

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.05.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.40741 of 2015

M.Indra

.. Petitioner

-vs-

The Director,
Institute of Mental Health,
Kilpauk,
Chennai.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari or any other appropriate writ, order or direction, in the nature of Writ by quashing the impugned order in ந.க.எண்.2729.நீ4.2014 dated Nil.11.2015 issued by the respondent and to appoint the petitioner in the suitable job at Institute of Mental Health, Chennai - 10, under compassionate grounds, arising due to the death and pass such further or other orders.

For Petitioner :: M/s.Prof.M.Udayabhanu

For Respondents :: Mr.R.Vijayakumar
Additional Government Pleader

ORDER

The petitioner viz., M.Indra, W/o.M.Ramakrishnan, is the daughter of the deceased M.Pushpa who worked as II Grade Female Attendant in the Institute of Mental Health, Kilpauk, Chennai - 10 and she died in harness on 28.11.2008. The petitioner's father Munnusamy already died on 06.01.1991.

2. The petitioner's mother left two legal heirs namely; (1) M.Manjula and (2) M.Indira. The elder sister of the petitioner herein M.Manjula is a mentally retarded patient and she has been diagnosed as behavioural problem with seizure disorder. In this regard, the Medical Certificate was issued by the Director, Institute of Mental Health, Chennai - 10, on 23.07.2009.

3. After the sudden death of her mother viz., M.Pushpa, the petitioner made an application for the appointment under compassionate ground on 12.08.2011 before the respondent. Meanwhile, the petitioner filed a petition for appointment of

guardian Under sections 50, 51, 52, 53 and 54 of Mental Health Act of 1987 for the custody of elder sister, M.Manjula, aged about 33 years who is also one of the legal heirs of the petitioner's mother in M.H.O.P.No.161 of 2010, before the learned Principal Judge, City Civil Court, Chennai, and passed an order of custody on 23.07.2010.

4. The petitioner while submitting his representation before the respondent had requested to give an appointment under the compassionate ground for him. On receipt of the said representation, the respondent has given a reply on 04.03.2012 stating that in M.H.O.P.No.161 of 2010, dated 23.07.2010, the petitioner was employed. Therefore, as per the Court order, employment opportunity cannot be given to a person who is already employed. On seeing the reply dated 04.03.2012, the petitioner came to know in the order it is wrongly mentioned that "the petitioner was employed".

5. Therefore, this petitioner again approached the said Court through her Advocate by filing a petition on 18.02.2014 under Order 6 Rule 17 read with Section 152 of C.P.C to rectify, delete and amend the mistaken observation in the order passed in M.H.O.P.No.161 of 2010 by the Learned Principal Judge, City Civil Court, Chennai.

6. Considering the petitioner's case, the Learned Principal Judge, City Civil Court, issued amendment order by deleting the word. "The petitioner was employed" and issued the old order copy on 05.03.2014 in C.M.P.No.340 of 2014, in M.H.O.P.No.161 of 2010. After rectifying the above mistake in the above order through the Competent Court, this petitioner approached the respondent once again and submitted fresh application on 12.03.2014, in which she has explained all her sufferings and hardships in maintaining mentally retarded sister without any monthly income and requested to give suitable appointment to the petitioner by considering the representation dated 12.03.2014. But no action was taken by the respondent in this regard. Therefore, the petitioner has approached this Court by filing a writ petition in W.P.No.22286 of 2015 for issuance of a writ of mandamus to direct the respondent to consider her representation dated 12.03.2014.

7. Considering the prayer, this Court by order dated 24.07.2015, passed an order, directing the respondent to pass appropriate orders on the petitioner's representation dated 12.03.2014, relating to compassionate appointment on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. On receipt of the said order, this petitioner shall once again give a representation to the respondent by enclosing the copy of the same.

8. On receipt of the said representation along with order copy in W.P.No.22286 of 2015, the respondent has passed the present impugned order stating that the legal heirs certificate has been issued by the Revenue Department in which it is stated that the

petitioner M.Indra is a married woman. Therefore, as per the Government Rules, no compassionate appointment will be given to a married woman. Hence, her request was rejected by the respondent. Challenging the said order, the present writ petition has been filed before this Court.

9. Heard Mr.M.Udayabhanu, learned counsel for the petitioner and Mr.R.Vijayakumar, Additional Government Pleader for the respondent.

10. It is an admitted fact that the petitioner's mother viz., M.Pushpa, was employed as II Grade Female Attendant in the Institute of Mental Health, Kilpauk, Chennai -10 and she died on 28.11.2008 while she was in service, leaving behind this petitioner and one elder sister viz., M.Manjula, is mentally retarded person and she is taking treatment in the Hospital. This Court passed several orders by directing the Government Authorities to give compassionate appointment to the married woman. The State Government has given appointment to the married sons that make discrimination with the married woman and therefore, opportunity in public employment cannot be deprived to the woman on the ground of marriage.

