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W.P.No.10951 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.10951 of 2012

D.Appan Raj

...Petitioner

Vs

The Tamil Nadu Power
Generation and Distribution Corporation,
Rep. by its Superintending Engineer (P & A Admn)
North Chennai Thermal Power Station
Chennai – 600 120.

.....Respondent

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the proceedings bearing Ka.No.127/Ne.Pe/Ne.U.1/Ko.Va.Ve/11 dated 01.04.2011 and quash the same and direct the respondent to provided suitable employment to the petitioner commensurate with his qualification on compassionate basis forthwith in the petitioner Corporation.

For Petitioner : Ms.P.Selvi

For Respondent : Mr.David Sundar Singh
Standing Counsel



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ORDER

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This writ petition is filed seeking for issuance of Certiorarified Mandamus to quash the proceedings of the respondent bearing Ka.No.127/Ne.Pe.2/Ne.U.1/Ko.Va.Ve/11, dated 01.04.2011 and to direct the respondent to provide suitable employment to the petitioner commensurate with his qualification on compassionate basis in the respondent Corporation.

2. The case of the petitioner is as follows:-

2.1. The petitioner has unmarried sister namely Ms.D.Sarala was working in the respondent/Corporation as Field Assistant on a regular basis and when she was 27 years old, she died on Harness on 07.09.2007. She was a only bread winner for the family though there are other four members in the family who are as follows:-

1. Mr. Devaraj Father 58 years
2. Mrs. Geetha Mother 56 years
3. Miss. Amul Sister 26 years
4. Mr. Bakkiaraj Brother 24 years.

None of them are working and are not educated.



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2.2 The respondent settled the terminal benefits of the deceased namely Ms.D.Sarala most of which was spent on funeral expenses and other loans that the family had incurred. The family pension of Rs.2955/- per month paid to the petitioner's mother is hardly sufficient to make both ends meet. Therefore, by a letter dated 11.06.2010, the petitioner applied to the respondent/Corporation to appoint him to the post of Field Assistant on compassionate ground. He has also passed VIII standard and belongs to the Schedule Caste Community and all other family members had given 'No Objection' letters dated 11.06.2010 to the respondent for considering the petitioner appointment on compassionate basis.

2.3. The respondent without appreciating the indigent circumstances of petitioner's family and the correct legal position had erroneously rejected petitioner's application by Proceeding Ka.No.127/Ne.Pe.2/Ne.U.1/Ko.Va.Ve/11, dated 01.04.2011 which is challenged in this Writ Petition.



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2.4. In the said impugned order, the respondent has relied on the Board's Order No. 27 (Ni.Ki.) dated 18.8.2008 which states that when an unmarried worker dies in harness her unmarried brother or sister can make an application for appointment on compassionate grounds. Further, by the Board's Resolution No. 915 it was stated that the said benefit would be available to such of those who died after 29.7.2008. In this case, the petitioner's sister died on 7.9.2007.

2.5 Aggrieved by the impugned order, the petitioner made a representation dated 02.09.2011 to the respondent explaining that as on the date of application should be considered and that the respondent should reconsider the decision of rejection of his application for compassionate appointment. Though the representation was received by the respondent no reply has been issued till date of filing the writ petition. Aggrieved by the same, the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner would further submit that the respondent has failed to apply the judgment of the Hon'ble Supreme Court in ***State Bank of India Vs. Jaspal Kaur*** reported in (2007) 9 SCC 571 wherein it



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has been categorically held that the scheme prevailing at the time when the application for compassionate appointment was made and not thereafter. The respondent failed to note that in deciding applications for compassionate appointment the major criteria is the financial condition of the family of the deceased person. The petitioner's family having lost their only bread-winner is living in abject poverty with no means of livelihood.

4. The learned counsel for the petitioner would further submit that the respondent ought to have favorably considered the application of compassionate appointment of the petitioner as on the date of application the said Board's Resolution No. 915 dated 29.07.2008 to provide appointment to the bothers and sisters of the deceased employee was in force.

5. The learned Standing Counsel appearing for the respondent/Corporation would submit that the petitioner's sister namely Ms.D.Sarala died on 07.09.2007 and as on that date the Memo No. 093547/R3-2/91-1(Administrative Branch) dated 09.12.1991 was in force.



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6. The learned standing counsel appearing for the respondent/Corporation would further submits that as per the Board's B.P.No.(FB) No. 27 (Adm.Br) dated 18.08.2008 order issued as follows:-

3. The proposal for adopting the G.O. Ms. No.134 L&E (Q.1) Department, dated 22.10.1998 for adoption in TNEB was placed before the Board in its 915th Meeting held on 29.07.2008 and the same has been approved as detailed below:

i) 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 employee that occur on and after the date of approval of the Board meeting.

As per the above B.P. if the unmarried employee dies while in service, unmarried Brother/Unmarried Sister may



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also be considered for employment assistance on compassionate grounds. Subject to condition that the death of the employee occur on and after the date of approval of Board Meeting.

In this case the Board employee expired on 07.09.2007 but the Board Meeting held on 29.07.2008. Since the Board employee Dies before the Board Memorandum and as per the above B.P. Thiru.D.Appanraj, B/o. D.Selvi, Helper/ NCTPS-I is not eligible for compassionate appointment.

