IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

WRIT APPEAL NO.200088 OF 2021 (S-RES)

BETWEEN:

1. THE GULBARGA ELECTRICITY
   SUPPLY COMPANY LTD.,
   REPRESENTED BY ITS
   MANAGING DIRECTOR,
   KALABURAGI – 585 102.

2. THE GENERAL MANAGER,
   THE GULBARGA ELECTRICITY COMPANY LTD.,
   MAIN ROAD, KALABURAGI.

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

3. THE ASSISTANT EXECUTIVE ENGINEER
   GESCOM, GANGAVATI,
   DIST: KOPPAL.

...APPELLANTS

(BY SRI KRUPA SAGAR PATIL, ADVOCATE)

AND:

1. HULIGEMMA
   W/O BASAVARAJ J.
   AGE ABOUT : 58 YEARS,
   OCC: NIL.,

2. GAYATRI
D/O BASAVARAJ J.
AGE ABOUT : 38 YEARS,
OCC: NIL.,

3. VIDYASHREE
D/O BASAVARAJ J.
AGE ABOUT : 36 YEARS,
OCC: NIL.,

4. RAJU
S/O BASAVARAJ J.
AGE ABOUT : 31 YEARS,
OCC: NIL.,

ALL R/O: HRS COLONY GANGAVATHI,
DIST: KOPPAL – 583 231.

…RESPONDENTS

(BY SRI P.VILASKUMAR, SENIOR ADVOCATE FOR
SRI NITESH PADIYAL, ADVOCATE FOR C/R-1 TO R4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE FINAL ORDER DATED 06.01.2021 PASSED BY THE LEARNED SINGLE JUDGE IN W.NO.204232/2014 (S-RES) AND TO PASS ANY SUCH APPROPRIATE ORDERS AS THIS HON'BLE COURT MAY DEEM FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

The present appeal by the Gulbarga Electricity Supply Company Ltd. (for short 'GESCOM') calls in question the correctness of the order of the learned Single Judge passed in W.P.No.204232/2014, whereby the Writ Petition filed by the family members of late Basavaraj seeking for quashing of the endorsement rejecting the prayer of granting appointment on compassionate grounds came to be challenged in the Writ Petition, which eventually was allowed. The Writ Petition was allowed setting aside the endorsement of the Corporation rejecting the claim to consider appointment on compassionate grounds and further direction was granted by the learned Single Judge in the nature of writ of mandamus to the Corporation to consider the application filed by the son of late Basavaraj.

2. Parties are referred to by their ranks in the writ proceedings for the purpose of convenience.

3. The facts made out are that: Basavaraj S/o: Nagappa was an employee of the respondent-GESCOM who died on 02.01.2005 during his service. It is thereafter submitted that in terms of Annexure-A, the wife of late K.Basavaraj, the deceased employee had made out a representation to the Corporation on 17.06.2005 to the effect that her son is a minor who was not attained the age of 18 years and permission was sought to file an application after he attained the age of majority.

4. It is further submitted that, in terms of Annexure-B Huligemma W/o: Basavaraj made another representation on 27.11.2007, reiterating the contents of Annexure-A.

5. It is also the case of the petitioner that in terms of Annexure-C, application was made requesting for appointment on compassionate grounds dated 15.08.2008/16.08.2008. It is this application which is in dispute as the Corporation has contended that this application was never made to it and did not bear any

acknowledgement or endorsement to substantiate that it was served on the Corporation.

6. It is the further case of the petitioner that an endorsement came to be issued at Annexure-D, rejecting the request made and referring to the application dated 26.10.2012 stated to have been made by the son of late Basavaraj, petitioner No.4.

7. The Writ Petition came to be heard and after detailed consideration, the Court has allowed the Writ Petition while quashing the endorsement at Annexure-D and directing that steps be taken to consider the application filed by petitioner No.4 i.e., the son, in accordance with law as applicable norms and qualifications of petitioner No.4.

