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Court : Chennai

Decided On : Oct-05-2012

Judge : T. RAJA

Appeal No. : Writ Petition No. 44061 of 2002

Appellant : P. Vijayakumar

Respondent : The Superintending Engineer, Udumalpet Electricity Distribution Circle and Another

Advocate for Pet/Ap. : For the Petitioner: S.N. Ravichandran, Advocate. For the Respondents: V. Radhakrishnan, Advocate.

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus as stated therein.)

The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records relating to letter No.36332/1070/Adm1/Asst.1/2002, dated 09.08.2002, emanated from the first respondent, quash the same and consequently direct the respondents to appoint the petitioner to suitable post in the TNEB (Tamil Nadu Electricity Board) on compassionate grounds.

2. The case of the petitioner is that his father Late Pakkianathan, while serving in the Dharapuram Rural Section of the TNEB as Wireman, died on 12.06.1991 at the age of 44. The petitioner, who was 10 years old at that time, after attaining majority, applied to the Board on 09.10.2000 seeking compassionate appointment. The respondent/Board, on receipt of the application, directed him to furnish a guarantee letter to the effect that he would join service under the Board if an appointment is given. On 18.10.2000, Assurance Letter was submitted to the first respondent stating that the petitioner would join duty immediately on his appointment. Subsequently, though the first respondent obtained a report from the Assistant Engineer, Dharapuram Rural Division, no order was passed and hence, the petitioner made repeated representations to the first respondent. While so, unfortunately, by the impugned letter dated 09.08.2002, the first respondent rejected his application stating that as on the date of the death of the deceased employee on 12.06.1991, the petitioner was only 10 years old ie., he did not attain the age of majority on or before 12.10.1998. Hence, the aggrieved petitioner has come up with the present writ petition.

3. Learned counsel for the petitioner submits that the employee died in harness at the young age of 44 during which time, the petitioner was only 10 years old and after the demise of the sole bread-winner, very hardly the family was somehow run in dire financial needs. Unable to run the family due to penurious circumstances, the mother of the petitioner/wife of the deceased made the Application seeking compassionate appointment during 1991 itself and the same was rejected on age factor. Still suffering due to poverty, when the petitioner, on attaining majority, made the application seeking the relief, at the verge of considering his case by directing him to furnish assurance letter and submit the certificates, all of a sudden, very unfairly and arbitrarily, the respondents rejected the case on flimsy grounds. So submitting, learned counsel prayed that suitable directions may be issued to the respondents by quashing the impugned letter.

4. Learned counsel for the Board states that the guideline of the Board in B.P. No.46, dated 13.10.1995, provides that 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 the B.P. and if the petitioner's case is looked at in terms

of the said guidelines, as on the date of death of the employee, the petitioner completed only 9 year and 7 months. According to him, the petitioner did not attain the age of majority on or before 12.10.1998 and hence, rightly, the application made by him on 09.10.2000 was rejected. Since the impugned letter was based on the above guideline, the present plea of the petitioner may be turned down.

5. I have carefully considered the rival submissions advanced on either side.

From the records, it is seen that after the demise of the employee on 12.06.1991, his wife viz., the petitioner's mother, citing penurious circumstances made an application, dated 04.11.1991, seeking compassionate appointment and such application was rejected by order of the Board dated 16.12.1991, stating that she was 42 years old and as per Rules, she should be below 40 on the date of the death of her husband. Only in these circumstances, without any support to take care of the family, the son immediately after attaining majority applied for job on compassionate ground and it was rejected as mentioned above. In fact, in a decision rendered by this Court in J.Jeba Mary v. The Chairman, TNEB (2011 (3) LLN 405 (Mad.)), a learned Judge of this Court, while dealing with almost an identical case, referred to a decision of the Apex Court, dated 30.03.2010, rendered in Civil Case Nos.5068-5069 of 2009, which is a direct answer to the issue involved herein. Relevant portions from the above decision of the learned single Judge with the extract of the Supreme Court's order dated 30.03.2010 are extracted below:-

"(e) Three writ petitions were disposed of by me i.e., W.P.Nos.19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order dated 24.7.2006 wherein similar issue was considered. In respect of the above three writ petitions, which were allowed, writ appeal was filed against one writ petition in W.A.No.1206 of 2006 while implementing the order in respect of other two cases. The said writ appeal was allowed by the Division Bench on 29.9.2006. The respondent in the writ appeal viz., J.Karthick filed review application which was also rejected by the Division Bench on 25.8.2008. Against the dismissal of the writ appeal as well as rejection of review application, the said J.Karthick filed SLP(C) No.2004-2005/2009 and on 23.2.2009 the SLPs were tagged along with Civil Appeal

No.2039 of 2006 viz., Indiraniammal case. Subsequently the said SLP was numbered as Civil Case Nos.5068-5069 of 2009 which was allowed on 30.3.2010 and the said order reads as follows:

" Leavegranted.

Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order dated 25.8.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned single Judge only on the ground of delay who directed compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned single Judge. No costs.

(Emphasis Supplied)

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13. From the above referred decisions passed by this Court in series of cases on the same ground, it is evident that the similar grounds raised by the respondents that the petitioner has not filed application seeking compassionate appointment within three years from the date of death of her father and that she has not completed 18 years of age within three years are not valid grounds to deny appointment on compassionate ground as no one in her family is employed and the family of the petitioner is in indigent circumstance even today as certified by the Revenue Officials.

6. In the present case also, at the time of the death of the employee, the son/petitioner was minor and her mother applied within time, however, the

application was rejected on age factor. Even now, it is not the case of the Board that the family is alleviated of the financial crisis. Therefore, when the petitioner made the application immediately on attaining majority, since the mother of the petitioner had already applied in time, the process is continuing and particularly when the Department did not negative the plea on the ground that the family is financially sound enough to maintain itself, I am of the view that the Board is not at all justified in turning down the application of the petitioner for compassionate appointment.

7. In this view of the matter, the Writ Petition is allowed and the Board is hereby directed to pass orders on the application of the petitioner, after usual verification of the certificates, within four weeks from the date of receipt of copy of this order.

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