7. Heard both sides and perused the materials available on record.

8. In the case on hand, admittedly the petitioner's sister namely Ms.D.Sarala who was employed in the respondent/corporation died on Harness at the age of 27 years on 07.09.2007 and the death certificate to that effect issued by the Executive Officer, Minjur Town Panchayat, Thiruvallur District, Tamil Nadu vide registration No. 116/2007/01 dated 17.09.2007. Thereafter, the petitioner applied for compassionate ground of appointment vide application dated 11.06.2010 and the same was



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rejected by the respondent/Corporation vide proceedings in Ka.No.127/Ne.Pe.2/Ne.U.1/Ko.Va.Ve/11, dated 01.04.2011 stating the reason that the petitioner is not eligible for compassionate ground of appointment as per the Board's Order No. 27(Adm. Br.) dated 18.08.2018.

9. The petitioner's sister namely Ms.D.Sarala died on 07.09.2007 and as on that date, the Memo No. 093547/R3-2/91-1(Administrative Branch) dated 09.12.1991 was in force and the same is extracted herein for better appreciation and understanding:-

“Sub: *Recruitment-Employment Assistance to the dependents of the employees who die in harness-Member of family eligible for employment-Orders-issued.*

Ref:1. B.P.Ms.(Ch)No. 411/Adm.Branch/dt 22.07.1983

2.Government's Lr.No.2286/Q1/90-2 (Labour & Employment Department) dated 11.06.1991.

With reference to the orders in the B.P. cited in cases where an employee of the Board dies in harness, one of his dependents is considered for employment in the Board subject to the conditions prescribed therein.

2. The term “member of the family eligible for assistance has been defined in Annexure-I to the B.P. Cited as Wife/Husband/Son/Unmarried daughter”.



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3. In pursuance of orders issued in Government's letter second cited, the following amendments shall be made in the Annexure to B.P.Ms.(Ch.) No. 411, Adm.Branch dated 22.07.1983:-

In Annexure -I, Item (C) shall be substituted as follows in place of the existing one

(c) If any of the dependant in the family of the deceased viz. Wife/Son/unmarried daughter/Widowed/Divorced daughter is employed, full details about their names, qualification and employment should be furnished.

Note: The details of Widowed/Divorced daughter shall be furnished provided Widow/Widower (as the case may be) as nominated the Widowed/Divorced daughter of the deceased Board Employee.

In Annexure -II, the following shall be inserted as note under item 6 in place of the existing one.

***Note:** Only near relatives are eligible for employment. The term near relatives has been defined to include Wife/Son/Unmarried daughter/Widowed/divorced daughter provided the widow/widower (as the case may be) has nominated the widowed/divorced daughter of the deceased Board Employee."*

10. In the above memo note column, it is clearly mentioned that only near relatives are eligible for employment. The term near relatives has been defined to include Wife/Son/Unmarried daughter/Widowed/divorced daughter provided the widow/widower (as the case may be) has nominated the widowed/divorced daughter of the deceased Board Employee.



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11. The learned counsel for the respondent relied on the Board's B.P.No.(FB). 27(Adm.Br) dated 18.08.2018, which provides employment assistance on compassionate grounds to the unmarried brothers/unmarried sister. Accordingly, 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 and it is further stated that this Board's proceeding will apply to all cases of death of employee that occurred on and after the date of approval of the Board meeting (i.e) on 29.07.2008.

12. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in **(2007) 9 SCC 571** in **State Bank of India and Others Vs Jaspal Kaur** is not applicable to the case on hand for the reason that, the application for compassionate ground of appointment was filed in the year 2000 and the High Court erred in considering the scheme prevailing in the year 2005 while deciding the application of the deceased's widow filed in the year 2000. But in the instant case, the respondent has rightly rejected the application of the petitioner dated 11.06.2010 for compassionate ground of



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appointment, based on the rules prevailing as on that date vide Memo No.093547/R3-2/91-1(Administrative Branch) dated 09.12.1991.

13. The main contention of the respondent is that according to the Memo No. 093547/R3-2/91-1(Administrative Branch) dated 09.12.1991 the petitioner is not eligible for appointment on compassionate ground since unmarried brother/unmarried sister of the deceased employee are not eligible for compassionate ground of appointment. After approval of the B.P. No.(FB) 27(Adm.Br.) dated 18.08.2008, the term “near relative” includes unmarried brother/unmarried sister of the unmarried employee of the Board. In this Case, the death of the employee on 07.09.2007 and as on that date the B.P. No.(FB) 27(Adm.Br.) dated 18.08.2008 was not in force which subsequently approved on 29.07.2008. Hence, the same is not applicable in the case of the petitioner.

14. The application given by the petitioner dated 11.06.2010 which is subsequent to the B.P.No.(FB) 27(Adm.Br.) dated 18.08.2008 which was approved on 29.07.2008. In the said B.P., it is clearly mentioned that it will apply to all cases of death of employee that occur on and after the date of approval of the Board meeting (i.e.) 29.07.2008. Hence it is clear and evident



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that the petitioner is not eligible for compassionate ground of appointment due to the death of his unmarried sister namely Ms. D.Sarala who died in Harness on 07.09.2007.

15. In view of the above factual matrix of this case, this Court is of the considered view that the order passed by the Respondent vide proceedings bearing Ka.No.127/Ne.Pe.2/Ne.U.1/Ko.Va.Ve/11, dated 01.04.2011 does not warrants interference by this Court and the same is hereby confirmed.

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

21.03.2024

ns1

Index:Yes/No

Speaking Order : Yes/No

Neutral case citation: Yes/No

To

The Superintending Engineer (P & A Admn),
The Tamil Nadu Power Generation
and Distribution Corporation,
North Chennai Thermal Power Station,
Chennai – 600 120.



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J.SATHYA NARAYANA PRASAD, J.

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