



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON	ORDERS PRONOUNCED ON
16.03.2022	13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.6568 OF 2020

R.Meena

...Petitioner

Vs.

1.The Chairman,
Tamil Nadu Power Generation And Distribution
Corporation Limited, TANGEDCO, NPKRR Maligai,
No.144, Anna salai, Chennai 2.

2.The Superintending Engineer,
Generation And Distribution Circle,
Kallakurichi Taluk, Kallkurichi District.

3.The Assistant Executive Engineer,
Tamil Nadu Power Generation And Distribution
Corporation (TANGEDCO) Ltd.,
Pillaiyarkuppam 606 102, Kallakurichi Taluk,
Kallakurichi District.

...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records connected in Lr.No.620/17/NIBI-2/4-5/Ko.Va.Ve.2018 dated 23.02.2018 of the second respondent to quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds in any one of the suitable vacancy.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.P.Subramanian
Standing Counsel

O R D E R

According to the petitioner, the petitioner's father was working as Wireman in the respondent Board at Elavanasoor Kottai Division and he died while in service on 8.1.2009 leaving behind his wife, three daughters and one son. After the death of petitioner's father, the petitioner's family is in indigent



circumstances and therefore, petitioner's mother has submitted an application to the respondents on 23.9.2011 and 1.10.2012 with a request to provide compassionate appointment to her daughter viz., the petitioner herein and also produced all the original documents before the authority concerned for verification and a report also sent to the second respondent to provide compassionate appointment. However, thereafter, there was no progress on the said report. According to the petitioner, clarification order has been issued by the Government stating that those who have completed 18 years of age only eligible for Compassionate appointment as per the Board proceedings No.17 dated 1.11.2011. According to the petitioner, at the time of verification of documents, the petitioner has completed 18 years. The petitioner's application is still pending with the respondent and no order has been passed. Therefore, the petitioner has filed the instant writ petition before this Court.

2. The learned Standing counsel appearing for the respondents would submit that the petitioner has stated that she submitted application on 22.9.2011. As per the Transfer Certificate, her date of birth is 29.11.1994. The petitioner has not completed 18 years at the time of submitting application i.e. on 22.9.2011. It is further submitted that on receipt of the application, dated 1.10.2012, the respondent had sent application form to the petitioner stating that the petitioner has to submit the duly filled application form along with relevant documents. The proceedings No.17 dated 1.11.2011 prescribed guidelines for appointment under compassionate ground that the applicant should have completed 18 years of age as on the date of application. The petitioner also contended that again the petitioner submitted application on 16.10.2012. The petitioner's father died on 8.1.2009. The last date for submitting the application for appointment under compassionate ground is 7.1.2012. Therefore, the petitioner submitted the said application beyond the period of three years i.e. on 16.10.2012. Therefore, the petitioner is not eligible for appointment under compassionate ground.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. On perusal of the records shows that the writ petitioner's mother has submitted application on 22.9.2011 to provide appointment to her daughter under compassionate ground. But there is no progress in the said application, the petitioner again made fresh application on 13.9.2013. By communication, dated 2.12.2013, the petitioner was informed to produce relevant documents within 15 days time. On receipt of the application along with relevant documents, the third respondent forwarded



the proposal to the second respondent on 15.2.2014 after physical verification. The District Educational Officer also submitted a report to the second respondent regarding genuineness of the Certificate in respect of educational qualification of the petitioner. On 9.10.2015, a clarification has been issued by the respondent stating that those who have completed 18 years of age alone are eligible for appointment under compassionate ground. The petitioner has submitted fresh application on 30.11.2015 and again the petitioner has sent representation on 12.2.2018 to the respondent. The petitioner also contended that at the time of certificate verification, she has completed 18 years of age. But the applicant should possess age and educational qualification as on the date of submitting the application. The second respondent vide letter dated 23.2.2018 informed to the petitioner that the applicant should possess all the qualifications within a period of three years from the date of death of the deceased Government employee. Since the applicant has not reached 18 years of age as on the date of submitting the application, the application submitted by the petitioner was rejected by the respondents.

5. The Honourable Supreme Court as well as this Court in a catena of decisions have repeatedly held that compassionate appointment cannot be made contrary to the relevant Rules. That apart the object of the compassionate appointment is to enable the family of the deceased Government employee to tide over the immediate financial crisis caused as a result of the untimely death of the employee and it is not a matter of right.

6. In Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], the Honourable Supreme Court has held as follows:

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

7. In Bhawani Prasad Sankar vs. Union of India and Others [2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:



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paragraph 5(c) of its Policy dated 18-1-1990. The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138], SBI v. Kunti Tiwary [(2004) 7 SCC 271, Punjab National Bank v. Ashwini Kumar Teneja [(2004) 7 SCC 265], SBI v. Somvir Singh [(2007) 4 SCC 778, Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384], Union of India v. Shashank Goswami [(2012) 11 SCC 307, SBI v. Surya Narain Tripathi [(2014) 15 SCC 739 and Canara Bank v. M.Mahesh Kumar [(2015) 7 SCC 412].

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually rewritten the terms of the Policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible."

9. In Government of India and another v. P.Venkatesh [(2019) 15 SCC 613], the Honourable Supreme Court has held as follows:

"8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This



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would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8-2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

10. The Honourable Full Bench in Paragraph No.13 of the Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011 has held as follows:

"13. In the light of the above we find that the judgment in the case of A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."



11. Identical issue came up before the Honourable Division Bench of this Court in W.A.No.1749 of 2019 (Sudhanthira Devi vs. The State of Tamil Nadu and others) [in the said Judgment, myself (DKKJ) is one of the member] and the Division Bench, by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

12. The learned counsel appearing for the petitioner relied on the decision of the Hon'ble Supreme Court rendered in SYED KHADIM HUSSAIN VS. STATE OF BIHAR AND OTHERS [(2006) 9 SCC 195] wherein it was held as under:

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.'"

13. In the aforesaid case, the application was made within the prescribed period and the Hon'ble Supreme Court while considering the peculiar facts and circumstances of the case, directed the authorities to consider the application on the ground that the authorities rejected the application without assigning any reason and also the orders have been passed after the lapse of six years. Therefore, the aforesaid decision relied upon by the petitioner would not support the petitioner's case, in view of the ratio laid down by the Hon'ble Supreme Court in Parkash Chand case (supra) that in the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy of the State Government. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering



employment assistance to a member of the family of a deceased government employee.

14. Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed the time limit to prefer an application for compassionate appointment as three years from the date of death of the Government servants.

15. In the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra and considering the facts of the case, this Court cannot interfere with the order passed by the second respondent.

16. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Chairman,
Tamil Nadu Power Generation
And Distribution Corporation Limited,
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- 3.The Assistant Executive Engineer,
Tamil Nadu Power Generation
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+1cc to Mr.G.Elanchezhiyan, Advocate Sr.No.25462

+1cc to Mr.P.Subramanian, Advocate Sr.No.25631

W.P.No.6568 of 2020

SV(CO)
RVM(19/05/2022)