

(2011) 03 MAD CK 0512

In the Madras High Court

Case No : Writ Petition No. 20949 of 2009

V. Selvarani

APPELLANT

Vs

The Chairman Tamil Nadu Electricity Board, The
Superintending Engineer Thiruvannamalai Electricity
Distribution Zone, The Executive Engineer Thiruvannamalai
Electricity Distribution and Thangammani

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 03 MAD CK 0512

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Rajan, for the Appellant; M. Vaidyanathan, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order passed by the second Respondent dated 17.4.2009 and direct the second Respondent to consider the Petitioner for compassionate appointment on the demise of her husband Bakthanathan, on merits and in accordance with law.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner's husband was employed as Lineman in the Tamil Nadu Electricity Board under the control of the second Respondent and he died in harness and intestate on 1.12.2003, leaving behind the Petitioner herein (wife of the deceased) and two minor daughters. According to the Petitioner, her deceased husband was the only breadwinner of the family.

(b) The Petitioner submitted several representations to the second Respondent seeking compassionate appointment within one year from the date of death of her husband. On 4.9.2006, the second Respondent rejected the request of the Petitioner on the ground that as per the legal heir ship certificate issued by the Tahsildar dated 28.1.2004, Petitioner is the second wife of the deceased

employee and therefore, she is not entitled for the compassionate appointment.

(c) According to the Petitioner, the said legal heir ship certificate was obtained by the fourth Respondent behind the back of the Petitioner and by using the signatures of the Petitioner, which were obtained by fraud on the pretext that her signatures were required for getting death certificate of the deceased Bakthanathan. It is the specific case of the Petitioner that she came to know about the said legal heir ship certificate dated 28.1.2004 for the first time only when the rejection order dated 4.9.2006 was passed by the second Respondent.

(d) Thereafter the Petitioner filed a suit in O.S. No. 39 of 2006 on the file of the District Court, Tiruvannmalai claiming the terminal benefits and the insurance amount due to the death of her husband Bakthanathan. The fourth Respondent, who was shown as first wife in the legal heir ship certificate dated 28.1.2004 was also arrayed as party in the said suit and she had also contested the suit by filing the written statement. The learned District Judge, Tiruvannamalai by judgment and decree dated 3.10.2007 granted decree for terminal benefits as prayed for by the Petitioner and also declared that the Petitioner is the legally wedded wife of the deceased Bakthanathan.

(e) After obtaining the judgment and decree, the Petitioner approached the concerned authorities for cancellation of earlier legal heir ship certificate dated 28.1.2004 and also for issuance of fresh legal heir ship certificate. The Tahsildar, on the basis of the judgment and decree, cancelled the earlier legal heir ship certificate dated 28.1.2004 and granted fresh legal heir ship certificate in favor of the Petitioner.

(f) Thereafter the Petitioner again approached the second Respondent along with the representation dated 24.12.2008 seeking compassionate appointment, in continuation of her earlier applications made well within the period of three years.

(g) The second Respondent again rejected the application of the Petitioner by his proceedings dated 17.4.2009 on the ground that the application is beyond the period of three years and hence the same cannot be entertained. Hence, the Petitioner has filed the present writ petition with the above prayer.

3. In this writ petition notice of motion was ordered on 14.10.2009 and subsequently on 1.7.2010 the writ petition was admitted. Today (21.3.2011) the writ petition is taken up for final disposal.

4. The learned Counsel for the Petitioner submitted that the issue raised in this writ petition is covered by the judgments of this Court as well as Honorable Supreme Court. The learned standing counsel for TNEB also fairly submitted that the issue is covered by the judgments in favor of the Petitioner.

