



WEB COPY



WA No. 2675 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2675 of 2022

M. Yukesh Venkataramanan

.. Appellant

Versus

1. The Chairman
Tamil Nadu Electricity Board
Administrative Branch
Electricity Avenue
No.800, Anna Salai
Chennai - 600 002

2. The Superintending Engineer
Tamil Nadu Electricity Board
110/33, K.W. Sub-Station
Thirumangalam, Anna Nagar
Chennai - 600 040

3. M. Devika

4. Ms. M. Sharmila

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.08.2022 passed in WP No. 25325 of 2014 on the file of this Court.

For Appellant	:	Mr. T.K. Kulasekaran
For Respondents	:	Mr. David Sundar Singh for RR1 & 2 Mr. M. Kamalakannan for R3 Mrs. K. Jamuna for R4



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JUDGMENT

WEB C **R. MAHADEVAN, J**

The appellant, who is aggrieved by the order dated 05.08.2022 passed by the learned Judge in WP No. 25325 of 2014, has come forward with this intra-court appeal.

2. The appellant has filed the said Writ Petition No. 25325 of 2014 praying to issue a Writ of Certiorarified Mandamus to quash the order dated 05.05.2014 of the second respondent and consequently direct the first and second respondents to consider and appoint him in any suitable post on compassionate grounds based on his educational qualification.

3. As per the averments in the affidavit filed in support of Writ Petition No. 25325 of 2014, the appellant / writ petitioner and his sister Sharmila are the two children born out of the wedlock between his father Mathivathanan and his mother Malliga. According to the appellant, even during the life time of his mother, his father began living with the third respondent and out of such relationship, a son by name Vignesh was born. It was further stated that due to such illicit relationship between his father Mathivathanan and the third respondent, his mother left his matrimonial



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company and was living separately. It was also submitted that he was left in the custody of his uncle who nurtured him and brought him up. According to the appellant, his father Mathivathanan was employed as Mazdoor in the office of the Assistant Engineer (O&M), Anna Nagar West, Chennai Division and during the course of such employment, he died due to illness on 27.03.2012. Even during the life time of his father, the third respondent purchased an immovable property worth Rs.25 lakhs and also retained all his golden ornaments. Thus, it was sought to be projected that the third respondent and her son are living happily with the earnings of his father. After the death of his father, the appellant submitted applications dated 12.02.2013 and 06.05.2013 seeking appointment on compassionate grounds. The said request was rejected by the second respondent on the ground that the third respondent is also claiming employment on compassionate grounds on the death of the deceased government servant. The appellant also came to know that the third respondent has filed WP No.8584 of 2014 for a Mandamus directing the respondent authorities to provide her employment on compassionate grounds and by citing the same, the order of rejection dated 05.05.2014 was passed. According to the appellant, the third respondent is leading a blissful life with the earnings of his father, but he is left with no employment and therefore, he must be appointed on compassionate grounds.



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4. On notice, the second respondent filed a counter affidavit contending that the father of the appellant was employed as a Mazdoor. As per the records maintained in the office of the respondents 1 and 2, the appellant's father married Malliga and out of the wedlock, the appellant and his sister have born. Due to matrimonial dispute, the father of the appellant filed OP No. 514 of 1999, in which a decree of divorce was passed on 31.12.2002 by the I Additional Principal Judge, I Additional Family Court, Chennai. Thereafter, the father of the appellant married the third respondent on 10.06.2005 and she is treated as legally wedded wife. After the death of the appellant's father, the appellant as well as the third respondent have submitted applications seeking appointment on compassionate grounds. Further, Sharmila, sister of the appellant also submitted an application seeking appointment on compassionate grounds. As there are multiple applications seeking appointment on compassionate grounds, the application of the appellant was rejected by assigning valid reasons. As regards the settlement of terminal benefits, it was stated that the third respondent is the legally wedded wife of the deceased. Therefore, on the death of the deceased, the third respondent and the children born through the first wife Mallika are entitled to a share in the terminal benefits equally. With these averments, the second respondent prayed for dismissal of the writ petition.



