



W.P.No.21848 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.21848 of 2012

S.Malarkodi

...Petitioner

-Vs-

1.Tamil Nadu Electricity Board,
Rep. by its Chairman,
No.144, Anna Salai,
Chennai – 600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai – 600 002.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri – 5.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records pertaining to impugned orders dated 19.11.2011 in reference No.076528/626/G8/G81/2011 and order 12.03.2012 in reference No.015316/44/Nipi-2/U-3/Ka.Pa.Ve./2012 passed by the respondents 2 and 3 respectively and quash the same and specifically direct the respondents to positively consider the claim for compassionate



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appointment of the petitioner in the light of the Authorities reported in 2010 WLR 1142 equivalent to CDJ 2010 MHC 5295 within such time frame as may determined by this Court and pass such further orders.

For Petitioner : Mr.S.N.Ravichandran
for M/s.P.K.Rajagopal

For Respondents : Mr.K.Raj Kumar
Standing Counsel

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned orders passed by respondents 2 and 3 dated 19.11.2011 in reference No.076528/626/G8/G81/2011 and order 12.03.2012 in reference No.015316/44/Nipi-2/U-3/Ka.Pa.Ve./2012 and specifically direct the respondents to positively consider the claim for compassionate appointment of the petitioner in the light of the Authorities reported in 2010 WLR 1142 equivalent to CDJ 2010 MHC 5295.

2. The case of the petitioner is that her husband, C. Subramani, son of Chinnannan was working as Wireman in the Tamilnadu Electricity Board in the office of the Assistant Executive Engineer (O. & M.), Pennagaram. He was initially working as a casual worker from the year 1992 and later he was regularized in service. He passed away on 09.09.2007 due to massive heart



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attack while he was in service. He is survived by his mother, Alamelu, daughters, Nandhini and Nadhiya, son Prakash and the petitioner. As on the date of death, the petitioner was aged 29 years, her daughters were aged 16 and 14 respectively, her son was aged 19 years and her mother-in-law who was aged 60 years as on that date has been under her care and custody. It is pertinent that she has not remarried till now and does not propose to marry and none of the family members are in Government service or in the service of any Government Establishment/undertaking. The petitioner's family do not own any valuable properties except a thatched shed in two cents of land. She has been doing cooli work in order to feed the family ever since the demise of her husband, but there is no continuous work and she finds it extremely difficult to make both ends meet.

3. Learned counsel for the petitioner submitted that she made a representation for the settlement of the terminal benefits payable to her late husband's account and they came to be paid to the petitioner only by the end of December 2009. Thereafter she made a representation to the 3rd respondent on 18.12.2009 praying for compassionate appointment for the petitioner and did not specify any job and was prepared to work in any job that they would be given by the respondents. However, by a reply dated



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19.03.2010 she was informed that since the petitioner had not mentioned my educational qualifications as to whether she had passed VIII standard or not her application could not be considered. In the meantime she had appeared in the examination in December 2008 and passed in four subjects but failed in one subject. Thereafter she made a representation on 11.08.2011 to the 3rd respondent that she had passed four papers in VIII standard and that the petitioner intended to attend the next examination in December 2010 in order to pass the remaining one paper. She also pointed out that the Public Examination for the VIII standard is held only once in a year and the delay is on account of that however the petitioner wrote the examination and passed the other paper also.

4. Learned counsel further submitted that she made another representation on 24.08.2011 stating that since she did not pass her VIII standard examination within three years from the date of the demise of her husband, nothing could be done on her application. Thereafter she made a further representation as a Mercy Petition to the Special Cell of the Chief Minister of Tamil Nadu, also followed it with a representation to the 1st respondent on 11.1.2011 and in the said representation she pointed out that in similar cases this Court had ruled that the candidate concerned could be



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considered for appointment. Again by orders dated 21.11.2011 and 12.03.2012, respondents 2 and 3 respectively rejected her claim for compassionate appointment solely on the score that the petitioner had not passed the VIII standard examination within three years from the date of the demise of her husband. Now she is in a situation wherein the entire family continues to suffer for want of income and non-availability of job. The stand taken by the respondents now about the orders rejecting her request for compassionate appointment is not legally tenable and it is arbitrary and unconstitutional. The Tamilnadu Electricity Board has earlier given compassionate appointments to a number of persons who are similarly placed by making exceptions or by bringing them within the purview of the Rules. This Court, in a judgment reported in 2010 WLR 1142 CDJ 2010 MHC 5295, after extracting instances of various persons having been given compassionate appointment in similar circumstances and pleased to direct the Tamilnadu Electricity Board to provide compassionate appointments in any suitable post to the petitioner therein within a period of six weeks from the date of receipt of copy of the order. The Tamilnadu Electricity Board also compiled with those orders passed in W. P. No.23561 of 2009 dated 29.09.2010.



