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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.04.2022

ORDERS PRONOUNCED ON : 29.04.2022

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
and
THE HON'BLE MRS. JUSTICE N.MALA

W.A.No.669 of 2022

N.Selvaraj

... Appellant

vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 2.

2. The Chief Engineer (Personnel),
Anna Salai,
Chennai - 2.

3. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore.

... Respondents

Prayer: Writ appeal filed under Clause 15 of Letter's Patent, to set aside the order passed in W.P.No.26362 of 2010, dated 15.11.2021 and thereby allow the Writ Petition as prayed for.

Prayer: in W.P.No.26362 of 2010

Writ petition filed under Section 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the entire records connected with the impugned orders of the third respondent in Lr.No. 05555/039/Va.Ve/Nir 2(4) 2001-3 dated 18.03.2002 and Lr.No. 002120/ 14/ Me.Pa.Po/ Kada/Ni.Ve/Nir.2/Vu4/Ko.Va.Ve/ 2007 dated 04.07.2007 and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground on the basis of the representation dated 23.10.2010 and in the light of the order in W.A.No.42 of 2007 dated 02.07.2009 in the case of "the Chief Engineer/Personnel - Vs. P.Venkatesan".



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For Appellant : Mr.S.N.Ravichandran
For Respondents : Mr.P.Subramanian
Standing Counsel for EB

J U D G M E N T

[Order of the Court was made by N.MALA, J.]

This is a typical case where the benefits of a benevolent scheme is sought to be defeated because of the callous and indifferent attitude of the respondents. A humane approach to the plight of a woman destituted at a young age with the burden of rearing three kids would have helped the family to tide over the penurious circumstance in which it was thrown by the death of the sole bread winner in harness. Policies were changed, G.O.s' and circulars were passed at the drop of a hat, but for what and for whom?

2.The above Writ Appeal is filed challenging the order dated 15.11.2021 passed in W.P.No.26362 of 2010 rejecting the prayer of the petitioner to quash the orders dated 18.03.2002 and 04.07.2007 and consequently to provide the petitioner suitable appointment on compassionate grounds.

3.The brief facts relevant to the issues raised in this appeal are as follows:

The petitioner's father Narayanan employed as a lineman in the respondent department died in harness on 08.05.1986, leaving behind the petitioner, his mother, sister and brother as his legal heirs. The petitioner was aged 5 years at the time of his father's death. The petitioners mother in 1991, applied for compassionate appointment and the third respondent vide proceedings dated 12.07.1991 returned the same for submission in prescribed format. She submitted the same and the third respondent orally replied that as she did not possess the basic qualification of pass in 8th Standard her application could not be considered. Then the petitioner on attaining majority gave a letter seeking compassionate appointment. The third respondent replied vide letter dated 01.2001 to submit the application in proper format. Thereafter the petitioner made the application on 22.01.2001 which was rejected by the respondent by the first impugned proceeding dated 18.03.2001, citing a delay of two years and four months from 12.10.1998 (three year period provided under BP (FB) 46 dated 13.10.1995).



3.The respondent Board meanwhile issued BP (FB) No.3 dated 09.1.2007 relaxing the time limit for cases prior to issuance of BP (FB) 46 dated 13.10.1995 with a further direction to reopen and reconsider already rejected cases also. The petitioners mother immediately sent a representation dated 29.01.2007 to the third respondent seeking compassionate appointment for the petitioner. The third respondent sent a reply directing to send the application in prescribed format. The petitioner accordingly submitted the application in prescribed format on 24.02.2007. The respondent, however rejected the same vide second impugned order dated 04.04.2007 and therefore the petitioner filed the writ petition challenging both the orders of rejection and further prayed for a direction to the respondents to provide suitable appointment to the petitioner on compassionate grounds.

4.The third respondent filed a counter wherein the factual aspects regarding the filing of application by the petitioner's mother and the petitioner were not disputed. The third respondent relied on BP (FB) 46 dated 13.1.1995 and stated that the application was beyond time and hence was rejected on 18.03.2002. As regards the second impugned order, the third respondent contended that as BP No.3 dated 09.01.2007 was cancelled vide proceedings in BP No.116 dated 24.03.2007, the petitioner's application was rightly rejected.

