In view of the above, the petitioner can be accommodated in any one of the last grade servants namely, Watchman, Gardener, Sweeper and Sanitary Worker, considering the indigent circumstances of the petitioner's family. However, without considering the said fact, the respondents mechanically rejected the said representation, which is unsustainable one. Accordingly, he prayed for allowing the writ petition.

4.Mrs.Srimathy, learned counsel for Mr.T.Sakthikumaran, learned Standing Counsel for the respondents would submit that as per the Electricity Board, the minimum qualification required for appointment is eighth standard, since the petitioner has not



possessed the minimum qualification of eighth standard, her application cannot be considered. Accordingly, she prayed for dismissal of the writ petition.

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5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

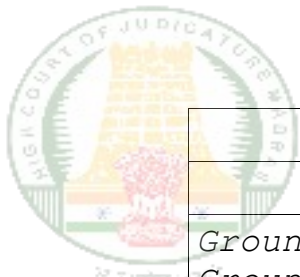
6. The facts in the present case is not disputed. On perusal of the affidavit, it reveals that the petitioner is the widow of the deceased employee and she has two minor children and due to the death of the male member, the entire family is suffering in harness. Hence, she has made an application for compassionate appointment on 14.08.2014. The said application was rejected only on the ground that the petitioner has not possessed the minimum qualification of 8th standard. However, the very same issue was came up for consideration before this Court in W.P(MD) No.20137 of 2015 in the case of **Thirumaniraja Vs The Superintending Engineer, TANGEDCO**, wherein Paragraph No.6 reads as follows:-

6. Earlier, I have dealt with the similar issue in A.SakilaBanu v. The Chariman, TNEB, Chennai [W.P.No.23561 of 2009 dated 20.09.2010] elaborately, wherein, in paragraphs 25 to 29, I have held thus:-

25. But the Regulations provide for pass in 4th Standard and ability to read and write in Tamil for certain posts. In this regard, the learned counsel for the petitioner heavily relied on Note-5 to Annexure III of the Regulations. The details of posts that require only IV standard and ability to read and write in Tamil are extracted hereunder as per Annexure III of the Regulations.

"94. Qualifications:

(a) No person shall be eligible for appointment to the post and by the method mentioned in Annexure III, unless he possesses the qualification specified therein.



Annexure-III	
Post	Qualification
Groundsman 'A' Groundsman 'A' Lascar, Grade I	Pass in IV Standard with one year practical experience in the type of work concerned
Lascar, Grade II Vehicle Helper Nursing Orderly Mazdoor, Grade I Mazdoor, Grade II	Pass in IV standard with one year practical experience in the type of work concerned
Coal Mazdorr Laborartory Helper Messenger Boy Gurkha Watchman Matty-cum- Watchman Watchman	-do- -do- -do- -do- -do- Ability to read and write Tamil
Gardener Sweeper Sanitary Worker	-do- -do- -do-

Note-5: The qualification of "Ability to read and write Tamil" prescribed for the posts of Watchman, Gardener, Sweeper and Sanitary Workers, will not be applicable to the appointment of dependents of employees who die in harness."

26. As rightly contended by the learned counsel for the petitioner 18,000 contract workers, who were not qualified, were absorbed as Helpers pursuant to the report dated 11.02.1991 of the Honourable Mr. Justice V. Khalid, former Judge of the Honourable Supreme Court, without age restriction and without reference to educational qualification. The contract labourers numbering 9095 employed in all thermal power stations were absorbed as Helpers by the respondent-Board in B.P.(FB) No.17, Secretariat Branch, dated 28.04.1999, without age restriction and without reference to educational qualification and the contract workers employed in Hydro Generation Circles, Basin Bridge and Narimanam Gas Turbine Stations, numbering 1002 were absorbed as Helpers, though most of them were not qualified to hold the post, by the respondent Board



in B.P.(FB)No.22, Secretariat Branch, dated 14.05.1999 without age restriction and without reference to educational qualification.

27. Therefore, it is very clear that the respondents, without applying their mind, rejected the request of the petitioner for compassionate appointment on the ground that the petitioner did not possess the qualification of 8th Standard. The Regulations makes it very clear that for the post of Office Helper alone, the candidate should possess 8th Standard as educational qualification. But for the post of Gardener, Sweeper and Sanitary Worker, no educational qualification is prescribed and the only required qualification is ability to read and write in Tamil. For compassionate appointment, even the said qualification is dispensed with.

28. Note -5 to Annexure III of the Regulations makes it very clear that for giving appointment as Gardener, Sweeper and Sanitary Worker, the dependents of the deceased employee need not have submitted that Note-5 to Annexure III of the Regulations is not applicable to the dependents of the deceased, who die in harness, by reading in isolation the words "will not be applicable to the appointment of dependents of employees who die in harness" in Note-5. Such an interpretation is absurd. Note-5 has to be read in its entirety. Note-5 makes it clear that the qualification of ability to read and write in Tamil prescribed for the post of Gardener, Sweeper and Sanitary Worker will not be applicable to the dependents of the deceased employee, who die in harness.

29. Further, as rightly contended by the learned counsel for the petitioner, the respondents granted exemption for educational qualification to some others, while granting compassionate appointment, by issuing the following proceedings.

(i) (Per.) B.P.(F.B) No.52 (Administrative Branch) dated 01.11.2007

(ii) (Per) B.P.(F.B) No.1 (Administrative Branch) dated 22.02.2008

(iii) (Per.) B.P.(F.B) No.10 (Administrative Branch) dated 17.04.2008."



7.Further, it is also relevant to mention that in the general clause in G.O(MS)No.18, dated 23.01.2020, it is clearly mentioned that if the widow of the deceased Government servant is not educationally qualified for appointment, she could be given a job like Sweeper.

8.In view of the above legal position and the scheme provided by the Government in the year 2020, I am inclined to set aside the order passed by the third respondent in Ka.No.004366/115/Ni.A/Ni.B.3/O.3/Koa Va.Velai/ 2016, dated 09.03.2016 and remand the matter back to the authority concerned for fresh consideration and to pass orders within a period of twelve weeks from the date of receipt of a copy of this order. The authority has to pass the order in the light of the decision made in W.P(MD) No.20137 of 2015 in paragraph No.6 and G.O(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, particularly the general clause. Accordingly, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-)

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/ /2021

Sub Assistant Registrar(CS)

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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 KUMARAN, Advocate (SR-1677[F] dated 21/01/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-1331[F] dated 20/01/2021)

Order made in
W.P. (MD) No.14660 of 2016
19.01.2021

SSS(CO)

TR(08.03.2021) 6P 3C