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5. Learned counsel further submitted that the impugned orders have been passed without taking into consideration that the petitioner herein did not ask for any specific post or job but only asked for any suitable job in the Tamil Nadu Electricity Board; as such the respondents ought not have insisted upon the minimum educational qualification a pass in VIII standard as a number of jobs in the Tamil Nadu Electricity Board do not require that qualification as minimum qualification. The petitioner having been applied for the compassionate appointment in view of the demise of her husband within three years from the date of demise her claim should have been considered as such and the fact that she could secure pass in VIII standard a little beyond three years should not have been put against her to deny her the compassionate appointment. The impugned orders have been passed without regard to the very principles governing compassionate appointment which is given in order to alleviate the poverty and suffering of the family that suddenly loses the head of the family in the Tamil Nadu Electricity Board. Aggrieved by the impugned orders passed by respondents 2 and 3, the petitioner has approached this Court by way of filing this writ petition.

6. Learned counsel for the petitioner relied on the ruling of this Court in ***W.P(MD)No.14660 of 2016 in A.Chandra Vs. The Chairman and***



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Managing Director, Tamil Nadu Generation and Distribution Corporation Limited, No.144 Anna Salai, Chennai – 600 002 dated 19.01.2021.

7. Learned counsel for the petitioner further relied on the judgment of the Hon'ble Division Bench of this Court in ***W.A(MD)No.309 of 2007 in The Superintending Engineer, Madurai Electricity Distribution Circle, Madurai, Vs. Jaya, dated 08.08.2007.***

8. A counter affidavit was filed on behalf of the 3rd respondent dated 23.10.2015.

9. Learned standing counsel appearing for the respondents submitted that sub clause (3) of Memo No: 038525/587/G8 /G82 / 2001-2 dated 24.05.200) issued by the Chief Engineer (Personnel) reads as follows:-

clause(3)

"The applicant should possess the minimum educational qualification of a pass in eighth standard".

10. Learned standing counsel appearing for the respondents further submitted that the petitioner has not completed 8th standard before 08.09.2010 i.e. within three years from the date of death of her husband and BP.No:17 dated 01.11.2011 is not applicable to the petitioner. The object of



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the Compassionate appointment is to redress the immediate needs of the deceased employee's family, which in this instant case is lacking.

11. Learned standing counsel drew the attention of this Court to Proceedings No.11 dated 11.06.2020 in regard to the Adoption of certain guidelines of G.O.Ms.No.18 Labour and Employment dated 23.01.2020, in which, Clause 14 – General and sub clause (v) and (vi) are extracted hereunder:

14. General

- v. *The post of the sweeper may not be given since many such works are done by the part time conservancy workers and appointing legal heirs in the post will lead to claims from existing part-time conservancy workers for permanent time scale, when the work volume is only two hours per day.*
- vi. *However, instead of providing appointment as Sweeper for the dependent of the deceased TANGEDCO / TANTRANSCO Employee who do not possess the minimum qualification (i.e.) 8th standard but how have educational qualification of IV standard and above, may be appointed in any of the new post to be created. The scale of pay of the new post may be fixed at entry/starting level.*

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

13. The husband of the petitioner died while he was in service on



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09.09.2007 due to heart attack. The petitioner gave a representation to the 3rd respondent on 18.12.2009, praying for a compassionate ground of appointment to the petitioner. In the said representation, it is stated that she is ready to work for any job that the respondents will provide her. However, the 3rd respondent in its reply dated 19.03.2010, stated that the petitioner had not mentioned her educational qualifications as to whether she had passed VIII standard or not.

14. It is pertinent to note that as on the date of the application, the petitioner did not possess the educational qualification of VIII standard, but she acquired the same in December 2010. According to the respondents, the case of the petitioner was rejected since she did not complete VIII standard before 08.09.2010, i.e., within three years from the date of death of her husband on 09.09.2007 and B.P.No.17 dated 01.11.2011 is not applicable to the petitioner.

15. The main contention of the respondents is that the petitioner did not have the educational qualification of VIII standard and has not completed before 08.09.2010 i.e., within three years from the date of death of the deceased employee / husband of the petitioner i.e. on 09.09.2007. The petitioner acquired qualification of VIII standard in



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December 2010. Hence, there is a delay of two months in acquiring the said educational qualification by the petitioner. The order passed by respondents 3 and 4 rejecting the application on the sole ground that she did not possess VIII standard qualification for appointment on compassionate grounds is unsustainable. The petitioner also submitted her representation on 11.11.2011 after acquiring the required qualification of VIII standard in December 2010. However, the same was rejected by the 2nd respondent by order dated 19.11.2011 and by the 3rd respondent on 12.03.2012.

