



W.A.MD) No.656 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.656 of 2018

and

C.M.P(MD)No.3622 of 2018

1.The Chief Engineer (Establishment)

Tamil Nadu Electricity Board,
NPKRR Maligai,
144, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,

Kanyakumari Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Nagercoil-629 003.

... Appellants/
Petitioners

-Vs-

D.P.Francy Diana
adopted daughter of late
T.Sobana Bai

...Respondent/
Petitioner

PRAYER: Writ Appeal filed under Clause XV of Letters of Patent Appeal, against the order dated 15.02.2017 made in W.P(MD)No.5310 of 2011 passed by this Court.



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For Appellant : Mr.Arivalagan
For Respondent : Mr.D.Sivaraman

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JUDGMENT

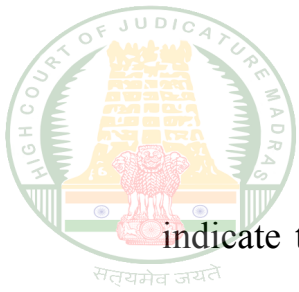
DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

T.Sobana Bai was etstwhile employee in Kanyakumari Electricity Distribution Division as Junior Assistant in the office of the Divisional Executive Engineer, Tamil Nadu Electricity Board, Thuckalai, Kanyakumari District, died as spinster on 28.01.2007. The respondent viz., Francy Diana made a claim for the death cum retirement benefits of the said Sobana Bai, on the strength of the Civil Court decree, wherein she has been declared as adopted daughter of the deceased Sobana Bai. The electricity Board considered her request and disbursed all the death cum retirement benefits accrued. However, when the said Francy Diana sought for compassionate appointment under the schme available in the Electricity Board and the same was rejected by the second respondent, vide communication dated 11.12.2008, stating that under the Tamil Nadu Electricity Board Rules only the adopted children of Hindu can be considered as legal representative and not the persons of other religions. The first respondent, vide his letter dated 15.12.2008, rejected the application for compassionate appointment stating that in the official record of the deceased employee ie., Sobana Bai, there is no entry to

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indicate the writ petitioner as her adopted daughter. These two communications were subject matter of the writ petition in W.P(MD)No.5310 of 2012 wherein the said Francy Diana sought for issuance of certiorarified Mandamus to quash both the communications and considered her application dated 12.11.2008 for compassionate appointment. This Writ Petition was pending consideration by the learned Single Judge of this Court for quite some time and on 15.02.2017, the writ petition was allowed with the following directions:

“21.In this regard, both the judgment of this Court in 2009 (8) MLJ 309 (cited supra) as well as 2010 (3) MLJ 417 (cited supra) has taken a stand that a person belonging to any religion has got right of adoption of a child within the meaning provided under Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000. Here in this case on hand, since the adoption has been taken place as per procedure to be adopted in Christianity and to that effect the Parish Priest of the Church concerned has also given a certificate and subsequently a succession certificate has been obtained by the petitioner. The further reasons whatsoever other than one cited in the impugned order cannot be put against the petitioner by merely filing counter affidavit by the respondents. In this regard the law is well settled that the impugned order has to be sustained only on the strength of the reasons given therein and the same cannot be improved by the subsequent proceedings or counter affidavit and in this regard the well considered earliest decision of the Hon'ble Apex Court in the case of [Mohinder Singh Gill v. Chief Election](#)



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Commissioner[(1978) 1 SCC 405 : AIR 1978 SC 851] can very well be pressed into service.

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22.Since both the reasons adduced in the impugned orders passed by the second respondent as well as the first respondent are untenable and liable to be rejected, both the impugned orders are quashed. Now it is open to the petitioner to make a claim immediately for compassionate appointment and in this regard the respondents are directed to take the application of the petitioner for compassionate appointment and still the petitioner feels that she requires an appointment on compassionate ground from the respondents Board the same shall be considered objectively and appointment to that effect can also be given within a period of six weeks from the date of receipt of a copy of this order.

2.The Electricity Board, being aggrieved by the above directions, has preferred the intra-court appeal, on the ground that the decree passed in O.S.No. 114 of 2017 declaring the writ petitioner as the adopted daughter of Sobana Bai will not bind them, since it is a collusive suit between the interested parties and the appellant, who is a necessary party was not impleaded. The succession certificate being a summary proceedings, the retirement benefits of Sobana Bai was disbursed based on the ground of succession certificate in S.O.P.No.36 of 2007. Futher, it is contended by the appellant that the compassionate appointment cannot be claimed as a matter of right beyond the scheme in force. Therefore, the

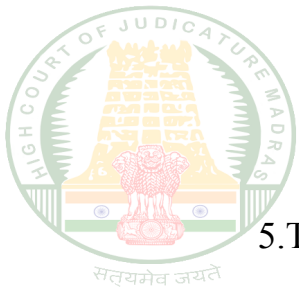


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order of the learned Single Judge directing the Board to consider the application for appointment on compassionate ground objectively and appoint her within six weeks is legally unsustainable.