8. The endorsement, which was in challenge before the learned Single Judge dated 16.05.2013 was to the effect that the application ought to have been filed within one year of date of death and same having been

filed after lapse of 7 years 9 months and 24 days delay, could not have been considered in terms of the Rules in force. Reference to the application that was considered was the application stated to have been made on 26.10.2012, by petitioner No.4.

9. A perusal of the order of the learned Single Judge, would reveal that the learned Single Judge has taken note of the Rule in force i.e., The Regulation 5 of Application for appointment of Karnataka Electricity Board Recruitment (Appointment on Compassionate Grounds) Regulations, 1997. Regulation 5 that was in force as on the date of the death prior to its amendment reads as follows;

> *"5. Application for Appointment :-*
>
> *Every dependent of a deceased Board employee, seeking appointment under these regulations shall make an application alongwith all supporting records/documents WITHIN ONE YEAR from the date of the Board Employee, in such form, as may be notified by the Board from time to time, to the Head of the office under whom the deceased Board employee was working.*

Provided that in the case of a minor, application shall be made within a period of ONE YEAR after attaining majority."

(emphasis supplied)

10. In terms of the said rule, there was a requirement under the proviso that where the applicant is a minor, application should be made within a period of one year after attaining majority.

11. The learned Single Judge has made observations as regards the application filed within one year after attaining the age of majority at paragraph No.15, which reads as follows;

"15. The petitioner No.4 attained majority and is stated to have been made an application on 16.08.2008 in furtherance of the representation made by the petitioner No.1 on 17.06.2005 to the respondents. Though, application dated 16.08.2008 produced along with the petition does not bear any endorsement of having been received by the respondents. The application is filed today under a memo, which bears the endorsement of respondents to be received on 17.08.2008. Thus, the contention of Sri Nagraj Patil, learned counsel, that no application was filed in the year 2008, cannot be believed. There appears to be another

application filed by the petitioner No.4 in the year 2012 which was considered by the respondents and rejected, what is to be considered by this Court is to whether the respondents could have replied to the application made in the year 2008 in 2013 and whether the said delay of 5 years could enure to the corporation by relying upon Rule 5 of the Regulations and amendment made thereto."

12. The observation made is to the effect that petitioner No.4 had attained majority and flied an application on 16.08.2008 and though the application produced along with petition at Annexure-C did not bear any endorsement, however memo was filed by petitioner on the date of order being passed, which had document reflecting the endorsement of respondent to have received the application on 17.08.2008.

13. It must be seen that the respondent-Corporation in the present appeal has canvassed the primary contention that no application was made over to the Corporation dated 16.08.2008 and Annexure-C to the petition did not bear an acknowledgment. It is further submitted that even otherwise despite the learned Single

Judge having referred to a document producing an acknowledgment having been produced, the memo filed along with Writ Petition did not have any document with an acknowledgment as regards Annexure-C. It is further submitted that in the absence of any acknowledgement to Annexure-C, the learned Single Judge could not have taken note of any other document to hold that the application was filed within one year of attaining majority.

14. It is further contended that the additional documents produced along with the appeal include an extract of the Register which would indicate that the Register has been tampered with and an entry to the effect that an application was delivered on 17.08.2008 and as the said date was the Sunday and the respondent-Corporation is a Public Authority, obviously, such entry was a concocted one entered in the register in collusion with the employees of the Corporation.

15. Further, the counsel for the Corporation would submit that a Show-cause notice was issued in the name

of the official to explain as to how such entry in the Register has came to be made as perusal of the Register would indicate that it was an inserted entry.

16. Learned Senior Counsel appearing on behalf of the petitioners would submit that Annexure-C was in effect submitted to the Corporation which application if taken note of, would be an application filed within one year of date of death of Basavaraj. It is submitted that the said handing over of application within one year from the date of attaining majority. It is submitted that evidence of having submitted such application was in the Register which the Corporation has produced in the appeal proceedings.

17. It is further submitted that the family members of Basavaraj including petitioner No.4 have no role in maintenance of the Register nor have any access to the Register, which bears an entry relating to the furnishing of application at Annexure-C.

