

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.22186 of 2014

H.Priyadharshini

... Petitioner

vs.

1.The Registrar,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Chennai - 600 051.

2.The Dean
Madras Veterinary College,
Vepery, Chennai - 600 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus, calling for the entire records pertaining to the orders passed by the 2nd respondent herein vide his proceedings No.10529/Estt./B3/2013 dated 11.02.2014 and quash the same as illegal, arbitrary, unreasonable being violative of the rules and principles of natural justice and thereby direct the respondents to provide appointment to the petitioner on compassionate grounds in any suitable post commensurate with her educational qualification.

For Petitioner : Mr.A.R.Suresh
For Respondents : Mr.S.Vijayakumar

सत्यमेव जयते
O R D E R

The father of the petitioner was working as a Professor and Head of the Department in the Department of Veterinary Pharmacology and Toxicology at Madras Veterinary College, Chennai. He died in harness on 30.07.2013, leaving behind him, the mother of the petitioner, her minor brother, besides the petitioner. According to the petitioner, due to ill health faced by her father, he urged for her marriage before his demise and accordingly, her marriage was solemnized on 27.01.2013 with one Mr.Sivaraj Kumar before the death of her father.

2. The petitioner made an application for compassionate appointment. The claim of the petitioner for compassionate appointment was rejected by the second respondent, by the impugned order dated 11.02.2014 on the sole ground that the

petitioner is married. The petitioner has filed this writ petition assailing the aforesaid order.

3. A counter affidavit is filed refuting the allegations and seeking to sustain the impugned order on the grounds that were not mentioned in the impugned order. According to the counter affidavit, as the mother of the petitioner is in receipt of family pension and the family received a huge pensionary benefits, the petitioner is not entitled to compassionate appointment.

4. The respondents also relied on the judgments of the Apex Court reported in (2011) 5 MLJ 187 (SC) [Bhawani Prasad Sonkar v. Union of India and others] and (2011) 5 MLJ 892 (SC) Local Administration Department and another v. M.Selvanayagam @ Kumaravelu in the counter affidavit.

5. The learned counsel for the petitioner made the following submissions:-

i) The only reason given in the impugned order for denying compassionate appointment is that the petitioner is married. Denying compassionate appointment to the daughter of the deceased Government solely on the basis of her marriage, is arbitrary and violative of Articles 14, 15, 16 and 21 of the Constitution.

ii) The Scheme of compassionate appointment placing restriction in the matter of providing compassionate appointment, based on receipt of family pension by the widow and payment of terminal benefits is not placed before this Court, by the respondents.

6. The learned counsel has relied on the judgment of the Apex Court reported in AIR 2000 SC 1596 [Balbir Kaur and another v. Steel Authority of India Ltd., and others] and 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 daughter citing marriage as a reason.

7. The learned counsel for the petitioner further submitted that denying compassionate appointment on the ground of marriage in the case of daughter is violative of Articles 15 and 16 of the Constitution of India. In the case of providing employment to married son, the details of employment of his wife is not looked into by the Government while giving compassionate appointment, but a gender bias is shown in the case of providing compassionate appointment in the case of married daughter.

8. The learned counsel for the petitioner would further submit that there is strained relationship between the petitioner and her husband and she is living with her mother, the widow of the deceased Government servant.

9. The learned counsel for the respondents took me through the counter affidavit and more particularly, paragraphs 10 and 11 and would submit that the family is paid huge sum towards terminal benefits and widow is paid monthly family pension of more than Rs.50,000/-. Hence, compassionate appointment cannot be claimed by the petitioner.

10. Heard both sides.

11. As rightly contended by the learned counsel for the petitioner, the respondents cannot travel beyond the impugned order. It is relevant to extract the impugned order dated 11.02.2014:-

"In pursuance of the reference cited, Tmt.S.Giriya Kumari, W/o (Late) Dr.P.Hariharan, Professor and Head, Department of Veterinary Pharmacology and Toxicology, Madras Veterinary College, Chennai for seeking employment on compassionate grounds to her daughter has not been considered by the University, since the nominee Tmt.H.Priyadharshini has got married."

