



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.19897 of 2017

D.Sivakumar

... Petitioner

Vs.

1.The Chief Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited(TANGEDCO),
NPKRR Maligai, 144, Anna Salai,
Chennai-600 002.

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

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in Ka.No.830/Ni.Bi.1/Ni.U.4/Ko.Va.Ve./2010, dated 16.02.2010 and consequential impugned order passed by the second respondent vide letter No.017739/950/Ni.Bi1/Ee.Ni.U/ Ko.Va.Ve./2017, dated 21.01.2017, quash the same and consequently direct the respondents to provide suitable employment opportunity to the petitioner on compassionate ground.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.T.Sakthi Kumaran
Standing Counsel

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ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in Ka.No.830/Ni.Bi.1/Ni.U.4/Ko.Va.Ve./2010, dated 16.02.2010 and consequential impugned order passed by the second respondent vide letter No.017739/950/Ni.Bil/Ee.Ni.U/ Ko.Va.Ve./2017, dated 21.01.2017, quash the same and consequently direct the respondents to provide suitable employment opportunity to the petitioner on compassionate ground.

2. The case of the petitioner is that the petitioner's father R.Devaraj was working as Helper in the Tamil Nadu Generation and Distribution Corporation (in short TANGEDCO) and while he was in service, he died on 12.01.2001. At the time of his death, the petitioner was aged about 10 years old and no other eligible person was available in his family to make application seeking compassionate appointment. The petitioner made an application on 23.12.2009, within a period of three years from the date of attaining his majority. However, no action was forthcoming. Therefore, the petitioner made a representation to the Honourable Chief Minister's cell. Thereafter, the third respondent passed the impugned order dated 16.02.2010, by rejecting the petitioner's claim for compassionate appointment on the ground that the petitioner has not submitted the application within a period of three years from the date of death of his father. Challenging the said order of rejection, the present Writ Petition has been filed by the petitioner.

3. Learned Counsel appearing for the petitioner would submit that prior to 23.08.2005, no time limit was prescribed for making compassionate appointment. However, after 23.08.2005, seeking compassionate appointment, the age limit was fixed as 18 years and the same was confirmed vide proceedings dated 09.10.2005, wherein it was held that a person made application between 23.08.2005 to 03.05.2005, they have to complete the age of 18 years and prior to 2005, even the minor can apply. A person who has not completed 18 years also entitled for making application for compassionate appointment and the petitioner fell within period of 23.08.2005 to 03.05.2010 and the petitioner made an application on 23.12.2009, which is well within the time and therefore, the learned Counsel appearing for the petitioner prays for allowing the writ petition.

4. Per contra, the learned Standing Counsel appearing for the respondents would submit that the present issue is no more *res integra*. When a similar circumstances arose in the case of **The Inspector General of Prisons, Trichirapalli District and another Vs P.Marimuthu**, reported in **2016(5) CTC 125**, wherein the Division Bench



of this Court held that the minimum age is 18 years and no minor can be appointed to any service and therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority.

5. It is relevant to extract hereunder paragraph Nos.38 and 39 of the said judgment:

"38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme 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."

6. The said judgment was confirmed by the judgment of the Full Bench of this Court in W.P.(MD)Nos.7016 of 2011 and batch cases, dated 11.03.2020 and the said judgment, Electricity Board Circulars, Memorandums and Schemes were elaborately discussed in paragraph Nos.12 and 13 of the judgment and thereafter, the Full Bench concluded that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. In view of the above, the learned Standing Counsel prays for dismissal of the writ petition.

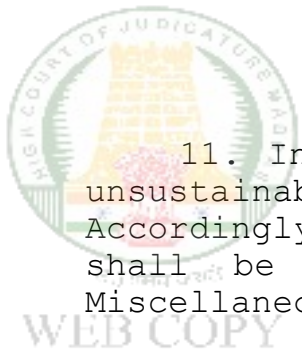


7. Heard the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials placed on record.

8. Considering the facts and circumstances, the short issue involved in the present case is as to whether the petitioner's application made after attaining the majority is maintainable or not. In the Full Judgment of this Court, in the unreported judgment in W.P.(MD)Nos.7016 of 2011 and batch cases, dated 11.03.2020, all the Electricity Board Circulars, Government Orders and Schemes were elaborately discussed, wherein it appears that before 23.08.2005, even a person, who has not attained the age of 18 years may also entitle for making application seeking compassionate appointment. However, that position is modified vide Electricity Board proceedings dated 09.10.2005, in which, the legal heirs who have completed 18 years alone are eligible to seek compassionate appointment after 04.05.2010. The Board proceedings clarified that after 23.08.2005, the legal heirs who has completed 18 years of age alone is to be treated as eligible for appointment on compassionate grounds and further it is clarified that after 04.05.2010, those who have completed 18 years of age alone will be treated as eligible for appointment on compassionate grounds.

9. In the present case, admittedly, the petitioner's father died on 12.01.2001 and the petitioner attained the majority on 16.04.2008 and he made an application on 23.02.2009. Though the petitioner claims that immediately after attaining the age of majority, he made an application within a period of three years, however, the scheme provides that the legal heirs shall submit their application within a period of three years from the date of death of the employee. Therefore, in the present case, the application made by the petitioner is beyond the period of limitation, which cannot be entertained.

10. The purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly.



11. In the light of the above, the present petition is wholly unsustainable and, accordingly deserves to be dismissed. Accordingly, this writ petition stands dismissed. However there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar()

//True copy//

/ /2021

Sub Assistant Registrar

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,
Tamil Nadu Generation and Distribution
Corporation Limited(TANGEDCO),
NPKRR Maligai, 144, Anna Salai,
Chennai-600 002.
- 2.The Superintending Engineer,
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Tiruchirappalli Electricity Distribution Circle,
Tiruchirappalli.
- 3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited(TANGEDCO),
Perambalur Electricity Distribution Circle,
Perambalur.

+1 CC to M/s.D.SANMUGANATHA SETHUPATHI, Advocate (SR-1984[F] dated 25/01/2021)

Order made in
WP (MD) No.19897 of 2017
22.01.2021

SSL

SRS/05.02.2021/5P/5C

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