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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

W.P.No.38243 of 2016
and W.M.P.No.32792 of 2016

R.Arunkumar .. Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai – 2.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai – 2.

3.The Superintending Engineer,
Vellore Electricity Distribution Circle,
Vellore District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records made in the impugned order of the 2nd respondent in Let.No.046006/427/G8/G81/2013-4 dated 04.04.2015 and quash the same

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and further direct the respondents to provide suitable employment to the petitioner on compassionate ground and sanction family pension and death cum retirement benefits.

For Petitioner .. Mr.S.N.Ravichandran

For Respondents .. Mr.K.Rajkumar
Standing Counsel (TANGEDCO)

ORDER

The writ petition has been filed in the nature of a Certiorarified Mandamus seeking interference with the order passed by the 2nd respondent/the Chief Engineer (Personnel), TANGEDCO, Chennai, in Letter No.046006/427/G8/G81/2013-4 dated 04.04.2015, and to further direct the respondents to provide suitable employment to the petitioner on compassionate grounds and also sanction family pension and death cum retirement benefits with respect to the service rendered by the father of the petitioner P.Rajagopal.

2(a). The petitioner was aged about 26 years at the time of filing the writ petition. His father was employed as a Contract Labour from 1989 with

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K.Lakshmanan, in the Tamil Nadu Electricity Board at the Office of the Junior Engineer (O&M), Virunchipuram, Vellore Electricity Distribution Circle. It is claimed that the petitioner's father was employed without any break in service and his service was permanent and perennial. However, his name was omitted in the Justice Khalid Committee Report, which had been formed to identify contract Labourers for being observed in service in the erstwhile Tamil Nadu Electricity Board. The father of the petitioner continue to work as a Contract Labourer

2.(b) On 12.03.2004, the father of the petitioner along with Line Inspector P.Durairaj had carried out repairs at Mottur SSIII, 250 KVA transformer at Virunchipuram. While they were reconditioning the said transformer at about 12.00 p.m., the father of the petitioner suffered shock by electrocution and died on the way to Hospital. In this connection, Arulselvan/the Assistant Engineer, had given a police complaint and accordingly, a FIR was came to be registered in Crime No.93 of 2004 by the Inspector of Police, Virunchipuram Police Station. Thereafter, the Post Mortem report confirmed that the death was due to electrocution.

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2. (c) The petitioner, his mother, his sister and his grandfather were the only legal heirs of deceased P.Rajagopal. Thereafter, the mother of the petitioner filed an application seeking compensation against the respondents herein under the provisions of the Workmen Compensation Act, 1923, in W.C.No.249 of 2004 and an award was passed on 11.04.2005, directing the Electricity Board to pay a sum of Rs.2,40,270/- (Two Lakhs Forty Thousand Two Hundred and Seventy only) together with interest at the rate of 12% per annum. As against that particular award passed by the Commissioner of Labour, the respondents herein filed C.M.A.No.634 of 2006. Pending appeal, the mother of the petitioner had filed an application seeking employment on compassionate ground for her son namely the petitioner herein, consequent to his completion of 18 years of age.

2. (d) The petitioner has averred in the affidavit that his mother was informed that compassionate appointment could not be granted since the father was a contract labourer. Thereafter, the judgment in C.M.A.No.634 of 2006 was delivered, wherein one of the primary issue that had been decided was that the father was an employee under the respondents and holding so on the basis of evidence let in, the learned Single Judge, by judgment dated

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22.09.2010, dismissed the Civil Miscellaneous Appeal and confirmed the award of the Commissioner of Labour. The petitioner quite independent of the earlier application given by his mother had also given a representation seeking employment on compassionate grounds on 29.05.2013. The 2nd respondent, by proceedings dated 27.06.2013, directed the 3rd respondent to furnish a report and issued a further direction in that regard. After a period of more than two years, the impugned order was passed on 04.04.2015, signed on 17.07.2015, rejecting the plea of the petitioner herein seeking employment on compassionate basis. The only ground such request by the petitioner was rejected was that the father of the petitioner was a Contract Labour. It was stated that since there were no rules available for granting compassionate employment to the children of those who were in contract basis, the petitioner was disentitled from seeking such relief. Questioning that particular order, this writ petition has been filed.

