

(2012) 11 MAD CK 0244

In the Madras High Court

Case No : Writ Petition No. 14397 of 2012 and M.P. No. 1 of 2012

V. Siva

APPELLANT

Vs

Tamil Nadu Electricity Board and Another

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2013) 1 MLJ 29

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Chandrasekaran, for the Appellant; R. Varalakshmi, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner's father was a member of INDCOSERVE Industrial Cooperative Society, which supplied labour to the Electricity Board. His father died on 16.9.1997 and thereafter his mother V. Shyamala made representation seeking for compassionate appointment in the Electricity Board. It transpires that the representation made by the petitioner's mother was rejected by the Board on 1.8.2005 stating that it was not feasible for compliance inasmuch as her husband was not working in the Electricity Board. Thereafter, the petitioner started sending representations on coming to know that one Nagammal, who allegedly similarly placed got a favourable order from this Court in W.P. No. 39841 of 2012 dated 5.4.2006. At the time of death of his father, the petitioner was a minor and was only 8 years old. The petitioner's mother after sending representation filed a Writ Petition being W.P. No. 44985 of 2006. The said writ petition came to be disposed of by a direction to the respondents to consider her representation. Significantly, in that writ petition, the petitioner's mother did not disclose about her claim being rejected by the Board even in the year 2005. Thereafter, the petitioner made representation and filed the present writ petition. It is not clear as to how such a writ petition is maintainable, when the petitioner's father was never an employee of the Electricity Board and having

absorbed by the Board. Admittedly he was working as a member of INDCOSERVE Industrial Cooperative Society.

2. On notice from this Court, the respondents Electricity Board filed a counter affidavit dated 10.8.2012. In the counter affidavit, it was stated that even as early as 1.8.2005, their request was rejected as he was not a permanent worker by the Board. Even subsequent to the order passed by this Court dated 28.11.2011 in the case filed by the petitioner's mother, the petitioner sent a letter dated 16.12.2011, the 2nd respondent passed a detailed order dated 23.1.2012, reminding him the earlier order passed. It was stated that the petitioner's father was working only in INDCOSERVE as temporary employee. Since he died as an employee of the Cooperative Society, he should not claim any relief against the Board and all his terminal benefits were paid only through the society and not by the Board. In the absence of scheme for any employment of such person, the question of the petitioner being considered for the said post does not arise. It is also stated in the counter affidavit that the petitioner at the time of death of his father was less than 10 years, being a minor was not considered for any employment.

3. Since the learned counsel for the petitioner placed reliance upon Nagammal's case in W.P. No. 39841 of 2002, it must be noted that such judgment will have no assistance to the petitioner. In that case, it was held that when the worker of the society died, subsequently, the legal heir was given compassionate appointment in the society and thereafter when absorption was made, it was made clear that she was eligible for absorption. It is not clear as to how the said judgment will have any assistance to the petitioner.

4. Reliance was placed upon the judgment of Division Bench of this Court in R. Lakshmi v. The Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai 2 and Another in W.P. No. 5980 of 2004. In that case, after referring to the provisions of the Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act, 1981, it was observed that if any person completes 480 days of service, he is deemed to have become permanent and even in the absence of any order for formal petition, by virtue of Section 3(1) of the Act, there is a legal fiction created and therefore the said employment should be deemed to be permanent employment and all consequential benefits arising out of various scheme must apply in case of death of such employee. The Division Bench does not answer the larger question as to whether if the contract employee completes 480 days of service, that would amount to deemed absorption against public employment. There is no such proposition on the above issue and the Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act, 1981 only provides for absorption against the employer, which engaged the labourer and not the principal employer. In the light of the above, the writ petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.