

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.37903 of 2015

R.Nandhini

...Petitioner

- Vs -

- 1.The Joint Registrar of Co-operative Societies,
Udhagamandalam,
Commercial Road, Super Market Up-stair,
Udhagamandalam,
The Nilgiris.
2. The Deputy Registrar of Co-operatives,
Udhagamandalam,
NGMS Complex, Garden Road,
Udhagamandalam,
The Nilgiris.
3. The President,
The Aravenu Primary Agriculture Co-operative
Credit Society Limited (No.J321),
Aravenu Post,
The Nilgiris- 643 201. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the entire records relating to the Impugned Order dated 07.11.2015 passed by the 3rd Respondent and quash the same and direct the Respondents to provide employment to the petitioner on compassionate ground.

For Petitioner : Mr.L.Mouli

For Respondents 1 to 2 : Ms.T.P.Santha
Government Advocate (Co-op.)

For 3rd respondent : Mr.E.M.S.Natarajan

O R D E R

The petitioner has come with present writ petition to quash the impugned order of the third respondent dated 07.11.2015 and for a consequential direction to the respondents to provide employment to the petitioner on compassionate ground.

2. The case of the petitioner is that her father Mr.G.Raju, who was working as Salesman in the third respondent, died in harness on 26.11.2011, leaving behind his wife, one daughter and one son as his legal heirs.

3. The petitioner would state that she had submitted an application to the third respondent seeking appointment on compassionate ground, enclosing all necessary documents including No objection Certificate from her mother and brother. However, the third respondent rejected the application of the petitioner on the sole ground that married daughters, who are living with their husband are not entitled for appointment on compassionate ground. Challenging the order, the writ petition is filed.

4. Heard the submissions of Mr.L.Mouli, learned counsel appearing for the petitioner, Ms.T.P.Santha, learned Government Advocate appearing for the respondents 1 and 2 and Mr.E.M.S.Natarajan, learned counsel appearing for the 3rd respondent.

5. Mr.Mouli, learned counsel for the petitioner would submit 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 settled by this Court in W.P.Nos.11777 of 2007 and 17677 of 2015.

6. In a judgment of this Court reported in 2008 (5) CTC 686 [G.Girija v. The Assistant Director (Panchayats), the eldest daughter of the deceased employee applied for appointment on compassionate ground. However, her request was rejected on the sole ground that she is married and she is not entitled to get appointment on compassionate ground. In that case, this court has held as follows -

6. The learned counsel for the petitioner as well as the learned counsel for the respondents submits that a similar issue was considered by the Division Bench of this Court

in WP No.18916 and the Division Bench in paragraph Nos.8 and 9 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 column 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 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.'

7. In view of the Division Bench judgment, which has already settled the controversy in this matter, the impugned order challenged in this writ petition is set aside and the second respondent is directed to issue appointment order to the petitioner on compassionate ground without reference to the marriage of the petitioner, in terms of the order passed by the Division Bench of this Court. Necessary order is directed to be passed by the second respondent within a period of four weeks from the date of receipt of a copy of this order.

7. In the case of Krishnaveni versus Superintending Engineer, Kadamparai Electricity Generation Block, Coimbatore District reported in (2013) 8 MLJ 684, this Court held that if marriage is not a bar in the case of son, the same yardstick shall be applied to the case of a daughter also and there cannot be any discrimination based on sex. The relevant paragraph is extracted below -

'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 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 10.09.2006. 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.''

8. 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 afresh and appoint her, if she is otherwise eligible for appointment and pass orders 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.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ssn/arr/rg

To

- 1.The Joint Registrar of Co-operative Societies,
Udhagamandalam, Commercial Road, Super Market Up-stair,
Udhagamandalam, The Nilgiris.
2. The Deputy Registrar of Co-operatives,
Udhagamandalam, NGMS Complex, Garden Road,
Udhagamandalam, The Nilgiris.
3. The President,
The Aravenu Primary Agriculture Co-operative
Credit Society Limited (No.J321),
Aravenu Post,
The Nilgiris- 643 201.

1 cc to Mr.L. Mouli, Advocate, Sr. 364
1 cc to Government Pleader, Sr. 602

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