3.The learned counsel appearing for the appellant relying upon the judgment of the Hon'ble Supreme Court in ***State of Chhatisgarh & Others-Vs-Dhirjo Kumar Sengar(Civil Appeal No.3242 of 2009)***, submitted that the grant of succession certificate in favour of person *per se* is not a proof of any relationship between the deceased and the applicant and therefore, the order of the learned Single Judge, taking into consideration of the disbursement of retirement benefits to the writ petitioner based on the succession certificate, ought not to have directed the Board to consider the application for compassionate appointment objectively within time frame.

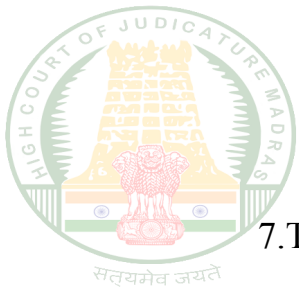
4.The learned counsel for the appellant would further submit that the Board has received objections from some of the family members of the writ petitioner and therefore, her application for compassionate appointment cannot be looked into.



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5.The learned counsel appearing for the writ petitioner/respondent submitted that the Civil Court has declared the writ petitioner as the adopted daughter of the deceased Sobana Bai. The decree passed in O.S.No.114 of 2007 on the file of the I Additional District Munsif Court, Kulithalai, not challenged by any of the persons interested including the appellant herein, on the plea that she is the adopted daughter. The Court has granted succession certificate in S.O.P.No.36 of 2007 to receive the retirement benefits. This grant of succession certificate also not challenged. Contrarily accepted by the Board and the entire death cum retirement benefits disbursed to the writ petitioner. However only when she sought for compassionate appointment with an object / intention her request was declined to be considered as per the scheme citing untenable reasons. The learned Single Judge, after considering all these facts, had rightly allowed the writ petition with direction. Instead considering the application as per the scheme prevailing the writ appeal filed and for the past 16 years the respondent had been deprived of her lawful entitlement.

6.In response to the above submissions, the learned counsel appearing for the Board submitted that the respondent is now gainful employee and she cannot claim compassionate appointment as a matter of right.



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7.This Court, after giving anxious consideration to the rival submissions, finds that the appellant been to deprive the writ petitioner being considered for compassionate appointment on invented reasons and dragged the writ petitioner to the Court. Even if the direction of the learned Single Judge to consider her application in accordance with the scheme and pass orders within six weeks, the appellant not inclined to consider the application but has preferred the appeal and kept it pending for more than six years. The conduct of the appellant is deplorable. At the same time, the Court also take note of the fact that the writ petitioner has come to the Court belatedly her application for compassionate appointment made on 12.11.2008 and within a month it has been rejected. She has not come to the Court immediately, it has taken more than two years. As usual, the Court delay has put her remediless till now.

8.This Court not oblivious of the fact that the compassionate appointment is not a right and it is based on the various other factors including the financial difficulty caused suddenly due to the demise of an employee. In this case, Sobana Bai died on 28.01.2007, the writ petitioner has made her application on 12.11.2008, after attaining majority. On the date of application, she was 19 years old. The Court decreed in O.S.No.114 of 2007 and grant of succession Certificate in S.O.P.No.36 of 2007 remains unchallenged. Therefore, the Board cannot deny



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in considering her application on the ground that she was not adopted daughter of Sobana Bai. The appellant is bound to consider her application as per the scheme and provide compassionate appointment, if she is eligible for the said appointment.

9. Therefore, taking into consideration of the factors in this case, the writ appeal is disposed of directing the appellants to consider the respondent/writ petitioner for compassionate appointment under the prevailing scheme. The respondent shall make a fresh application within a period of four weeks from today with all her qualifications and other details necessary. On receipt of the said application, the appellants shall consider the application as per the scheme and pass necessary orders within six weeks from the date of receipt of the application. For considering the application given afresh, the appellants should treat it as an application deemed to have been given on 12.11.2008 and should not refuse to receive citing it was made after three years of the demise of the employee or for any other point of limitation. It is also made clear that even if the writ petitioner is now gainfully employed for her livelihood that should not be cited as a reason to reject her application. We make it clear, a person cannot live in poverty and hunger expecting the employment from the Board. They have to work out their livelihood by engaging themselves in any of the avocation and that cannot be put



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against the writ petitioner. At the same time, even if she is considered for compassionate appointment and appointed in the appellant Board. There cannot be any monetary benefits or service benefits given to the writ petitioner with ante-date.

10In the result, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

[G.J., J.] & [R.P., J.]

27.02.2025

NCC : Yes / No

Index : Yes / No

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