



W.P.No.23314 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.23314 of 2023
and W.M.P.No.22855 of 2023

P.Raja

... **Petitioner**

Vs.

1.The Chief Engineer (Employment)

TANGEDCO

144, Anna Salai

Chennai – 600 002.

2.The Superintendent Engineer

TANGEDCO

Cuddalore Electricity Distribution Taluk

Kepparmalai

Cuddalore – 4.

... **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the respondent with reference to letter of the 2nd respondent vide கடித எண்.028161/மேபொ/கமிபவ/கட/நிர்.2/உ.4/கோ.வா.வே/2023 நாள் 13.03.2023 quash the same and further direct the respondent to appoint the petitioner as lineman at Tamilnadu Electricity Generation and Distribution Corporation.

For the Petitioner

: Mr.T.Saravanan



W.P.No.23314 of 2023

WEB COPY

For the Respondents : Mr.K.Rajkumar

ORDER

This Writ Petition is filed, challenging the order of the 2nd respondent dated 13.03.2023, whereby the application filed by the petitioner for compassionate appointment was rejected.

2. The petitioner's father was employed as Mazdoor in the respondent Corporation and he died while in service on 19.06.2012. As application for compassionate appointment was made in respect of the petitioner's mother and the same was rejected on 05.10.2015. Thereafter, the said matter was not pursued. Again, when the petitioner attained majority as on the year 2023, a fresh application is made on 08.03.2023 for providing compassionate appointment for the petitioner. The same is rejected by the impugned order and hence the Writ Petition.

3. The learned counsel for the petitioner would submit that when the application was made earlier within a period of three years by the petitioner's mother, the same was rejected. Now, the petitioner attained majority and



W.P.No.23314 of 2023

WEB COPY

immediately after obtaining majority, he submitted an application for compassionate appointment and the respondents ought to have considered the same on merits and ought not to have rejected the same on the ground of delay. He would rely upon the Judgment of this Court in ***G.Vinod Kumar Vs. Director of Medical and Rural Health Services and Family Welfare and Ors.***¹ and another Judgment in ***M.Uma Vs.The Chief Engineer (Personnel), TNEB and Ors.,*** (W.P.No.4050 of 2006 dated 29.06.2010)

4. This issue is no longer res integra, since the issue was referred to the Full Bench of the Court and the Full Bench has held that unless the candidate attains majority within three years from the date of death of the deceased employee, an application thereafter made is not maintainable. Useful reference can be made in ***Periyaraj Vs. State rep.by its Chief Secretary, Social Welfare Department, Chennai and Ors.,*** (W.A.(MD) No.1435 of 2023 dated 05.09.2023) and it is relevant to extract relevant paragraph No.5, which reads as follows:-

¹ MANU/TN/0177/2023



WEB COPY



W.P.No.23314 of 2023

“5. The Hon'ble Full Bench of this Court in W.P. (MD) Nos.7016 of 2011 and batch by judgment dated 11.03.2020 has considered all the previous judgments and discussed in detail after taking note of various Government order / guidelines in relation to compassionate appointment. Since the judgment is not reported the relevant paragraphs are extracted below:

“16. It is also well settled that there is no right to compassionate appointment and where there is a scheme for appointment on compassionate basis for the dependant of a person who has died in harness, then the family of the deceased employee is entitled to apply for compassionate appointment and for consideration of the application in accordance with the terms and conditions which are prescribed in the scheme.

17. Even before the judgment in A.Kamatchi (supra) and Renugadevi (supra) were pronounced, a Division Bench of this Court by an order dated 18.09.2006, in E.Ramasamy Vs. Tamil Nadu Electricity Board, W.A.Nos.336 of 2003, 997 of 2006 and 1006 of 2006 in a case arising for appointment of compassionate basis in the Electricity Board, after relying on various Hon'ble Supreme Court judgments and more particularly, the judgment of the Hon'ble Supreme Court in Sanjay Kumar Vs. State of Bihar (2000) 7 SCC 192, observed as under:-

16. It is, thus, clear that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided, otherwise. The purpose of providing employment to a dependant of a government servant dying in



WEB COPY



W.P.No.23314 of 2023

harness in preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. None of these considerations can operate when the application is made after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family.

