

(2013) 07 MAD CK 0227
In the Madras High Court
Case No : W.A. (MD) . No. 682 of 2010

The Chief Engineer, The Superintending Engineer, and
Assistant Executive Engineer

APPELLANT

Vs

N. Elavarasan

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 3 LLN 736

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : M. Balasubramanian, for the Appellant; D. Shanmugaraja
Sethupathy, for the Respondent

Final Decision : Dismissed

Judgement

P. Devadass, J.—This appeal has been directed as against the order of the Writ Court, dated 13.11.2009 passed in W.P.(MD). No. 3909 of 2009, whereunder, the appellants/Tamilnadu Electricity Board (TNEB) officials have been directed to provide appointment on compassionate ground to the respondent/writ petitioner, within prescribed time. The afore-said order came to be passed quashing TNEB's letter No. 0843-1/ni.pi.1/U.4/Ko.Va.ve/2007, dated 20.06.2007, whereunder the request of the respondent for appointment on compassionate ground has been rejected on the ground that he has applied beyond three years of his father's death.

2. Facts in brief:

i) On 16.06.1997, respondent's father died in harness. On 18.11.1997, his widow sought for appointment on compassionate ground. Then she was 45 years old. Thereafter, there were many clarifications and returns by TNEB and they were also responded to by her. As per the Board's Standing Orders, appointment on compassionate ground could be given up to 50 years of age. By April, 2004 she was about to cross her 53 years. Then, she sought job for her son/writ

petitioner. She was informed by the officials that since her son was below 18 years, he cannot be appointed. However, she pursued it stating that within few months he is to attain his majority.

ii) On 19.07.2006, few days after attaining 18 years, the writ petitioner applied for appointment enclosing his mother's no objection. On 20.03.2007, also he reiterated his request submitting another application. But, no response. In the circumstances, he filed W.P.(MD). No. 3887 of 2007 for issuance of Mandamus. On 24.04.2007, this Court directed TNEB to consider his representation dated 20.03.2007 and pass orders within 8 weeks. On 20.06.2007, second respondent passed orders based on Board's Standing order No. 46(Ni. Ni.), dated 13.10.1995, rejecting the request of the widow as she is above 50 years and also her son's request as he had applied 3 years after his father's death.

3. The learned counsel for the appellants contended that appointment on compassionate ground cannot be given dehors the circulars and orders of TNEB. Further, providing appointment to a person on compassionate ground after his attaining majority will amount to keeping a post reserved for him till he attains majority. In this respect, the learned counsel relied on a Division Bench decision of this Court in E. Ramasamy Vs. Tamil Nadu Electricity Board,].

4. On the other hand, the learned counsel for the respondent/writ petitioner contended that since there are contrary decisions of the Hon''ble Apex Court, Ramasamy's case (supra) is no longer good law. The learned counsel also cited J. Jeba Mary Vs. The Chairman, Tamil Nadu Electricity Board, The Chief Engineer (Personnel) and The Superintending Engineer , whereunder in similar circumstances, a learned Single Judge, relying on the decisions of the Hon''ble Apex Court directed TNEB to appoint the son of a deceased employee on compassionate ground.

5. We have anxiously considered the rival submissions. Perused the materials on record, the impugned order of TNEB and of the writ Court and the decisions cited.

6. The facts are not in dispute. Let us notice, the decisions on the point and resolve the tangle posed before us.

7. In T. Meer Ismail Ali Vs. The Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, a learned Single Judge of this Court, now, Hon''ble Mr. Justice F.M. Ibrahim Kalifulla, Judge, Supreme Court of India, held as under:-

I am, therefore, of the view that the petitioner's case deserve consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified.

8. The decision of this Court in MEER ISMAIL ALI (cited supra) was upheld by a Division Bench of this Court in W.A. No. 48 of 2004 dated 01.12.2004.

Subsequently, the SLP filed against it was also dismissed by the Hon''ble Apex Court vide its judgment in C.A. No. 6387 of 2004, dated 04.04.2005.

9. Another Division Bench of this Court in Selvi. R. Anbarasi Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, held as follows:-

The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P. No. 1584 of 2011 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be rejected on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T. Meer Ismail Ali Vs. The Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein.

10. In E. RAMASAMY's case (supra), as argued by the learned counsel for the appellants, the Division Bench negatived the request of the writ petitioner, who was a minor when his father died in harness and who subsequently, applied for appointment on compassionate ground, however, within 3 years of his attaining majority. It is pertinent to note that this decision has been overturned by the Hon''ble Apex Court. This has been noted in Mohanambal Vs. Director, Land and Survey Department, Kancheepuram District and Others,

11. The very same issue has been dealt with elaborately by one of us (N. Paul Vasanthakumar, J.) in the following cases, wherein, my learned Brother relied on Division Bench decisions and also the decisions of the Hon''ble Apex Court.

1. Mohanambal Vs. Director, Land and Survey Department, Kancheepuram District and Others,

2. J. Jeba mary v. The chairman, tamil nadu electricity board [2011 (3) LLN 405]

3. G. Saravanakumar vs. The Chairman Tamil Nadu Electricity Board, Chennai [2011 (2) CWC 83]

4. R. Prasath v. The Secretary, Labour and Employment Dept., Chennai (W.P. No. 3078 of 2006, dated 17.06.2010)

5. M. Uma v. The Chief Engineer (Personnel) Chennai (W.P.(MD). No. 4050 of 2006, dated 29.06.2010)

12. My learned Brother in his said decisions reviewed the case-laws on the point

and held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father.

13. It is not the case of the appellants that the family of the respondent is not in indigent status as on today. In the circumstances, we have no occasion here to deviate from the view taken by the Writ Court. In view of the foregoings, this writ appeal fails and it is hereby dismissed. Order of the Writ Court is upheld. The respondent is directed to produce a Certificate from the competent authority to the effect that the family of the respondent is in indigent circumstances as on today, within four weeks and submit the same before the second appellant herein along with a copy of this Judgment. On receipt of the same, based on the representations of the respondent/writ petitioner, dated 19.07.2006 and 20.03.2007, the appellants shall appoint him in any suitable post within two weeks therefrom. No costs.