

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN  
AND  
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.975 of 2011  
& M.P.No.1 of 2011

1. The Joint Director of School Education,  
Higher Secondary (Vocational),  
O/o Director of School Education,  
College Road, Chennai-6.
  2. Chief Educational Officer,  
Thiruvannamalai District. .. Appellants/Respondents
- Vs
- S.Prema .. Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.12.2009 made in W.P.No.15324 of 2009 filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus following for the records pertaining to the endorsement made by the 2<sup>nd</sup> respondent in Na.Ka.No.7092/A1/09 dated:14.7.2009 and quash the same and direct the respondents to appoint the petitioner on Compassionate ground and grant her all consequential source and monetary benefits.

For appellants : Mr.R.Rajeswaran, Spl.G.P.  
For respondent : Mr.M.Muthappan

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

In this Writ Appeal, we are called upon to examine the order of the learned single Judge made in W.P.No.15324 of 2009, dated 04.12.2009, wherein, as to the challenge made by the respondent-writ petitioner to the order passed by the second appellant in Na.Ka.No.7092/A1/09, dated 14.07.2009 and seeking for a consequential direction to the appellants to appoint her on compassionate grounds and grant her all consequential service and monetary benefits, the learned single Judge allowed the Writ Petition by setting aside the

impugned order and directed the appellants to consider the case of the respondent-writ petitioner for compassionate appointment without regard to her marital status and such an order was directed to be passed within a period of eight weeks from the date of receipt of a copy of the order and to communicate the result to the writ petitioner without fail, against which, the present Writ Appeal is filed by the appellants.

2. The respondent-writ petitioner is a daughter of the deceased Shanmugam, who was working as Part-time Vocational Instructor (Agriculture) in the Government Higher Secondary School, Kannanmangalam, Thiruvannamalai District. He died in harness on 17.02.2000 and her mother sought for payment of terminal benefits, besides the writ petitioner making a request for employment assistance on compassionate grounds. As the same was not forthcoming, she moved this Court in W.P.No.7973 of 2008 for a direction to the appellants to pass orders on the representation made by her, dated 05.09.2007 for appointment on compassionate grounds on the death of her father Shanmugam while in service. This Court, by order dated 01.04.2008, directed the appellants to consider and dispose of the said representation of the writ petitioner, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of the order. Accordingly, she also represented to the appellants thereafter and as there was no response, she filed Contempt Petition No.532 of 2000 before this Court, and during the pendency of the contempt proceedings, the second appellant issued an order on 14.07.2009 in Na.Ka.No.7092/A1/10, rejecting the claim of the writ petitioner on the ground that she got married on 04.06.2009 and hence, she is not eligible for appointment on compassionate grounds.

3. Before the Writ Court, the appellants have filed counter affidavit, stating that the writ petitioner's father late Thiru.S.Shanmugam was appointed as single Part-time Vocational Instructor (Crop Production) on 10.08.1979 by the Headmaster of the Government Higher Secondary School, Kannamangalam and at that time, he possessed only Technical Training Certificate in Agriculture and hence, the Government found that mere Technical Training Certificate in Agriculture qualification is not enough to teach the students of Higher Secondary Standard and therefore, the Government passed a Government Order in G.O.Ms.No.834, Education Department, dated 23.09.1999 directing the Vocational Instructors with Technical Training Certificate qualification to undergo three months' training conducted by the Directorate of Technical Educational and Research and Training (DTERT) and to get through the examination to be conducted at the end of the training. Accordingly, the writ petitioner's father was instructed to undergo the training at DTERT in 1996 and he appeared for the examination at the end of the training, but failed and he subsequently got through the examination and thereafter, his services have been regularised with effect from

12.11.1997, by proceedings of the Joint Director (Vocational), dated 02.04.2008. Consequent thereto, all the benefits have been paid to the first legal heir, that is, to the mother of the writ petitioner, on 01.08.2008. The father of the writ petitioner died on 17.02.2000 in harness. The writ petitioner has filed W.P.No.7973 of 2008 to direct the appellants to pass orders on the representation, dated 05.09.2007 for appointment on compassionate grounds and the said Writ Petition was disposed of with a direction to consider and dispose of the said representation, on merits and in accordance with law. On receipt of the order copy in W.P.No.7973 of 2008, the representation dated 05.09.2007 was perused by the District Educational Officer, Thiruvannamalai and by proceedings, dated 08.04.2009, the writ petitioner was informed that the Junior Assistant post appointment under compassionate grounds is made upto the seniority date 24.04.1995 and whenever the date approaches to 17.07.2000, the writ petitioner's name will be considered for appointment. In the meanwhile, the second appellant rejected the claim of the writ petitioner on 14.07.2009 on the ground that she was married on 04.06.2009. As per G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, only the dependents of the deceased Government servant, viz., wife / husband / son / unmarried daughter would be eligible for appointment on compassionate grounds.