18. Heard both sides.

19. The facts which are not in dispute that Basavaraj K., died on 02.01.2005. In terms of Regulation 5 of the Karnataka Electricity Board (supra), in case the claimant is a minor, application must be filed within one year of date of attaining majority. It is not in dispute by both sides that the date of birth is 12.06.1990. If that were to be so, application ought to have been filed by 12.06.2008.

20. The entirety of reasoning of the learned Single Judge is found at paragraph No.15, wherein the learned Single Judge has recorded an affirmative finding that the application dated 16.08.2008 apparently referring to Annexure-C was submitted on 17.08.2008 and if that were to be so, application having been filed within one year of attaining majority ought to have been taken note of.

21. A perusal of the Writ Petition records would reveal that Annexure-C to the petition was the application

dated 15.08.2008/16.08.2008 made in the name of petitioner No.4. There is no acknowledgement to the said application. Though the learned Single Judge in the observation at paragraph No.15 has stated that memo was produced including copy of endorsement. A perusal of the memo, does not indicate Annexure-C with acknowledgement, what has been produced along with memo is only an RTI application. This could not take the role of establishing that Annexure-C was received on 17.08.2008, as observed by the learned Single Judge. What is curious is the submission of learned counsel for the Corporation that 17.08.2008 was the Sunday. The relevant Register was directed to be produced. The learned counsel for the petitioners was also provided access to the said Register.

22. A perusal of the Register extract of which is produced along with the additional documents would reveal that entry No.428 refers to the alleged acknowledgement of the application made by petitioner

No.4. There is no signature in the Register by any official alongside such entry. Above the said entry in the Register another entry has been made, which appears to be pertaining to entry No.428, which has been struck off and subsequently entry No.428 is again inserted. This insertion is visible to the bear eye. Insofar as the contention that the petitioners have no role insofar as such entry as the Register is in the possession of the respondent-Corporation, it could be stated that any insertion in the Register would be for the benefit of the claimants and accordingly if there is an insertion as is apparent in the Register and the stand taken by the Corporation, it is only for the benefit of the claimants.

23. It must be noticed that the contention of the Corporation that no application was made in the year 2008, is further strengthened by the fact that the endorsement at Annexure-D, which rejected the application made by petitioner No.4 refers to application made by petitioner No.4 dated 26.10.2012. The said

representation stated to have been made by petitioner No.4, is evidenced by extract of the Register produced along with the additional documents which makes an entry that petitioner No.4 had made an application on 26.10.2012. If the application dated 26.10.2012 is taken note of, obviously it is beyond the period of one year of attaining majority and has been made after a lapse of 4 years after attaining majority. If the only official application as found in the Register was made by petitioner No.4 on 26.10.2012, same could not have been considered.

24. The finding of the learned Single Judge is only on the basis of the say of the petitioner that application was filed and duly acknowledged and endorsement was made in the year 2008. However, there is no evidence of an acknowledgement and even the Register produced by the Corporation would prima facie indicate an insertion was made and the feeble response of the petitioners is not sufficient to dispel the apparent insertion in the Register.

Further, in order to clarify the additional document evidencing petitioner No.4 to have made an application on 26.10.2012, Original Register was produced and entry perused. This would further clarify that what was filed by petitioner No.4 was an application only on 26.10.2012.

25. Even, if an application was made in the year 2008, there is no reason forthcoming as to the delay from 2008 to the second application in 2012. Such inaction would also defeat the very objective of granting appointment on compassionate grounds after undue delay, which is a settled position of law.

26. Accordingly, the Writ Appeal is allowed and the order of the learned Single Judge is set aside.

27. In light of the vehement submission of the learned counsel for the Corporation that the Register has been altered, the Corporation is reserved liberty to take appropriate action both on the administrative side and even before the appropriate police authorities.

28. The original Register is permitted to be returned by the Registry after retaining a duly attested copy of the relevant extract.

Sd/-
(S.SUNIL DUTT YADAV)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE

MSR
List No.: 1 Sl No.: 24