

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.12.2015

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN
AND
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.1333 of 2012
and M.P.No.1 of 2012

1. The Director of School Education
D.P.I. Campus,
Chennai - 600 006.
2. The District Educational Officer
Erode, Erode District. Appellants/Respondents

vs

Chitralekha Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent Act to set aside the order, dated 02.12.2010 made in W.P.No.26703 of 2010.

WP.No.26703 of 2010:Petition presented Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the records relating to the order dated 16.6.2010 made in Na.Ka.No.89923/J4/08- on the file of the first respondent herein quash the same and consequentially direct the second respondent herein to appoint the petitioner on compassionate grounds pursuant to her application dated 5.6.1999 made to the second respondent herein.

For Appellants : Mr.R.Ravichandran, AGP

For Respondent : Mr.K.N.Nataraj

J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN, J)

Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent.

2. The Writ Appeal has been preferred challenging the order, dated 02.12.2010 made in W.P.No.26703 of 2010 passed by the learned Single Judge.

3. The relief sought for in the writ petition is in the nature of writ of Certiorarified Mandamus, to call for the records pertaining to the order, dated 16.06.2010 made in Na.Ka.No.89923/J4/08 on the file of the Director of School Education, D.P.I. Campus, Chennai - 6, the first appellant herein, to quash the same and consequently, direct the District Educational Officer, Erode, the second appellant herein to appoint the respondent herein on compassionate ground, pursuant to the application, dated 05.06.1999 made to the second appellant.

4. It is not in dispute that the respondent's mother was employed as a Secondary Grade Teacher in the Municipal Primary School, Kutchery Road, Erode and died on 28.02.1989, while in service. As the husband of the deceased was an illiterate person, the respondent's brother applied for appointment on compassionate grounds. However, before the said application could be processed, he died. Then, the elder sister of the respondent also got married. Hence, the respondent made an application, dated 15.06.1999, seeking appointment on compassionate ground before the District Elementary Educational Officer, Erode, who forwarded the said application to the District Educational Officer, the second appellant herein.

5. As there was no response from the second appellant, the respondent / petitioner preferred an appeal before the first appellant, which was rejected, by order, dated 16.06.2010 passed by the first appellant. It is not in dispute that the application seeking compassionate appointment by the respondent herein was rejected only on the ground that she being a married lady was not entitled to get compassionate appointment.

6. Learned Single Judge, relying upon the earlier decision, in G.Girija v. The Assistant Director (Panchayats), Kancheepuram, Kancheepuram District and three others, reported in 2008 (5) CTC 686, held that the order passed by the first appellant, dated 16.06.2010 was liable to be set aside. Accordingly, the writ petition was allowed and the impugned order, dated 16.06.2010 was quashed and direction was given to the second appellant to issue appointment order to the respondent / petitioner on compassionate ground, without reference to the marriage of the respondent / petitioner, in terms of the order passed by the Division Bench of this Court, on the aforesaid decision, within a period of four weeks from the date of receipt of a copy of that order. Aggrieved by which, the present Writ Appeal has been preferred.

7. Mr.R.Ravichandran, learned Additional Government Pleader appearing for the appellants submitted that the respondent, as daughter of the deceased employee, had approached the authority after the time limit prescribed under the Rules and further, contended that seeking compassionate appointment would not be a matter of right and according to him, there is no material available to show that the respondent was an indigent person. Learned Additional Government Pleader also argued that no time was given for filing counter by the learned Single Judge and on this ground, the impugned order is not sustainable.

8. It is well settled that in the writ appeal, appellant cannot raise any unsustainable new grounds and this Court also need not go into the disputed question of facts in the writ appeal.

9. Learned counsel appearing for the respondent submitted that as per the latest, G.O.Ms.No.165, dated 30.08.2010, married daughters could also claim compassionate appointment, had she been unmarried at the time of making application and accordingly, argued that the respondent was unmarried, when she submitted her application for appointment on 15.06.1999. Learned counsel further submitted that the mother of the respondent was the sole bread winner of the family and the father of the respondent was an illiterate person on the date of demise of her mother, all her children were minors and after attaining majority, brother of the respondent submitted an application for compassionate appointment and when the same was being processed, he passed away on 07.11.1997 and her sister also got married in the year 1999 and hence, as an eligible daughter of the deceased, the respondent submitted her application for appointment on compassionate ground on 15.06.1999 and on the facts and circumstances, sought for the dismissal of the writ appeal.

10. On a perusal of the case records and material papers, it is clear that opportunity had been given by the learned Single Judge for filing counter. Hence, non availing of the opportunity would not be a ground in favour of the appellant in the writ appeal. The only defence raised by the appellants before the learned Single Judge was that the respondent, being a married daughter of the deceased, was not entitled to get compassionate appointment.

11. In this regard, it is relevant to refer Articles 14, 15 (1) and 16(2) of the Constitution of India. As per Article 14, the State shall not deny to any person equality before the law or the equal protection of the laws, within the territory of India. Similarly, as per Article 15(1), the State shall not discriminate between citizens on grounds only of religion, race, caste, sex, place of birth or any of them. As per Article 16(2),

there is equality of opportunity in matters of public employment, which reads that 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.

12. Learned Additional Government Pleader has not disputed that there is no statutory bar for a married dependent in getting compassionate appointment. If that is so, denying such a right to a married dependent / daughter of the deceased, on the ground that she is a married woman, that would certainly be a discrimination, which is contrary to gender equality. It is also brought to our notice that the Government of Tamil Nadu has passed an order in G.O.Ms.No.165, dated 30.08.2010, whereby it was made clear that married daughter of the deceased would also be entitled to claim compassionate appointment, if she was unmarried at the time of making application.

