



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.01.2024

Pronounced On : 15.04.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.31605 of 2016

J. Sakthivel

...Petitioner

Vs

1. The Chief Engineer

Tamil Nadu Electricity Board

No.144 Anna Salai

Chennai 600 002.

2. The Superintending Engineer

Perambalur Electricity Distribution Circle

Tamil Nadu Electricity Board

Perambalur.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 13/6/2016 passed by the second respondent in Ka.No.005060/272/NiPi.1/U.4/Ko.VaVe/2016 and quash the same and consequently direct the respondents to provide job by appointing the petitioner on compassionate grounds.



WEB COPY



W.P.No.31605 of 2016

For Petitioner : Mr.S.Shanmugasundaram
for Ms.N.Valliamma
For respondents : Mr.K.Purushotham

ORDER

The petitioner has filed this writ petition seeking for a direction to provide compassionate appointment on the death of the petitioner's father.

2. The facts in brief are as under:-

2.1. The petitioner's father by name Jeyasankar who worked as Mazdoor at the second respondent office died on 14.04.2013, leaving behind his wife, petitioner, petitioner's sister and grandmother. The petitioner who was born on 19.4.1998, submitted a representation dated 28.1.2016 to the second respondent seeking employment on compassionate grounds. The said representation was rejected on the ground that the petitioner has not attained the age of 18 years, as on the date of application. Subsequently, after attaining the age of 18 years, he submitted another representation dated 18/5/2016 to the second respondent, however, the said application was also



rejected on the ground that the application for compassionate appointment was not filed within three years from the date of death of the petitioner's father. Aggrieved by the same, the present writ petition is filed.

3. The Superintending Engineer, Perambalur Electricity Distribution Circle, TANGEDCO, Perambalur has filed a counter affidavit on behalf of both the respondents, stating that as per the scheme of appointment of making compassionate appointments, which was in force, as on the date of death of the petitioner's father on 14.04.2013, the application seeking compassionate appointment shall be filed within three years from the date of death of the employee and that the applicant should have at least passed VIII standard and should have attained the age of 18 years and that the family should have been in indigent circumstances, etc.

4. It is also further mentioned in the counter affidavit that the petitioner has applied for employment on compassionate grounds before attaining the majority and that he has not attained the age of majority within three years from the date of death of his father, thereby, his second application was rejected, *vide*, order dated 13.06.2016.



WEB COPY

5. Heard Mr.S.Shanmugasundaram, learned counsel for the petitioner and Mr.K.Purushothaman, learned counsel for the respondents.

6. It is submitted by the learned counsel for the petitioner that as on the date of making an application for appointment on compassionate grounds on 28/1/2016, the petitioner was a minor and thereby he has filed an application on 18/5/2016 and both the applications were rejected. It is further submitted that though the application of the petitioner dated 28/1/2016 was rejected on the ground that he has not attained majority, his second application dated 18/5/2016 has to be considered favourably, as the second application is only renewal of the application dated 28/1/2016.

7. The learned counsel appearing for the petitioner cited a decision rendered by this Court as reported in ***CDJ 2004 MHC 840, T.MEER ISMAIL ALI Vs. THE TAMIL NADU ELECTRICITY BOARD & OTHERS.*** In the said decision, application for appointment on compassionate ground was filed prior to attaining 18 years of age and similar to that of the case on hand, the said application was rejected, as the petitioner therein was a minor and subsequently, after attaining the age of



majority, he has filed fresh application but that was rejected on the ground that he has submitted an application within three years. While considering the above facts, this Court has observed as follows:-

“4. In such circumstances, it was a deserving case where the respondent should have shown some compassion while considering the petitioner's application for compassionate appointment. Unfortunately, the respondent did not seem to have shown any compassion at all and mercilessly rejected the petitioner's application on a hyper technical ground.

.....

6. I am, therefore, of the view that the petitioner's case deserves consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18. In the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified.

7. The orders impugned are, therefore, set aside and the respondent is directed to consider the petitioner's application on merits and provide necessary relief to the petitioner in accordance with the rules relating to compassionate appointment. The writ petition is allowed. No costs.”



8. This Court by its order dated **25.08.2022** in **W.P.No.31311 of 2017** has held that :

"6. Admittedly, at the time of the death of the petitioner's husband on 03.10.1994, there was no uniform policy which was adopted by the respondents for appointment on compassionate ground. G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 was passed a few months after the death of the petitioner's husband. However, that G.O has not been given serious consideration by the respondent/Board in as much as the petitioner has been able to demonstrate that several persons' applications were much later and beyond three years limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 and they have given appointment by the respondents. The respondents cannot discriminate by resorting to pick and choose method in the matter of appointment on compassionate ground also."

