

(2014) 06 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 29117 of 2011 and M.P. No. 1 of 2011

T. Kavitha

APPELLANT

Vs

Superintending Engineer

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Citation : (2014) LabIC 3604 : (2014) 3 LLJ 498 : (2015) 1 LLN 749

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Judgement

N. Paul Vasantha Kumar, J.—By consent of learned counsel on both sides, this writ petition is taken up for final disposal. This writ petition is filed by the petitioner to quash the order of the respondent dated 16.11.2009 declining to consider the claim of the petitioner seeking compassionate appointment due to the death of her husband and for a direction to the respondent to order employment to the petitioner on compassionate ground.

2. It is the case of the petitioner that her husband V. Radhakrishnan worked as Contract Labourer in the respondent Electricity Generation and Distribution Corporation Limited for more than 14 years. Considering his 14 years of service as Contract Labourer, he was absorbed as Casual Labourer on 31.1.2008 and on 12.6.2009 he was absorbed as Temporary Casual Labourer and he was paid a sum of Rs. 70/- per day. While working in the said capacity, on 17.6.2009 when he was returning from his work, he met with a road accident and died due to shock and hemorrhage in spite of rushing to Government Hospital. Petitioner is the widow of deceased V. Radhakrishnan and having two minor children, aged about 11 and 9 years as on date. Petitioner's family is in indigent circumstance as she is unemployed and not having any immovable property. On 25.9.2009 petitioner submitted an application before the respondent seeking compassionate appointment. The said application was rejected on 16.11.2009 stating that there is no provision to consider the application of the petitioner for compassionate appointment as her husband worked as a Contract Labourer. Hence petitioner

has challenged the said order in this writ petition with the above prayer.

3. The writ petition is opposed by the respondent by filing counter affidavit admitting the facts about petitioner's husband's employment with the respondent and reiterating the reasons stated in the impugned order to justify the rejection order.

4. Mr. S. Doraisamy, learned counsel appearing for the petitioner submitted that the petitioner's husband having been absorbed as Temporary Casual Labourer from 31.1.2008 and served till 17.6.2009, he had completed more than 480 days of continuous service within 24 calendar months and therefore he is entitled to be regularised in terms of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The learned counsel further submitted that similar issue in respect of identically placed legal heir of an employee of the Tamil Nadu Electricity Board was considered by the Division Bench of this Court in the decision reported in R. Lakshmi Vs. Chief Engineer (Personnel), Tamilnadu Electricity Board, Chennai and Another, wherein also the claim of the temporarily appointed Casual Labourer, having completed 480 days of continuous service in 24 calendar months, was ordered regularisation, though he died before regularisation and his legal heir was directed to be given compassionate appointment after granting permanency. Therefore the issue involved in this writ petition is covered by the said Division Bench judgment, which was also implemented.

5. Mr. P.R. Dilipkumar, learned Standing Counsel appearing for TNEB, who also appeared before the Division Bench in the above cited case, fairly submitted that the said judgment was challenged before the Supreme Court by filing SLP, which was dismissed and thereafter the order was implemented. The learned counsel further submitted that there is no provision under the Scheme to give appointment on compassionate ground to the legal heir of a Casual Labourer.

6. I have considered the rival submissions in the light of the Division Bench judgment cited supra.

7. It is not disputed by the respondent that the petitioner's husband served as Contract Labourer for 14 years before he was absorbed as Casual Labourer on 31.1.2008 and again he was absorbed as Temporary Casual Labourer by the proceedings of the respondent dated 12.6.2009. Petitioner's husband completed about 503 days of continuous service in 24 calendar months. Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, mandates every employer to confer permanent status to workman/employee, who had completed 480 days of continuous service in 24 calendar months. Thus, it is evident that the petitioner's husband was entitled to get permanent status from 27.5.2009. Admittedly petitioner's husband died on 17.6.2009. Thus, the petitioner's husband is entitled to get permanent status in the respondent Corporation from 27.5.2009.

8. It is also an admitted fact that if a permanent employee of the respondent

Corporation dies while in service, one of the legal heir is entitled to get employment on compassionate ground, if the family is in indigent circumstance and also if no one in his family was in employment. Petitioner submitted her application seeking compassionate appointment on 25.9.2009 i.e., within three months from the date of death of her husband. The indigent circumstance of petitioner's family is not disputed by the respondent in the impugned order and during the hearing of this writ petition.

9. On the above facts and circumstances of this case, the Division Bench Judgment reported in *R. Lakshmi v. Chief Engineer (Personnel), TNEB (supra)* is applicable with full force to the petitioner's case. In the said judgment in paragraphs 34 to 38 it is held thus,

"34. On going through the ingredients of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, we are of the considered view that the Petitioner's husband, completed 480 days of work in a period of 24 calendar months (during his lifetime), and would become automatically a permanent employee under the Respondents/Tamilnadu Electricity Board, because of the simple fact that the Section mandates the Respondents to confer permanent status on the Petitioner's husband S. Raju and the conferment of permanent status to the Petitioner's husband S. Raju/Employee/Workman would not depend upon his employer on his own or on a direction given by the competent authority under the Act.

35. The words "employed" in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, are not directory in nature, in our considered opinion. Per contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the Petitioner's husband late Raju satisfied the essential condition of, being a worker and the Tamilnadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularization was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be necessarily granted to him by the Respondent/Tamilnadu Electricity Board.

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 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/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 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.

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.

(emphasis supplied)

As already stated supra, the learned counsel for the respondent has not disputed the applicability of the said judgment to the case on hand and fairly submitted that the SLP filed against the said judgment was dismissed and the same was also implemented.

Applying the said judgment to the facts of this case, the writ petition is allowed and the impugned order dated 16.11.2009 is set aside. The respondent is directed to confer permanent status/regularisation to the petitioner's husband V. Radhakrishnan from 27.5.2009. As the petitioner's husband died while in service as a permanent employee, the respondent is directed to extend the benefit of compassionate appointment to the petitioner, who is widow of the said V. Radhakrishnan, based on her qualification, within a period of four weeks from the date of receipt of copy of this order. The respondent is also directed to confer other terminal benefits if any, payable to the petitioner due to the grant of permanent status to the petitioner's husband from 27.5.2009 within eight weeks. There is no order as to costs. Connected M.P. No. 1 of 2011 is closed.