5. The learned Judge, on considering the rival submissions, disposed of the writ petition No. 25325 of 2014 along with two other writ petitions namely WP Nos. 8583 and 8584 of 2014 filed by the third respondent herein by a common order dated 05.08.2022 with the following observations:-

"4. The learned Standing Counsel appearing on behalf of the Tamil Nadu Electricity Board made a submission that the deceased employee had not nominated any of the legal heirs for the purpose of disbursing the terminal and pensionary benefits. Per contra, the learned counsel appearing on behalf of Smt.Devika made a submission that the deceased employee has nominated.

5. However, these disputed facts cannot be adjudicated in a writ proceedings under Article 226 of the Constitution, considering the complex nature of disputes between the parties. The same are to be adjudicated with reference to the original documents and evidences available before the competent Court of law. A Roving enquiry cannot be conducted in the present writ proceedings. In view of the fact that the relationship, marriage, nomination are questioned by each one of the legal heirs, they are bound to resolve the same by approaching the competent Civil Court of law for the purpose of settlements.

6. Three writ petitions are before this Court and three set of contentions are placed. The contentions are not corroborating and the disputes seems to be on different grounds. Thus, an adjudication of issues are inevitable. Thus, the writ petitioners in all the writ petitions are at liberty to approach the competent Civil Court of law for appropriate relief and only after reaching finality in respect of the disputes between the parties, they are at further liberty to approach the respondent/TANGEDCO for the purpose of settling the terminal and other pensionary benefits.

7. With this liberty, all these writ petitions stand disposed of. No costs."

6. Seeking to review the common order dated 05.08.2022 passed in WP Nos. 8583, 8584 and 25325 of 2014, the appellant has filed Review Application No. 146 of 2022, while the third respondent has filed Review Application Nos. 148 and 149 of 2022. In the review applications, it was contended on behalf of the appellant that his status as son of the deceased has



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not been disputed and therefore a direction must be given to the official respondents to confer him with an appointment on compassionate grounds.

On behalf of the third respondent, it was submitted that for no reason, the respondents 1 and 2 have withheld the payment of terminal benefits and a direction must be given to them to act as per the nominations given by the deceased.

7. Upon hearing the rival submissions, the learned Judge dismissed the review applications by concluding that there is no error apparent on the face of the records warranting a review. It was also stated that the grounds raised by the Review Applicants cannot be considered in exercise of the power under Order XLVII Rule 1 of CPC and accordingly, the Review Applications were dismissed.

8. After dismissal of the Review Applications, assailing the order dated 05.08.2022 passed by the learned Judge in WP No. 25325 of 2014, the present Writ Appeal is filed by the son born through the first wife of the deceased employee.



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9. The learned counsel appearing for the appellant submitted that both the appellant and the third respondent/second wife were nominated by the deceased, which is evident from para No.4 of the counter affidavit filed by the respondents 1 and 2. However, the learned Judge erred in passing the impugned order as if no nomination at all has been filed by the deceased. The learned counsel further submitted that the third respondent is now aged 49 years and therefore, her objection for appointing the appellant on compassionate grounds, ought not to have been entertained by the respondents 1 and 2. Without considering the same, the learned Judge dismissed the writ petition solely on the basis of frivolous objection raised by the third respondent. It is also submitted that even otherwise, as per the scheme framed by the respondents 1 and 2 for appointment on compassionate grounds, it is the appellant, who fulfils the criteria relating to age, whereas the third respondent has admittedly crossed the minimum age limit fixed by the respondents 1 and 2. Therefore also, the learned Judge, in exercise of the power conferred under Article 226 of The Constitution of India, ought to have directed the respondents 1 and 2 to appoint the appellant on compassionate grounds, instead of relegating them to a Civil Court for appropriate remedy. The learned counsel for the appellant therefore prayed for setting aside the order of the learned Judge and allowing this writ appeal.



