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W.P.No.25229 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25229 of 2018

A.Sridevi

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
Gobi Electricity Distribution Circle,
132-D, Katchery Veethi,
Gobichettipalayam – 638452,
Erode District.

2.The Junior Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
Gobi Electricity Distribution Circle,
Arasur – 638 452, Erode District.

3.P.Kathiresan
[R3 impleaded as respondent in order
dated 21.11.2022 in WMP.No.28083 of 2019
in WP.No.25229 of 2018]

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to disburse the terminal benefits in accordance with the decree and judgement dated



W.P.No.25229 of 2018

27.09.2012 in O.S.No.78 of 2005, District Munsif Court, Palani and consider the petitioner for compassionate appointment in the respondent Department.

For Petitioner : Mr.R.Subramanian
For R1 & R2 : No Appearance
For R3 : Mr.N.Damodaran

ORDER

The relief sought for in the present writ petition is for a direction to direct the respondent to disburse the terminal benefits in accordance with the decree and judgement dated 27.09.2012 in O.S.No.78 of 2005, District Munsif Court, Palani and consider the petitioner for compassionate appointment in the respondent Department.

2. The petitioner states that her father died on 01.11.2004 and she made an application on 08.11.2004, requesting appointment on compassionate grounds. The deceased employee had two wives and the petitioner is the daughter of the first wife and the second wife also has got two sons. Thus, there was a family dispute and the parties approached the Civil Court by filing O.S.No.78 of 2005 on the file of the District Munsif



Court, Palani. The Suit was decreed on 27.09.2012 and the petitioner states that she was declared as a legal heir of the deceased employee and entitled to 1/4th share in the terminal benefits of the deceased employee.

3. The present writ petition is filed, seeking implementation of the decree passed by the Civil Court. The decree passed by the Civil Court cannot be executed by filing a writ petition before the High Court under Article 226 of the Constitution of India. Decrees are to be executed only by following the procedures contemplated under the Code of Civil Procedure and therefore, the petitioner if at all aggrieved, has to approach the competent Civil Court under the Code of Civil Procedure. Thus, the very relief sought for in the present writ petition to direct the respondents to disburse the terminal benefits as per the decree in O.S.No.78 of 2005 is untenable.

4. Secondly, compassionate appointment is to be provided based on the terms and conditions stipulated under the scheme. In the present case, the deceased employee died in the year 2004 and already 18 years lapsed. The petitioner is also now aged about 39 years. That apart, there was a



family dispute during the relevant point of time and counter application seeking appointment on compassionate grounds was also filed by the children of the second wife. On account of the dispute, the respondents were not in a position to consider the applications for providing appointment on compassionate grounds. At this length of time, appointment cannot be provided under the scheme of compassionate appointment, since efflux of time is also a ground to reject the application. The penurious circumstances if at all existed at the time of the death of an employee, now after long time, an inference is to be drawn that such circumstances became vanished. The object of the scheme is not to provide one appointment to the legal heirs of the deceased employee. It is to mitigate the circumstances arising on account of the sudden death of an employee. Thus, appointment on compassionate grounds cannot be considered after long years from the date of death of the deceased employee.

5. The principles regarding the compassionate appointment are laid down by the Hon'ble Supreme Court in the following cases:

(a) 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 :

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“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 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.”

(b) In this regard, the Hon'ble Supreme Court of India 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:-

“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



WEB COPY



W.P.No.25229 of 2018

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 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.”

(c) 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



W.P.No.25229 of 2018

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 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.”

(d) Even recently on 30.09.2022, the Hon'ble Supreme Court of India in the case of ***The State of Maharashtra and another Vs. Ms.Madhuri Maruti Vidhate (Since after marriage Smt.Madhuri Santhosh Koli)***, reported in **2022 LiveLaw (SC) 820**, laid down the principles as follows:



WEB COPY



W.P.No.25229 of 2018

*“5. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of **Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704**, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in **N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617**, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-*

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the



WEB COPY



W.P.No.25229 of 2018

consideration of the application should be the basis for consideration of claim for compassionate appointment.

6. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

*6.1 **Govind Prakash Verma Vs. LIC**, reported in (2005) 10 SCC 289.....*

“21.

“2.As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit.In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the



WEB COPY



W.P.No.25229 of 2018

deceased who may be eligible for such employment.It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute.

26.Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.....

7. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such



employment. 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 such family a post much less a post held by the deceased.

7.1.Even otherwise, she shall not be entitled to appointment on compassionate ground after a number of years from the death of the deceased employee.”

(e) Yet another judgment in the case of ***Fertilizers and Chemicals Travancore Ltd & Ors. Vs. Anusree K.B.*** reported in **2022 LiveLaw (SC) 819**, the Apex Court held as follows:

“9.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 such family a post much less a post held by the deceased.

9.1. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a



WEB COPY



W.P.No.25229 of 2018

period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.”

6. In the present case, already 18 years lapsed from the date of death of the deceased employee. Further, there was a family dispute between two wives of the deceased employee. Second Wife's children are not eligible for appointment on compassionate ground as per the Government orders. Now, the petitioner is the daughter of the first wife and at this length of time, the scheme cannot be extended in favour of the writ petitioner, in view of the principles laid down by the Hon'ble Supreme Court of India in the above cited judgments.

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

21.11.2022

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Index : Yes



W.P.No.25229 of 2018

Speaking order: Yes

To

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WEB COPY



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S.M.SUBRAMANIAM, J.

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W.P.No.25229 of 2018

21.11.2022