12. The only reason given in the impugned order for declining compassionate appointment is that the petitioner is married and hence, she is not entitled to compassionate appointment.

13. As rightly contended by the learned counsel for the petitioner, the respondent University cannot now adduce fresh reasons in the counter affidavit to sustain the impugned order. The Apex Court in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi and others [1978 (1) SCC 405] held that new reasons that are given in the counter affidavit shall be ignored.

13.1. It is relevant to refer the following decisions of this Court following the judgment of the Apex Court in Mohinder Singh Gill's case.

13.2. A Division Bench of this Court in Chennai Metropolitan Development Authority V. Prestige Estates Projects Ltd. and Another, reported in 2014-4-L.W. 83, held as follows :-

"22. The only reason assigned by the appellant, that too in the counter affidavit, is that the Government have revised the guideline value upwardly with effect from 01.04.2012 and as per the revised guidelines value, the site of

the petitioner is Rs.4,000/- per sq.ft. and NOC issued by CMWSSB dated 30.03.2012 was received on 02.04.2012 and in the interregnum, guideline value was revised and the impugned demand came to be made. Admittedly, the said reason is not found in the impugned demand notice and sought to be justified only through the counter affidavit and in the celebrated case of Mohinder Singh Gill V. The Chief Election Commissioner, New Delhi & Others [(1978) 1 SCC 405], wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and therefore, on that ground also, the impugned demand is unsustainable."

13.3. This Court in M.Kumarasamy College of Engineering V. The Government of Tamil Nadu, reported in 2004 (4) CTC 668, in paragraph 38, placed reliance on the Mohinder Singh Gill's case as hereunder :

"38. It was held in Mohinder Singh Gill V. Chief Election Commission, 1978 (1) SCC 405, that,

"..... validity (of an order) must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

13.4. In Shanthi V. The District Collector and Inspector of Panchayat, Dindigul District and 2 Others, this Court held as hereunder:

"18. In the decision reported in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others (1978(1) Supreme Court Cases 405), the apex court has observed in Paragraph 8 as follows :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by

additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older." "

14. It is not the case of the respondents that the Scheme providing compassionate appointment places restriction in the matter of providing compassionate appointment, based on the amount of family pension and other terminal benefits. In the absence of any such restriction, the payment of family pension and terminal benefits cannot be cited as a reason by the respondents to deny compassionate appointment and more particularly, when the same was not stated in the impugned order.

15. I am of the view that the judgment relied on by the petitioner in Balbir Kaur case (cited supra) is directly on the point, wherein, in the said judgment, it has been held that receipt of terminal benefits and family pension cannot be a ground to deny compassionate appointment. The relevant passages found in paragraphs 13, 15, 16 and 17 are extracted hereunder:-

"13. Mr Bhasme, learned advocate appearing for Steel Authority contended that the Family Benefit Scheme was introduced on 21-11-1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management could avail of the Scheme by depositing the lump sum provident fund and gratuity amount with the Company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the date of superannuation of the employee

in question. Mr Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr Bhasme contended that consequently on deposits as above with the management, the employee's family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the employees' union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.

15. It is upon consideration of the above-noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the provident fund but as regards the gratuity amount, be it noted that there is a mandate of the statute that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death – the introduction of the Family Pension Scheme by which the employee is compelled to deposit the gratuity amount, as

beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the employees concerned but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

16. Adverting to the provident fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump sum and availability of this amount is the only insulating factor to such a grief-stricken family. The amount is payable in one lump-sum and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise.

17. In any event as appears in the contextual facts, the NJSC Agreement being a tripartite agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and in the wake of the same we do not see any reason to deny the petitioner the relief sought for in the writ petition."

16. In the light of the above judgment, I am of the view that the respondent cannot now state that since the widow of the deceased Government servant is paid family pension and terminal benefits, the petitioner cannot be given compassionate appointment.