5. In this case the Petitioner's husband died on 1.12.2003 while in service and the Petitioner made a representation seeking compassionate appointment within one year from the said date. The second Respondent rejected the request of the Petitioner by his proceedings dated 4.9.2006 on the ground that in the legal heir

ship certificate dated 28.1.2004 Petitioner is shown as second wife of the deceased employee. Thereafter Petitioner approached the Civil Court and obtained a decree on 3.10.2007 in her favor for getting terminal benefits and got herself declared as the legally wedded wife of the deceased Bakthanathan. Based on the civil Court decree Petitioner again approached the revenue authorities and got the earlier legal heir ship certificate dated 28.1.2004 cancelled and obtained a fresh legal heir ship certificate. Enclosing the said legal heir ship certificate Petitioner again made a representation to the second Respondent on 28.12.2008 seeking compassionate appointment, which is rejected by the impugned order dated 17.4.2009. From the above narrated facts it is clear that the representation of the Petitioner dated 28.12.2008 is not the first representation of the Petitioner, but it is made in continuation of her earlier representation made within one year from the date of death of the deceased Bakthanathan. The fact that the first representation was rejected by the second Respondent on 4.9.2006 itself is enough to prove that the first representation was made within three years from the date of death of the deceased employee. The Petitioner is actively pursuing her case and hence the subsequent representation made by the Petitioner on 28.12.2008 cannot be treated as belated application. In this view of the matter, I hold that the Petitioner has made representation seeking compassionate appointment well in the time, i.e. within three years from the date of death of the deceased employee.

6. It is also a fact that from 26.11.2001 to 28.2.2006, there was a ban order issued by the Government of Tamil Nadu in G.O. Ms. No. 212 P and AR Department, dated 28.11.2001 prohibiting appointment of staff in any of the Government/Government Undertakings except Teachers, Police and Doctors. The said ban order was lifted by the Government only during February, 2006.

7. (a) Similar issue as to whether an application seeking compassionate appointment can be rejected on the ground that the application was not submitted within three years from the date of death of the deceased employee and whether completion of 18 years within three years, is a mandatory requirement when earlier application submitted by other claimant is kept pending, was considered by this Court in the decision reported in T. Meer Ismail Ali Vs. The Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, (F.M. Ibrahim Kalifullah, J (as he then was)). In the said case the deceased Board employee died on 13.4.1993 and the application submitted by one of his daughter on 5.8.1997 was rejected on the ground that she had not completed 18 years of age and after completing 18 years of age when an application was made on 4.7.2000 which was rejected on the ground that the application was not made within three years from the date when the Board Proceedings dated 13.10.1995 was issued. This Court considering the technical plea raised by the Respondent Board set aside the said order and remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in W.A. No. 4008 of 2004 before the First Bench of this

Court (consisting of the Hon"ble Mr. Justice Markandey Katju, C.J. (as he then was) and N.V. Balasubramanian, J.) dismissed the writ appeal on 1.12.2004. The Respondents herein filed SLP No. 6387 of 2005 against the said order which was also dismissed on 1.4.2005 by the Honourable Supreme Court and consequently the said writ Petitioner was given compassionate appointment.

(b) Another writ petition in W.P. No. 41459 of 2005 was considered by me on the same set of facts. The said writ petition was allowed following the earlier order of the Division Bench of this Court made in W.A. No. 4008 of 2004 dated 1.12.2004 and the said decision is reported in Selvi. R. Anbarasi Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, . The said order was challenged by the TNEB before the First Bench in W.A. No. 988 of 2006. However, the said Petitioner was given appointment on compassionate ground by implementing the order and therefore the writ appeal was dismissed as in fructuous on 15.9.2006 by recording the statement made by the Standing Counsel for the TNEB.

(c) In W.P. No. 21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned single Judge dismissed the writ petition by order dated 4.8.2003 against which the Petitioner therein filed W.A. No. 3050 of 2003 and the said writ appeal was allowed by the Division Bench (consisting of the Hon"ble Mr. Justice P. Sathasivam (as he then was) and S.K. Krishnan, J) by order dated 8.3.2005 following the earlier judgments as well as the Supreme Court judgment reported in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, . Against the said decision Civil Appeal No. 2039 of 2006 was filed by the Respondent Board herein which was dismissed by the Honourable Supreme Court on 30.3.2010.