16. Apart from this, the judgment of the Hon'ble Division Bench of this Court relied on by the learned counsel for the petitioner in ***W.A(MD)No.309 of 2007 dated 08.08.2007, The Superintending Engineer, Madurai Electricity Distribution Circle, Madurai, Vs. Jaya,*** wherein this Court has held as follows:

“2.1.The writ petitioner's husband died on 05.10.1999 while he was discharging his duty as a Helper in the respondent Electricity Board. She applied for appointment on compassionate ground 15.11.2000, but the same was rejected on the ground that she did not possess the minimum educational qualification, namely a pass in 8th standard. The hapless widow/the writ petitioner again applied for employment on compassionate ground, but her request was turned down once again on the same ground



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by the proceedings of the respondent dated 07.03.2002. The writ petitioner therefore passed 8th standard examination on private studies in December, 2004 and again applied for appointment on compassionate ground. But, the respondent, by his proceedings dated 03.06.2005, rejected the request of the writ petitioner on the ground that she had not submitted her application within three years from the date of death of her husband.

10. But, here is the case where a widow of an employee of the respondent Board has approached the Board as early as on 15.11.2000, i.e. within 13 months from the date of death of her husband; but her request was turned down on the ground that she lacks the minimum educational qualification, namely a pass in 8th standard. Hence, she also completed her 8th standard and again renewed her request. But, this time the request was rejected on the ground that she did not apply within three years from the date of death of her husband, which necessitates this Court to interfere in the matter as the authorities obviously overlooked the very intention behind the provisions made for appointment on compassionate ground on the death of the employee concerned i.e. to enable the family to get over the sudden financial crisis - [2004 (7) SCC 265 - Punjab National Bank v. Ashwini Kumar Taneja]. The exception to rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and it is based on the doctrine of Legitimate Expectation and it is based on the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned - 1994 (4) SCC - Umesh Kumar Nagpal v. State of Haryana and Others).

11. With this background, we find that the respondent had failed to adopt Good Samaritan approach ignoring the fact that she was constantly making a request for appointment to the suitable post, even if it is the lowest in the cadre, as early as from 15.11.2000 i.e. within 13 months from the date of death of her husband, which has not been dealt with in proper perspective as observed above.



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12. For all these reasons, while rejecting the writ appeal, we direct the appellant to consider the case of the respondent/writ petitioner for a suitable post in their Electricity Board, within a period of four weeks from the date of receipt of a copy of this Order. No costs. Connected M.P.(MD)No.2 of 2007 is also rejected.”

17. Further, the order of the learned Single Judge of this Court relied on by the learned counsel for the petitioner in ***W.P(MD)No.14660 of 2016, A.Chandra Vs. The Chairman and Managing Director, Tamil Nadu Generation and Distribution Corporation Limited, No.144 Anna Salai, Chennai – 600 002***, wherein this Court has held as follows:

“7. Further, it is also relevant to mention that in the general clause in G.O(MS)No.18, dated 23.01.2020, it is clearly mentioned that if the widow of the deceased Government servant is not educationally qualified for appointment, she could be given a job like Sweeper.

8. In view of the above legal position and the scheme provided by the Government in the year 2020, I am inclined to set aside the order passed by the third respondent in Ka.No. 004366/115/Ni.A/Ni.B.3/O.3/Koa Va.Velai/ 2016, dated 09.03.2016 and remand the matter back to the authority concerned for fresh consideration and to pass orders within a period of twelve weeks from the date of receipt of a copy of this order. The authority has to pass the order in the light of the decision made in W.P(MD) No.20137 of 2015 in paragraph No.6 and G.O(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, particularly the general clause. Accordingly, this Writ Petition is allowed. No cost.”



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18. In view of the above ratios laid down by this Court and the submission of the learned counsel for the petitioner, the Indigent Certificate which was filed along with the writ petition is pertaining to the year 2008 and the respondents are insisting for a fresh Indigent Certificate of the year 2024.

19. In view of the above factual matrix of the case, the Superintending Engineer, Tamil Nadu Electricity Board Dharmapuri Electricity Distribution Circle Dharmapuri-5, the 3rd respondent herein, is directed to conduct the field inspection in regard to the present status of the petitioner, her family and also to verify whether she is working in any job or any other organization. Furthermore, the petitioner is directed to submit a fresh Indigent Certificate within a period of three weeks from the date of receipt of a copy of the order and after receipt of the Indigent Certificate, if the petitioner, viz., S.Malarkodi, is found eligible, the respondents Board may appoint her to the suitable post based on her educational qualification within a period of four weeks thereof.

In the result, the writ petition stands disposed of with the above



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observations and directions. No costs.

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Index : Yes / No

Speaking / Non Speaking Order

To

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Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai – 600 002.



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2.The Chief Engineer (Personnel),
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J.SATHYA NARAYANA PRASAD, J.

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