17. Coming to the reason assigned in the impugned order, viz., marriage as a bar for compassionate appointment, I have considered the entire issue including the validity of G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 in detail in my order dated 13.04.2015 in W.P.No.10565 of 2015 (R.GOVINDAMMAL VS. THE PRINCIPAL SECRETARY, SOCIAL WELFARE AND NUTRITIOUS MEAL PROGRAMME DEPARTMENT, SECRETARIAT AND OTHERS) and held that G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 declining to provide compassionate appointment to married daughter is violative of the provisions of the Constitution. In that order, I have also considered the judgments of this Court reported in G.GIRIJA VS. THE ASSISTANT DIRECTOR (PANCHAYATS), KANCHEEPURAM DISTRICT [2008 (5) CTC 686] and KRISHNAVENI VS. SUPERINTENDING ENGINEER, KADAMPARAI ELECTRICITY GENERATION BLOCK, COIMBATORE DISTRICT [2013 (8) MLJ 684].

18. It is useful to refer paragraphs 20, 21, 22, 26, 27, 28 and 29 of the order dated 13.04.2015 in W.P.No.10565 of 2015, which are extracted hereunder:-

"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.

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 suitably 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."

19. Later, the Government issued G.O.Ms.No.96 Labour and Employment Department, dated 18.06.2012 making further improvements to G.O.Ms.No.165. As per G.O.Ms.No.96, the daughters of the deceased Government servants, who got married after 29.11.2001 are entitled to compassionate appointment. Applying the said Government Order, the petitioner is entitled to compassionate appointment. In my view, fixation of cut off date as 29.11.2001 has no rationale and the same has no nexus with the object of providing compassionate appointment. In any event, even as per G.O.Ms.No.96, the petitioner is entitled to succeed.

20. The judgment relied on by the respondents in Bhawani Prasad Sonkar case (cited supra) does not render any assistance to them. The following passages found in paragraph 19, relied on by the respondents are extracted hereunder:-

"19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

21. Thus, the judgment of the Apex Court in Bhawani Prasad's case far from supporting the case of the respondents, supports the claim of the petitioner for compassionate appointment.

22. The learned counsel for the respondents also relied on the following passages found in paragraphs 5, 8 and 9 of the judgment reported in (2011) 5 MLJ 892 (SC) [Local Administration Department and another v. M.Selvanayagam @ Kumaravelu]:-

"5. In the order dated 19-4-2000, two reasons were assigned for rejecting the respondent's claim for appointment on compassionate basis. First, on the death of Meenakshisundaram, his wife, the mother of the respondent did not make any request for appointment and this showed that the demise of the employee concerned had not caused a very serious financial crisis in the family. In this connection it was also stated that in case on the death of Meenakshisundaram, his wife had made a request for appointment on compassionate grounds, her application might have been considered giving her relaxation of age and academic qualification. The second reason given for rejecting the respondent's claim was that following the death of Meenakshisundaram, the family was given Rs 26,674 as terminal benefits besides family pension to the widow. Thus, the dependants of the deceased employee were not left completely without any financial resources.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on

his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

23. A reading of the aforesaid judgment would go to show that compassionate appointment was made belatedly in that case and that weighed in the mind of the Apex Court in deciding the issue. Further, from a reading of paragraph 9, it is seen that the respondent therein was only 11 years old at the time of death of the Government Servant. The application was made on his behalf on attaining majority after 7 years and 6 months of the death of the father. In those circumstances, the Apex Court reversed the order of this Court granting compassionate appointment.

24. Further, the payment of family pension and terminal benefits that are paid due to the death of the government servant cannot be the yardstick to determine the financial condition of the deceased family, particularly, when the scheme providing compassionate appointment does not place such restriction. Hence, the judgment cited by the respondents does not render any assistance to them.

25. In the present case, immediately after the death of the government servant, claim was made and the same was rejected by the impugned order on the sole ground that the petitioner was a married daughter.

25. Hence, for all the aforesaid reasons, the impugned order is quashed and a direction is issued to the 2nd 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.

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

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Registrar,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Chennai - 600 051.

2. The Dean
Madras Veterinary College,
Vepery, Chennai - 600 007.

+1 cc to Mr.A.R.Suresh counsel for the Petitioner(sr.31426)
+1 cc to Mr.S.Vijayakumar,Counsel for the Respondent
(sr.31380)

W.P.No.22186 of 2014

VGI (co)
cp 19/10/2015

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