

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.21887 of 2015 and
M.P.No.1 of 2015

Kumuthavalli

...Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.
- 2.The Director General of Police,
O/o. DGP, Santhome, Chennai - 600 004.
- 3.The District Collector,
Perambalur District.
- 4.The Superintendent of Police,
Perambalur District.
- 5.The Superintendent of Police,
Office of Spl.Task Force, Erode District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 5th respondent vide proceedings Na.Ka.No.A1/635/2010 dated 24.11.2010 and quash the same and consequentially direct the respondents to consider and appoint the petitioner on compassionate grounds.

For Petitioner : Mr.A.D.Jagadish Chandra

For Respondents: Mr.S.Gunasekaran
Government Advocate

O R D E R

The father of the petitioner was working as Deputy Superintendent of Police in the Special Task Force. He died on 21.12.2009, while he was in service, leaving behind, the petitioner, her mother, her younger brother and her younger sister as legal heirs. The petitioner got married before the death of her father.

2. According to the petitioner, since her husband is a differently abled person and was medically declared to be unfit to perform any job, her father was taking care of her entire family. Her brother is employed at abroad and her sister's husband is having agricultural lands and they are well-placed.

3. Hence, the petitioner's mother submitted an application, dated 29.10.2010 to the 5th respondent seeking compassionate appointment to the petitioner.

4. While so, the impugned order was passed by the fifth respondent on 24.11.2010 rejecting the application of the petitioner's mother, by placing reliance on G.O.Ms.No.165 Labour and Employment Department, dated 30.08.2010, on the sole ground that the petitioner was married at the time of death of her father. Hence, the petitioner has filed this writ petition, seeking to quash the aforesaid order, dated 24.11.2010, declining to grant compassionate appointment on the ground of marriage.

5. Heard both sides.

6. 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.

7. 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.

8. 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].

9. 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 Labout 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 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."

10. For all the aforesaid reasons, the impugned order is quashed and a direction is issued to the fifth 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.

11. The writ petition stands allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.
 - 2.The Director General of Police,
O/o. DGP, Santhome, Chennai - 600 004.
 - 3.The District Collector,
Perambalur District.
 - 4.The Superintendent of Police,
Perambalur District.
 - 5.The Superintendent of Police,
Office of Spl.Task Force,
Erode District.
- +1cc to Mr.A.D. Jagadishchandira, Advocate, S.R.No.37216
+1cc to the Government Pleader, S.R.No.37411

KM(CO)
EU(08/09/2015)

W.P.No.21887 of 2015