4. On a careful consideration of the issue and by looking into the counter affidavit filed by the appellants, justifying their action mainly on the ground that the writ petitioner was married and also taking note of the fact that when her application was under consideration, the relevant G.O. stipulated that only the unmarried daughter can be granted such relief of compassionate appointment and looking into the claim of the writ petitioner on the basis of the ruling of the Division Bench of this Court, which was followed by a learned single Judge in the decision reported in 2008 (6) MLJ 774 (G.Girija Vs. Assistant Director (Panchayat), Kancheepuram), the learned single Judge allowed the Writ Petition with the following observations:

"3. On notice from this Court, respondents have filed counter affidavit dated 20.11.2009 justifying their action solely on the ground that the petitioner is married. When her application was under consideration, the relevant Government Order stipulates only an unmarried daughter can be granted such relief, the issue is no longer valid.

4. In this context, the learned counsel for the petitioner relied upon the judgment of this Court reported in 2008 (6) MLJ 774 (G.Girija Vs. Assistant Director (Panchayat) Kancheepuram) wherein, the learned Judge after following the Division Bench judgment, in paragraph No.7 has observed as follows:

"7. In view of the Division Bench Judgment which has already settled the controversy in this matter, the impugned order challenged in this writ petition is set aside and the second respondent is directed to issue appointment order to the petitioner on compassionate ground without reference to the marriage of the petitioner in terms of the order passed by the Division Bench of this Court. Necessary order is directed to be passed by the second respondent within a period of four weeks from the date of receipt of a copy of this order."

5. The same question also came up before this Court for consideration in W.P.No.30089/2006.

6. In the light of the same, the writ petition stands allowed and the impugned order is set aside. The respondents are directed to consider the case of the petitioner for compassionate appointment without regard to her marital status. Such an order shall be passed, within a period of eight weeks from the date of receipt of a copy of this order and communicate the result to the petitioner without fail. No costs. Consequently, connected miscellaneous petition is closed."

5. Mr.R.Rajeswaran, learned Special Government Pleader appearing for the appellants has made his submissions mainly on the ground that the married daughters are not entitled to get the compassionate appointment as per the scheme of the Government in G.O.Ms.No155, Labour and Employment Department, dated 16.07.1993, as the unmarried daughters only are eligible for consideration of appointment on compassionate grounds, and therefore, the learned single Judge is not right in coming to such a conclusion while allowing the Writ Petition. He fairly placed reliance on G.O.Ms.No.165, Labour and Employment (Q2) Department, dated 30.08.2010, wherein, the Government, while referring to G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, stipulated certain conditions for giving appointment on compassionate grounds to the married daughters also, by the applicant (married daughters) filing an affidavit of undertaking stating that they will continue to maintain the deceased-fathers' family.

6. Learned counsel for the respondent-writ petitioner submitted that the impugned order of the learned single Judge does not warrant any interference.

7. It is seen that the respondent-writ petitioner and her husband have filed affidavits before this Court to the effect that she and her husband will continue to maintain the family of the deceased-father and it is stated that the said affidavits have also been filed before the concerned authority. The relevant portion of the said affidavits, dated 19.01.2015 filed by the respondent-writ petitioner as well as by her husband, reads as follows:

Affidavit of the respondent:

"3. I submit that after my Writ Petition was allowed, the Government of Tamil Nadu in G.O.(D).No.165, Labour and Employment (Q2) Department, dated 30.08.2010 issued orders enabling married daughters of the deceased Government servant may be appointed on compassionate grounds, provided that by giving undertaking that they will take care of the deceased family after their marriage.

4. I submit that my father died on 17.02.2000 as Vocational Instructor (Agriculture). At that time my father's service has not been regularized. My father's services were regularized only by the orders of this Hon'ble Court and thereafter only the retirement benefits have been settled to my mother. The family was living in indigent circumstances and I am being a physically handicapped person, my mother in order to see my future given marriage to Tr.Chandrasekaran, who happened to be my uncle's son. My husband is also unemployed working in a tea shop as daily wage labour.

5. I submit that my mother is under my care and protection and living with me. I hereby undertake that I will take care of my mother's family if I am provided with appointment on compassionate ground."

Affidavit of T.Chandrasekaran, Husband of the writ petitioner:

2. I am the husband of the respondent Ms.Prema, who happened to be my uncle's daughter. She is physically handicapped with 60% of deficiency.

3. I submit that I am living in my father-in-law's house along with my wife and mother-in-law. I am not owning any movable or immovable properties.