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10. Per contra, the learned Standing counsel appearing for the respondents 1 and 2, by placing reliance on the counter affidavit, submitted that the deceased joined the services of the respondents 1 and 2 on 10.09.2007 and after rendering 4 1/2 years of service, he died on 27.03.2012 and therefore, the legal heirs of the deceased are not entitled for pensionary benefits. It is further stated that the third respondent is 47 years old and if she is appointed in any post on compassionate grounds such as Office Helper, she may draw monthly salary below Rs.20,000/- approximately. On the other hand, the appellant is an Engineering Graduate and if he is appointed on compassionate grounds as Technical Assistant, he is likely to draw salary between Rs.30,000/- to Rs.35,000/- approximately. Therefore, the learned counsel for the respondents 1 and 2 prayed for appropriate order to proceed further in this matter.

11. On the above submissions, we have also heard the learned counsel for the respondents 3 and 4 and also perused the materials placed.

12. On appreciation of the above facts, it is clear that the legal heirs of the deceased Mathivathanan are waging a pitched battle to get appointed on compassionate grounds. The respondents 1 and 2 rejected the application of



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the appellant for appointment on compassionate grounds, citing the reason that two other applications viz., one by the third respondent and another by the fourth respondent/sister, were submitted for the similar claim. Challenging the said rejection order, the appellant has filed WP No. 25325 of 2014, which was disposed of, by order dated 05.08.2022, thereby relegating the parties to approach the civil court for adjudication of the *inter se* dispute between them.

13. Though certain issues have to be dealt with only by competent civil court, considering the peculiar facts and circumstances of the case, we are inclined to go into the issue on hand, to a limited extent. We have noticed that there is no dispute as to the status of legal heirship among the appellant as well as respondents 3 and 4. The appellant is the son and the fourth respondent is the daughter born to the deceased out of his first wedlock with one Malliga. After obtaining a decree of divorce, dissolving the marriage with his first wife, the deceased contracted a second marriage with the third respondent. Therefore, the third respondent is the legally wedded wife of the deceased and it is not in dispute. Now, the dispute is as to who can be accommodated with an appointment on compassionate grounds on the death of the deceased Mathivathanan.



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14. According to the respondent authorities, there are three applications seeking compassionate appointment i.e., one by the appellant (son born through the first wife of the deceased employee), second by the third respondent (second wife) and the third by the fourth respondent (sister of the appellant / daughter born through the first wife of the deceased employee). At this juncture, the learned counsel for the fourth respondent submitted that the fourth respondent, who is the sister of the appellant, has no objection to appoint the appellant in any suitable post on compassionate grounds. This statement of the learned counsel for the fourth respondent is recorded.

15. In the counter filed by the respondents 1 and 2, it is stated that if the third respondent is considered for appointment on compassionate grounds, she may draw monthly salary below Rs.20,000/- approximately. However, if the appellant, an Engineering Graduate is considered for appointment on compassionate grounds as Technical Assistant, he is likely to draw salary between Rs.30,000/- to Rs.35,000/- approximately. It is also relevant to point out at this juncture that if the third respondent is appointed, having regard to her age, she may have lesser number of years of service. On the other hand, the appellant is appointed, he will have considerably long number of years of service befitting his age. That apart, it is the specific submission of the learned



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counsel for the appellant that the third respondent is leading a blissful life with the earnings of the appellant's father, but the appellant is left with no employment and hence, he will have to be considered for compassionate appointment. Considering all these aspects, in order to strike a balance, to determine the entitlement between the appellant and the third respondent to get appointment on compassionate grounds, this Court is of the view that appointing the appellant will be beneficial in all respects. In such view of the matter, we direct the respondents 1 and 2 to appoint the appellant/writ petitioner in any suitable post on compassionate grounds, if he is otherwise eligible, within a period of eight weeks from the date of receipt of a copy of this judgment.

16. With respect to the payment of terminal benefits payable to the deceased, if any, it is open to the appellant, third respondent as well as the fourth respondent to arrive at a mutually acceptable settlement among themselves. If they could not arrive at a workable solution for sharing the terminal benefits of the deceased, then, it is open to them to approach the competent Civil Court for appropriate relief.



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17. Accordingly, the order of the learned Judge is modified and the writ appeal is allowed to the extent as indicated above. No costs.

(R.M.D., J)

(M.S.Q., J)

31.07.2023

Index : Yes / No

Internet : Yes / No

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