3. A counter affidavit had been filed on behalf of the 3rd respondent/the Superintending Engineer, Vellore Electricity Distribution Circle, Vellore District. In the counter affidavit, it had been stated that the father of the petitioner was working as a Contract Labour and died due to

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electrocution on 12.03.2004 and such electrocution occurred while the father of the petitioner was repairing the transformer. The fact about the claim made before the Workmen Compensation Tribunal, was also confirmed. The fact that an award was granted was also confirmed. It was stated that the claim of the petitioner seeking employment was rejected only on the ground that the Board has a policy that it would grant employment only to those who were the legal heirs of permanent employees and not for those of contract Labourers.

4. It had been stated that the application had also been filed only on 29.05.2013 after 9 years, 2 months and 17 days. It had been stated that the employment necessity of the family seeking compassionate appointment did not exist after a period of 9 years. It had also been stated that the Scheme cannot be extended to contract Labourer, who were working only for a temporary period under a particular Scheme.

5. The learned counsel for the respondents placed reliance on the judgment of a learned Single Judge of this Court in ***W.P.No.30022 of 2012*** dated ***14.12.2017***, wherein it was stated that a contract Labourer who was

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working in a particular Scheme, can be said to be employed only during the period of that particular Scheme and therefore, the legal heirs cannot seek any right for the compassionate employment, if he dies during the course of employment.

6. Reliance had also been placed on the Full Bench judgment of this Court in ***W.P.(MD).No.7016 of 2011*** dated ***11.03.2020***, wherein it had been held that appointment on compassionate grounds has to be strictly followed in accordance with the relevant Government rules on schemes framed by the employer and that any deviation from the same is not permissible.

7. Heard arguments advanced by Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.P.Subramanian, learned Standing Counsel for the respondents.

8. It is the contention of the learned counsel for the petitioner that the father of the petitioner was a contract Labourer, who had worked continuously under the respondents. It had been stated that though several

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such workers had been identified to be absorbed by the respondents, unfortunately, the father of the petitioner had been left out. It was pointed out that this would not mean that the father was not working under direct supervision of the respondents. The learned counsel for the petitioner also stated that the claim of the respondents that compassionate employment would be granted only to those who are recognised as employees of the respondents cannot withstand the scrutiny of this Court.

9. The learned counsel placed reliance on the judgment of a learned Division Bench of this Court in ***W.A.No.10 of 2018*** in the case of ***M.Vigneshwaran Vs. the Superintending Engineer, TNEB***, dated ***22.04.2019*** whereby, it was held that if death occurred due to unnatural circumstances like a case of electrocution, there cannot be strict existence of the period of three years, within ab application should be made for seeking employment under compassionate basis.

10. The learned counsel also placed reliance on the subsequent order passed by the Division Bench and pointed out that owing to oral observations of Division Bench of this Court, the respondents therein namely the Electricity Board/respondents herein had provided employment to the

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writ petitioner therein.

11. Reliance was also placed on a judgment of a learned Single Judge of this Court in ***W.P.No.30910 of 2002*** dated ***10.09.2005*** in the case of ***Veeramani Vs The Chief Engineer/Personnel, TNEB, Chennai***, wherein it was held that the Electricity Board cannot be heard to raise technical objections and must provide employment to the dependants of those who die while performing duties.

12. The learned counsel also pointed out the proceedings of the respondents dated 08.05.2013 wherein, with respect to the time for making application, it had been stated that the applicant should have completed 18 years and a maximum of 35 years. If a widow claims employment, the maximum age limit was 50 years. It had also been stated that in special cases the proposal for compassionate appointment to the legal heirs of the Bonafide Contract Labourers who die in fatal electrical accidents will be considered but limited to those Labourers who would have been observed as permanent employees if they had continued in service.

13. The learned counsel also pointed out the reasoning of the learned

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Single Judge of this Court in the Civil Miscellaneous Appeal filed by the respondents questioning the award of the Commissioner of Labour under the Workmen Compensation Act. The learned Single Judge had specifically held that the father of the petitioner was an employee of the respondents.