(d) Dismissal of another W.P. No. 775 of 2004 by order dated 29.1.2005 on the ground of delay was considered by the Division Bench (F.M. Ibrahim Kalifullah, J. (as he then was) and P. Murugesan, J) in W.A(MD). No. 29 of 2006 and by order dated 27.6.2006 the Division Bench allowed the writ appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on 15.11.1996. The said order of the Division Bench was also challenged by the Board in SLP(C) No. 15534 of 2007 which was also dismissed by the Apex Court on 8.4.2009.

(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. Kart hick 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. 50 68-50 69 of 2009 which was allowed on 30.3.2010 and the said order reads as follows:

Leave granted.

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)

From the perusal of the above order it is evident that the order passed by the Division Bench in writ appeal and in the review petition were set aside and the order of the single Judge dated 29.9.2006 was restored.

(f) In W.P. No. 18575 of 2006 I had an occasion to consider similar issue and allowed the writ petition on 20.6.2006 by following earlier orders. The said order was also challenged by the Respondent in W.A. No. 42 of 2007 and the Division Bench (D. Murugesan, J and K. Venkataraman, J) dismissed the writ appeal on 2.7.2009. The Board filed SLP(C) No. 8305 of 2010 which was also dismissed by the Honorable Supreme Court on 6.7.2010. The said candidate viz., P. Venkatesan was given compassionate appointment by order dated 18.8.2010.

(g) Again similar matter was considered by me in W.P. No. 29059 of 2003 and relief granted by order dated 7.7.2006, against which also the Board filed W.A. No. 1652 of 2006. The said writ appeal was dismissed by Division Bench (D. Murugesan, J. and S. Nagamuthu, J.) on 30.3.2009.

(h) W.P(MD). No. 1335 of 2006 was disposed of by me on 10.8.2006. The said order was also confirmed by the Division Bench (consisting of the Hon"ble Mr. Justice P.D. Dinakaran (as he then was) and P.R. Shivakumar, J.) in W.A. No. 309 of 2007 on 8.8.2007 and the same is reported in (2007) 6 MLJ 1011 (Superintending Engineer, Madurai Electricity Distribution Circle v. V. Jaya) and the said candidate viz., V. Jaya was given appointment order.

(i) Similar matter was again considered by me in W.P. No. 4050 of 2006 and the said writ petition was allowed by order dated 29.6.2010 following the orders of

the Division Bench and Supreme Court and the said judgment is reported in (2010) 7 MLJ 644 (M. Uma v. Chief Engineer (Personnel), TNEB, Chennai). No appeal is filed against the said order.

8. 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 husband, is not a valid ground to deny appointment on compassionate ground as no one in her family is employed.

9. The learned Counsel for the Petitioner also cited a decision of the Supreme Court reported in Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, for the proposition that once a judgment had attained finality on a particular/similar issue, it could not be termed as wrong and its benefit ought to be extended to other similarly placed persons. Citing the said judgment the learned Counsel contended that the earlier orders passed by this Court granting relief to similarly placed persons confirmed unto the Supreme Court and the said orders having been implemented by the Board, the Petitioner cannot be discriminated in the matter of giving compassionate appointment as she is also similarly placed. In the said decision in paragraphs 19, 20 and 23 the Supreme Court held thus,

19. ... once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present Appellant-writ Petitioners and in issuing similar directions to the State authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as SLP was also dismissed.

20. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned single Judge without filing intra-court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ Petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present Appellants. In our opinion, therefore, the learned single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

21. ...

22. ...

23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ Petitioners. It, however, challenged the order passed by the single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned single Judge was set aside. In our considered view, the order passed by the learned single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.