17. In Sanjay Kumar's case (cited supra), the Court has expressly held that there cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. An application made after the period stipulated under the scheme is not maintainable, and it is not permissible to hold that such application could be made after attaining majority. We are afraid, the Division Bench which rendered the judgment in Indiraniammal v. The Chief Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai # 600 002 and another) (cited supra) has not followed the earlier decisions of the Supreme Court and does not lay down correct law. The order of the learned single Judge in Meer Ismail Ali. T v. The Tamil Nadu Electricity Board (cited supra) is rather cryptic wherein the learned single Judge has observed that without going into the merits of the controversy the petitioner be given employment on humanitarian consideration. None of the judgments of the Supreme Court cited above are considered."

18. A perusal of the above judgment discloses that at that point of



WEB COPY



W.P.No.23314 of 2023

time itself there was a difference in opinion between the judgments rendered in E.Ramasamy Vs. Tamil Nadu Electricity Board and Indiraniammal Vs. The Chief Engineer (Personnel). The judgment of the Division Bench in the case of E.Ramasamy (supra) has also held that a judgment of a learned Single Judge in Meer Ismail Ali Vs. The Tamil Nadu Electricity Board (2004) 3 CTC 120, wherein an application for appointment on compassionate basis was filed after seven years of the death of the deceased employee to be maintainable, is contrary to the law laid down by the Hon'ble Supreme Court.

19. Despite the judgment of E.Ramasamy Vs. Tamil Nadu Electricity Board, passed on 18.09.2006, a Single Judge of this Court in Mohanambal Vs. The Director Land and Survey, (2011) 1 CTC 349, entertained an application for appointment on compassionate basis after 16 years of the death of the employee following the judgment of the Indiraniammal Vs. The Chief Engineer.

20. Another Division Bench in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758, did not choose to follow the judgment of E.Ramasamy (supra). In this case, the writ petitioner's father died in harness on 12.12.1980. The writ petition was taken on 05.06.1981. The writ petitioner's mother sought for appointment on compassionate basis which was rejected on the ground that there was no vacancy. Writ petitioner attained the majority on 05.06.1999 and he applied for compassionate appointment on 28.10.1999. The learned Division Bench directed the Electricity Board to entertain the application for appointment on compassionate basis. The learned Division Bench chose to rely on certain other judgments and did not follow the judgment of E.Ramasamy (supra) holding that the judgment of E.Ramasamy (supra) has been over ruled. It is pertinent to mention here that the said finding that the judgment of E.Ramasamy (supra) has been over-ruled is not correct. This order in Kamatchi's case (supra) is contrary to the scheme of compassionate appointment of the Electricity Board

21. A Division Bench of this Court by an order dated 11.06.2012 in the Secretary to the Government Vs. N.Renugadevi, rejected an application for compassionate basis, where in that case, the employee had died in harness on 05.03.1990. The wife of the employee filed an application on compassionate basis on 12.11.1990 and on 05.06.1991, she was asked to produce the documents for being considered for



WEB COPY



W.P.No.23314 of 2023

appointment to the post of Sweeper on compassionate grounds. However, the wife of the employee made a request for an appointment of her son, who was studying in IX standard at that point of time. The request of the wife of the employee was rejected on the ground that the application made by her was belated in view of the G.O.Ms.No.202 dated 08.10.2007. The learned Division Bench in that case relied on various judgments of the Hon'ble Supreme Court.

22. A perusal of the above would show that there is a cleavage in the various decisions. The law on compassionate basis has been laid down in a number of judgments. As stated earlier, the object and purpose of the compassionate appointment is to provide immediate financial assistance and succour to the family of the deceased government servant so as to protect them against any form of indigent because of the death of the sole bread winner of the family. (Refer Sanjay Kumar Vs. State of Bihar (2000) 7 SCC 193, Jagdish Prasad Vs. State of Bihar & another, (1996) 1 SCC 301, S.Mohan Vs. Government of Tamil Nadu, (1998) 9 SCC 485.

