



W.A. No.2416 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.09.2024

DELIVERED ON: 19.10.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and**

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2416 of 2024

B.Jaya Bharath

.. Appellant/Petitioner

Vs

1.The Chairman cum Managing Director,
The Tamil Nadu Generation and
Distribution Corporation,
144, Anna Salai, Chennai 600 002.

2.The Chief Engineer Personnel,
The Tamil Nadu Generation and
Distribution Corporation,
144, Anna Salai, Chennai 600 002.

3.The Superintendent Engineer,
Ennore Thermal Power Station,
Chennai – 600 057.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.02.2024 in W.P.No.24128 of 2022.

For Appellant : Mr.K.Krishnamoorthy



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For Respondents : Mr.Anand Gopalan
Standing Counsel
for R1 to R3

J U D G M E N T

(Order of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The unsuccessful Writ Petitioner in W.P. No.24128 of 2024 is the appellant before us.

2. We have heard Mr.K.Krishnamoorthy, learned counsel for the Appellant and Mr.Anand Gopalan, learned Standing Counsel for the respondents 1 to 3.

3. The case of the appellant/petitioner is that his father was working in the respondent Corporation, as a long time contract employee and he was not absorbed as a permanent employee. One Union by name, Tamil Maanila Tholilalargal Sanagam has filed a Writ Petition in W.P. No.4769 of 1989 and the Writ Court passed final orders on 13.10.1998 and directed the respondents to regularise the services of the members of the said Union.



The said order of the Writ Court was challenged by the respondents in W.A. Nos.1720 to 1722 of 1998, however it was unsuccessful.

4. It is the further case of the appellant/petitioner that his father died in harness on 21.02.1992, even pending the Writ Petition. As against the Judgment of the Hon'ble Division Bench in the above mentioned Writ Appeals, the respondents have approached the Hon'ble Supreme Court by way of Special Leave Petitions, which also came to be dismissed. According to the appellant, the appellant's father is also entitled to the benefits which were extended to similarly placed persons and since the appellant's father died in harness, the appellant was entitled for employment on compassionate grounds.

5. The Writ Court dismissed the Writ Petition on the following grounds:

(i) the appellant/petitioner's father was only a contract employee and therefore, the petitioner cannot seek for compassionate appointment on the demise of his father;



(ii) Though the appellant/petitioner's father died on 21.02.1992, the appellant has made a representation for compassionate appointment after lapse of 29 years;

(iii) The appellant/petitioner's father was also not a member of any Association which had approached the Court by way of Writ Petition seeking regularisation of employment.

6. The learned counsel for the appellant would submit that when similarly placed employees were given the benefit of the order passed in W.P. No.4769 of 1989 which came to be confirmed up to the Hon'ble Supreme Court, the appellant cannot be denied relief.

7. Per contra, Mr.Anand Gopalan, learned counsel appearing for the respondents would submit that the request of the appellant for compassionate appointment was considered and rejected on merit on 20.09.2021 and rightly, the Writ Court did not give any relief to the appellant as prayed for. He would pray for dismissal of the Writ Court.

8. We have carefully considered the submissions advanced by the



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learned counsel on either side.

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9. Admittedly, even according to the appellant, his father was only a contract employee and was never absorbed during his lifetime. The only ground on which the petitioner has sought for compassionate appointment is that insofar as similarly placed persons, the respondents have given compassionate appointment in pursuance of the decision of this Court in W.P. No.4767 of 1989 which came to be confirmed by the Hon'ble Supreme Court in S.L.P. (Civil) No.589 of 2008.

10. Paragraph No.5 of the order of the Hon'ble Supreme Court in Civil Appeal Nos.2514 to 2516 of 2018 arising out of SLP (C) Nos.589 to 591 of 2008 is extracted hereunder:-

“5. Having considered the matter, we are of the view that the judgment and order of the High Court is not sustainable. However, as regards, the question of granting relief to the workmen is concerned, we find that it would be extremely unequitable and unjust to deny relief to the workmen who were employed for the purpose of loading and unloading of coal. On an average the workmen had worked for over a decade. They appear to have restrained from working after the year 1998 without any reason attributable to their performance. In pursuance of the Commission headed by Justice Khalid about 40,000 such workmen had been restored to their



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employment and their services had been regularized. We see no reason why these workmen could not be entitled to the same relief. We accordingly, direct that the appellants shall reinstate the 27 workers whose names appear (as marked finally), in Annexures 1 and 2 appended to the Representation dated 04.10.2016, filed in the Court, within three months."

11. From the above, it is clear that the Hon'ble Supreme Court did not approve the concurrent findings rendered by this Court. However only on equitable grounds, the Hon'ble Supreme Court directed the respondents herein to reinstate only 27 workers whose name appears in the Annexures 1 & 2 appended to representation dated 04.10.2016 filed before the Hon'ble Supreme Court within three months.

12. Admittedly, the appellant/petitioner's father name is not one amongst the 27 names set out in the Annexures 1 & 2. Therefore, the appellant cannot claim that his father was also a beneficiary of the said order passed by the Hon'ble Supreme Court.

13. In fact, one of us (DKKJ) speaking for the Division Bench in W.P.No.34427 of 2019 order dated 29.11.2023 held that unless the applicant



satisfies the eligibility criteria, he/she would not be entitled for compassionate appointment and further held that unless the services of the father had been regularized, the application for compassionate appointment cannot be considered.

14.The Hon'ble Supreme Court in *State of Madhya Pradesh and Others Vs. Amit Shirvas* reported in 2020 (10) SCC 496 held that there is a distinction between the work-charged employee, a permanent employee and a regular employee and in order to claim compassionate appointment, the employee has to be a regular employee and even if the concerned employee had attained the status of permanent employee, on account of completing a particular minimum number of years, he would still not be entitled to regularization and consequently his heirs also not being entitled to compassionate appointment. Even applying the above ratio to the facts of the present case, the appellant cannot seek for compassionate appointment.

15.We therefore see no justifiable reasons to interfere with the order



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of the Writ Court, especially since the Writ Court has also found delay and latches coming in the way of granting leave to the appellant/petitioner.

16.In fine, Writ Appeal is dismissed. No costs.

(D.K.K.J.,) (P.B.B.J.,)

19.10.2024

Internet: Yes/No
Index : Yes/No
Speaking Order/Non Speaking Order
rkp

To

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D. KRISHNAKUMAR. J.,

and

P.B.BALAJI, J.



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Pre-delivery Judgment in
W.A.No.2416 of 2024

19.10.2024