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W.P.No.26576 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.26576 of 2012

R.Kannan

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai – 600 002.
- 2.The Chief Engineer (Personal)
Administrative Branch,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer,
Administrative Branch – 1,
Mettur Electricity Distribution Circle,
TNEB Mettur Dam – 1,
Salem District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent in Ka.No.46723/935/me.po/ko.(m)ko.Per/2011 dated



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30.09.2011 and quash the same and further direct the respondent to give appointment to the petitioner on compassionate ground.

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For Petitioner : Mr.M.Dhamodharan

For Respondents : Mr.David Sundar Singh
TANGEDCO

ORDER

The relief sought by the petitioner in this writ petition is to call for the records of the third respondent in Ka.No.46723/935/me.po/ko.(m)ko.Per/2011 dated 30.09.2011 and quash the same and further direct the respondent to give appointment to the petitioner on compassionate ground.

2. The facts of the case in a nutshell:

The petitioner viz., R.Kannan was employed as Helper at Mill Plant/MTPS at the office of TNEB, Mettur Dam, Salem District under the control of the third respondent/The Superintending Engineer. This being so, his father died in harness on 14.10.2010 leaving behind the petitioner, his mother and his sister as legal heirs. Subsequently, the petitioner's mother also died within two months i.e., on 19.12.2010.



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2.1. The petitioner's father was a sole earning member of the family and after the death of his father and mother, the petitioner has no source of income to maintain himself and his sister. Moreover, the petitioner's studied upto 12th standard, unemployed, and belongs to Scheduled Caste Community. Since, the petitioner's father has served as helper for eleven years under the third respondent, the petitioner sent a representation dated 06.04.2011 to the third respondent, requesting him to extend the benefit of compassionate appointment to him. On receipt of the said representation dated 06.04.2011, the third respondent vide letter dated 12.05.2011 asked for death certificate, legal heir certificate and other particulars. Thereafter, the petitioner submitted all the particulars sought for by the third respondent along with a letter dated 28.07.2011, which includes No Objection Certificate given by his sister. However, after complying the said requirements sought for by the third respondent, the third respondent by its order dated 13.09.2011, rejected the claim of the petitioner on the ground that the he was **37 years 4 months and 14 days old at the time of death of his father and not entitled for an appointment on compassionate grounds.** Aggrieved over the said order



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dated 13.09.2011 in Na.Ka.No.46723/935/me.po/ko(m)/ko.per/2011, the petitioner has filed this present writ petition.

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3. The learned counsel for the petitioner submitted that the petitioner's representation dated 06.04.2011 for appointment on compassionate ground was based on the proceedings of the Tamil Nadu Electricity Board in B.P.Ms. (Ch.) No.409 dated 28.06.1984, which states that the age limit for Scheduled Caste candidate is 40 years and in the present case on hand, the petitioner was only 37 years old, at the time of his representation dated 06.04.2011. For better appreciation, the relevant portion of the aforesaid proceeding dated 28.06.1984 is extracted hereunder:

“The Board after careful consideration of the clarification issued by the Government in the letter cited so far as it relates to age exemption in respect of SC/ST candidates, hereby directs that the dependents of the deceased employees of the Board, who belong to SC/ST can be appointed on compassionate grounds, even if they exceed the age limit of 30/40 years on the date of death of Board employee, prescribed by the Board when the age limit prescribed in the Service



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Regulation for the post of which they are considered for appointment is more beneficial to the individuals”.

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4. Subsequently, an amendment was carried out in the aforesaid proceeding on 28.04.2007, by fixing the age limit of the Scheduled Caste candidate at 35 years and without mentioning the same in the rejection order dated 30.09.2011, the third respondent rejected the petitioner's claim for appointment on compassionate ground, which is not sustainable in law and prayed for allowing this writ petition.

5. Per contra, learned counsel appearing for the respondents relied on the amended proceeding dated 28.04.2007 and they has also filed a counter affidavit to that effect on 25.02.2022. For better appreciation, the relevant paragraphs of the said counter affidavit is extracted hereunder:

“5. As regards B.P.Ms (Ch) No.409 (Administrative Branch) dated 28.06.1984, I submit that the maximum age limit for the entry level post i.e. Filed Assistant is 30 years and the age limit in respect of SC/ST is 35 years as per the service regulation and hence as the Petitioner's age as on the date of death of the deceased employee is 37 years 4 months and 14 days is rightly rejected and the same cannot be taken exception to by the Petitioner herein.



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6. *I state that the age of the Petitioner is 37 years, 4 months and 14 days. Hence the Mettur Thermal Power Station management has rightly rejected the Petitioner representation dated 28.07.2011 vide Ka.No.46724/935/Me.Po.Ko.(MN)/Per/2011 dated 30.09.2011 the order impugned in this Writ Petition.*

7. *I state that as per the Board proceedings, the 2nd respondent has rightly refused to provide compassionate appointment to the deceased employee's son R.Kannan.*

8. *I submit that as per (per) F.B.TANGEDCO proceedings No.11, dated 11.06.2020 issued by the Board adopting the G.O.Ms.No.18 (Labour and Employment) (Q1) Department dated 23.01.2020.*

06) (ii) *The maximum age limit for the spouse/father/mother is 50 years on the date of the death of the TANGEDCO/TANTRANSCO employee.*

(iii) *The maximum age limit for the son or daughter of the deceased TANGEDCO/TANTRANSCO employee and unmarried brother/unmarried sister of the unmarried deceased TANGEDCO/TANTRANSCO employee is 40 years at the time of applying”.*

6. The learned counsel appearing for the second respondent has filed an affidavit dated 20.4.2023. For better appreciation, the relevant paragraphs are extracted hereunder:

“3. I Submit that in BP (FB) No.13 (Secretariat Branch)



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dated 28.04.2007 among others, Amendments have been issued to Regulation 89 of TNEB Service Regulations by inserting the following Sub – Regulation after sub – Regulation(c),

“(cc) Notwithstanding anything contained in these regulations, the rule of reservation shall not apply to the appointment on compassionate grounds”.

