

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.10565 of 2015

R.Govindammal

...Petitioner

vs.

- 1.The Principal Secretary,
Social Welfare and Nutritious Meal Programme Department,
Secretariat, St.George Fort,
Chennai - 600 009.
- 2.The Director,
Social Welfare and Nutritious Meal Programme,
Primary School Building,
No.58, Arunachalam Street, Chintadripet,
Chennai - 600 002.
- 3.The District Collector,
Dharmapuri District,
Dharmapuri - 636 905.
- 4.District Adi Dravidar Welfare Officer,
Dharmapuri District,
Dharmapuri.
- 5.Special Tahsildar,
Adidraavidar and Tribal Welfare,
Pappireddipatti (TK)
Dharmapuri District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records relating to the letter/proceedings of the fourth respondent made in OO.mu.42637/2003/koo.4/dated 28.08.2003 and quash the same and direct the third respondent to provide employment under compassionate grounds.

For Appellant : Mr.AK.Gopalan

For Respondents: Mr.V.Jayaprakash Narayanan
Special Govt.Pleader

O R D E R

With the consent of both parties, the writ petition itself is taken up for final disposal at the time of admission.

2. The father of the petitioner was working as Head Cook and Watchman in Government Malaival Uraividaival School at Nochikuttai Village, Dharamapuri District. He died on 18.01.2003 while he was in service, leaving the petitioner and her mother as legal heirs. He has no son and the petitioner is the only daughter.

3. The petitioner immediately submitted an application for compassionate appointment in the month of April 2003 to respondents 3 to 5. The 4th respondent passed the impugned order dated 28.08.2003, wherein and by which, the application of the petitioner was rejected on the sole ground that compassionate appointment cannot be granted to married daughters.

4. According to the petitioner, the Government imposed ban on recruitment including compassionate appointment. The ban was lifted only on 21.02.2006. The petitioner made repeated representations to the third respondent on 06.03.2006, 09.08.2007, 05.07.2010, 28.03.2011 and 10.12.2012. However, no follow up action was taken on those applications. Hence, the petitioner has filed this writ petition, seeking to quash the aforesaid order dated 28.08.2003 declining to grant compassionate appointment on the ground of marriage.

5. The learned counsel for the petitioner placed reliance on the judgments of this Court reported in 2008 (5) CTC 686 [G.Girija v. The Assistant Director (Panchayats), Kancheepuram District and (2013) 8 MLJ 684 [Krishnaveni v. Superintending Engineer, Kadamparai Electricity Generation Block, Coimbatore District] and would submit that the State cannot discriminate in the matter of providing compassionate appointment to woman.

6. On the other hand, the learned Special Government Pleader submitted that earlier, there was a total restriction in providing compassionate appointment to a married daughter, but now the Government issued G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 providing compassionate appointment to the married daughter, provided that she was unmarried at the time of submitting application for compassionate appointment. According to the learned Special Government Pleader, the petitioner was married even before the death of her father. Hence, the petitioner is not entitled to compassionate appointment as per the scheme.

7. I have considered the submissions made by the learned counsel on either side.

8. The question that arises for consideration is whether the State can discriminate in the matter of providing compassionate appointment to women (daughters) on the ground of marriage, while no such restriction is imposed for men (sons).

9. The State cannot discriminate against women in providing compassionate appointment, citing marriage as a reason and such action of the State is against the very Scheme of the Constitution. The preamble of the Constitution ensures "equality of status and

opportunity" to all its citizens. Therefore, opportunity in public employment cannot be deprived to women on the ground of marriage, while the same is not a restriction in the case of men.

10. Further, the Preamble declares that the dignity of the individual would be assured, while promoting fraternity among citizens. The dignity of women would not be assured, if they are discriminated by the State in providing employment on compassionate ground. Hence, I have no hesitation to hold that if the Scheme of the State providing employment on compassionate ground treats the women differently on the ground of marriage to their detriment, the Scheme would certainly be violative of various provisions of the Constitution of India.

