



W.P.No.10262 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 12.12.2022

Orders delivered on 28.02.2023

CORAM :

THE HONOURABLE Mrs.JUSTICE **J.NISHA BANU**

W.P.No.10262 of 2012

R.Gurumoorthy

.. Petitioner

Vs

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

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
Anna Salai, Chennai.

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

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned orders passed by the 3rd respondent in Lr.No.002541(36)



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Ni.Pi.3/Vu.4/Ko.Va.Ve.Va.No.02.08 dated 25.04.2008 and
Lr.No.014551/NiPi.3/Vu.4/Ko.Va.Ve.Va.No/2010 dated 30.03.2010 and
quash the same and direct the respondent to provide suitable employment to
the petitioner on compassionate ground.

For Petitioner : Mr.S.N. Ravichandan
For Respondents : Mr.P.Subramanian

ORDER

This Writ Petition has been filed challenging the order passed by the 3rd respondent dated 25.04.2008 and 30.03.2010, rejecting the claim made by the petitioner seeking appointment on compassionate ground and to direct the respondents to provide suitable employment to the petitioner on compassionate ground.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner father was working as wireman in the Tamilnadu Electricity Board in the office of Junior Engineer Operation and Maintenance, Anathiur Villupuram Electricity Distribution Circle. While he



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was in service, he died due to illness on 10.11.1983 at the age of 43 years.

At the time of death of the petitioner's father, he left behind his wife daughter and the petitioner as his legal heirs. The petitioner was aged 3 years at the time of death of his father. His father was the only breadwinner of his family. After his death his mother was unable to maintain the family without any income and there was also no pension scheme available to workers in Regular Work Establishment. The petitioner's mother being illiterate could not make any application for compassionate appointment. After completion of 18 years, the petitioner's mother made representation in person to the 3rd respondent on 15.03.1998 requesting for compassionate appointment to the petitioner. There is no response from the 3rd respondent. Again the petitioner made request on 06.02.1999 to the 3rd respondent. The petitioner's representation was rejected by letter of the 3rd respondent dated 10.09.1999 stating that the petitioner did not make application within 3 years from the date of death of his father.

ii) Pursuant to G.O.No.120 dated the Board issued B.P.(FB) No.46 dated 13.10.1995 prescribing 3 years time limit from the date of Board



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proceedings for the past cases. Further the 2nd respondent issued a clarification memo dated 14.06.1997 wherein the dependent of the deceased employee can make an application if he/she is a minor they will be informed by the Board after completion of 18 years and the said application will be considered as per existing rules. Therefore the petitioner made representation dated 18.12.2002 requesting to reconsider the order dated 10.09.1999 and the same was rejected by the 3rd respondent on 21.12.2002 and 11.02.2003. Aggrieved by the same the petitioner filed W.P.No.1091 of 2004 before this Court and this Court vide order dated 28.01.2004 directed the respondents to consider the applications of the petitioner dated 15.03.1998 and 06.02.1999 as per B.P.(FB) No.46 dated 13.10.1995.

iii) The 3rd respondent rejected the claim of the petitioner by proceedings dated 17.04.2004 on the ground that there is no such applications dated 15.03.1998 and only the petitioner made application on 06.02.1999 belatedly after 16 years. Hence, on 18.05.2004, the petitioner made appeal to the second respondent to reconsider the order of the 3rd respondent. Even thereafter, there is no response for the same from the



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respondents. On 09.01.2007, the board issued B.P.(FB) No.3 relaxing the time limit for the past cases prior to issuance of B.P.(FB) No.46 dated 13.10.1995 and directed the dependents to make application for rejected cases. Hence, the 3rd respondent by proceedings dated 24.01.2007 directed the petitioner to submit an application for compassionate appointment as per the procedure along with necessary documents. Thereafter, the petitioner applied for legal heir certificate, income certificate and indigent certificate to the Thasildar. After obtaining the said certificates in the last week of March 2007, the petitioner's mother made representation dated 12.04.2007 to the 3rd respondent along with necessary documents. However, the 3rd respondent rejected the application on 25.04.2008. Thereafter, the petitioner made representation to the Chief Minister Cell on 21.01.2010 by registered post. The same was forwarded to the 3rd respondent. However, again the 3rd respondent by proceedings dated 30.03.2010 rejected the same reiterating the earlier reasons.