The said judgment of the Supreme Court was followed by the Division Bench of this Court (consisting of the Hon'ble Mr. Justice S.J. Mukhopadhyaya (as he then was) and V. Dhanapalan, J.) in W.A. (MD) Nos. 64 and 111 to 126 of 2007, judgment dated 14.11.2008. In paragraphs 28 and 29 the Division Bench held thus,

28. In a recent decision of the Supreme Court in Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, , the issue regarding the extension of benefit to similarly situated persons was dealt with and though the proposition of law was accepted that wrong decision in one case could not be extended to others, on facts, it was held that once a judgment had attained finality, it could not be termed as wrong and its benefit should be extended to other similarly situated persons.

29. The above decision of the Apex Court is squarely applicable to the facts of the present case, as in this case, Maundered and others, who were similarly placed like that of the workmen, were given permanent status by the management, but it was not done in the case of the workmen herein, thereby violating the provisions of Article 14 of the Constitution of India.

10. The issue i.e., to consider similarly placed persons equally if the issue is identical was considered by me in the decision reported in N.S. Balasubramanian and Others Vs. Food Corporation of India, . Paragraphs 16 and 17 reads as follows:

16.(a) The learned Senior counsel for the Petitioner cited the judgment of the Supreme Court reported in K.C. Sharma and others Vs. Union of India and others, , wherein in Para 6 it is held as under,

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the Appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay

in filing of O.A. No. 774 of 1994 is condoned and the said application is allowed. The Appellant would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.

(b) In another decision cited by the learned Senior Counsel for the Petitioner reported in State of Karnataka and Others Vs. N. Parameshwarappa and Others, in paragraphs 8 and 9 the Supreme Court held as under,

8. ...we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30.3.1990, as raised in the proceedings.

9. For all the reasons stated above, the appeals filed both by the State as well as by the private Respondent teachers fail and shall stand dismissed. Our declaration to extend the benefits of the judgments to others who have not approached the Court, but similarly placed is to do complete and substantial justice. No costs.

(c) In yet another decision reported in 1999 SCC 788 (Govind Ram Purohit and Anr. v. Jagjiwan Chandra and Ors.), in Para 3 the Honorable Supreme Court held thus,

3. It was lastly contended by the learned Counsel for the Appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the Appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

From the analysis of the judgments cited above, it is beyond doubt and clear that once the point is decided in favors of a group of persons, there is no further point in waiting for each and every person to file petition and pray for the same relief. As held by the Honorable Supreme Court, the benefit of the judgment is equally applicable to similarly placed persons to do complete and substantial justice.

17. The Law Department as well as the Finance Department of the Respondents/ Corporation considered the similarity of the issue involved and recommended to

the Respondents to pay the recovered amount to the Petitioners as well. Hence the denial of the said benefit to the Petitioners is unreasonable and violative of Articles 14 and 16 of the Constitution of India. The decisions cited by the learned Additional Advocate General reported in AIR 1996 SC 2890 (State of Karnataka v. G. Halappa) and AIR 2002 SC 2427 (State of Karnataka v. G. Halappa) have no application to the facts of this case because of the submission that Circular No. 13 dated 9.7.1997 was wrongly applied by the Respondents while stepping up of the pay. The said contention was raised before the Kerala High Court and before the Honorable Supreme Court and the same was not accepted. Hence it is not open to the Respondents to raise the said plea in this writ petition as they were parties to the proceedings before the Kerala High Court.

The said decision is confirmed in W.A. No. 956 of 2006 by the Division Bench by judgment dated 30.10.2006. SLP(C) No. 677 of 2007 filed against the same was also dismissed by the Supreme Court on 23.4.2007.

11. Having regard to the above said facts as well as the undisputed facts regarding the claim of the Petitioner, Respondents are not justified in passing the impugned order.

12. Applying the above referred judgments to the facts of this case, the impugned order is set aside, with a direction to the Respondents to consider the claim of the Petitioner treating the application submitted by the Petitioner dated 24.12.2008 as a continuation of earlier application submitted by her, in the light of the fresh legal heir ship certificate issued by the authorities and pass fresh orders, within a period of four weeks from the date of receipt of copy of this order, without reference to the objections raised in the impugned order.

13. The writ petition is ordered accordingly. No costs.