5.The learned Judge on the basis of the pleadings, records and on the submissions of the counsels found favour with respondent and dismissed the writ petition.

6.The learned counsel for the appellant submitted that the learned Judge failed to appreciate that on the date of death of the appellant's father, the appellant was only five years of age and hence his mother applied but she was not considered as she did not possess the requisite Educational qualification. The counsel further submitted that after attaining majority the appellant applied on 22.01.2001 but the third respondent erroneously rejected his application as belated. According to him on the cut off date of 12.10.1998, admittedly the petitioner was only 16 years and therefore the application submitted after attaining majority ought to have been considered. He relied on several Judgments in support of his contention that application made after attaining majority was proper.

7.The learned counsel submitted that BP (FB) No.3 dated 09.01.2007 relaxed the time limit for past cases and provided that even applications which were rejected earlier would be reopened and reconsidered and further it was clearly stated therein that the said applications would be considered on merits. According to counsel therefore the reason given by the



third respondent in the impugned order dated 04.07.2007 is untenable. The appellant counsel further submitted that the appellant's father died on 08.05.1986 and hence the scheme prevalent on that date alone should be considered. The scheme on the date of death of the appellant's father did not provide for any time limit and therefore his application ought to have been entertained and he ought to be appointed to a suitable post.

8.The standing counsel for the respondent reiterated that the case of the appellant was covered by BP (FB) 46 dated 13.10.1995 and further supported the order passed by the learned Judge. The respondents counsel prayed for the dismissal of the appeal as meritless.

9.There is no dispute regarding the facts of the case. There are certain aspects of the case which need special mention to appreciate the case better. That the appellant's mother made an application in 1991 after the appellant's father demise is not disputed. It is pertinent to note here that the respondents have not stated about the status of the appellant's mother's application, though the appellant submitted that the respondents orally informed her that as she did not possess educational qualification she was not considered for appointment. It is clear that the application of the mother was filed in time and that she was not given appointment, therefore the application of the appellant submitted after attaining majority, strictu sensu, could not be said to be belated. Several judgments of this Hon'ble Court relied on by the appellant's counsel support his contention that the application made by the appellant after attaining majority should be entertained. We will refer to a couple of the Judgments only. In the case of J.Jebamary Vs. Chairman TNEB reported in 2011 (3) LLN 405, (Madras High Court) His Lordship Justice Paul Vasanthakumar J., as His Lordship then was referred to several Judgments of this Hon'ble Court as well as the Hon'ble Apex Court and in paragraph 13 of the Judgment stated as follows:

13.From the above referred decisions passed by this Court in series of cases on the same ground, it is evident that the similar grounds raised by the respondents that the petitioner has not filed Application seeking compassionate appointment within three years from the date of death of her father and that she has not completed 18 years of age within three years are not valid grounds to deny appointment on compassionate ground as no one in her family is employed and the family of the petitioner is in indigent circumstance even today as certified by the Revenue Officials.



Petitioner's mother and petitioner are prosecuting the matter before the respondents right from July, 1992.

10. Further the Division Bench of this Hon'ble Court in S.Velraj Vs. The Superintend Engineer, (W.A.(MD).No.1400 of 2011) by order dated 16.12.2015 held as follows:

3. It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and, therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority, the respondents have to consider the appellant's application for appointment on compassionate ground.

11.Further in the W.A.(MD).No.792 of 2011 dated 03.12.2015 the Hon'ble Judges have held:

6. First of all, there is no necessity for the appellant to rely upon the proceedings in B.P.(F.B.) No.3, dated 09.01.2007 as the appellant's mother made an application for compassionate appointment as early as on 24.02.1996, within three years from the date of death of her husband, i.e. 26.11.1994. When an application was made in time and the same is proved by the proceedings of the second respondent in Letter No.002393/47/epgp1/cjtp/4/nf/nt/th/96. Dated 24.02.1996, the question of applying limitation does not arise. Hence, the reliance on the proceedings in (Per.) B.P.(F.B.) No.3, Administrative Branch, dated 09.01.2007, is unnecessary. Even as per the existing Orders, the appellant is entitled to the compassionate



appointment as the application was made in time.

