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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35124 of 2016
and
W.M.P.No.30264 of 2016

M.Devi Priya ...Petitioner

Vs.

1. Chairman cum Managing Director,
   Tamil Nadu Generation and Distribution
   Corporation Ltd. (TANGEDCO),
   NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

2. Chief Engineer/Personnel,
   Tamil Nadu Generation and Distribution
   Corporation Ltd. (TANGEDCO),
   NPKRR Maaligai,
   144, Anna Salai,
   Chennai-600 002.

3. Superintending Engineer,
   Tamil Nadu Generation and Distribution
   Corporation Ltd. (TANGEDCO),
   GOBI Electricity Distribution Circle,
   132D, Kutchery Street,
   Gobichettypalayam-638 452. ..Respondents

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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to quash the impugned order No. 95/Ni. Pi 2/E. Ni 2/Ko.Va.Vey dated 13.7.2016 passed by the 3rd respondent and further direct the 1st respondent to appoint the petitioner on compassionate ground.

For Petitioner : Mr.R.Pandian

For Respondents : Mr.P.Subramanian

ORDER

The rejection of the claim of compassionate appointment is under challenge in the present writ petition.

2. The petitioner states that her father was holding the post of Foreman Grade I and died on 27.01.2001. At the time of the death of the deceased employee, the petitioner was a minor and the mother has not filed an application seeking employment for herself. Thus, the petitioner submitted an application, on attaining the age of majority, after a prolonged period of time on 08.07.2016.

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3. Pertinently, the application seeking appointment on compassionate grounds itself was submitted after a lapse of about 15 years from the date of the death of the deceased employee. The said application was rejected on the ground that the application was not submitted within a period of three years as contemplated under the terms and conditions of the scheme.

4. Scheme of compassionate appointment is a concession and cannot be claimed as an absolute right. Scheme being an exception, cannot be expanded for the purpose of providing appointment on compassionate grounds in a larger manner. Large scale compassionate appointment would result in infringement of the Fundamental Rights of the eligible citizen, who all are aspiring to secure public employment through open competitive process. Scheme of compassionate appointment being a concession, to be implemented in a restricted manner, so as to provide appointment only to the families, who all are genuinely in penurious circumstances and in this regard, the authorities competent are bound to conduct field inspections and ascertain the imminent circumstances, warranting an appointment on compassionate grounds. It is not as if one appointment is to be granted to the family of the deceased employee and it is not as if every legal heir can

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submit the application and thereafter, the appointment is to be considered. Once an application is filed by any one of the legal heir of the deceased employee and the said legal heir became ineligible, it is not as if that other legal heir can submit an application irrespective of the length of time. In the event of entertaining such repeated applications for compassionate appointment, the very purpose and object of the scheme would be defeated. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of an employee. Therefore, the scheme cannot be expanded nor any consideration is to be shown on misplaced sympathy, which would result in denial of Fundamental Right to all other eligible candidates, who all are longing to secure public employment. Thus, the Courts are not expected to grant compassionate appointment on misplaced sympathy. Such sympathy would result in unconstitutionality. Scheme being violative of Articles 14 and 16 of the Constitution of India, since there is no merit assessment of the applicant and there is no application of rule of reservation, there is no other assessment is made for appointment on compassionate grounds. In the event of large scale compassionate appointment, the efficiency level in the public administration will also be in stake. The Rule of Reservation, merit

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assessment and no other assessment has been made and therefore, the large scale appointments causing inefficiency in public administration, which would result in violations of the Constitution provisions, since the Constitution mandates an efficient public administration.

5. Lapse of time would also provide a ground to draw a factual inference that the penurious circumstances aroused on account of the sudden death of an employee became vanished. Thus, Courts have repeatedly held that compassionate appointment cannot be granted after several years.

6. Even to ascertain the indigent circumstances, the pensionary benefits are also to be taken into consideration. The Supreme Court of India in the case of ***Union of India and others Vs. Amrita Sinha*** in ***C.A.No.7640 –7641 of 2021*** dated 11.12.2021 (2021 15 Scale 174) held in Paragraph No.10 as follows :

> *"The monthly pension which was payable to the respondent was required to be taken into account in the award of merit points. The Tribunal, however, came to the conclusion that*

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pension is paid for past service rendered by the employee and, hence, denial of compassionate appointment on that basis was not justifiable. This reasoning of the Tribunal is fallacious. Undoubtedly, pension is not an act of bounty, but is towards the service which has been rendered by an employee. However, in evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service. Compassionate appointment is not a vested right. It is provided in order to enable a family to tide over a financial crisis caused by the death of its wage-earner while in service. If the scheme requires that the family pension must be taken into account in evaluating the merits an application, it has to be followed."

7. In this regard, the Hon'ble Supreme Court of India, ***recently on 05.09.2022***, in the case of ***Ahmednagar Mahanagar Palika vs. Ahmednagar Mahanagar Palika Kamgar Union*** reported in ***[2022 LiveLaw (SC) 739]***, wherein in paragraph-8 of its judgment, reiterated the principles to be adopted for providing appointment on compassionate grounds as under:-

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"8. Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get

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an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified."

8. Even in yet another recent judgment of the Hon'ble Supreme Court in the case of ***CENTRAL BANK OF INDIA vs. NITIN*** reported in [***2022 LiveLaw (SC) 690]*** , wherein in paragraphs 20 and 21, it has been held as under:-

"20. It is well settled that compassionate appointment is an exception to the rule of equality, which enables the dependent family members of a medically incapacitated employee who has no option, but to retire, or a deceased employee, to tide over the immediate crisis caused by the incapacitation or death of the breadwinner. Compassionate Appointment excludes equally or more meritorious candidates, much in need of a job, from the zone of consideration. Consideration for compassionate appointment must, therefore, be strictly in

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accordance with the prevalent rules for compassionate appointment applicable to the deceased/prematurely retired employee.

21. In this case, there is a financial criteria of eligibility for compassionate appointment under the Compassionate Appointment Scheme. Rules which provide for a financial criteria for appointment on Compassionate ground are valid and lawful rules which have to be construed strictly, as otherwise the quota reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress."

9. In the present case, the deceased employee died on 27.01.2001 and the representation for compassionate appointment was sent on 08.07.2016, i.e., after a lapse of about 15 years from the date of death of the deceased employee. This being the factum, now after a lapse of about 15 years from the date of death of the deceased employee, the benefit of compassionate appointment scheme cannot be extended to the petitioner.

10. Accordingly, this writ petition stands dismissed. No costs.

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Consequently, connected miscellaneous petition is closed.

30.09.2022

Index : Yes
Speaking order
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To

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S.M.SUBRAMANIAM, J.

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