

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.20477 of 2015

N.Vimala

... Petitioner

vs.

The District Collector,
Nagapattinam.

... Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus, calling for the records of the respondent in Na.Ka.No.4140/2..w/8/2010 dated 07.04.2015 and quash the same as unconstitutional, illegal and unlawful and further direct the respondent to provide employment to the petitioner in the respondent department under compassionate ground more particularly within a frame as may be stipulated by this Court.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

The father of the petitioner was working as Road Inspector in Thalainayar Panchayat Union, Vedaranyam Taluk, Nagapattinam District. He died on 16.03.2010, while in service, leaving behind him, the petitioner and her elder sister. The mother of the petitioner pre-deceased her father. Both the daughters of the Government servant got married at the time of the death of the government servant.

2. When the petitioner submitted an application for compassionate appointment on 18.07.2014, the same was declined by the respondent, vide order dated 07.04.2015 on the sole ground that she was married at the time of death of the government servant. The impugned order was passed based on G.O.Ms.No.165 Labour and Employment Department, dated 30.05.2010.

3. Heard both sides.

4. The learned counsel for the petitioner placed reliance on the judgments of this Court 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] and would submit that the State cannot discriminate in the matter of providing compassionate appointment to women on the ground of marriage.

5. On the other hand, the learned Government Advocate sought to sustain the impugned order. According to him, there is no infirmity in the impugned order and this Court need not interfere with the same.

6. 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, if she got married before making application for compassionate appointment after the death of her father/mother, who was a Government servant, 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].

7. In Govindammal's case (cited supra), I traced the scheme of compassionate appointment in government service with regard to the married daughters. In the original scheme providing compassionate appointment in G.O.Ms.No.560 Labour and Employment Department, dated 03.08.1977, there is a total deprivation for married daughters to seek compassionate appointment. While married sons are eligible to make compassionate appointment, married daughters are ineligible to make application for compassionate appointment.

8. 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 after 16 years of the issuance of the first Government Order viz., G.O.Ms.No.560.

9. G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993 provided compassionate appointment to married daughters of government servant, if the daughter was abandoned by her

husband or a divorcee or a widow i.e., G.O.Ms.No.155 included certain categories of married daughters to claim compassionate appointment. However, discriminatory treatment was not removed in total, that is, while marriage is not a pre-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.

10. Thereafter, G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 was issued making further improvements in the Scheme. As per G.O.Ms.No.165, 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 Government servant and more particularly after making application for compassionate appointment, i.e., G.O.Ms.No.165 also did not render full justice to women. Still discriminatory treatment was meted out to women. While no such condition is prescribed in the case of a son, that the son shall be unmarried at the time of making application after the death of the deceased government servant, a condition is prescribed in the case of daughter that she shall be unmarried at the time of making application for compassionate appointment.

11. Now a further improvement is made in the scheme providing compassionate appointment by issuing G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012, providing compassionate appointment to married daughter, if the marriage took place after 29.11.2001.

12. In fact, today i.e., 09.07.2015 in W.P.No.20437 of 2015 [A.Vimala v. The Secretary to Government, L & E Department], I have quashed G.O.Ms.No.96, in so far as it declines compassionate appointment to daughters, who got married prior to 29.11.2001. It is relevant to extract the paragraphs 15 and 16 in this regard:-

"15. In my considered view, this Government order also does not put an end to the discriminatory treatment meted out to the daughters in the matter of providing compassionate appointment. Even as per this Government Order, marriage is a bar for a daughter, if she got married prior to 29.11.2001. The daughters, who got married after 29.11.2001 are alone entitled to seek compassionate appointment based on the death of her father/mother, who was a government servant. There is no explicit reason given as to why the cut-off date was fixed as

29.11.2001.

16. The reference column of G.O.Ms.No.96 refers to G.O.Ms.No.212 P & AR Department, dated 29.11.2001. That Government Order, namely G.O.212, is relating to imposition of ban on recruitment in Government service. Hence, I fail to understand as to how the date viz., 29.11.2001 has any nexus to the object of the scheme providing compassionate appointment to the married daughters. Hence, I have no hesitation to declare that the cut-off date fixed in G.O.Ms.No.96 as 29.11.2001 is arbitrary, illegal and unconstitutional. By such declaration and by quashing paragraphs 3 and 4 of the aforesaid G.O.Ms.No.96 in so far as fixing 29.11.2001 as the cut-off date, the discrimination meted out to married daughters will be totally wiped out. Accordingly, paragraphs 3 and 4 of G.O.Ms.No.96 Labour and Employment Department, dated 18.06.2012 fixing cut-off date as 29.11.2001 are quashed.

13. In the case on hand, the petitioner got married on 02.03.2008. Hence, even as per G.O.Ms.No.96, the petitioner is entitled to compassionate appointment.

14. For all the foregoing reasons, the impugned order is quashed and a direction is issued to the respondent to provide compassionate appointment to the petitioner, 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 extent indicated above. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//सत्यमेव जयते

svki
To

Sub Assistant Registrar

The District Collector,
Nagapattinam.

+1cc to Mr.J.Pooventhera Rajan, Advocate, S.R.No.34690
+1cc to the Government Pleader, S.R.No.35033

W.P.No.20477 of 2015

KM(CO)
CA(04/09/2015)