12. Even in this case the appellant's mother filed the application even before BP (FB) No.46 dated 18.10.1995, therefore the appellants application ought to have been considered. One other aspect is that if the scheme prevailing on the date of death of the employee is to be taken, then there was no limitation provided at the relevant time. The Hon'ble Supreme Court in its Judgment in State of Madhya Pradesh Vs. Ashsish Awasthi reported in 2022(2) SCC 157 and Secretary to Government, Department of Education (Primary) Vs. Bheemappa reported in 2021 SCC Online 1264 has held that the policy prevalent at the time of death of the deceased only to be considered and not subsequent policy, viewed from this angle also the first impugned order dated 18.03.2001 cannot be sustained.

13. The appellant's mother after the rejection order dated 18.03.2001 gave a representation on 25.01.2007 in pursuance of BP (FB) No.3 dated 09.01.2007 seeking compassionate appointment for her son. It is worthy to note here that BP (FB) No.3 was passed modifying BP (FB) No.46 and in respect of employees who died prior to 13.10.1995, the three year condition was dispensed, and rejected cases were permitted to be re-opened. The third respondent vide communication dated 13.02.2007, directed the petitioner's mother to apply in prescribed format. Thereafter the appellant submitted the application in prescribed format on 24.02.2007. The respondent on 04.07.2007 passed the second impugned order rejecting the appellant's application. The respondent rejected it on the ground that the same could not be considered on the basis of the prevailing Board Proceedings. It is the contention of the respondents in the counter affidavit that the applications were invited based on BP (FB) No.3 dated 09.01.2007 and as the said BP.(FB).No.3 was cancelled on 24.03.2007, the appellant's claim was rejected. We are of the view that the respondent's conduct in issuing BP (FB) No.3 dated 09.01.2007 and its cancellation soon thereafter on 24.03.2007 is highly questionable. It is relevant to note here the observation of the learned Division Bench in W.A.(MD).No.792 of 2011 dated 03.12.2015. The learned Judges at Paragraph No.9 have stated as follows:

"It is not understandable as to how the respondent Board gave a concession by proceedings in (Per.) B.P.(F.B.)No.3, Administrative Branch, dated 09.01.2007 and cancelled the same by proceedings in B.P.(F.B.). No.116, dated 24.03.2007, within two months. This Court doubts that the proceedings in (Per.) B.P.(F.B.)No.3, Administrative Branch, dated



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09.01.2007, was intended to benefit a few people and after accommodation, the proceedings should have been cancelled on 24.03.2007. Passing of this kind of proceeding is deprecated by this Court and moreover, no reasons have been assigned as to why concession was given and subsequently, it was withdrawn."

14. In the second impugned order no reason is cited except to state that as per prevailing scheme, the application could not be considered at this stage. We find that the reason is very cryptic and hence unsustainable. The respondents have improved the case in the counter by referring to cancellation of BP (FB) No.3 dated 09.01.2007 by BP (FB).No.116 dated 24.03.2007 as the reason for rejection of the application. It is now settled law that no case can be improved in the counter. Useful reference can be made to the Judgment of the Hon'ble supreme Court in the case of Mohinder Singh Gill Vs. Chief Election Commissioner reported in (1978) 1 Supreme Court Cases 405, wherein the Hon'ble supreme Court in paragraph No.8 has stated as follows:

"8. The Second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

We therefore find that the second impugned order is also



unsustainable. In the peculiar facts of the case we are inclined to allow the appeal with the following directions.

15.The appellant has not specifically pleaded that the impecunious circumstances still exists. The respondent has doubted that the appellant's family is still in penury because of the lapse of 31 years since the date of the employee's death. We are therefore of the view that the respondents may be directed to hold a field enquiry to find out if the petitioner's family continues to be in penury and if it is found that the appellant is still suffering and needs succour from his miserable financial conditions, then the respondents shall consider favourably his claim for appointment. The said exercise shall be completed within a period of six weeks from the date of receipt of this order. The Writ Appeal is ordered accordingly.

16.The Writ Appeal is disposed of with the above directions. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 2.
2. The Chief Engineer (Personnel),
Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore.

+1cc to Mr.S.N.Ravichandran , Advocate, S.R.No.30321
+1cc to Mr.P.Subramanian , Advocate, S.R.No.30781

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PA(CO)
CT 17/05/2022