

(2014) 12 MAD CK 0080

In the Madras High Court

Case No : W.P. No. 28224 of 2013 and M.P. No. 1 of 2013

K. Kavitha

APPELLANT

Vs

Chief Engineer (Personnel), Tamilnadu Electricity Board and
Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2015) 1 MLJ 887

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : C. Senapathi, Advocates for the Appellant; R. Varalakshmi,
Advocates for the Respondent

Judgement

M.M. Sundresh, J.—The petitioner's husband late M. Kumar worked as a contract labour with the Tamil Nadu Electricity Board on a daily wage basis of Rs. 120/- per day and he died on 12.7.2012 while in service. As the employment of the petitioner's husband was not confirmed, the Association representing the petitioner's husband, in which he was a member, approached the appropriate authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 seeking confirmation. By the order dated 27.12.2000, the appropriate authority was pleased to pass appropriate orders against the respondents. The respondent Board has challenged the said order by filing writ petition in W.P. No. 29960 of 2003 before this Court and the said writ petition filed was dismissed and stay was granted in W.A. No. 2117 of 2004 dated 23.6.2004. Ultimately, order was passed by the appropriate authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 in and by the proceedings dated 26.10.2012. After the death of the petitioner's husband, the petitioner made a request for compassionate appointment. The request made by the petitioner was rejected on the ground that prior to the order dated 26.10.2012 passed by the Chief engineer, the petitioner's husband died and was working as a daily wage employee and as such the petitioner is not entitled for an appointment on

compassionate ground. Challenging the same, the present writ petition is filed. Learned counsel for the petitioner submitted that after the completion of 480 days confirmation has to be granted as a matter of right. The petitioner's husband was working from the year 1996 onwards. In any case, the rights have been accrued atleast from 27.12.2000 when the Order was passed by the authority under the Tamil Nadu Industrial Establishment Act (Conferment of Permanent Status to Workmen) Act, 1981. The challenge made by the respondents by way of filing writ petition and thereafter by filing writ appeal cannot be put against the petitioner as the said proceedings ended against the respondents. Therefore, the right accrued would relate back to the order passed by the authority constituted under the Act. In support of the said contention, the learned counsel has made reliance upon the order passed by the Division Bench of this Court in R. Lakshmi Vs. Chief Engineer (Personnel), Tamilnadu Electricity Board, Chennai and Another, .

2. Learned counsel for the respondents submitted that inasmuch as the petitioner's husband was not made permanent at the time of his death, the petitioner is not entitled under the scheme for being considered for compassionate appointment and therefore no interference is required with the order impugned.

3. Considering the similar issue, the Division Bench of this Court in R. Lakshmi v. Chief Engineer (Personnel), Tamilnadu Electricity Board, Chennai (supra) was pleased to hold as follows:

"36. We also hold that even in the absence of any enquiry conducted by the Inspector under the 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 calender months and on that basis, we hold that the Petitioner's husband deceased S. Raju is entitled to be made permanent by the Respondents/Tamilnadu 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 calender 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.

37. Also, on the basis of Equity, Fair play, Good Conscience and even a matter of prudence, we direct the Respondents/Tamilnadu Electricity Board Authorities to issue appropriate proceedings in making the petitioner's deceased husband Raju

as a permanent employee of the Board and to pay the petitioner family pension, family benefit and other terminal benefits including Gratuity as per Rules and regulations from time to time in force. The Respondents are further directed to consider and dispose of the representation of the Petitioner's dated 08.12.2003 and 08.01.2004 wherein she had prayed for Compassionate Appointment being provided to her daughter Valarmathi as per Rules and in accordance with law within a period of four weeks from the date of receipt of copy this order, (if not already considered and disposed of.)

38. The Respondents are directed to pay the Petitioner's family pension and other terminal benefits including gratuity etc., due to be paid to the petitioner's deceased husband within a period of eight weeks from the date of receipt of copy of this order. As such, the writ petition is allowed in above terms. No costs."

4. The ratio applied therein would apply as a fortiori to the case on hand. Even otherwise atleast from the date of the Order passed by the competent authority under the Act, the rights of the deceased husband of the petitioner have accrued. The order passed by the Chief Engineer on 26.10.2012 is only a consequential order. The said order was passed after waiting for a long time in view of the continuance of the legal battle at the instance of the respondents, which cannot be put against the petitioner. It is also to be noted that the petitioner's husband was made permanent by the proceedings of the Chief Engineer dated 26.10.2012 which stands as on today. In such view of the matter, the order impugned is hereby set aside and the 2nd respondent is directed to consider the case of the petitioner for compassionate appointment and pass appropriate orders in accordance with law. The 2nd respondent is also directed to pay the requisite terminal benefits by treating the petitioner's husband as a permanent employee, since the said issue was also taken note of by the Division Bench of this Court in the judgment referred supra. The above exercise shall be done by the 2nd respondent within a period of eight weeks from the date of receipt of copy of this order. The writ petition is disposed of accordingly. However, there is no order as to costs.