



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.07.2015
CORAM:
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN
W.P.(MD)No.9314 of 2015

WEB COPY

Kalimuthu

... Petitioner

Vs.

1.The Director,
Chepaukkam,
Agriculture Department,
Chennai.

2.The Joint Director,
Agriculture Department,
Pudukottai.

3.The Assistant Director,
Office of Agriculture
Thirumayam
Pudukottai District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 3rd respondent in letter No.33/2015-16, dated 24.04.2015 and quash the same and consequently, direct the respondents to appoint the petitioner in a suitable job in the respondent department.

For Petitioner : Mr.J.Anandkumar
For Respondents : Mr.R.Velmurugan
Government Advocate

O R D E R

The petitioner has filed the above Writ petition for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 3rd respondent in letter No.33/2015-16, dated 24.04.2015 and quash the same and consequently, direct the respondents to appoint the petitioner in a suitable job in the respondent department.

2.The case of the petitioner is that the petitioner's father has been appointed as Driver under the respondent Department. However, on 04.08.2013 due to ill health the petitioner's father died while he was in service. After the death of her father, the petitioner's mother applied through proper channel for appointment to a suitable post on compassionate ground before the 2nd respondent. The said request was rejected by the 2nd respondent dated 19.05.2014 on the ground that the petitioner's mother has crossed the minimum age as prescribed. At this juncture, the petitioner herein applied for a suitable post on compassionate ground, as she is one of the daughter. However, on 24.04.2015, the 2nd respondent by



his proceedings rejected the application of the petitioner for compassionate appointment on the ground that the petitioner got married. Hence, the petitioner is before this Court with the present Writ petition.

3.The petitioner submitted that in terms of the decision of the Full Bench of this Court in **R.Sivakumari Vs. Ramanthapuram Mavatta Payirchipetra Edinilai Asiriyargal Sangam (2007(5) CTC 561)**, the right to seek employment in public services is a valuable right and the Constitution guarantees equality of opportunities in matters relating to employment or appointment to any office under the State. Articles 14 and 16 of the Constitution of India mandates that all eligible candidates should be considered for appointment in the post which have fallen vacant, the same aspect has been discussed in detail by the Apex Court in State **Bank of India Vs. Anju Jain (2008(8) SCC 475)**. The petitioner further submitted that the obligation cast on the State under Article 39(a) of the Constitution to ensure that all citizens equally have the right to adequate means of livelihood. Even though the right to employment was not incorporated in Part III of the Constitution, the Constitution guaranteed to secure its citizens with justice, social, economic and political as well as the quality of the status and in particular the opportunity and that Article 21 of the Constitution comes to her rescue.

4.The petitioner further submitted that in view of the decision reported in **G.Girija Vs. The Assistant Director (Panchayats) (2008(5) CTC 686)** marriage is not a bar in the case of son, the same yardstick shall be applied in the case of daughter also. It is the duty cast upon the children to take care of the parents at their old age, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, there cannot be any unequal treatment among the children based on sex. The petitioner submitted that G.O.(Ms).No.96, dated 18.06.2012 is unconstitutional, ultra vires of the Constitution, arbitrary and discriminatory in nature, hence liable to quashed. The petitioner further submitted that fixing a cut off date, that too only for female legal heirs of deceased employees is nothing but discriminating females from other gender and it is against equality. It is well settled law that equal can be treated as equal and unequals cannot be. In the present case, the petitioner in both ways is equal to others. It is a fact that the petitioner is one of the female child of the deceased employee. Therefore, the petitioner prayed that she must be considered for appointment on compassionate ground.

5.I have heard the learned counsel appearing for the petitioner and the learned counsel for the respondents.

6.When the Government Order decides to treat the son and the daughter on the same footing, fixing a cut off date is not correct. That apart, this Court in a decision dated 23.4.2013 in W.P.(MD) No.6763 of 2013 and another decision dated 2.7.2012 in W.P.(MD) No.8686 of 2011, has granted relief to the petitioner, while quashing the impugned order of rejection. The relevant paragraph of the said order is extracted hereunder:

"9. As stated above, if a marriage is not a bar in the case of son, the same yardstick shall be applied in the case of 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 785 - (G.Girija vs. The 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. Her application was rejected on the ground that she was married when she gave an application for compassionate appointment. This Court quashed the order declining to give compassionate appointment holding that there cannot be any discrimination between the 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."

7.The decision in W.P.(MD) No.6763 of 2013 dated 23.4.2013 is also a case where the daughter of the deceased employee got married in 2002 and her father died in 2009. In this case, prior to the demise of her father, the petitioner got married. I had an occasion to consider the case of compassionate appointment which is reported in **2014 (1) LLN 515 (Mad.) - R.Kanagasanthi vs. Tamil Nadu Civil Supplies Corporation**}, the relevant paragraph 12 is extracted below:-

"12. At this juncture, it is relevant to point out Paragraph No.20 of a decision reported in Bhawani Prasad Sonkar vs. Union of India and others {2011 (3) LLN 37 (SC) : 2011 (4) SCC 209, wherein the Hon'ble Apex Court has held as follows:

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

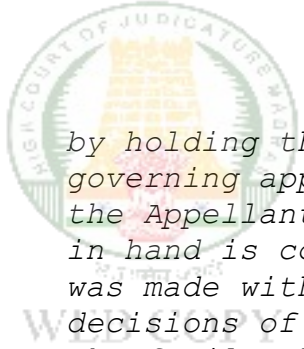
(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment de-hors 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 largessee 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."

In that case, the Hon'ble Apex Court has allowed the case of the Appellant



by holding that testing on the touchstone of these broad Guidelines governing appointment on compassionate ground, it was of the opinion that the Appellant has made out a case for such appointment. As far as the case in hand is concerned, the Application for compassionate ground appointment was made within the time limit. It has also been held in a catena of decisions of the Hon'ble Apex Court that to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner, Compassionate Appointment has got to be made. This has been established by the petitioner. The spirit of the Compassionate Appointment was to provide relief to the family members of the deceased persons and that on yardstick of social justice, such relief cannot be withdrawn retrospectively as the Government stopped appointments for certain periods and when there was a modification, after lifting the ban, the new scheme or modification has to take effect only prospectively. The Writ Petitioner has rightly contended that when there is a change in policy on 5.4.2007, while lifting the Ban, it could not result in denial of Compassionate Appointment to the petitioner, as any change would only be prospective in nature.

8. Taking note of the fact that there cannot be any discrimination and there should be uniformity and there cannot be any cut off date, when the Government has decided to consider a man and a woman equally, this writ petition is allowed and while allowing the writ petition, I direct the second respondent to consider the case of the petitioner and provide appointment on compassionate grounds to the petitioner, if the petitioner is otherwise eligible and if there are no legal impediments. The order of this Court is directed to be complied with preferably, within a period of 3 months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



RR
To

1.The Director,
Chepaukkam,
Agriculture Department,
Chennai.

2.The Joint Director,
Agriculture Department,
Pudukottai.

3.The Assistant Director,
Office of Agriculture
Thirumayam
Pudukottai District.

+1cc to M/s.J.Anandkumar, Advocate in Sr.No.37643
+1cc to Special Government Pleader in Sr.No.37975

W.P. (MD) No.9314 of 2015

08.07.2015

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