8.1. The judgement in ***A.Mustafa Iqbal Basha vs. State of Tamil Nadu, rep. By its Secretary to the Government, Education Department and others***, reported in **(2011) 4 MLJ 438**, this Court has observed as follows:

"9. It is true, as contended by the learned Government Advocate, that the objective of providing compassionate appointment is to tide over the sudden indigent circumstances unexpectedly created by the sudden death of the Government Servant. As the



WEB COPY



W.P.No.31605 of 2016

petitioner was a minor at the time of the death of his father and at the same time his mother was also not eligible for appointment, he could not submit any application for compassionate appointment. Instead, he, immediately after attaining majority, submitted an application to the respondents. Just because there is a delay in submitting the application for the said reason by the petitioner for compassionate appointment, it cannot be said that the family of the deceased Government servant has got over the indigent circumstances. It is seen from the records that the two sisters of the petitioner are married and the brother is living separately. Now, the persons left out in the family are the petitioner and his mother, who are without any job and in every need of employment. In the given situation, it is very difficult for them to get two square meals a day. Therefore, I am of the considered opinion that the family of the deceased government servant cannot be left in lurch."

8.2. In yet another citation reported in **CDJ 2014 MHC 3095 (S.NAGARAJAN Vs. THE SUPERINTENDING ENGINEER, TAMIL NADU ELECTRICITY DISTRIBUTION CIRCLE, TIRUNELVELI & ANOTHER)**, it has been held by this Court as follows:

"18. The above judgment is squarely applicable to the present case. Admittedly, in the present case, the widow of the deceased has submitted the application within time and the application seeking appointment for the petitioner was submitted within 3 years after attaining majority. Nothing is brought before this Court to



WEB COPY



W.P.No.31605 of 2016

show that the family is not in indigent circumstances and this Court is of the opinion that the widow of the deceased must have appointed on compassionate grounds in some job based on her qualification. This Court is also of the view that when a person cannot be employed in government services before the completion of 18 years, he could not make an application seeking appointment during his period of minority. Therefore the period of three years for a minor son/daughter can commence only after he/she attains majority. Therefore, for all the reasons stated above, the application made on behalf of the son cannot be treated as time barred.

19. In the result, this writ petition is allowed and the impugned proceedings of the respondent dated 31.01.2011 is set aside. The petitioner is directed to produce a certificate from the competent authority to the effect that his family is in indigent circumstance as on today, within four weeks and submit the same before second respondent and on receipt of the same, the second respondent shall pass order appointing the petitioner in any suitable post within two weeks there from. No costs.”

Basing on the observations of this Court in the above referred judgement, the case of the petitioner can be considered.

9. However, the learned counsel appearing for the respondents has filed a copy of Permanent B.P.Ms (FB) No.46 dated 13/10/1995 which are



relevant to the facts of the case, wherein it is mentioned as follows:-

WEB COPY

“(i). The application for appointment on compassionate grounds should be made within three years from the date of death of employees of the Board.

“(ii). The maximum age limit, for such appointment be raised to 50 (fifty) years in the case of widows of the deceased employees of the Board.

“(iii). In the case of already expired staff while in service the dependant should apply for employment assistance within three years from the date of issue of this order.”

10. The respondents has also filed a letter No.028610/G9/G91/2011-2 (Administrative Branch) dated 1/11/2011, which includes clarification in respect of grant of employment to the legal heir of the deceased employer, wherein it is stated as follows:-

“(i). Prior to 23/8/2005, applications received within a period of three years seeking appointment on compassionate grounds shall be considered eligible if they have not completed 18 years of age but fulfil all other qualifications for appointment on compassionate grounds.

“(ii). As the age for appointment on compassionate grounds has been fixed at 18 with effect from 23/8/2005, only the legal heir who was attained the age of 18 years after 23/8/2005 should be considered eligible for appointment on



WEB COPY



W.P.No.31605 of 2016

compassionate grounds.

(iii). For appointments on compassionate grounds as per Reference 3, the age and educational qualifications of the employees of Tamil Nadu Generation and Distribution Corporation Ltd., Tamil Nadu Power Transmission Corporation and Tamil Nadu Power Corporation shall be determined within three years of their death, taking into account the date of application of the application.

(iv). The clarification in paragraph 2 (c) above shall come into force from the date of publication of the Government letter to the Tamil Nadu Generation and Distribution Corporation Ltd., the Tamil Nadu Power Grid Corporation and the Tamil Nadu Power Board.”

11. The respondents have also filed a comprehensive guidelines in (Per.) FB TANGEDCO Proceedings No.11,dated 11th June, 2020, issued in respect of the appointment on compassionate grounds to the deceased employee's legal heir.

12. As per G.O.(Ms).No.33 Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023, the Government has adopted a new policy in respect of compassionate appointment, wherein, it is stated as follows:



WEB COPY



W.P.No.31605 of 2016

“5. Every application for appointment under these rules shall be made within a period of three years from the date of death of the Government servant or from the date of retirement on medical invalidation or from the date of receipt of Court order declaring the missing Government servant as dead, under Sections 107 or 108 of the Indian Evidence Act, 1972 (Central Act I of 1872).

12.1. In ***Fertilizers and Chemicals Travancore Ltd., & Ors., Vs Anusree K.B***, reported in ***2022 Live law (SC) 819***, the Hon'ble Supreme Court of India has observed as under:

"9.1. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the Respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the Respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided."