11. This Court passed relevant orders in the following cases:

- (i) G.Girija Vs. Assistant Director (Panchayats), Kancheepuram District, 2008 (5) CTC 686;
- (ii) Krishnaveni Vs. Superintending Engineer, Kadamparai Electricity Generation Block, Coimbatore District, 2013 (8) MLJ 684 in W.P.No.16153 of 2015, dated 09.06.2015.
- (iii) M.Sudha Vs. District Collector, Thanjavur District in W.P.(MD).5183 of 2013 and W.P.(MD).No.8686 of 2011.
- (iv) R.Govindammal Vs. Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Chennai in 2015 (5) CTC 344.

12. As per G.O.Ms.No.560, dated 03.08.1977, the State Government provides Compassionate Appointment to the wife/husband/son/unmarried daughter on the death of the Government Servant i.e., while the son of the deceased Government Servant is entitled to Compassionate Appointment without reference to marriage, the daughter is not treated equally in providing compassionate appointment and a condition is imposed that the daughter should be unmarried to claim compassionate appointment. Later on, the said another Government Order was issued in G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010. In my view, such a scheme of compassionate appointment is arbitrary and violative of Articles 14 and also against Articles 15(1) and 16(2) of the Constitution of India.

13. All the above judgments have clearly observed that the State Government should not discriminate inspite of giving compassionate appointment to the sons and daughters of the deceased

employee. When the Government is giving appointment to the married sons, they should not deny to give employment to the married daughters. But in this case, only on the ground of marriage of this petitioner, who is the daughter of the deceased mother, is denied by citing marriage as a reason and such action of the State is against the very scheme of the Constitution. The preamble of the Constitution ensures equality of status and opportunity to all its citizens. The Government should not discriminate or deprive to woman on the ground of marriage, while the same is not a restriction in the case of a man.

14. Admittedly, in this case, the deceased employee has died during the course of the employment by leaving her two daughters viz., M.Manjula and M.Indra. Infact, the elder daughter of the deceased employee viz., M.Manjula is a mentally retarded person and this petitioner, who is the second daughter of the deceased employee should take care of the first daughter. But, without considering all the above Government Orders and the judgments of this Court passed in the above writ petitions and the pathetic condition of the petitioner's family, the respondent mechanically passed the present impugned order by stating that the petitioner is a married woman and hence she is not entitled to the compassionate appointment. Again, the view of the respondent is totally illegal and he had not applied his mind. In all the above judgments cited supra, this Court directed the Government Authorities to give employment to the married daughter without discrimination but this respondent purposely rejected the request of the petitioner on the sole ground that she is a married daughter of the deceased employee.

15. In fact, this Court in the case of R.Govindammal Vs.Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Chennai in 2015 (5) CTC 344 has directed the first respondent to provide compassionate appointment to the petitioner, if she is otherwise eligible, without reference to marriage. In the said order, the learned Judge of this Court issued a direction to the Chief Secretary of the Tamil Nadu Government, to suitably modify the Government Order in G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 in the light of the observations made above.

16. The learned Additional Government Pleader, for the respondent Mr.R.Vijayakumar, argued that the impugned order dated NIL was passed in accordance with the above Government Orders. Since, the Government Order is restricted to give employment to the married daughters and hence, he sustained the impugned order.

17. In my considered opinion and by going through the above judgments and on perusing the impugned order passed by the respondent it is unfortunate to note here that the respondent without considering the pathetic situation of the petitioner's case that the elder sister viz., M.Manjula, is a mentally retarded person and she ought to have been taken care of by her family members, the respondent has passed the impugned order in a mechanical manner

without mentioning any other ground except the ground of married daughter. All the above cases cited supra has rightly directed the respondent authorities to provide compassionate appointment without reference to the marriage of the petitioner. In the present case also, the above judgment is squarely applicable.

18. Being, the authority concerned/respondent should call for the petitioner along with her elder daughter viz., M.Manjula, who is mentally retarded person, left by the deceased employee viz., M.Pushpa and make a thorough enquiry. Thereafter only, suitable orders should be passed. The respondent has passed the present impugned order by simply stating that as per the legal heirs certificate issued by the Revenue Department, that this petitioner is married woman has rejected her request. The impugned order has been passed with total non application of mind and against the principles of natural justice and without considering the family situation of the petitioner and hence, it is liable to be set aside. Accordingly, this Court is constrained to pass the following order.

(a) The impugned order in ந.க.எண்.2729,நி4.2014, Dated-NIL, is set aside and the writ petition is allowed.

(b) The respondent is directed 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 four weeks from the date of receipt of a copy of this order.

19. The writ petition stands allowed to the extent indicated above. There is no order as to costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Director,
Institute of Mental Health,
Kilpauk, Chennai.

2 ccs to Mr.M. Udayabanu, Advocate, Sr. 28330
1 cc to Government Pleader, Sr. 28385

W.P.No.40741 of 2015

SSK (CO)
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