11. G.O.Ms.No.165 Labour and Employment Department, dated 30.08.2010 refers to the earlier Government Orders viz., namely G.O.Ms.No.560 Labour and Employment Department, dated 03.08.1977 and G.O.Ms.No.155-L & E Department, dated 16.07.1993 relating to the Scheme of Compassionate appointment.

12. In G.O.Ms.No.560 dated 03.08.1977, the State provides compassionate appointment to the wife/husband/son/unmarried daughter on the death of the Government servant i.e, while the son of the deceased Government Servant is entitled to compassionate appointment without reference to marriage, the daughter is not treated equally in providing compassionate appointment and a condition is imposed that the daughter should be unmarried to claim compassionate appointment. In my view, such a Scheme of Compassionate appointment is arbitrary and violative of Articles 14 and also against Articles 15(1) and 16(2) of the Constitution.

13. It is useful to refer to Articles 15(1) and 16(2) of the Constitution:-

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

16. Equality of opportunity in matters of public employment.-

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

14. Therefore, I am of the view that G.O.Ms.No.560 dated 03.08.1977 depriving compassionate appointment to married daughters, while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15(3) of the Constitution. But the State cannot

discriminate women in the matter of compassionate appointment, on the ground of marriage.

15. It is also useful to refer to Article 39(a) of the Constitution, that appears in Part IV of the Constitution viz., Directive Principles of State Policy:-

"39. Certain principles of policy to be followed by the State.-The State shall, in particular, direct its policy towards securing-
(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; "

16. Further, it is useful to refer to of Article 42 of the Constitution:-

42. Provision for just and humane conditions of work and maternity relief.-The State shall make provision for securing just and humane conditions of work and for maternity relief.

17. It is also useful to refer to Article 51-A(k) of the Constitution that appears in Part IV A of the Constitution describing Fundamental Duties.

"51-A.- It shall be the duty of every citizen of India-
(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

18. A combined reading of Articles 14, 15, 16, 39(a), 42 and 51(a) (k) makes it clear that the State cannot discriminate women in the matter of providing compassionate appointment.

19. It is also useful to take note of Article 243D(3) and 243T (3) of the Constitution, which provides reservation (for women) for election to Panchayat and Municipalities :-

"243D. Reservation of seats.-

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

243T. Reservation of seats.-

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such

seats may be allotted by rotation to different constituencies in a Municipality."

20. Thus, Constitution makes it clear that law could be made giving certain concession to women. But women cannot be deprived of certain rights, while the same are extended to men. Hence, G.O.Ms.560 L & E Department, dated 03.08.1977, which deprives compassionate appointment to married daughters is unconstitutional in the light of Preamble to Constitution and Articles 14,15,16, 39 (a), 51(a)(k), 243D (3) and 343T(3) of the Constitution.

21. Later, the Government made certain improvements to G.O.Ms.No.560 by issuing G.O.Ms.No.155 Labour and Employment Department, dated 16.07.1993. The said Government Order i.e, G.O.Ms.No.155 provides compassionate appointment to daughters of a Government servant, if the daughter was abandoned by her husband or a divorcee or a widow. That is, apart from unmarried daughters, G.O.Ms.No.155 has included certain categories of women to claim compassionate appointment. However, discriminatory treatment was not removed in total, i.e, while marriage is not a condition prescribed in the matter of providing compassionate appointment to sons of a deceased Government Servant, the same was placed as a condition in the case of daughters.

22. Now a further improvement is made in the latest Government Order in G.O.Ms.No.165 dated 30.08.2010. As per the said Government Order, the married daughter could also claim compassionate appointment, if she was unmarried at the time of making application. In the said Government Order, it is stated that taking into account the decisions of this Court, such relaxation was granted in providing compassionate appointment to the married daughters, who got married subsequent to the death of the father and more particularly after making application for compassionate appointment.

