

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:9-4-2015

CORAM

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

WRIT PETITION No.10385 of 2015

R.Mahalakshmi

.. Petitioner

vs.

1. The Director General of Police,
Law and Order,
Chennai-600 004

2. The Superintendent of Police,
District Police Office,
Madurai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the first respondent herein to consider and pass orders on the petitioner's representation dated 24.1.2014 regarding appointment on compassionate grounds in the light of G.O.Ms.No.96, Labour and Employment (Q-1) Department dated 18.6.2012, within a time frame.

For petitioner : Mrs.Daisy for
M/s.G.Bala and Daisy

For respondents : Mr.S.Gunasekaran,G.A.

ORDER

Heard Mrs.Daisy, the learned counsel for the petitioner and Mr.S.Gunasekaran, the learned Government Advocate appearing for the respondents and with the consent of parties, the writ petition itself is taken up for final disposal.

2.The father of the petitioner was working as Grade-I Police Constable. He died in harness. The petitioner applied for compassionate appointment. Her name was kept in the waiting list for the post of Typist. The first respondent issued a proceedings in Na.Ka.No.48740/CA.1/2007, dated 20.03.2007, appointing the petitioner and others on compassionate grounds as Typists. 46 persons were appointed in the aforesaid proceedings dated 20.03.2007 of the first respondent. The petitioner's name is found at Serial No.29, for being allotted to the Office of the District Police, Sivagangai. But the

first respondent passed another proceedings dated 18.6.2007 without reference to the earlier proceedings dated 20.03.2007, deleting the petitioner's name from the waiting list for appointment as Typist and also cancelling her appointment as Typist to the District Police Office, Sivagangai, on the ground that she got married. Paragraph No.3 of the order, dated 18.6.2007, is extracted hereunder:

"3. (i) Similarly, as per the letter third cited of the Superintendent of Police, Madurai District, since R.Mahalakshmi, D/o (Late) Gr I PC 1619 Thiru.Raghavan of Madurai District, got married before her appointment, her name is deleted from the waiting list for appointment as Junior Assistant/Typist and consequently, the orders issued in Chief Office memo first cited (SL.No.29 in the list of candidates) allotting her for appointment as Typist to District Police Office, Sivagangai his also cancelled.

(ii) Regarding her mother Tmt.Vijayalakshmi's request for appointment on compassionate ground to her son R.Mohanasundaram, she was already informed by the Superintendent of Police, Madurai district in Endt.No.A8/32043/2006 dated 14.03.2007 that her request is not feasible of compliance."

3. In these circumstances, the petitioner made a representation, dated 24.1.2014, to consider her case for compassionate appointment in the light of G.O.Ms.No.96, Labour and Employment, dated 18.6.2012. According to the petitioner, as per the said Government Order, even a married daughter is eligible for compassionate appointment.

4.G.O.Ms.No.96, Labour and Employment, dated 18.6.2012, makes it clear that even a married daughter is eligible to be appointed on compassionate grounds. Hence, I am of the view that the order of the first respondent, dated 18.06.2012, cancelling the appointment of the petitioner to the post of Typist is non-est in the eye of law.

5. It is true that G.O.Ms.No.96 was issued only in 2012, however, this Court has held in catena of judgements that a woman cannot be denied compassionate appointment solely on the ground that she got married. Denying employment on the ground of marriage is violative of Articles 14, 15 and 16 of the Constitution of India.

6.Though the authorities were inclined to provide compassionate appointment, the only impediment seems to be that the petitioner was a married daughter at the time of the death of her father and hence, the rules does not provide compassionate appointment. In my view, the same cannot be a ground to deny compassionate appointment to the petitioner. Such denial is against

the very spirit of the constitutional scheme and is also opposed to and in violation of Articles 14, 15 and 16 of the Constitution of India.

7.This Court has held in many cases that married daughter is also entitled to compassionate appointment. In fact, the Government also issued orders in this regard. While marriage is not a bar in the case of son for compassionate appointment, the same cannot be put as a bar for providing compassionate appointment to the daughter. Further, if such a bar is placed reliance, the same is violative of Articles 14, 15 and 16 of the Constitution of India.

8.Furthermore, the Parliament has enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which places equal duty on both the son and daughter to take care of the parents at the old age. Hence, there is no reason to deny compassionate appointment to the petitioner on the ground of marriage.

9.In this regard, it is apt to extract para 6 of my judgment in KRISHNAVENI VS. SUPERINTENDING ENGINEER, KADAMPARAI ELECTRICITY GENERATION BLOCK, MINPARAI [2013 (8) MLJ 684] as follows:

"6.In similar circumstances, the matter was considered by me in W.P.(MD) No.5183 of 2013 (M.Sudha vs. the District Collector, Thanjavur District), and I set aside the similar impugned order and issued direction to the respondent therein to consider the case of the petitioner therein for compassionate appointment, if the petitioner therein was otherwise eligible for appointment. In fact, in the said judgment, I followed the earlier judgment of mine in W.P.(MD) No.8686 of 2011. The relevant paragraph 5 of the aforesaid judgment is extracted hereunder:

"5.As rightly contended by the learned counsel for the petitioner, the matter is squarely covered by a decision dated 2.7.2012 rendered by me in W.P.(MD) No.8686 of 2011. Paragraph 9 of the judgment is extracted hereunder:

"9. As stated above, if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also. At this juncture, it is relevant to take note of the statute, namely the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which places equal duty on both the son and daughter to take care of the parents at the old age.

Therefore, in the case of death of the parents, there cannot be any unequal treatment among the children based on sex. Further, as rightly contended by the learned counsel for the petitioner, the judgment of this Court reported in 2008 5 CTC 685 (G.Girija vs. Assistant Director (Panchayats) Kancheepuram, Kancheepuram District) applies to the facts of this case. In the said case, the Government servant died on 26.2.1991. The daughter got married on 10.9.2006. She gave an application for compassionate appointment on 2.6.1997. This court quashed the order declining to give compassionate appointment holding that there cannot be any discrimination between sons and daughters in the case of giving compassionate appointment. The said judgment squarely applies to the facts of this case. Therefore, I have no hesitation to quash the impugned order. Accordingly, the impugned order is quashed and a direction is issued to the respondents to consider the claim of the petitioner for compassionate appointment without reference to the marriage of the petitioner and to pass appropriate orders in the light of this judgment within a period of eight weeks from the date of receipt of a copy of this order."

10. For all the above reasons, the writ petition is disposed of by directing the first respondent to consider the representation of the petitioner dated 24.1.2014, for compassionate appointment, in the light of the aforesaid judgement that compassionate appointment cannot be denied on the ground that the petitioner got married. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. However, there is no order as to costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Director General of Police,
Law and Order,
Chennai-600 004

2. The Superintendent of Police,
District Police Office,
Madurai

+ 1 cc to Govt.Pleader SR 19838

+ 1 cc to M/s.G.Bala & Daisy, Advocate SR 19642

rv(co)
prk6/7

W.P No.10385/2015



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