

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.75 of 2016

and

C.M.P.No.420 of 2016

- 1.The Secretary to the Government,
The Government of Tamil Nadu,
Labour and Employment (Q1) Department,
Fort St. George,
Chennai.
- 2.The District Collector,
Ariyalur District,
Ariyalur.
- 3.The Revenue Divisional Officer,
Udaiyar Palayam,
Ariyalur District.
- 4.The Tahsildar,
Jayankondam,
Jayankondam Taluk,
Ariyalur District.

..Appellants/Respondents

Vs.

P.Usha Rani

..Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court dated 10.07.2014 passed in W.P.No.33305 of 2013.

Prayer in WP.NO.33305/2013:-

Writ petition filed under article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for records of the impugned Government Order

in G.O.(Ms) NO.96 dated 18.6.2012 (Labour and Employment (Q1) Department) and consequential rejection order of the second respondent herein relating to employment for the petitioner herein on the ground of Compassionate Ground dated 3/10/2013 proceedings in Na.Ka.No.3/4287/2013 and to quash the same as unconstitutional, illegal and unlawful with a consequential direction to the respondents herein to provide employment to the petitioner herein under Compassionate Ground on her representation dated 7.7.2008.

For appellants : Mrs.A.Srijayanthi, Spl.G.P.

For Respondent : Mr.S.Sathyanarayanan

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

With the consent of the learned counsel appearing for parties, the writ appeal is taken up for final disposal at the admission stage itself.

2 The instant intra-court appeal is directed against the order dated 10th July, 2014 passed in W.P.No.33305 of 2013.

3 The incontrovertible facts in nutshell are that the father of the writ petitioner /respondent herein, i.e., S.Paramasivam, while working as Village Assistant, died in harness on 21st April, 2008. The writ petitioner, being the only legal heir, made an application on 7th July, 2008 within the time prescribed under the policy, to consider her case for compassionate appointment. The petitioner married one S.Rajendran on 12th July, 2001. The application of the petitioner was rejected by the impugned proceedings dated 3rd October, 2013 on the ground that the writ petitioner was already married. Feeling aggrieved, the writ petitioner / respondent herein, preferred the writ petition, questioning the validity of G.O.Ms.No.96, Labour and Employment Department, dated 18th June, 2012 and also to quash the impugned proceedings dated 3rd October, 2013 and seeking consequential direction to provide employment on compassionate basis.

4 The learned Single Judge, finding the cut off date specified in the aforesaid G.O.Ms.No.96, i.e., 29th November, 2001, as irrational and unreasonable, directed the appellant herein to consider the case of the writ petitioner / respondent herein afresh for appointment on compassionate basis in the next vacancy arising in Class III or IV. Thus, this appeal.

5 The learned counsel appearing for the appellants would submit that G.O.Ms.No.96 was issued considering all relevant factors, wherein it was clearly stated that all married daughters, who got married after 29th November, 2001, would be treated as female legal heirs for the purpose of seeking appointment on compassionate ground. The decision to fix the date as 29th November, 2001 was taken considering several factors and the same being the policy decision could not have been faulted or quashed.

6 On the other hand, Mr.S.Sathyanarayanan, learned counsel appearing for the respondent submits that the said cut off date was decided subsequently by G.O.Ms.No.96 dated 18th June, 2012, overlooking relevant factors, i.e., the status of the legal heir, whether the married daughter is the only legal heir, whether the widow is dependent on other members or dependent on the female married daughter, which are relevant consideration for the grant of compassionate appointment.

7 We have heard the learned counsel for the parties, perused the pleadings, considering the submissions and documents annexed thereto.

8 Indisputably, the writ petitioner / respondent herein is the only daughter of the deceased employee. There is no other legal heir. It is also the case of the writ petitioner that the widow is dependent on the writ petitioner / respondent herein, who is the only daughter and married. On the date of death of the deceased employee, the sudden crisis had befallen widow and the daughter of the deceased employee. There is no one to take care of the mother as there is no male child.

9 Till G.O.Ms.No.96 dated 18th June, 2012 was issued, the Government has taken a decision to consider unmarried, widow and divorced daughter, living with the deceased employee. There was also a policy decision to get an undertaking from unmarried daughter that after her marriage, she would take care of the dependents of the deceased employee. Subsequently, G.O.Ms.No.96 was passed prescribing other conditions that daughters married after 29th November, 2001 would be eligible for consideration on compassionate ground. There is no rationale behind the fixing of cut off date as 29th November 2001. Thus, the learned Single Judge has rightly quashed the same. In the case on hand, the writ petitioner / respondent herein got married on 12th July, 2001.

10 An identical issue came up for consideration in The Assistant Primary Education Officer, Assistant Primary Education Office, Anthiyur and two others Vs. Mrs.Kayalvizhi [W.A.No.635 of 2015]. A Division Bench of this court, by order dated 23rd April, 2015, held as under :

"3.The ratio which arises from the afore-stated observation is, that a married daughter is eligible for consideration subject to submission of 'no objection certificate' of other members of the deceased family and also with an undertaking from her and her husband that she will take care of the other members of the parents' family."

11 Considering all aspects of the matter, we are of the view that fixing of cut off date as 29th November, 2001 has no basis and the same is unreasonable, irrational, which has been rightly quashed. If only married daughter is available to take care of the dependents of the deceased employee, the said married daughter is eligible for consideration of appointment on compassionate basis, subject to submission of No Objection Certificate of the mother and other members, if any, of the deceased family and also giving an undertaking along with her husband that they will take care of all dependent members of the deceased employee.

12 For the reasons mentioned hereinabove, the writ appeal is disposed of directing the appellants to consider the application of the writ petitioner / respondent herein for compassionate appointment, subject to aforesaid conditions and also the eligibility for appointment on the appropriate post, within a period of four weeks from the date of receipt of copy of the order. No costs. Consequently connected miscellaneous petition is closed.

sd/-
Assistant Registrar (Cs-VI)

/TRUE COPY/

Sub-Assistant Registrar

vvk

To

1.The Secretary to the Government,
The Government of Tamil Nadu,
Labour and Employment (Q1) Department,
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4.The Tahsildar,
Jayankondam,
Jayankondam Taluk,
Ariyalur District.

+1 CC to MR.S.Sathya Narayanan Advocate. SR.NO. 5349
+1 CC to Govt.Pleader. SR.NO. 4246

W.A.No.75 OF 2016

CO-SKV
JD 11/02/2016



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