23. At this juncture, it is useful to refer to the judgment of this Court in G.Girija's case (cited supra). In that case, the Government servant died on 26.02.1991 leaving his wife and others. The eldest daughter of the Government servant sought compassionate appointment, as there was no one in her family in employment. No order was passed on the application of the petitioner dated 02.06.1997. She gave another application on 12.04.2001. The Government imposed ban on recruitment in 2001 and the same was lifted on 21.02.2006. After the ban was lifted, she was directed to furnish certain particulars. In the mean time, she got married on 10.09.2006. Based on the same, her request for compassionate appointment was rejected.

24. In Paragraph 6 of the judgment, this Court referred to a judgment of the Division Bench and ultimately quashed the order refusing to grant compassionate appointment and issued direction to provide compassionate appointment without reference to marriage of the daughter. Paragraph 6 is extracted hereunder:-

"6. The learned counsel for the petitioner as well as the learned counsel for the respondents submits that a similar issue was considered by the Division Bench of this Court in W.P.No.18916 and the Division Bench in paragraph Nos.8 and 9 has held as follows:-

"8. There is no dispute that the Government has made provision for appointment on compassionate ground, obviously with a view to enable the family members of the deceased employee to tide over immediately the financial stringency on account of the breadwinner in the family. It is of course true that as per G.O.Ms.No.73, Employment Services dated 26.10.1983, only an unmarried daughter is eligible and not a married daughter. However, there is no requirement in the G.O. that at the time of actual employment such unmarried daughter should continue to be unmarried nor there is any requirement that after an unmarried daughter gets employment on the compassionate ground, she cannot marry in future. There is no dispute that the present petitioner was eligible to make the application and she made an application as an unmarried daughter. The appropriate authority took about 3 to 4 years to finalise the matter. Merely because the unmarried daughter got married in the meantime and that too with a specific understanding that her husband would have no objection to her maintaining the members of the family of her father, it cannot be said that such person had got employment by suppressing any material fact.

9. We have also perused the format in which such Applications are required to be made. There is no column in such format to indicate that an applicant at the time of her employment is required to disclose whether she is married in the meantime is any requirement that an unmarried daughter after getting such appointment on compassionate ground is required to remain as a spinster for ever. If an unmarried daughter after getting employment on compassionate ground has liberty to marry, we fail to understand as to why an unmarried daughter, who makes such Application and is otherwise eligible, keeping in view the financial aspect, would be deprived of the right of getting employment, more

particularly when there is no objection raised by any other eligible person. As a matter of fact, in the present case, the mother and the petitioner's brother, who has become major in the meantime, have filed affidavits stating that they have no objection to the petitioner continuing in service.

9. For the aforesaid reasons, we are unable to sustain the order passed by the Tribunal and such order is hereby quashed. The petitioner shall be deemed to be continuing in service from the date of order of removal. However, no amount would for the period from 25.6.2004 till the date of rejoining pursuant to the present order. The petitioner shall be permitted to rejoin in service within a period of 30 days from the date of receipt of a copy of this order. The entire period shall be notionally counted for the purpose of seniority, increments, pension and other service benefits."

25. In that case, the daughter was unmarried at the time of death and also at the time of making application. Hence, it was suffice for the Court to issue such a direction as stated above.

26. In the decision in Krishnaveni's case reported in (2013) 8 MLJ 684, I had an occasion to consider the claim made by married daughter for compassionate appointment, when the same was rejected by the State. Relying on my earlier judgments in W.P.(MD) No.5183 of 2013 (M.Sudha vs. the District Collector, Thanjavur District) and W.P.(MD)No.8686 of 2011, I held in categorical terms in (2013) 8 MLJ 684 that if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also. It is relevant to extract paragraph 6, which is 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."

27. In Krishnaveni's case (cited supra), I have referred to 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 and held that the daughters shall be treated alike the sons in providing compassionate appointment. Thus, in the matter of providing compassionate appointment, no distinction shall be made between a son and a daughter.

28. The case on hand is a classic case, wherein, the deceased Government servant has no male issue. Nowadays, it is a common

thing that a family have a single child ; either male or female. Thus, if a Government servant has only daughter, as in this case, the widow of the Government servant cannot be stated that her married daughter could not be provided compassionate appointment, particularly, when she has to solely rely on her daughter. As stated above, Maintenance and Welfare of Parents and Senior Citizens Act, also now places equal responsibility on both the son and daughter to take care of their parents.