14. The learned counsel pointed out that the FIR had been lodged only by the Assistant Executive Engineer and stated that there was no obligation on the Assistant Executive Engineer to so lodge a complaint if the father of the petitioner was a total stranger. He further stated that in the FIR it had been very specifically averred that the father died while repairing the transformer.

15. Mr.K.Rajkumar, learned Standing Counsel on behalf of the respondents however was quite emphatic in his submissions that the petitioner was not at all eligible to be considered for grant of appointment under compassionate basis. It is the contention of the learned Standing Counsel that the father of the petitioner was not at all an employee of the respondents and the Board proceedings permitted only children or legal heirs of the employee to be considered for grant of such employment.

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16. It is the contention of the learned Standing Counsel that the application was also made after considerable delay and on that ground the request of the petitioner herein should be rejected.

17. In this connection, the learned Standing Counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in ***2023 (1) SLR 774,*** in the case of ***Kirloskar Brothers Limited Vs. Ramcharan and Others***, wherein the Hon'ble Supreme Court had distinguished between employment on contract basis under the contract or a direct employee and had very specifically stated that a contract Labourer is the contract Labourer and not an employee. The learned Standing Counsel contended that the petitioner was not eligible to be considered for grant of employment. The learned Standing Counsel was quite definite in his observations that the writ petition should be dismissed.

18. I have carefully considered the arguments advanced and perused the materials placed on record.

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19. The following facts are not in dispute in this case:

1. The father of the petitioner was an employee on contract basis under the respondents.
2. Owing to such employment, the father of the petitioner was paid salary or wages or remuneration by the respondents.
3. The father of the petitioner, died due to electrocution while repairing a transformer.

The above facts are not denied or disputed. The one aspect relied upon by the learned Standing Counsel on behalf of the respondents is that in view of those facts, the petitioner stands disqualified from seeking employment consequent to the fact that the father of the petitioner was a contract Labourer.

20. In this connection, strong reliance is placed on the judgment of the Hon'ble Supreme Court reported in ***2023 (1) SLR 774,*** in the case of ***Kirloskar Brothers Limited Vs. Ramcharan and others***. That was a case where an application had been made for absorption in service by those who were contract Labourers. The consistent of the Courts below were reversed

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by the Hon'ble Supreme Court. In that particular case, one defining factor was that the 7th respondent was the named contractor. The Hon'ble Supreme Court observed that contract of service between that particular contractor/7th respondent and those who sought permanent employment, was a subsisting contract and that contract between the contractor and the employees had not been declared void under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It was specifically found that the particular enactment namely the Contract Labour (Regulation and Abolition) Act, 1970, was a Central Government enactment and reliance placed by the Courts below on a State Legislation was not proper in view of Article 154 of the Constitution of India. Therefore, the claim of the employees to be regularized was rejected, by holding that they had a valid contract, which was not declared void or illegal under the provisions of the aforementioned Act. It was held that since such declaration had not been made, their obligation was only with the contractor and not with the employer.

21. Holding as above, the Hon'ble Supreme Court held that the employees therein could not claim permanency in employment and therefore, set aside the judgments of all the Courts below.

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22. This judgment, is distinguishable on the facts of this particular case. There was direct evidence extracted in the judgment of the learned Single Judge of this Court in the Civil Miscellaneous Appeal, which had been filed by the respondents herein questioning the award of the Commissioner of Labour under Workmen Compensation Act, who had granted an award consequent to the death of the father of the petitioner herein.

23. One of the issues framed for consideration was whether the father of the petitioner herein was an employee of the respondents. This issue was direct. This issue was straight forward. It examined whether there was a relationship of employer/employee between the respondents herein and the father of the petitioner herein.

24. The answer to that issue directly applies to the case of this writ petitioner herein. Answering that particular issue, the learned Single Judge in order dated ***22.09.2010*** in ***C.M.A.No.634 of 2006,*** in the case of ***The Superintending Engineer, Vellore Electricity Distribution Circle Vs.***

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R.Suganthi, held as follows:

"4. At the time of admission, the following question of law has been framed:

"1. Whether the deceased was a workman to claim a compensation under this Act?"

