

(2009) 03 MAD CK 0052

In the Madras High Court

Case No : Writ Appeal No. 1652 of 2006 and M.P. No. 1 of 2006

The Chief Engineer/Personnel, Tamilnadu Electricity Board
and The Superintending Engineer

APPELLANT

Vs

S. Suder

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Citation : (2009) 03 MAD CK 0052

Hon'ble Judges : S. Nagamuthu, J;D. Murugesan, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; S.N. Ravichandran, for the Respondent

Judgement

D. Murugesan, J .

1. The Tamil Nadu Electricity Board, represented by its Chief Engineer (Personnel), Chennai and the Superintending Engineer, Kanyakumari

Electricity Distribution Circle, Nagercoil-1, are the appellants herein.

2. The respondent, by name, S. Suder, applied to the appellants-Board for appointment on 21.10.1999 seeking for appointment on

compassionate grounds that his father Thiru. Sugirthamani, while he was working as Wireman at the Office of the Assistant Engineer, TNEB,

Kazhuvanthilai, Kanyakumari District, died due to illness on 7.3.1998. The said application was returned with a direction to the mother of the

respondent to apply again after completion of 18 years of age, by order dated 1.8.2000. The respondent attained the age of 18 years on

30.8.2002 and the said application was rejected on 28.4.2003 on the ground that no such application could be entertained, in view of the Board's

Proceedings No. 46, as the respondent did not attain the age of 18 years on the date of application, i.e. 3.9.2002. Virtually, the application was

rejected on the basis of the Memo dated 6.4.2002. Apparently, the application was made pursuant to the Circular in B.P.No.46, dated

13.10.1995. By virtue of the said Circular dated 13.10.1995, an application could be made for appointment on compassionate grounds, even in

case of minors, at the time of the death of the breadwinner, on attaining the age of 18 years and further within the period of three years from the

date of majority.

3. The issue as to the sustenance of such application by a minor after he became major and within a period of three years, came up for

consideration before this Court on very many occasions.

4. In the judgment reported in 2001 Writ L.R. 601 in the case of ""Ramados. D. v. The Chief Engineer, T.N.E.B"" , this Court (D. Murugesan, J.)

directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same

Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002 (4) L.L.N. 1132, (D. Murugesan, J.), in the case of ""P. Ravi v. Chief Engineer (P). T.N.E.B"" ,

also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6. Justice P.D. Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P. No. 19673 of 2003,

in the order dated 23.9.2003, in the case of ""J. Jayakaran v. The Superintending Engineer, Theni Electricity Distribution Circle, Theni"" and the

application for appointment on compassionate grounds was directed to be considered.

7. Justice K. Govindarajan has also taken the same view in Writ Petition No. 13099 of 2003, order dated 30.10.2003, in the case of ""G.

Muthamilselvan v. The Chief Engineer (Personnel) and Anr."".

8. Justice F.M. Ibrahim Kalifulla has also taken the same view in the decision reported in T. Meer Ismail Ali Vs. The Tamil Nadu Electricity Board

and The Superintending Engineer, Tamil Nadu Electricity Board, . We are told that the order in the said case of ""Meer Ismail Ali"" was confirmed in

Writ Appeal by the Division Bench in W.A. No. 4008 of 2004, by judgment dated

1.12.2004 and as against the said judgment dated 1.12.2004, the SLP in Civil Appeal No. 6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005.

9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No. 3050 of 2003 in the case of

Indiraniammal v. The Chief Engineer (Personnel) and Anr." and by judgment dated 8.3.2005, the Division Bench set aside the impugned order

therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the

application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate grounds is not automatic, as it would

amount to backdoor entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints

of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would

be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment

on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either

by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the Office of the Assistant Engineer, TNEB,

Kazhuvanthilai, Kanyakumari District, died due to illness on 7.3.1998. At the time of the death of his father, the respondent was 15 years old and

for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make

any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on

3.9.2002, within a period of four days from the date of his attaining majority, i.e. 18 years. That application was rejected on the ground that the

same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis

of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate

appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P. No. 46, dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board Proceedings in B.P. No. 46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority.

13. The objection of the Board appears to be that the application was made on 3.9.2002 and even before the said application was filed, by the

Memo dated 6.4.2002, the Board deleted the provisions of entitlement to make application conferred under B.P. No. 46, dated 13.10.1995. As

already observed, the appointment on compassionate grounds can be regulated by the employer with conditions attached to such regulations.

When the Board is empowered to make eligible a candidate to apply a person to apply for compassionate appointment, even after his attaining the

majority and within a period of three years, thereafter, in case he was a minor at the time of the death of the breadwinner, certainly, the Board

could take away such right by the issuance of Circular, by deleting such provisions entitling such person also to apply after attaining the age of

majority. The power of the Board cannot be questioned. Nevertheless, our attention was drawn to the fact that the subsequent Memo dated

6.4.2002 was set aside by this Court in Writ Appeal No. 3050 of 2003, by judgment dated 8.3.2005 and the matter is pending before the

Supreme Court in S.L.P.-Civil Appeal No. 16518 of 2005 and no interim order was granted.

14. We have perused the judgment of the Division Bench of this Court, dated 8.3.2005 in Writ Appeal No. 3050 of 2003, wherein the Division

Bench has directed consideration of the application of the petitioner therein, after setting aside the order impugned therein, necessarily meaning

thereby, the Memo dated 6.4.2002 was also set aside.

15. It is contended by learned Counsel for the appellants-TNEB that the Division Bench has not elaborately discussed the purport of the Memo

dated 6.4.2002 and the Division Bench had only set aside the order of rejection of the application and therefore, the judgment of the Division

Bench is not applicable to the facts of the present case.

16. In our opinion, we cannot go into the circumstances under which the Division Bench has rendered the judgment and for our disposal of the

present Writ Appeal, it would be suffice for us to refer to the direction of the Division Bench, namely, setting aside of the impugned order therein,

including the Memo dated 6.4.2002 as well.

17. In view of the fact that the appellants-TNEB cannot rely upon the Memo dated 6.4.2002 to reject the application of the respondent for

appointment on compassionate grounds, we do not find any merits to interfere with the impugned order passed by the learned single Judge. The

application of the respondent made on 3.9.2002 should be considered on its own merits and in accordance with law, without reference to the

Memo dated 6.4.2002. Such order should be passed by the appellants-TNEB within a period of two months from the date of receipt of a copy of

this judgment.

18. With the above modification in the impugned order passed by the learned single Judge, the Writ Appeal is disposed of. No costs. The

Miscellaneous Petition is closed.