



W.P.No.39525 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	19.12.202
		2
PRONOUNCED ON	:	28.02.202
		3

CORAM :
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
W.P.No.39525 of 2015
and M.P.No.1 of 2015

B. Sundari

... Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. By its Chairman,
No.144, Anna Salai, Chennai- 600 002
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai- 600 002
3. The Superintending Engineer,
Kundha Power Generation Circle,
Kundha, Nilgiri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records made in the impugned order of the 3rd respondent in Letter No.009537/244-2/Ni.Pi.2/Uthavi1/Ko.Va.Ve/2015 dated 21.07.2015 and



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quash the same and direct the respondents to provide suitable employment to the petitioner's daughter Tmt.Sudha on compassionate ground in the light of the order passed in W.P.No.22171/2013 dated 13.08.2013.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.David Sundar Singh

ORDER

This writ petition has been filed by the wife of one Kakkamallan seeking to quash the impugned order of the 3rd respondent in Letter No.009537/244-2/Ni.Pi.2/Uthavi1/Ko.Va.Ve/2015 dated 21.07.2015 and consequently to direct the respondents to provide suitable employment to the petitioner's daughter Tmt.Sudha on compassionate ground in the light of the order passed in W.P.No.22171/2013 dated 13.08.2013.

2. According to the learned counsel for the petitioner, the petitioner's husband Kakkamallan was employed by the respondent Electricity Board as Foreman. He died in harness on 18.05.2008, leaving behind the petitioner/wife, sons Vijay Anand and Nandakumar and daughter Sudha as his legal heirs. Subsequently, the petitioner had approached the respondent



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Board for the sake of grant of compassionate appointment. Upon the request made by the petitioner, her Nandakumar was appointed as Helper (Trainee) on compassionate ground by an order dated 04.04.2012 and later he was posted in the office of the Assistant Engineer / Electrical Maintenance, Kundha Power House – 4, Pillur Dam. After completion of two years of training, the employment of the said Nandakumar was made permanent w.e.f 10.04.2013 vide order of the third respondent dated 27.03.2014. On 07.08.2014, while attending night shift, the petitioner's son had fainted and fell unconscious which was not noticed by anyone until next day morning. Thereafter, he was admitted in the hospital, where he died on 22.08.2014 due to brain fever.

3. According to the petitioner, the petitioner's elder son Vijay Anand got married in the year 2010 and is living separately and does not render any assistance nor maintains the petitioner. After the death of the petitioner's son Nandakumar, the petitioner is living with her daughter Sudha, who has lost her husband due to kidney failure on 20.11.2015. Therefore, the petitioner has made an representation on February 2015 to the second respondent



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requesting for compassionate appointment to her daughter Sudha. The second respondent had forwarded the representation to the third respondent for taking appropriate action, but the third respondent had rejected the proposal on the ground that married daughter is not entitled for compassionate appointment, as per Board proceedings dated 18.08.2008. The main grievance of the petitioner is that since the petitioner is old aged and is living with her daughter, who is also a destitute widow and struggling hard to maintain the family, the impugned order of the third respondent rejecting the claim of the petitioner for compassionate appointment deserves the interference of this Court and hence, prayed for allowing the writ petition.

4. Per contra, the learned counsel appearing for the respondents would submit that the eligible service benefits of the deceased Kkkamalan were promptly disbursed to the petitioner and the petitioner is also now drawing Family Pension from the respondent Board. The petitioner's son was appointed as Helper on compassionate grounds on 11.04.2012, only after obtaining consent from all the other legal heirs of the deceased employee. According to the learned counsel, inspite of several request made, the said



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Nandakumar has not made any nomination to receive the retired benefits. The impugned letter, which was issued based on the Board's proceedings in (Per)

B.P.(FB) No.27 dated 18.08.2008 is extracted hereunder:

“ (1) In case a Board employee, who is unmarried, dies while in service (Leaving Parents, Brothers and Sisters in an indigent Circumstances), the question of providing employment assistance on compassionate grounds to his unmarried brother/unmarried sister may also be considered. Accordingly, it may be directed that the term "near relative" includes unmarried brother/unmarried sister of the unmarried employee of the Board who dies in harness while in service subject to satisfaction of other conditions of Board prescribed under the scheme.

(ii) This will apply to all cases of death of employees that occur on and after the date of approval of the Board Meeting. and therefore, there was no infirmity, irregularity or impropriety in the impugned order.