5. The short point for consideration in the appeal is whether the deceased was a workman entitled to claim compensation under the Workmen Compensation Act?

6. It is stated in the application filed by the respondent, who is the dependent of the deceased that the deceased P.Rajagopal, was a workman employed by the opposite party/appellant and when he was attending to works at Mottur SS.III 250KVA Transformer, the accident took place. At the time of accident, the deceased was earning Rs.75/- per day and the respondent claimed a compensation of Rs.2,02,780.50/-.

7. In the counter affidavit it is stated that on 12.03.2004 the deceased without the knowledge of the Department personnel attempted to release the L.T bushing second jumper in Mottur SS III 250KVA distribution

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transformer, Virinjipuram O & M Section when it was affected by the interruption of supply and thereby met with the accident. Further, when it is stated that if he had used the safety measures, the accident could have been avoided, it is clear that he is treated as an employee of the Electricity Board. Further in this evidence, the respondent has stated as follows:

> *"... இது குறித்து எதிர்மனுதாரர் தரப்பில் தமிழ்நாடு மின்சார வாரிய நிலையான ஊதியம் குறித்த அட்டவணை (எ.ம.சா.ஆ.9) தாக்கல் செய்து மறுப்பு தெரிவித்திருந்தும் எ.ம.சா.1 தனது சாட்சியத்தில் 01.07.1996 முதல் ஒப்பந்த தொழிலாளர்களுக்கு நிலையான ஊதியம் குறித்த அட்டவணை (ம.சா.ஆ.7)ன் அடிப்படையில் சம்பளம் கொடுக்க குறிப்பிடப்பட்டுள்ளது என்று சாட்சியம் அளித்துள்ளார்."*

8. Hence, in the evidence also the fact that the deceased is an employee has been admitted. Therefore, when in the pleadings as well in the evidence it has been clearly admitted that the deceased is an employee of the Electricity Board, it is not open to the appellant to say that he is not an employee. Accordingly, the substantial question of law No.1 is answered in favour of the respondent and as against the appellant.

9. So far as the quantum is concerned,

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there is no quarrel over the same, since the correct factor has been applied and the age and salary also are admitted. Under these circumstances the compensation awarded by the Court below is fair, reasonable and correct. In the result, the appeal is dismissed. No costs.

10. It is stated by the learned counsel for the appellant that the entire award amount has already been deposited and 50% has already been permitted to be withdrawn by the respondent. The respondent is permitted to withdraw the balance amount along with accrued interest."

It is thus seen that the said Civil Miscellaneous Appeal itself was admitted on only one question of law and that question of law *"whether the deceased was a workman to claim compensation under this Act"* that issue was answered on the basis of the evidence adduced not by the applicant/mother of the petitioner, but by the respondents herein.

25. On the basis of the evidence of the respondents, which had been extracted above in the order, the learned Judge came to a conclusion that the

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father died in the course of employment and such employment was provided directly by the respondents and therefore, the respondents had an obligation to pay compensation for his death. Compensation can be paid and can be directed to be paid only when the death occurs in the course of employment and during the course of employment, and that employment should be authorised by the respondents. A stranger cannot be called upon to climb on a transformer to do repairs. It is only a person, who is authorised to do that work can be given that particular work to repair that particular transformer. The transformer is the property of the respondents and nobody can unauthorizedly climb on a transformer. Therefore, if a person is directed to work on a transformer, he should have necessary authority and responsibility and those who directed him to work should bear the consequences if anything untoward happens.

26. In this case, the drastic incident had led to the death of the father of the petitioner herein. To that extent, the respondents have a responsibility to discharge their duty.

27. It is contended that by the learned Standing Counsel on behalf of

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the respondents that the application had been given after a considerable period of three years.

