



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.21484 of 2021

M.Pon Abirami

... Petitioner

-VS-

1.The Chairman,
Tamil Nadu Electricity Board,
No.800 Anna Salai, Chennai - 2.

2.The Chief Engineer,
The Tamil Nadu Electricity Board,
5-A Block, Electricity Avenue,
144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Virudhunagar Distribution Circle,
Virudhunagar.

... Respondents

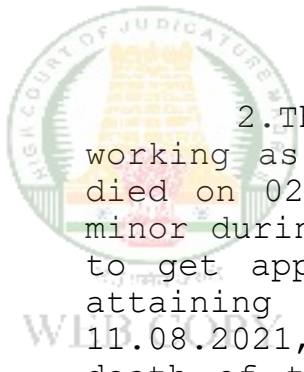
Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Rejection letter Lr.No.9854/564/NA/NP/Asst.1/Comp.appnmt/2021 dated 17.08.2021 passed by the 3rd Respondent and quash the same and direct the respondents to provide compassionate appointment to the petitioner.

For Petitioner : Ms.Lakshmi Gopinathan,
for M/s.Polex Legal Solutions

For Respondents : Mr.S.Arivalagan,
Standing Counsel

O R D E R

The order of rejection dated 17.08.2021 rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.



2.The father of the writ petitioner Late.V.Murugan was working as Foreman Grade-I in the 3rd respondent - Corporation and died on 02.10.2016 while he was in service. The petitioner was a minor during the relevant point of time. Thus, she was not eligible to get appointment on compassionate grounds. The petitioner, on attaining the age of majority, submitted an application on 11.08.2021, after expiry of three years of period from the date of death of the deceased employee. Thus, the 3rd respondent rejected the same.

3.The learned counsel for the petitioner made a submission that the petitioner is a single child and lost her father. However, the petitioner is now look after by her mother from and out of the family pension and other benefits. The petitioner has completed her Diploma Course in Electrical and Electronics Engineering and under these circumstances, the learned counsel for the petitioner reiterated that benefit of compassionate appointment is to be provided.

4.This Court is of the considered opinion that the arguments articulated by the learned counsel for the petitioner certainly seem to be attractive and sympathetic situation is also portrayed. However, Courts are not expected to take decision on misplaced sympathy. When the rights are dealt with equally, the infringement of rights of the citizen are also to be considered by the constitutional courts. In the event of expanding the scope of compassionate appointment, the eligible candidates who all are longing to secure public employment are deprived of their rights. All appointments are to be made under constitutional schemes by providing equal opportunity through open competitive process. In the event of exercising the power of judicial review under Article 226 and providing appointment on certain misplaced sympathy, it will result in unconstitutionality and deprive the rights of all other eligible candidates who all are waiting to secure employment through open competitive process. The consequences of misplaced sympathy in such cases are disastrous. Contrarily, the petitioner, just completed her Polytechnic Course, is getting an opportunity to participate in the open competitive process. Always, the young candidates of this great nation must aspire to get public employment in a meritorious manner and by way of reservation provided. Contrarily, the scheme of compassionate appointment and its scope if expanded, it will result in denial of opportunity to other persons.

5.Compassionate appointments are made without assessing the relative merits between the candidates. There is no eligibility or suitability which all are tested by the authorities. Thus, such appointments are to be certainly restricted only by providing benefit to the most deserving families and not in a routine manner. Thus, the scheme of compassionate appointment is to be granted only in case where the mitigating circumstances are established beyond



6..The Honourable Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata**, reported in (2022) 1 SCC 30, has made observations in respect of implementation of the scheme of compassionate appointment and the relevant portion of the observations are extracted hereunder:

"8. 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 **State of Karnataka vs. V.Somayashree [(2021) 12 SCC 20]**, 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 summarized the principle governing the grant of appointment on compassionate ground as under:

10.1. That the compassionate appointment is an exception to the general rule;

10.2. That no aspirant has a right to compassionate appointment;

10.3. 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;

10.4. 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;

10.5. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. As per the law laid down by this Court in a 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.

9.1. In the case of **H.P. v. Shashi Kumar [(2019) 3 SCC 653]**, this Court in paras 21 and 26 had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this Court



in **Govind Prakash Verma v. LIC [(2005) 10 SCC 289]**, it is observed and held as under:

"21. The decision in **Govind Prakash Verma**, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in **Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]**. The principles which have been laid down in **Umesh Kumar Nagpal** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. 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 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. 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. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

"26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [*Mumtaz Yunus Mulani v. State of Maharashtra*, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] 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. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

7. In the present case, the father of the writ petitioner died on 02.10.2016 and the petitioner on attaining the age of majority, submitted an application on 11.08.2021 beyond the period of three years contemplated under the scheme. However, certain factual mistakes found in the impugned order will not provide a remedy to the writ petitioner which is otherwise not in consonance with the



scheme of compassionate appointment. In such view of the matter, the petitioner is not entitled for the relief as such sought for in this writ petition and the writ petition is liable to be dismissed.

8. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

1. The Chairman,
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3. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Virudhunagar Distribution Circle,
Virudhunagar.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-10731[F] dated
08/03/2022)

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