IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.37703 of 2015
and
M.P.No.1 of 2015

Tmt.Amsaveni ... Petitioner

– Vs –

1.Govt. of Tamil Nadu,
Represented by Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The Director of Rural Development and Panchayat Raj,
Chennai-600 005.

3.The District Collector,
Coimbatore District, Coimbatore.

4.The Panchayat Union Commissioner,
Sultanpet Panchayat Union, Sultanpet,
Coimbatore District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in his impugned Memo in Na.Ka.No.496/2015/A1 dated 03.07.2015 quash the same and issue consequential directions to the respondents to give appointment to the petitioner on compassionate ground without reference to marriage, consequent on the death of her father, Late Ayyappan on 04.11.2014 while serving as watchman in the Panchayat Union Office, Sultanpet, Coimbatore District.

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For Petitioner : Mr.R.Thamarai Selvan

For Respondents 1 to 3 : Mr.S.Gunasekaran
Government Advocate

For 4th respondent : Mr.Rajendra Narasimhan

O R D E R

The petitioner has come with present writ petition for issuance of a writ of certiorarified mandamus to quash the impugned order of the fourth respondent dated 03.07.2015 and issue consequential directions to the respondents to give appointment to the petitioner on compassionate grounds.

2. The case of the petitioner is that she belongs to Scheduled Caste community and her father Ayyappan, who worked as night watchman in the Panchayat Union Office, Sultanpet, Coimbatore District, died on 04.11.2014 in harness, leaving behind his wife and three daughters as his legal heirs.

3. The petitioner would state that she had submitted an application dated 11.03.2015 to the 4th respondent seeking appointment on compassionate grounds, along with No objection Affidavit from her mother and two sisters. The 4th respondent though his letter dated 13.3.2015 has forwarded her application to the 3rd respondent. However, before the decision taken by the 3rd respondent, the 4th respondent had sent an impugned order stating that married daughters are not entitled for appointment on compassionate grounds.

4. Heard the submissions of Mr.R.Thamarai Selvan, learned counsel appearing for the petitioner, Mr.Gunasekaran, learned Government Advocate appearing for the respondents 1 to 3 and Mr.Rajendra Narasimhan, learned counsel appearing for the 4th respondent.

5. Mr.Tamarai Selvan, learned counsel for the petitioner submitted that as per G.O.Ms.No.165, Labour and Employment (Q2) Department dated 30.08.2010, even married daughters are entitled for employment on compassionate ground. It is further submitted that the issue whether the married daughter is entitled for appointment on compassionate ground has already been settled by this Court in W.P.Nos.10565 of 2015 and W.P.No.21047 of 2015.

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6. The learned Government Advocate submitted that the 4th respondent had sent a proposal to the 3rd respondent on 13.03.2015 and the 3rd respondent has not passed any orders based on the application of the petitioner. By impugned order, the 4th respondent has only returned the application filed by the petitioner and sought for further clarification from the Government.

7. The Hon'ble Division Bench of this Court in the order passed in W.P.No.18916 has held as follows:-

> ''8. There is no dispute that the Government has made provision for appointment on compassionate ground, obviously with a view to enable the family members of the deceased employee to tide over immediately the financial stringency on account of the breadwinner in the family. It is of course true that as per G.O.Ms.No.73, Employment Services dated 26.10.1983, only an unmarried daughter is eligible and not a married daughter. However, there is no requirement in the G.O. that at the time of actual employment such unmarried daughter should continue to be unmarried nor there is any requirement that after an unmarried daughter gets employment on the compassionate ground, she cannot marry in future. There is no dispute that the present petitioner was eligible to make the application and she made an application as an unmarried daughter. The appropriate authority took about 3 to 4 years to finalise the matter. Merely because the unmarried daughter got married in the meantime and that too with a specific understanding that her husband would have no objection to her maintaining the members of the family of her father, it cannot be said that such person had got employment by suppressing any material fact.
>
> 9. We have also perused the format in which such Applications are required to be made. There is no coloumn in such format to indicate that an applicant at the time of her employment is required to disclose whether she is married in the meantime is any requirement that an unmarried daughter after getting such appointment on compassionate ground is required to remain as a spinster for ever. If an unmarried daughter after getting employment on

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compassionate ground has liberty to marry, we fail to understand as to why an unmarried daughter, who makes such Application and is otherwise eligible, keeping in view the financial aspect, would be deprived of the right of getting employment, more particularly when there is no objection raised by any other eligible person. As a matter of fact, in the present case, the mother and the petitioner's brother, who has become major in the meantime, have filed affidavits stating that they have no objection to the petitioner continuing in service.

10. For the aforesaid reasons, we are unable to sustain the order passed by the Tribunal and such order is hereby quashed. The petitioner shall be deemed to be continuing in service from the date of order of removal. However, no amount would for the period from 25.06.2014 till the date of rejoining pursuant to the present order. The petitioner shall be permitted to rejoin in service within a period of 30 days from the date of receipt of a copy of this order. The entire period shall be notionally counted for the purpose of seniority, increments, pension and other service benefits.''

8. This Court in Krishnaveni versus Superintending Engineer, Kadamparai Electricity Generation Block, Coimbatore District reported in (2013) 8 MLJ 684 held that there cannot be any discrimination on the ground of sex in compassionate appointment, which would run thus:-

''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

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said case, the Government Servant died on 26.2.1991. The daughter got married on 10.09.2006. 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.''

9. In the light of the above cited judgments, the order passed by the fourth respondent is set aside and the third respondent is directed to consider the application of the petitioner by taking into consideration of the judgments cited above, within a period of twelve weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssn/arr

To

1.Govt. of Tamil Nadu,
Represented by Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat,
Chennai-600 009.

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2.The Director of Rural Development and Panchayat Raj,
Chennai-600 005.

3.The District Collector,
Coimbatore District, Coimbatore.

4.The Panchayat Union Commissioner,
Sultanpet Panchayat Union, Sultanpet,
Coimbatore District.

+1cc to Mr.R.Thamarai Selvan, Advocate, S.R.No.388
+1cc to the Government Pleader, S.R.No.601

W.P.No.37703 of 2015
and
M.P.No.1 of 2015

AK(CO)
CA(29/01/2016)

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