28. The learned counsel for the petitioner had placed reliance on the judgment of the Division Bench of this Court in ***W.A.No.10 of 2018,*** in the case of ***M.Vigneshwaran Vs. The Superintending Engineer, TNEB*** dated ***22.04.2019***. As a matter of fact, the order of the Division Bench of this Court is very telling. What is more important is that during the course of hearing on 15.03.2019, when the Division Bench had observed as follows:

> " *The father of the appellant was a Lineman. He was electrocuted while in service. The application submitted by the appellant to the respondents seeking compassionate appointment was rejected. The writ petition filed by the appellant was dismissed on the ground of delay and laches.*
>
> *2. We are of the view that this is a fit case for giving compassionate appointment. The respondents, in a very mechanical manner, rejected the request for compassionate appointment. Eventhough we originally directed the Chief Engineer to appear before this Court and explain as to why the application of the*

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appellant for commissionate appointment was mechanically rejected, the learned Standing Counsel submitted that he would take up the matter with the respondents.

3. We direct the respondents to take a decision in this matter taking into account the fact that the death was not under normal circumstances and it was during the course of employment, more particularly, a case of electrocution. Therefore, a lenient approach should be taken by the respondents.

4. Let the respondents take a decision and communicate to this Court by 21.03.2019.

5. Post on 21.03.2019."

29. Thereafter, on 22.04.2019, the Division Bench had ordered as follows:

" The application submitted by the appellant for compassionate appointment was rejected by the Tamil Nadu Electricity Board on the ground that there was a considerable delay in making the application. The learned Single Judge agreed with the contention taken by the respondent resulting in dismissing the Writ Petition. Feeling aggrieved, the appellant has

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come forward with this intra Court Appeal.

2. We have perused the material papers produced by the appellant. The father of the appellant was a Lineman. He was electrocuted while in service. Under such circumstances, the appellant made an application for compassionate appointment.

3. The respondent rejected the application like any other application on the ground of delay. We have therefore, passed an order directing the respondent to pass appropriate orders giving compassionate appointment to the appellant.

4. The TNGEDCO through its Superintending Engineer complied with the direction and issued orders of appointment dated 16.04.2019. The Executive Engineer, Operation and Maintenance also passed an order dated 20.04.2019, posting the appellant at Mettur Electricity Distribution Circle and allotted to Sankari Division.

5. The TNGEDCO has changed its indifferent attitude now by giving appointment to

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the appellant. Since the earlier direction of this Court has already been complied with, there is no need for further adjudication of the issue raised by the appellant.

6. The TANGEDCO must consider the request of the legal representatives of those employees who were electrocuted in a commissionate manner. Those employees have sacrificed their life in connection with their employment. The application like the appellant should be given due consideration with priority.

7. The intra Court Appeal is disposed of, with the above observation. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

30. This order answers the issue of delay. In that case, the application seeking compassionate employment by the son of a Lineman was given to the respondents. It had been observed that the death occurred not under normal circumstances but during the course of employment and more particularly owing to electrocution. The Division Bench directed the respondents to provide employment and come back with an answer that employment had actually been provided in the next hearing date. The

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Division Bench, after recording that there had been compliance of the said direction had also observed as that the request of the family of those employees who sacrifice their lives in connection with their employment, should be taken into consideration if ever any request is placed seeking compassionate employment.

31. There is yet another order which had been placed reliance by the learned counsel for the petitioner namely the order of a learned Single Judge of this Court in ***W.P.No.39010 of 2002*** dated ***10.09.2005,*** in the case of ***Veeramani Vs. The Chief Engineer/Personnel, TNEB, Chennai***. In that case, the father of the writ petitioner had died when he was attending work, and died of electrocution on 02.12.1980. It was observed that he died during the course of employment leaving behind her wife, who was pregnant. The petitioner therein was only 1 ½ years old at the time of death of his father.