9.2. Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the Appellants to reconsider the case of



WEB COPY



W.P.No.31605 of 2016

the Respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.

12.2. The judgement in ***The State of West Bengal vs. Debabrata Tiwari & others***, reported in ***2023 Livelaw (SC) 175***, the Hon'ble apex Court held as below:

"7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

- i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.*
- ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is*



WEB COPY



W.P.No.31605 of 2016

over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source. "

12.3. The judgement in **MGB Gramin Bank vs. Chakrawarti Singh**, reported in **2013 STPL (web) 623 SC**, the Hon'ble Supreme Court of India has held that:

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme



WEB COPY



W.P.No.31605 of 2016

has to be considered."

13. Full Bench judgement of this Court in ***W.P.(MD) Nos.7016 of 2011 and batch*** by judgement dated 11.03.2020 has observed as under:

"10. The narration of the above mentioned Government orders would show that there have been different schemes at different part of time. It is again well settled that the scheme available on the date of death of the Government employee has to be applied and not any scheme which has been framed after the cause of action has arisen. A perusal of the orders would show that after 1995, all the schemes provide that an application for appointment on compassionate basis has to be made within a period of three years from the date of death of the deceased employee.

30. As stated earlier, if the policy is to ensure an immediate indigence of the family to be taken care of, then application will not serve the purpose. However, it is pertinent to mention that in cases where the employee has passed away prior to 1995, then the employer has to consider the application on the facts of each case and after taking into account the indigent circumstances in which the family is placed. The Electricity Board also has to consider the applications on the basis of the schemes which were prevalent on the date of the death of the employee.



WEB COPY



W.P.No.31605 of 2016

The board cannot apply a subsequent scheme and has to apply the scheme which was applicable on the date of the death of the employee."

14. As per the Division Bench judgement of this Court in ***V.Deepika vs. The District Collector, Office of the District Collector, Ramanathapuram District, in W.A.(MD)No.682 of 2022, dated 08.07.2022***, the relevant portion of which is extracted hereunder:

"9. The appellant is seeking compassionate appointment by stating that he had applied within three years after attaining majority. The appellant's father died on 29.10.2014, the appellant attained majority on 04.12.2017. The appellant's three years period from the date of death is on 28.10.2017. The appellant's mother had applied for compassionate appoinement to her minor daughter on 15.05.2015, but as on the date of application the appellant was a minor and has no necessary qualification and hence the claim of compassionate appoinement was rejected. The Hon'ble Full Bench of this Court in W.P.(MD) Nos.7016 of 2011 and batch by judgement dated 11.03.2020, has held that the scheme does not permit entertaining an application by a dependent after attaining majority, hence the period of limitation ought to be considered from the death alone and not from the date of attaining majority. Therefore, this Court following the judgement of the Hon'ble Full Bench and the principles laid



WEB COPY



W.P.No.31605 of 2016

down by the Hon'ble Supreme Court in several cases, is of the considered opinion that the appellant's claim cannot be considered for three years period ought to be considered from the date of death of the deceased employee. In this case, on the date of the death of the deceased employee, the petitioner was a minor and she became major after 3 years. Unless there is scope for relaxing the rules, the application for compassionate appointment is liable to be rejected. The learned Single Judge has rightly rejected the claim of the appellant and the appellant has not made out any case and the writ appeal is liable to be dismissed."

As per the law laid down by the Hon'ble Supreme Court of India and the Hon'ble Benches of this Court referred above, appointment on compassionate ground after long lapse of time is against the object and purpose for which the compassionate appointments are provided. The appointment on compassionate ground is not a vested right which can be exercised at any time in future. It has to be provided immediately to help in distress.

15. Further, in order to get employment under compassionate ground apart from the other educational and other qualifications, the application should have been filed within three years from the date of death of the employee and that in case, if the petitioner is a minor, he should have attained majority within three years from the date of death of the employee.



W.P.No.31605 of 2016

In the case on hand, admittedly, the petitioner was a minor as on the date of death of the employee and as on the date of initial application, he was still a minor and he could not attained the majority within three years from the date of death of the employee and after attaining majority, he has filed an application dated 18/5/2016 and that was also rejected on the ground that he has filed the application within three years.

16. From a perusal of various Government Orders issued from time to time, it is clear that there is limitation for seeking compassionate appointment and hence, the request of the petitioner to provide him job on compassionate appointment is declined. In view of the above, this writ petition is dismissed.

15.04.2024

vca

Index: Yes/No

NCC: Yes/No



WEB COPY



W.P.No.31605 of 2016

Dr.D.NAGARJUN,J

vca

To

1. The Chief Engineer
Tamil Nadu Electricity Board
No.144 Anna Salai
Chennai 600 002.
2. The Superintending Engineer
Perambalur Electricity Distribution Circle
Tamil Nadu Electricity Board
Perambalur.

Pre-delivery order made in
W.P.No.31605 of 2016



WEB COPY



W.P.No.31605 of 2016

15.04.2024