4. I Submit that TANGEDCO amended the above provision in pursuant of the amendment issued by the Tamil Nadu Government to Rule 22, the Tamil Nadu State and Subordinate Services Rules vide GO.MS No.334 (Personal and Administrative Reforms Department) dated 02.09.1993. This amendment has been adopted in the TNEB Service Regulations by the Board.

5. I submit that with respect to BP Ms.(CH) No.409 (Administrative Branch) dated 28.06.1984, this is an Executive order issued by the chairman, but the amendment is made to the TNEB Service Regulations based on the amendment issued to Tamil Nadu State and Subordinate Service Rules. The Executive order has no statutory back, hence it cannot override the amendment made to the Service Regulations which are Statutory nature”.

7. Heard the learned counsel on either side and perused the materials available on record.

8. In the present case on hand, the petitioner’s father has worked as a



helper in the office of TNEB, Mettur Dam, Salem and died on 14.10.2010.

Subsequently, his mother also died on 19.12.2010. Further, the petitioner belongs to Scheduled Caste Community, studied only 12th standard, and he is unemployed. Hence, he sent a representation dated 06.04.2011 to the third respondent, seeking for appointment on compassionate ground, along with the relevant documents viz., death certificate, legal heir certificate, including **No Objection Certificate from his sister and community certificate.**

However, the third respondent has rejected the petitioner's application/representation dated 06.04.2011 and issued order in Ka.No.46723/935/me.po/ko(m)/ko.per/2011 dated 30.09.2011, stating that the age of the petitioner was 37 years 4 months and 14 days at the time of death of his father and he is not entitled for appointment on compassionate ground.

9. It is pertinent to note that the petitioner's application/representation dated 06.04.2011 was only based on the proceeding issued by the Tamil Nadu Electricity Board dated 28.06.1984. For better appreciation, the said proceeding is extracted hereunder:

“The Board after careful consideration of the



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clarification issued by the Government in the letter cited so far as it relates to age exemption in respect of SC/ST candidates, hereby directs that the dependents of the deceased employees of the Board, who belong to SC/ST can be appointed on compassionate grounds, even if they exceed the age limit of 30/40 years on the date of death of Board employee, prescribed by the Board when the age limit prescribed in the Service Regulation for the post of which they are considered for appointment is more beneficial to the individuals”.

Subsequently, an amendment was carried out in the aforesaid proceeding dated 28.06.1984 with effect from 28.04.2007 and the same reads as follows:

AMENDMENTS

In the said regulations:-

(i) After sub-regulation (e) in regulation 91(2), the following regulation shall be inserted namely:-

**(ee) Age concession for appointment on
Compassionate Grounds:-*

Notwithstanding anything contained in these Regulations, regarding the maximum age limit for appointment by direct recruitment, in the case of appointment on Compassionate grounds, the maximum age limit shall be 35 years in respect of the sons or the unmarried daughters and 50 years in respect of wife or husband of the Board employee, who died in harness while in service, or retired from service on medical invalidation before attaining the age of fifty three



years, as the case may be”.

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10. In the present case on hand, the above said facts was not mentioned in the rejection order dated 30.09.2011. If the third respondent has mentioned the said amendment, which was came into effect on 28.04.2007 in the rejection order, the petitioner would have challenged the same in the manner known to law, but, the rejection order was silent on this aspect.

11. The stand taken by the respondents is that in the representation/application dated 06.04.2011, the petitioner has not mentioned that he belongs to Scheduled Caste Community. Hence, the amendment, which fixes the age limit for the Scheduled Caste candidates at 35 with effect from 28.04.2007 was not mentioned in the rejection order passed by the third respondent dated 30.09.2011, which is not acceptable to this Court for the reason that the petitioner's father belongs to Scheduled Caste Community, even though, the petitioner has not mentioned about his community in the representation/application



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dated 06.04.2011, he has produced the community certificate dated 09.10.1992 that he belongs to Scheduled Caste Community. It is very obvious and crystal clear that once the father belongs to Scheduled Caste Community, the son also belongs to the same community and there is no need to mention about the same in the application/representation for appointment on the compassionate ground.

12. It is pertinent to note that the age of the petitioner at the time of the representation/application dated 06.04.2011 was 37 years 4 months and 14 days and due to efflux of time, the petitioner's age at present is 50 years. At this juncture, the case of the petitioner cannot be considered for compassionate ground appointment. Hence, this Court is of the considered view that the application/representation dated 06.04.2011 of the petitioner for compassionate ground appointment cannot be entertained due to the amendment, which came into effect on 28.04.2007 and moreover, the age of the petitioner is also 50 years.

13. In the result, this writ petition stands dismissed. No costs.



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Index : Yes/No

Speaking Order : Yes/No

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