



WEB COPY



W.P.No.9696 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.9696 of 2017

V. Radhakrishnan
Petitioner

...

Vs.

1. The Chairman
TANGEDCO No.144, Anna Salai,
Chennai – 600 002.

2. The Chief Engineer (Personnel)
TANGEDCO
No.144, Anna Salai,
Chennai 600 002.

3. The Superintending Engineer,
TANGEDCO
Villupuram.

4. The Superintending Engineer,
TANGEDCO
Coimbatore North
Coimbatore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus calling for the records of the second respondent in Letter No.027550/218/G8/G81/2013-1/dated 25.06.2013 and



W.P.No.9696 of 2017

quash the same and also direct the respondents to provide the petitioner compassionate appointment in any qualified post in TANGEDCO.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.P.Subramanian
Standing Counsel

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Letter No.027550/218/G8/G81/2013-1/dated 25.06.2013 and quash the same and also direct the respondents to provide the petitioner compassionate appointment in any qualified post in TANGEDCO.

2. The petitioner's brother Murugan was working in Tamil Nadu Electricity Board for more than 13 years. The petitioner's brother Murugan died on 05.03.2011, while in service and just 2 days before the order of appointment dated 07.03.2011. The petitioner's sister-in-law made a representation on 15.09.2011, stating that as she was uneducated and had no issues, compassionate appointment may be given to the petitioner. The petitioner's sister-in-law re-married one Rajasekar and left the family. The petitioner's



WEB COPY

brother was the sole bread winner of the family and due to his untimely demise the family was pushed into indigency. The petitioner's father gave representation for the petitioner's appointment on compassionate grounds. The 2nd respondent rejected the said representation stating that the petitioner's brother was not a permanent employee in Tamil Nadu Electricity Board. Aggrieved by the rejection order of the 2nd respondent the petitioner filed the writ petition.

3. The respondents filed a detailed counter stating that under B.P.No. 27 dated 18.08.2008, only unmarried brother/unmarried sister of the deceased unmarried employee were alone entitled to compassionate appointment. As the petitioner's deceased brother was married, the petitioner was not entitled for compassionate appointment as per B.P.No.27. The respondent stated that only the wife/son/daughter of a deceased permanent employee alone were entitled to compassionate appointment. Since the said Murugan died as a temporary casual labour the petitioner could not be considered for compassionate appointment and hence the impugned order was valid.

4. The learned counsel for the petitioner submitted that following the



W.P.No.9696 of 2017

WEB COPY

judgment of this Court in the case of ***R.Lakshmi Vs The Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another*** reported in (CDJ 2012 MHC 3840), a learned single Judge of this Court passed order in W.P.No.4680 of 2011 dated 03.07.2014 in the case of ***S.Sathish Vs The Tamil Nadu Electricity Generation & Distribution Corporation Limited, Chennai and others*** holding that a workman who had completed 480 days of continuous service in a period of 24 calender months would become automatically a permanent employee under the employer, even if, the employer did not confer him with the permanent status or even if, no direction was issued by the competent authority under the Act, 1981 or the Rules framed thereunder. The learned counsel on the basis of the aforesaid judgment submitted that the contention of the learned Standing Counsel for the respondents that the deceased employee was only a temporary employee and hence compassionate appointment could not be granted could not be countenanced.

5. On the other hand, the learned Standing Counsel for the respondents submitted that as per order in (Per) B.P.(FB) No.27 (Adm.Branch) dated 18.08.2008 the petitioner was not eligible for compassionate appointment on the ground that the petitioner's deceased brother was married and only



unmarried brother/unmarried sister of the deceased unmarried employee were alone entitled for compassionate appointment.

6. The learned counsel for the petitioner submitted that in the impugned order no such ground was raised and therefore the respondents could not improvise the case in the counter.

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

8. As rightly contended by the learned counsel for the petitioner, the impugned order does not reflect that the petitioner was found ineligible as per order in (Per) B.P.(FB) No.27 (Adm.Branch) dated 18.08.2008. The only ground on which the petitioner was non-suited was that the deceased employee was a temporary employee. As rightly contended by the learned counsel for the petitioner, the deceased employee is deemed to be a permanent employee as he had put in more than 480 days of service in 24 calendar months. The Division Bench judgment of this Court in the case of ***R.Lakshmi Vs The Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another*** reported in (CDJ 2012 MHC 3840) in para 36 held as hereunder:-



WEB COPY

“36. We also hold that even in the absence of any enquiry conducted by the Inspector under Act, the right conferred upon the petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the respondents/Electricity Board Authorities to confer permanent status of the petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calendar months and on that basis, we hold that the petitioner's husband deceased S.Raju is entitled to be made permanent by the respondents/Tamil Nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman who had completed 480 days of continuous service in a period of 24 calendar months would become automatically a permanent employee under the employer, even if, an employer had not conferred him with the permanent status or even if, no direction was issued by the competent authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the Reference.”

9. In view of the above judgment, the contention of the learned Standing Counsel for the respondents that as the deceased employee died as a temporary employee the petitioner was ineligible for compassionate appointment cannot



W.P.No.9696 of 2017

be sustained. The other point raised by the learned counsel for the respondent regarding B.P.27 is concerned, I am of the view that the same cannot be countenanced as the impugned order does not refer to the same and the objection is raised only in counter. It is well settled that the respondent cannot be permitted to improve their case in the counter.

10. In the factual matrix of the case and the law laid down by the Division Bench of this Court, this Court is of the considered view that the impugned order passed by the 2nd respondent in Letter No.027550/218/G8/G81/2013-1 dated 25.06.2013 deserves to be set aside and the same is set aside. The petitioner is directed to give a fresh representation to the respondents for compassionate appointment within a period of two weeks from the date of receipt of a copy of this order and on receipt of such representation, the respondents shall pass orders on merits and in accordance with law within a period of four weeks thereafter.

11. The Writ Petition is disposed of, with the above direction. No costs.

06.09.2024

dpq



W.P.No.9696 of 2017

Index : Yes /No
Speaking Order : Yes/No

To

1. The Chairman
TANGEDCO No.144, Anna Salai,
Chennai – 600 002.

2. The Chief Engineer (Personnel)
TANGEDCO
No.144, Anna Salai,
Chennai 600 002.

3. The Superintending Engineer,
TANGEDCO
Villupuram.

4. The Superintending Engineer,
TANGEDCO
Coimbatore North
Coimbatore.



WEB COPY



W.P.No.9696 of 2017

N. MALA, J.

dpq

W.P.No.9696 of 2017

06.09.2024