23. The Hon'ble Supreme Court in Bhawani Prasad Sonkar Vs. Union of India &Ors., (2011) 4 SCC 209, after examining the law upto 2011 which still holds the field, observed as under:-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to



W.P.No.23314 of 2023

the purpose it seeks to achieve.....”

WEB COPY

.....

.....

26. On the other hand, the learned Government Pleader would state that the law on compassionate appointment is well settled and the scheme applicable when the date of the death of the employee must be followed. He would contend that now the Hon'ble Supreme Court has taken a consistent view that the family members of the deceased employee should not be permitted to move applications for appointment on compassionate basis beyond the period fixed under the scheme. The Government Pleader would rely on the judgments passed by the Hon'ble Supreme Court in *Sushma Gosain Vs. Union of India* [1989 (4) SCC 468], *Umesh Kumar Nagpal Vs. State of Haryana* [1994 (4) SCC 138], *National Hydro Electric Power Corporation Vs. Nanak Chand* [2004 (12) SCC 487], *Bhawani Prasad Sonkar Vs. Union of India* [2011 (4) SCC 209] and *State of Gujarat Vs. Arvind Kumar T. Tiwari* [2012 (9) SCC 545], to substantiate his contentions.....

.....

.....

31. The Hon'ble Supreme Court in *Sanjay Kumar Vs. State of Bihar*, (2000) 7 SCC 192, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependant of the deceased employee filed after he attains majority cannot be entertained. Considering a belated application will be contrary to the scheme framed by the Government and will be also contrary to the judgments of the Supreme Court.”

32. In view of the above, the reference is answered as under:-
a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible. b) In view of the above the judgment of the Division Bench in *E. Ramasamy Vs. Tamil Nadu Electricity Board* and the *Secretary to Government Vs. Renugadevi*, lays down the correct law



WEB COPY



W.P.No.23314 of 2023

and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly.”

The above views of one of the members of Full Bench, Hon’ble Mr. Justice Subramonium Prasad was approved by the then Hon’ble Chief Justice and Hon’ble Mr. Justice Abdul Quddhose with slight modification without any difference of opinion on the question of reference in the following lines:

“We have had the privilege of going through the enunciation of law expounded by our brother, Hon’ble Mr. Justice Subramonium Prasad, and we find ourselves in complete agreement with the same. We, however, may add a few reasons in addition thereto so as to explain the legal canvas in order to clear any further doubts in this regard.

2.The basic precepts pertaining to compassionate appointment need to be emphasized. Appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Article 16 provides for equality of opportunity in the matters of public appointments. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment. The reason for compassionate appointment, as envisaged under the scheme and the relevant Government Orders, is the immediacy of financial hardship that is sustained by the bereaved family by the death of its earning member that is sought to be alleviated in a situation in which the Government servant died while in service. This is the underlying theme or the thread which cuts across almost every provision of the Government Order and the



WEB COPY



W.P.No.23314 of 2023

Scheme in question.

3. The main issue that has been canvassed before us is about the caption of three years imposed under the rules as a limit from the date of death of the employee for the dependent to move an application for compassionate appointment. This period of three years, in our opinion, is a reasonable period within which even a person of ordinary prudence, particularly one who is in dire need of employment, will come to know about the possibilities of any such employment.

4. It is well settled that ignorance of law is no excuse, but as argued by the learned Senior Counsel that there are illiterate people having no access to all sorts of information either beneficial or otherwise, the said presumption is explainable inasmuch as when an employee is in Government service or in the service of a Corporation, etc. his family knows the source of earning and the source of employment. The existence and locus of the office of employment is not unknown as the dependents immediately get information with regard to terminal benefits and other pecuniary benefits that flow in the shape of family pension or other residual benefits, the disbursement whereof takes from the office where the deceased employee was employed. Thus, the plea of total illiteracy or ignorance of benefits available or about their doubts can be cast aside by seeking simple information from the office of employment. This is not a task like climbing Mt. Everest to find out the benefits to which a dependent of the deceased employee is entitled to. Thus, such information is not buried so deep so as to uncover the ignorance of even a widow or a dependent of a family who can gather such information and for which the period of three years can be reasonably said to be sufficient. In



WEB COPY



W.P.No.23314 of 2023

today's modern world, with various forms of communications and websites with all information available through internet services even in the remotest corners of the world, the exercise of getting information is not in a fathomless pit, but is almost available on the press of a few sensors.

5. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. The argument that there are some exceptional cases where people hardly get information is a far-fetched argument raised to dilute a reasonable time that has been fixed under the rules and the scheme and, in our opinion, caters sufficiently to allow a dependent to stake his/her claim for compassionate appointment. If a dependent whosleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground to establish the existence of indigence even after attaining the age of majority. This, in our opinion, has also been taken due care of by providing a period of three years for moving an application for compassionate appointment which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority.

6. The question of relaxing the period further or otherwise is within the realm of a policy to be undertaken by the Government in this regard and it is certainly not for this Court to expand the time limit more so in the absence of any such provision or rules indicating relaxation. Relaxation is a discretionary power and should not be exercised so as to swallow the main or the



WEB COPY



W.P.No.23314 of 2023

substantive provision thereby rendering the basic purpose and object of the legislation nugatory.

7. The duty of a dependent while seeking compassionate appointment is also to disclose in full, true and candid manner the details of the financial condition of the family as well as the other relevant details pertaining to the members of the family of the deceased, including their status with regard to marital, employment, income, etc., in as much as all these details have a direct bearing on the financial need of the family which has to be assessed before a decision is taken to grant the benefit of compassionate appointment.

8. In our considered opinion, the claim of compassionate appointment is not a heritable right and being an exception to the ordinary rule of law and jurisprudence of public employment, it has otherwise also to stand the test of scrutiny of the fundamental rights guaranteed in the Constitution for the reason that there are millions who are standing in the queue for a public employment to reach their family for the first time even when there is no deceased employee in their family. Such broader aspects need not be overlooked in the name of mere sympathy or compassion. The request for appointment on compassionate grounds should be proximate to the death of the employee and, therefore, the period of three years is a reasonable period as contained in the scheme of the Government Order.

9. It is for this reason that the Hon'ble Supreme Court has in catena of decisions time and again laid stress that compassionate appointment should be made only in accordance with the rules or the scheme applicable and not beyond the same as travelling beyond the limits of the rules and scheme would negate the rights of those who are otherwise eligible for public



WEB COPY



W.P.No.23314 of 2023

appointment which would have been available to them but for the claim of compassionate appointment.

10. A Full Bench of the Allahabad High Court in Shiv Kumar Dubey v. State of Uttar Pradesh (AIR 2015 All. 47) while dealing with the same issue, particularly with regard to applications being moved after the dependent becomes a major and the application is far beyond the time prescribed for seeking public appointment under compassionate grounds, took notice of various decisions of the Supreme Court as follows:

“19. The provisions of Rule 5 of the Rules in the State of Uttar Pradesh specifically came up for consideration before the Supreme Court in Santosh Kumar Dubey v. State of Uttar Pradesh, (2009) 6 SCC 481, In that case the father of the appellant was untraced from 1981. The Supreme Court held that without going into the issue as to whether compassionate appointment could be sought in a case or deemed death under Section 108 of the Indian Evidence Act, such a right could have been exercised in 1988 itself and the period of five years under Rule 5 would not enable the appellant to compute the period until 1993. In that context, the Supreme Court observed as follows:

“11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the families of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers



WEB COPY



W.P.No.23314 of 2023

financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.”

.....

13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in



WEB COPY



W.P.No.23314 of 2023

exceptionally rare cases on the
principles as indicated herein above...
.”””

5. In view thereof, the prayer of the petitioner, who was aged only about 8 years as on the date of death of the deceased employee cannot be countenanced and as such the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.06.2024

Jer

Neutral Citation : No

To
1.The Chief Engineer (Employment)
TANGEDCO
144, Anna Salai
Chennai – 600 002.
2.The Superintendent Engineer
TANGEDCO
Cuddalore Electricity Distribution Taluk
Kepparmalai
Cuddalore – 4.

Page 15 of 17



WEB COPY



W.P.No.23314 of 2023

D.BHARATHA CHAKRAVARTHY, J.

Jer

W.P.No.23314 of 2023



WEB COPY



W.P.No.23314 of 2023

12.06.2024