4. I submit that I am working in a tea shop as a daily wage labour.

5. I hereby undertake that I will take care of my mother-in-law, if my wife is given appointment on compassionate grounds."

8. Looking into the legal position as to the earlier Government scheme as per G.O.Ms.No.155 as well as the present scheme of the Government in G.O.Ms.No.165, it is seen that there is an object sought to be achieved for providing appointment on compassionate grounds to the applicants-daughters to mitigate the sufferings of the bereaved families and the person to be given compassionate appointment is having the duty of maintaining the deceased-fathers' family in order to get rid of the indigent circumstances. Therefore, the Government has come out with the present scheme in G.O.Ms.No.165, as stated supra, for providing compassionate appointment on filling of an affidavit of undertaking by the married daughters to the effect that they will continue to maintain the deceased fathers' family.

9. In the instant case, the respondent-writ petitioner being the daughter, at the time of applying for appointment on compassionate grounds on 05.09.2007, was unmarried and she has been subsequently married only on 04.06.2009. When that is the position, the object sought to be achieved by the Government in its scheme in the G.Os. stated supra, had been satisfied by the respondent-writ petitioner and her husband, by filing the said affidavits of undertaking. Considering the social responsibility of the daughter of the deceased-father in the family as well as the scheme of the Government, we find that the impugned order passed by the learned single Judge gives the entire support to the respondent-writ petitioner and therefore, the same is no way legally infirmed. We have no hesitation to uphold the same and the impugned order is accordingly confirmed.

10. Accordingly, the Writ Appeal deserves no merit consideration and the same is dismissed. The appellants shall implement the impugned order of the learned single Judge, in W.P.No.15324 of 2009, dated 04.12.2009, in its right spirit as per the latest scheme of the Government in G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010, as expeditiously as possible. No costs. The Miscellaneous Petition is closed.

Sd/  
Asst. Registrar

/true copy/

Sub Asst. Registrar

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Copy to

1. The Joint Director of School Education,  
Higher Secondary (Vocational),  
O/o Director of School Education,  
College Road, Chennai-6.

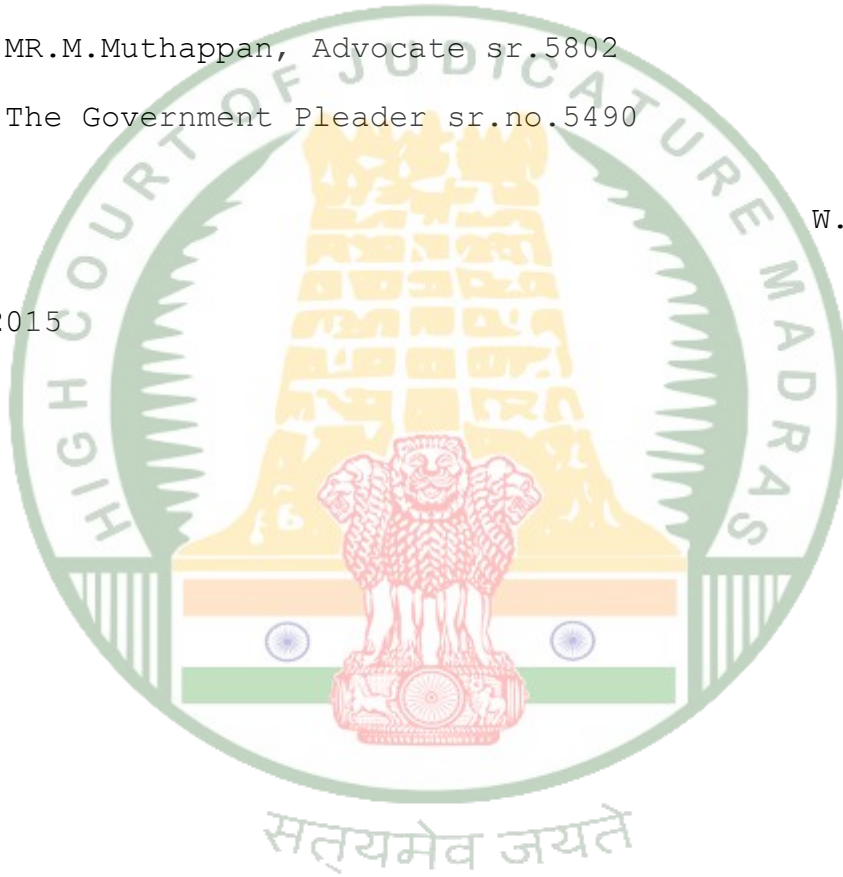
2. Chief Educational Officer,  
Thiruvannamalai District.

+ 1 cc to MR.M.Muthappan, Advocate sr.5802

+ 1 cc to The Government Pleader sr.no.5490

W.A.No.975 of 2011

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