

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 24021 of 2012 (C)

PETITIONER(S):

**JAYASREE.K.K.
W/O LATE SURENDRAN, PUNNOTHPARAMBIL HOUSE
ARIYANNUR P.O, GURUVAYUR, TRICHUR DISTRICT 680102**

**BY ADVS.SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SRI.P.N.APPUKUTTAN
SMT.P.A.RINUSA**

RESPONDENT(S):

- 1. GURUVAYOOR DEVASWAOM
MANAGING COMMITTEE, REPRESENTED BY ITS ADMINISTRATOR
GURUVAYUR DEVASWOM, GURUVAYOOR
TRICHUR DISTRICT 680101**
- 2. THE MANAGER,
SREEKRISHNA COLLEGE, ARIYANNUR P.O, GURUVAYUR
TRICHUR DISTRICT 680102**

**Addl.3. THE STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF HIGHER EDUCATION
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 033.**

**(ADDL.R3 IS SUO MOTU IMPEADED AS PER ORDER DATED
24.03.2015)**

**R1,R2 BY ADV. SRI.K.JAJU BABU,SC,GURUVAYUR DEVASWOM
R BY SRI.P.GOPAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXT. P1 TRUE COPY OF THE APPLICATION DATED 14-06-2012
SUBMITTED BY THE PETITIONER
- EXT. P2 TRUE COPY OF THE ORDER DATED 29-02-2000 ISSUED BY THE
1ST RESPONDENT
- EXT. P3 TRUE COPY OF THE ORDER DATED 28-08-2008 ISSUED BY THE
1ST RESPONDENT
- EXT. P4 TRUE COPY OF THE ORDER DATED 29-07-2009 ISSUED BY THE
1ST RESPONDENT
- EXT. P5 TRUE COPY OF THE JUDGMENT DATED 15-07-2002 IN OP NO
2097/2002
- EXT. P6 TRUE COPY OF THE NOTIFICATION DATED 18-02-2012 ISSUED BY THE
RESPONDENT
- EXT.P7 COPY OF THE LETTER DATED 17.12.12 ISSUED BY THE 1ST
RESPONDENT.
- EXT./P 8 COPY OF THE DECISION TAKEN BY THE GURUVAYUR DEVASWOM
MANAGEMENT COMMITTEE DATED 17.01.08
- EXT.P9 COPY OF THE DECISION TAKEN BY THE GURUVAYUR DEVASWOM
MANAGEMENT COMMITTEE DATED 6.5.08
- EXT.P10 COPY OF THE DECISION TAKEN BY THE GURUVAYUR DEVASWOM
MANGEMENT COMMITTEE DATED 6.7.09
- EXT.P11 COPY OF THE LETTER NO.EC1-2836/12 DATED 12.4.12 ISSUED BY THE
ADMINISTRATOR GURUVAYUR DEVASWOM BOARD.
- EXT.P12 COPY OF THE DECISION NO.30 OF THE MANAGEMENT COMMITTEE
OF GURUVAYUR DEVASOM OBTAINED UNDER RIGHT TO
INFORMATION ACT.
- EXT.P13 COPY OF G.O(MS) NO.636/2013/H.EDN. DATED 7.10.13.

RESPONDENTS' EXHIBITS

- EXT.R1(A) COPY OF THE RESOUTION NO.44 DATED 22.1.2000 OF THE
GURUVAYUR DEVASWOM MANAGEMENT COMMITTEE.
- EXT.R1(B) COPY OF THE JUDGMENT DATED 29.7.04 IN W.P.(C) NO.12076/04 OF
THI HON'BLE COURT.

// TRUE COPY //

P.A TO JUDGE.

K. VINOD CHANDRAN, J.

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W.P.(C) No.24021 of 2012 - C

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Dated this the 23rd day of September, 2015

J U D G M E N T

The petitioner, a hapless widow, seeks compassionate appointment in the aided college under the 1st respondent. The claim arose on the death of the petitioner's husband on 18.02.2012. The petitioner's husband was working as a Laboratory Assistant in the 2nd respondent college. When he expired; immediately thereafter on 14.06.2012, the petitioner made an application before the respondent Devaswom Board evidenced at Ext.P1 for appointment as a Laboratory Assistant, under the compassionate appointment scheme.

2. It is an admitted fact that the respondent had at that point of time issued a notification, at Ext.P6 for appointment of Peon/Laboratory Assistant, in which four vacancies were notified. There was an interim order that one

post shall be kept vacant. The said post even now is kept vacant, is the submission of the learned Standing Counsel appearing for the respondent Board.

3. The learned Senior Counsel appearing for the petitioner relies on similar orders passed in the case of other applicants as also the decision taken by the Devaswom Board evidenced at Ext.P12, to contend that the petitioner is entitled to be appointed under the Scheme. The learned Senior Counsel also relies on G.O(P)12/99/P&ARD, dated 24.05.1999 to contend that there is no age bar applicable to the widows, who applied for compassionate appointment.