32. Thereafter, the petitioner passed Higher Secondary Education and also qualified typewriting higher in both Tamil and English and then had forwarded representations in 1999 and 2000, nearly 19 to 20 years after the

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death of the father. By an order dated 16.09.1998, the Chief Engineer of the respondents had rejected the application since it was given too long after the staff had expired. The observations of the learned Single Judge are extracted hereunder:

> *" 5. Having regard to the scheme of compassionate appointment implemented by the Tamil Nadu Electricity Board, which provide for appointments being given for the kith and kin or even members of the staff, who die natural death, there is no justification for denying employment to the legal representatives of the deceased employee, who met with his death while performing his duties, having suffered electrocution.*
>
> *6. Though the legal aspects of the scope of compassionate appointment was elaborately argued by both sides, I am inclined to hold that this is a hard case in which the respondent Electricity Board cannot be heard to be raising such technical objections. As pointed out earlier, when the scheme of compassionate appointment has been extended to certain unreasonable limits, providing employment even in the place of*

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employees who die natural death, there is no justification for the respondent raising technical objections of limitation.

7. Here is a case where the employee had lost his life while performing his duties. The said claim is not denied.

8. Therefore, having regard to the said fact, I am inclined to hold that in this case, such technical objections cannot be countenanced.

9. With the result, the writ petition is allowed and the respondent is directed to give suitable posting and appointment to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs."

This also answers the issue of delay. Both the Division Bench and the learned Single Judge have stated in very strong terms that the issue of delay should not be put, if the employee died in the course of employment due to electrocution and such death was not natural.

33. The issue that the father of the petitioner herein only a contract Labourer and therefore, could not be considered has to be rejected,

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consequent to the order of the learned Single Judge that even employees of the contract Labourers should be granted with compassionate employment. Moreover, the judgment in Civil Miscellaneous Appeal as stated *supra* had very specifically answered that the respondents are the employers of the father of the petitioner herein. That issue had been directly answered against the respondents.

34. The next issue of delay had again be answered and the reasons of the Division Bench and learned Single Judge are directly applied by me in this particular case.

35. The reliance placed by the learned Standing Counsel for the respondents in the counter affidavit, that the scheme of the respondents to exclude from the scheme dependents of a contract Labourer cannot be found fault, but can not be applied to the facts of this case, since in the Civil Miscellaneous Appeal, it had been very specifically found that the respondents are the employers and the father of the petitioner had been paid salary. Therefore, that issue cannot be put against the petitioner herein.

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36. The direction issued by the Full Bench judgment as stated *supra* are followed. The father died owing to electrocution during the course of employment. The death of the father was an unnatural death. The petitioner had applied immediately after he completed the age of 18 years. Therefore, the rejection of application is not proper.

37. The learned counsel for the petitioner also placed reliance on proceedings No.12 dated 08.05.2013 of the respondents. To avoid any confusion, let me extract the proceedings in entirety:

> *" PROCEEDINGS:*
>
> *The TANGEDCO is adopting the following guidelines for consideration of employment on compassionate grounds to the family of the deceased Board employee;-*
>
> *a) Legal heirs should have applied for employment within 3 years from the date of death of the employee.*
>
> *b) At the time of application, legal heir seeking employment should have completed 18 years subject to a maximum of 35 years of age*

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and in cases of widow the age limit prescribed is 50 years.

c) Should possess a minimum qualification of 8th Std. pass."

38. It is seen that the respondents themselves had passed the above proceedings. They have taken a decision that in special cases, the proposal for compassionate appointment to the legal heirs of Bonafide Contract Labourer, who happened to die in fatal electrical accident could be considered by the respondents. This has to be read in conjunction with the specific averment made in the affidavit that those who worked along with the father of the petitioner, had been absorbed as employees of the Board. Therefore, the contention of the learned counsel for the petitioner that if the father had continued to live, he would have been absorbed, will have to be given due credits.

39. In view of all these aspects, I hold that the respondents have an obligation to discharge their duty, recognising the work done by the father of the petitioner herein and that obligation is to provide employment on compassionate basis to the petitioner, if otherwise eligible. Accordingly, the

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writ petition stands allowed.

40. The respondents are directed to pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

41. I would also make it clear that it is only a direction of the Court in the Civil Miscellaneous Appeal that employment of the father had been recognised and therefore, the other reliefs have not been directly addressed. I advise the petitioner to be content with gaining employment. It would be a recognition of the services rendered by his father.

42. Writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

27.07.2023

Index : Yes/No
Neutral Citations : Yes/No
Speaking/Non-Speaking

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C.V.KARTHIKEYAN,J.

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