iv) Due to poverty, the petitioner could not continue his further studies after I.T.I. in Electrician trade. Without any income, the petitioner is unable



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to meet day-to-day expenses. Hence, this writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that the Scheme of Compassionate Appointment was introduced by the Tamil Electricity Board for providing Employment assistance to the dependent of the deceased employees who are in most penurious circumstances by adopting the rules of compassionate appointment issued by the Government of Tamil Nadu vide its Government orders. It is settled proposition of law that the scheme or the rule that was prevalent on the date of demise of the deceased employee alone will govern the scheme of compassionate. In the instant case, the petitioner's father died in service due to illness on 10.11.1983 and on the date when the petitioner's father died, the limitation of three years to make application seeking compassionate appointment was not prescribed by



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the Board. This factum is admitted by the respondent as well.

ii) Learned counsel for the petitioner would further submit that the Government of Tamilnadu vide its G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995 for the very first time prescribed and imposed a limitation period of three years time limit from the date of death of deceased for submitting application for compassionate appointment. Following the aforesaid G.O, the Board issued proceedings in B.P.Ms.(FB)No.46 Administrative Branch dated 13.10.1995 adopting the said G.O.Ms.No.120 dated 26.06.1995 Para No.3 of the said Board Proceedings reads thus:

"3. The Board has decided to adopt the order of the Government, accordingly, the following modification of the existing scheme of providing employment assistance to the dependents of the deceased employees of the Board is ordered.

1. The application for appointment on compassionate ground should be made within three years from the date of death of employees of the Board.

2. The maximum age limit for such appointment is raised to 50(fifty) years in the case of the widows of the deceased employees of the Board.



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3. In the event of already expired staff while in service the dependent should apply for employment assistance within three years from the date of issue of this order."

iii) If the death of employee of the Board occurred on or before 13.10.1995, then the period of three year time limit will commence only from 13.10.1995. The petitioner's mother made representation dated 15.03.1995 well within time and the petitioner made application in format on 6.2.1999 after attaining majority within time and as per memo dated 14.07.1997. Therefore, rejecting the claim of the petitioner by the 3rd respondent on the basis of time limit is against the spirit of the board proceedings dated 13.10.1995 and memo dated 14.06.1997. He would further submit that by B.P.No.3 dated 09.01.2007, the time limit prescribed in the matter of making application for compassionate appointment within a period of three years was taken away

iv) Subsequent, the Board by Memo No.147941/921/ R.6(2)/96 dated 14.06.1997 issued a clarification to B.P.Ms.(FB) No.46 dated 13.10.1996 as under:

"As per the B.P.(FB.)No.46, dated 13.10.1995, the legal heirs of the deceased employee shall give



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5. The respondents have filed counter affidavit stating that the petitioner made request on 06.02.1999 seeking compassionate appointment. By letter dated 10.09.1999, the 3rd respondent rejected the claim on the ground that he did not make the application within three years from the date of death of his father. The petitioner filed W.P.No.1091 of 2004 before this Court and by order dated 28.1.2004, this Court directed the 3rd respondent to consider the petitioner's application dated 15.03.1998 and 6.2.1999 as per BP.No.46 dated 13.10.1995. But no application dated 15.03.1998 has been received by the 3rd respondent. By order dated 25.04.2008 and 30.03.2010, the claim of the petitioner has been rejected on the ground that the petitioner belatedly made the claim after a period of 16 years and that he did not possess the educational qualification of 8th standard as on the date of his application as per the rules and regulations of the Board. Further, B.P.No.3 dated 09.01.2007 which has taken away the time limits prescribed in the matter of making application for compassionate appointment within a period of three years has been cancelled by B.P.No.13 dated 17.04.2007. Moreover, the petitioner is aged barred for appointment on compassionate



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and his claim cannot be considered at this stage. Therefore, he would seek to dismiss the writ petition.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. There is no dispute regarding the fact that the petitioner's father died in service on 10.11.1983 at the age of 43 years, while he was working as Wireman in the Tamil Nadu Electricity Board, Anathiur, Villiuram Electricity Distribution Circle. The petitioner's mother being an illiterate could not make any application for compassionate appointment. After the petitioner completed 18 years, his mother made representation in person to the 3rd respondent on 15.03.1998 requesting for compassionate appointment for the petitioner. Since there was no response, the petitioner made an application on 06.02.1999 in format seeking appointment on compassionate ground.