4. The learned Standing Counsel however would contend that the aforesaid Government Order is not at all applicable to private aided colleges and even the provision relied on to get over the age limit is applicable only to part-time contingent employees. The learned Standing Counsel would assert that there being no specific scheme for appointment on

compassionate grounds, the petitioner cannot claim any such appointment.

5. Ext.P5 is a judgment in a writ petition, filed by two persons, who had applied on compassionate grounds under the dying-in-harness scheme, in the Sreekrishna College, Guruvayur. This Court by Ext.P5 directed the application to be considered by the Devaswom Board. Though an appeal was filed from the above order by contract employees, specifically taking leave to file the appeal, a Division Bench as is indicated at Ext.R1(b) refused to interfere with the directions in the judgment. Exts.P5 and R1(b) does not lay down any positive dictum as to the compassionate appointment scheme, applicable to the 2nd respondent's college. However, it is an admitted fact that the petitioners in Ext.P5 were given appointment and the same has also been regularised by the Government. The said appointments were on compassionate ground.

6. Exts.P3, P4, P8, P9 and P10 are also orders issued

by the Devaswom Board, in which certain other persons were granted appointment on compassionate grounds. Ext.P11 is a reply given by the Administrator of the Devaswom Board, wherein it is specifically indicated that in the year 1999-2000, a compassionate appointment scheme had been implemented in the Board and that employees under the college have been brought under the scheme.

7. Ext.P12 is a decision of the Board, which has affirmed the proceedings of the Administrator, making applicable a compassionate appointment scheme to the employees of the aided college. The overwhelming instances as to appointments having been regularly made under the compassionate scheme, would stand against the plea of the respondent Devaswom Board that there is no such scheme applicable to the 2nd respondent college. The said instances, justify the ground raised of hostile discrimination in the case of the petitioner; against the Devaswom Board.

8. The 2nd respondent Board also cannot take a contention that the Government Order referred to above specifically excludes private aided colleges. The Board decided to bring in such scheme and make it applicable to the 2nd respondent college. Though the Government thought it fit to exclude private aided colleges a management could validly bring in such scheme since the appointment and other service conditions are regulated by the terms prescribed by the University and not the Government.

9. In the present instance Management of the private aided college themselves have decided to adopt the scheme to the employees of the college. In such circumstance, merely because private aided colleges have been excluded under the Government Order, a Management, who had adopted the scheme and had made such appointments cannot pick and choose and deny such appointments to particular individuals.

10. The next contention raised is with respect to the

age limit, as per the provision in clause 18 of the Compassionate Employment Scheme, which is extracted as under:-

Age limit: In the case of appointment to widow/widower and in* [the case of father/mother of unmarried Government servant who dies in harness and also in] the case of appointment in part-time contingent posts, there shall be no upper age restriction ie. applicants shall be given appointment up to the age of retirement. In all other cases, the upper age limit prescribed for direct recruitment to the post shall apply. *[substituted by G.O(p) 24/99 DT.18.11.1999].

11. On a reading of the above provision, the contention of the Devaswom Board that it applies only to part-time contingent employees cannot be accepted. The use of the word "and" specifically indicates that in the case of appointment of the widow/widower or father/mother of a Government servant and also in the case of the part-time contingent posts, there shall be no age limit. Hence in addition to the appointment to part-time contingent posts, the appointment of a widow/widower or father/mother is excluded from the

prescription of age limit. It is only reasonable since the widow/widower or father/mother would definitely not be within the age limit prescribed for direct recruitment, if an employee dies-in-harness. The very intention of such a scheme is to provide succour to the family who lost its only bread-winner. It is also specifically prescribed that the prescription of age limit shall apply in all other cases, for example, in the case of children, the same would definitely apply. The said principle is in fact accepted in the Calicut University Statute, 1979 in the prescription, which is extracted hereunder:-

45. Age for appointment for the purpose of appointment of members of non-teaching staff by direct recruitment the minimum and the maximum age followed for similar categories of posts in Government service shall be followed.

and also in the Pubic Service (Raising of Upper Age Limit for Appointment Rules, 1978) is extracted hereunder:-

(3) Notwithstanding anything contained in sub-rules (1) and (2), the maximum upper age limit for direct

recruitment to any post shall in no case exceed 50 years except in the case of widows/widowers who were dependents of Government Servants died in harness.

12. In such circumstance, it is only proper that the petitioner is appointment to the post kept vacant as per the interim order of this Court be considered. The same shall be done within a period of two months from the date of receipt of a certified copy of this judgment. The petitioner shall be given appointment if the petitioner satisfies the respondents that the petitioner had no major employed children at the time of the death of the petitioner's husband and that at the time of death of the petitioner's husband, he alone was the sole bread-winner of the family.

The writ petition is disposed of. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.