29. Hence, for all the aforesaid reasons, the impugned order is quashed and a direction is issued to the first respondent to provide compassionate appointment to the petitioner, if she is otherwise eligible, without reference to marriage. Such exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of this order. A direction is issued to Chief Secretary of the Tamil Nadu Government, to suitable modify the Government Order in G.O.Ms.165 Labour and Employment Department, dated 30.08.2010 in the light of the observations made above.

The writ petition stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

svki

To

- 1.The Principal Secretary,
Social Welfare and Nutritious Meal Programme Department,
Secretariat, St.George Fort,
Chennai - 600 009.
- 2.The Director,
Social Welfare and Nutritious Meal Programme,
Primary School Building,
No.58, Arunachalam Street, Chintadripet,
Chennai - 600 002.
- 3.The District Collector,
Dharmapuri District,
Dharmapuri - 636 905.
- 4.District Adi Dravidar Welfare Officer,
Dharmapuri District,
Dharmapuri.

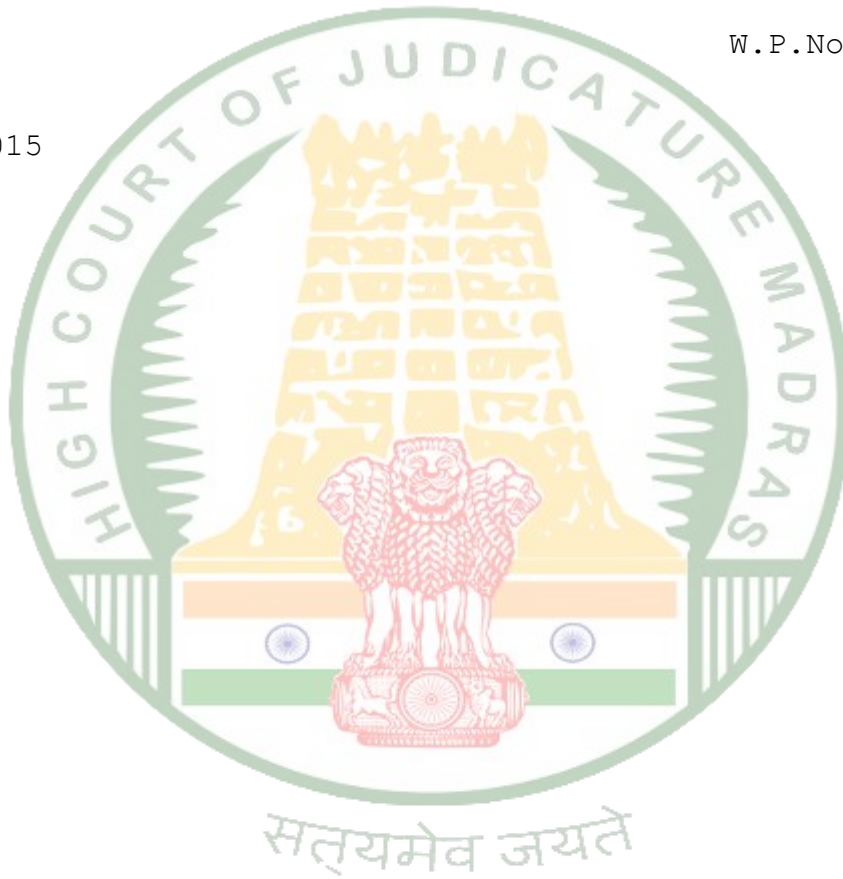
5.Special Tahsildar,
Adidraavidar and Tribal Welfare,
Pappireddipatti (TK)
Dharmapuri District.

6.The Chief Secretary, Fort St.George,Secretariat,
Chennai - 600 009.

1 cc to Government Pleader.Sr.No.20408

W.P.No.10565 of 2015

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