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8. It is pertinent to note here that the application submitted by the petitioner after attaining majority could not be said to be belated. In the case relied on by the learned counsel for the petitioner in J.Jebamary Vs. Chairman TNEB reported in 2011 (3) LLN 405, (Madras High Court) His Lordship Justice Paul Vasanthakumar J., as he 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.

9. Further, the Division Bench of this Hon'ble Court in S.Velraj Vs.



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The Superintendent 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.



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10. It is to be noted 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 is to be considered and not subsequent policy, thus, viewed from this angle also the impugned order cannot be sustained.

11. At this juncture, it is relevant to point out that BP (FB) No.3 was passed modifying BP (FB) No.46 stating that in respect of employees who died prior to 13.10.1995, the three years condition was dispensed and the rejected cases were permitted to be re-opened. The third respondent, by proceedings dated 24.01.2007 directed the petitioner to submit the application for compassionate appointment as per the procedure along with necessary documents. Thereafter, the petitioner applied for legal heir



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certificate, income certificate and indigent certificate to the Tahsildar. After obtaining the said certificates, the petitioner mother made representation dated 12.04.2007 to the 3rd respondent along with necessary documents for compassionate appointment to the petitioner. But the same was rejected by the 3rd respondent on 25.04.2008 reiterating the earlier reasons.

12. It is the contention of the respondents in the counter affidavit that BP (FB) No.3 dated 19.01.2007 which has taken away the time limits prescribed in the matter of making application for compassionate appointment within a period of three years has been cancelled by B.P.No.13 dated 17.04.2007 and hence, the petitioner's claim was rejected. It is relevant to note the observation of the learned Division Bench in W.A.(MD).No.792 of 2011 dated 03.12.2015. In the said order, it has been observed at Paragraph No.9 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



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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 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.”

13. Further, the respondents have improved the case in the counter by referring to cancellation of BP (FB) No.3 dated 09.01.2007 by B.P.No.13 dated 17.04.2007 as the reason for rejection of the application. It is now settled law that no case can be improved in the counter. This Court therefore find that the impugned order is unsustainable.

14. Insofar as contention of the respondent that the petitioner is age barred is concerned, this plea has not been raised neither in the impugned rejection order nor in the counter affidavit filed before this Court. As on the date of filing the writ petition, the petitioner was 32 years and thus, well



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within the age limit. Even if the petitioner is age barred, the respondent Board has power to relax the age limit. In the case of R.Magudeeswaran v. The Chairman, TNEB, W.P.No.11059 of 2011 dated 22.06.2011, this Court relaxed the upper age limit and directed the dependent to be provided with compassionate appointment. The Electricity Board, in compliance of the order passed in R.Magudeeswaran's case, issued (Per.)FB TANGEDCO Proceeding No.12, Administrative Branch dated 02.07.2012 released the upper age limit and provided employment assistance by appointing him as Helper Trainee. The said order is applicable to the petitioner's case as well. Further, the petitioner has also proved that his family is in indigent circumstances by producing the indigent certificate issued by the Tahsildar.

15. For all the reasons stated above, this Court is of the view that the claim of the petitioner seeking compassionate appointment cannot be rejected. Therefore, the respondents are directed to pass appropriate orders providing suitable employment to the petitioner on compassionate ground. The said exercise shall be completed within a period of three months from



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the date of receipt of this order. The Writ Petition is ordered accordingly. No costs.

28.02.2023

Index :Yes/No

Speaking/Non-speaking order

vsi

To

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J.NISHA BANU, J.

(vsi)

Pre-delivery order in
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