5. The learned counsel also relied upon the following judgments wherein it has been held that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. In the case of **MGB Gramin**



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Bank Vs Chakrawarti Singh in C.A.No.6348 of 2013 dated 07.08.2013, the

Hon'ble Supreme Court has held in paragraph no.5 as follows:

“5. Every appointment to Dublic office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. As exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is, satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The Consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.”

Similarly in the case of **Jagdish Prased -vs- State of Bihar** reported in **(1996) 1 SCC 301**, the Supreme Court has observed that the very object of



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appointment of a dependent of the deceased employee who dies in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Also, the learned counsel for the respondents relied upon the case of **MMTC Ltd. -Vs- Pramoda Dei** reported in **(1997) 1 SCC 390**, wherein the Hon'ble Supreme Court has observed that the object of the compassionate appointment is to enable penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of a employee does not entitle his family to compassionate appointment.

6. According to the learned counsel for the respondents, the employment assistance on compassionate ground was rightly given to the son of the deceased employee who died in harness. While so, the petitioner cannot claim again for the grant of compassionate appointment to her daughter. Moreover, the petitioner is not a destitute because she has been receiving Family Pension from the Board. The petitioner's elder son Vijay Anand, who is also working in the respondent Board is drawing good salary and it is his duty to maintain the petitioner, under the Maintenance and Welfare of



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Parents and Senior Citizens Act, 2007. Hence, the learned counsel for the respondents prayed for dismissing the writ petition.

7. Heard both sides and perused the records carefully.

8. The admitted facts in this case is that the petitioner's husband who was working as Foreman in the 3rd respondent project died on 18.05.2008 while in service. On compassionate ground, petitioner's second son got appointment and suddenly he also died on 28.08.2014. The petitioners seeks for compassionate appointment now to her daughter who is a widow on the ground that as per Board Proceedings B.P.FB.No.27 dated 18.08.2008, daughter's claim for compassionate appointment has to be considered.

9. The claim of the petitioner was resisted by the respondent-Board stating that the petitioner is receiving family pension from TNEB, hence, she is not a destitute. On the other hand, the petitioner submits that for the purpose of providing compassionate appointment, it is strenuously contended that widow daughter of the workman who died in harness is termed as "near relative" and subject to satisfaction of other conditions of Board prescribed



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under the scheme, compassionate appointment will apply to the case on hand.

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10. The learned counsel for the petitioner in support of his submissions relied on the decision in the case of ***U.P.Power Corporation Ltd., Vs Urmila Devi dated 27.01.2011 reported in 2011 2 LLN 660*** and submitted that in the cited case, it has been decided that widowed daughter is included in the family and the widowed daughter-in-law is also entitled for compassionate appointment. The relevant portion of the said judgment is as under:-

“6. However, during the pendency of these proceedings, considering the peculiar features of the case, the Appellant themselves, on queries raised by the Court, have taken a decision to give appointment to the Respondent on producing the documents as set out in the Affidavit filed on behalf of the Appellants. They have also made it clear that the age bar would not come in the way while giving appointment to the Respondent. In the light of that, in our opinion, really, nothing further would survive in this reference. However, liberty to the Respondent, in the event appointment is not given, to apply.

7. We must, however, note one feature of the definition of the word 'family' as generally contained in most Rules. The definition of "family" includes wife or husband, sons; unmarried and widowed daughters; and if the deceased



was an unmarried Government servant, the brother, unmarried sister and widowed mother dependant on the deceased Government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of family. It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to our civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by including the daughter-in-law in the definition of family. Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied”

11. Since the widowed daughter of the petitioner is coming within the ambit of the term “near relative”, a conscious decision is to be taken as regards the family of the deceased who is still suffering in the aftermath of the



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death of the father who originally worked in the services of the Board.

Compassionate appointment to the family member of the deceased who is facing financial hardship due to sudden demise of the bread winner of the family that is second son of the petitioner could be viewed sympathetically and such appointment is justified in the circumstances prevailing in the family.

12. In the considered opinion of this court, the State being a welfare state to help the family of the deceased at the time of need of the family, taking note of the genuine and peculiar circumstances in the family of the petitioner, this court, directs the respondents to provide suitable employment to the petitioner's daughter Tmt.Sudha on compassionate ground, within a period of eight weeks from the date of receipt of a copy of this order.

13. This writ petition is partly allowed on the above terms. No costs. Consequently, connected MP is closed.

28.02.2023



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Index : Yes/No
Speaking Order : Yes/No

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J.NISHA BANU, J.,

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To:

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai- 600 002
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai- 600 002
3. The Superintending Engineer,
Kundha Power Generation Circle,
Kundha, Nilgiri District.

Order made in
W.P.No.39525 of 2015

Dated:
28.02.2023