13. The averments made in the counter filed by the respondent / petitioner was not denied by the learned Additional Government Pleader. Further, it is not disputed that earlier, the brother of the respondent had applied for compassionate appointment, however, he died. Subsequently, the respondent's elder sister got married and therefore, being an unmarried dependent, the respondent applied for compassionate appointment. On the aforesaid circumstances, there could be no allegation against the respondent, for causing delay.

14. We are not in a position to accept the new plea of the appellants, with regard to any question of fact in the writ appeal. In the Writ Appeal preferred against the decision of the learned Single Judge, the only point to be decided is, as to whether the appellants would deny the compassionate appointment, on the ground that the respondent is a married woman. As there is no such legal bar against a married woman in getting compassionate appointment, raising such a plea is against the gender equality, guaranteed under Articles 14, 15(1) and 16(2) of the Constitution of India.

15. In the original scheme providing compassionate appointment in G.O.Ms.No.560 Labour and Employment Department, dated 03.08.1977, there was a total deprivation for married daughters to seek compassionate appointment. We are of the considered view that as a married son is eligible to get compassionate appointment, married daughter would also be eligible to make application for compassionate appointment.

16. It is not in dispute that the Government has 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, referred to above.

17. It has been made clear that G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993 provides compassionate appointment to married daughter of a government servant, since 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 toto, performance of marriage shall not be a pre-condition for daughter in the matter of getting compassionate appointment, since married son of a deceased government servant is entitled.

18. 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, married daughter of the deceased 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 married daughters, who got married subsequent to the death of the Government servant and more particularly after making application for compassionate appointment.

19. In the instant case, it is crystal clear that after the demise of the mother of the respondent, since her father was illiterate, her brother of the respondent herein made an application and while processing the application, he died and thereafter, her elder sister got married and hence, the respondent herein submitted her application on 15.06.1999, requesting for appointment on compassionate ground. On the facts and circumstances, we are of the view that there is no delay in submitting the application by the respondent herein.

20. Having considered the facts and circumstances and the arguments advanced by both sides, it is crystal clear that the learned Single Judge has rightly allowed the writ petition and hence, the writ appeal is liable to be dismissed, as there is no merit.

21. In the result, this writ appeal is dismissed, confirming the order passed by the learned single Judge. The second appellant is directed to issue appointment order in favour of the respondent herein on compassionate ground, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the interim stay granted in M.P.No.1

of 2012 is vacated and the said petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

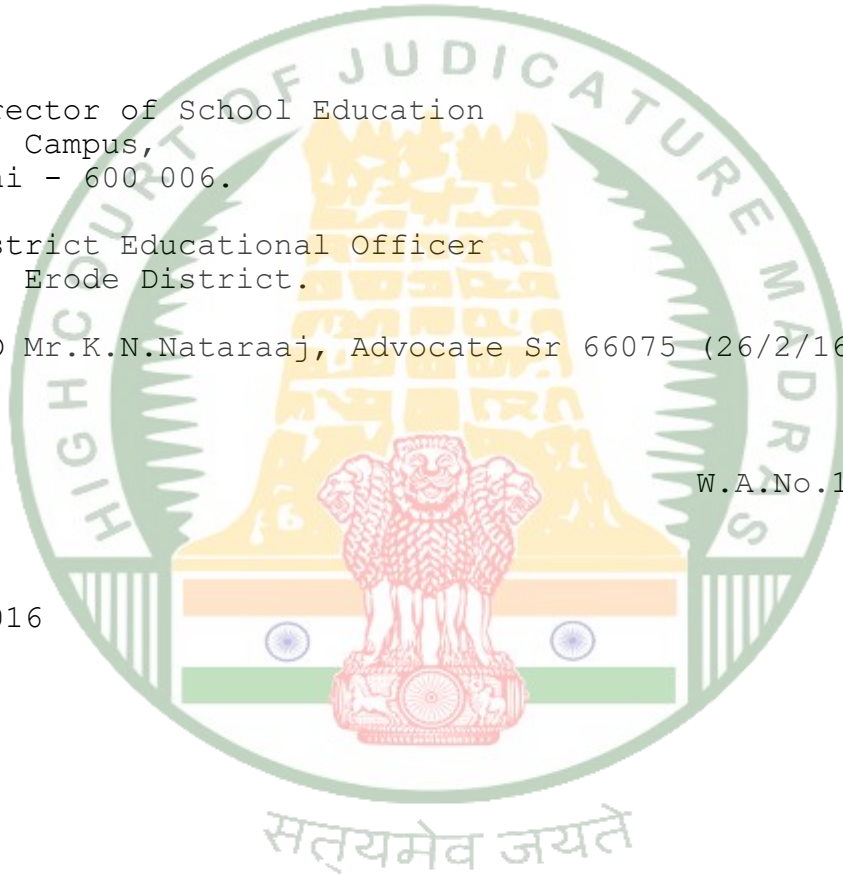
kal / tsvn

To

1. The Director of School Education
D.P.I. Campus,
Chennai - 600 006.
2. The District Educational Officer
Erode, Erode District.
- + 3 CCS TO Mr.K.N.Nataraj, Advocate Sr 66075 (26/2/16)

W.A.No.1333 of 2012

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