

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.30302 of 2011

M.Baby Rani

.. Petitioner

Vs

1.The Director of Public Libraries,
Anna Salai, Chennai-2.2.The District Library officer,
Erode – 638 003.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for records relating to the 1st respondents order made in Na. Ka.No. 14047/A4/2009, dated 11.10.2010 to quash the same and consequently direct the respondents to consider and appoint the petitioner forthwith in any of the eligible post on compassionate ground.

For Petitioner

: Ms. N.R.Jasmine Padma

For Respondents

: Mr.A.Rajaperumal
Additional Govt. Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the first respondent's order made in Na.Ka.No.14047/A4/2009, dated 11.10.2010, to quash the same and to consequently direct the respondents to consider and appoint the petitioner forthwith in any of the eligible posts on compassionate ground.

2. The facts in a nutshell are as under: The petitioner's father died in harness on 07.09.1997, while discharging his duties as Grade-III Librarian under the control of the respondents, leaving behind his wife (mother of the petitioner) and other legal heirs, including the petitioner.

3. It is stated that in order to mitigate the immediate necessity of the family and as there was no other earning family member, the petitioner's mother, who is an illiterate, made a representation during October, 1997, seeking appointment of the petitioner herein on compassionate grounds. The said representation was returned stating that the petitioner was only 13 years old and the same can be presented for consideration only on attaining 18 years.

4. It is stated that on attaining the age of 18 years and on successfully completing Tenth Standard, the petitioner made a representation on 30.08.2001 seeking appointment on compassionate grounds. The said representation was returned by the respondent authorities with a direction to apply in the prescribed format. The petitioner submitted the application immediately in the prescribed format with all necessary enclosures and thereafter the issue is stated to have been kept on the back burner. Pending such consideration of her representation, the petitioner got married during 2004 and it is stated that, even thereafter, the indigent circumstances continue and the family is suffering.

5. The petitioner sent a representation to the Hon'ble Chief Minister's Grievance Cell seeking compassionate appointment and in response to the same, she was informed that in view of G.O.Ms.No.73, Labour and Employment Department, dated 26.10.1983, the petitioner, having been married, is not entitled to be considered for appointment on compassionate grounds.

6. Thereupon, the petitioner sent another representation to

the second respondent stating that the above said government order is not applicable to her inasmuch as she applied for compassionate appointment much prior to her marriage and that what needs to be considered is the status as on the date of the death of the employee as well as the indigent circumstances in which the family is surviving. However, the first respondent by proceedings dated 21.11.2009 and the second respondent by proceedings dated 19.04.2010 rejected the claim of the petitioner. It is stated that assailing the same, the petitioner filed W.P.No.13472 of 2010.

7. This Court, by order dated 28.06.2010, allowed the above said writ petition and set aside the order under challenge and directed the respondents to consider the request of the petitioner afresh. However, the said direction did not evoke any response from the respondent authorities, warranting the petitioner to issue a pre-contempt notice and thereafter, the first respondent, by proceedings dated 30.06.2011 (anti-dating the same as 11.10.2010), rejected the claim of the petitioner.

8. Assailing the said order, the present writ petition is filed for the relief stated supra.

9. The learned counsel appearing on behalf of the petitioner submitted that the non-consideration of the indigent circumstances of the family and taking note of the subsequent event of her marriage, which took place long after her representation seeking compassionate appointment was sent, the respondent authorities have mechanically rejected the request of the petitioner and the same is liable to be set aside.

10. The learned Additional Government Pleader appearing on behalf of the respondents submitted that if the petitioner is married at the time of appointment, a no objection certificate has to be obtained from the other legal heirs of the deceased person. He added that if the petitioner is appointed after her marriage, a declaration should be filed by the petitioner to the effect that the benefits will be given to the deceased family and a declaration from the person who is to marry the petitioner that in future, he will not object regarding the benefits that will be given to the parents of the petitioner, who had applied on compassionate grounds. It is also admitted that the petitioner had sent such declaration through the District Library Office.

11. I heard M/s.N.R.Jasmine Padma, learned counsel for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents and perused the documents available on record.

12. It is a matter on record that this Court, while disposing of W.P.No.13472 of 2010, by order dated 28.06.2010, observed as under:

"By the order impugned in the writ petition, the respondents have rejected the request of the petitioner for appointment on compassionate ground on the sole ground that the petitioner was already married. But the question as to whether compassionate appointment could be rejected in respect of the married daughters has already been decided in several decisions of this Court, including the one in G.Giri v. Assistant Director [2008 (6) MLJ 774].

In view of the above, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondents for fresh consideration. The respondents shall pass orders within a period of eight weeks from the date of receipt of a copy of this order."

13. In *G.Giri v. Assistant Director [2008 (6) MLJ 774]*, a

learned Single Judge of this Court, referring to a decision of the Division Bench of this Court in W.P.No.18916, in particular to paragraphs (8) and (9), which are as under:

"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.

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 be paid (sic) for the period from 25.6.2004 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.”,

held that 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.

14. The law enunciated in the decisions, referred supra, squarely applies to the case on hand. That apart, it is fairly admitted by the respondents in the counter affidavit that the petitioner has submitted the requisite undertaking in the prescribed format through the District Library Office.

15. In such view of the matter, the following order is passed:

- (i) the writ petition is allowed and the impugned order dated 11.10.2010 passed by the first respondent is set aside;
- (ii) inasmuch as the respondents have fairly admitted receipt of the undertaking as required,

the respondent authorities are directed to appoint the petitioner within twelve weeks from the date of receipt of a copy of this order.

(iii) No costs.

18.07.2017

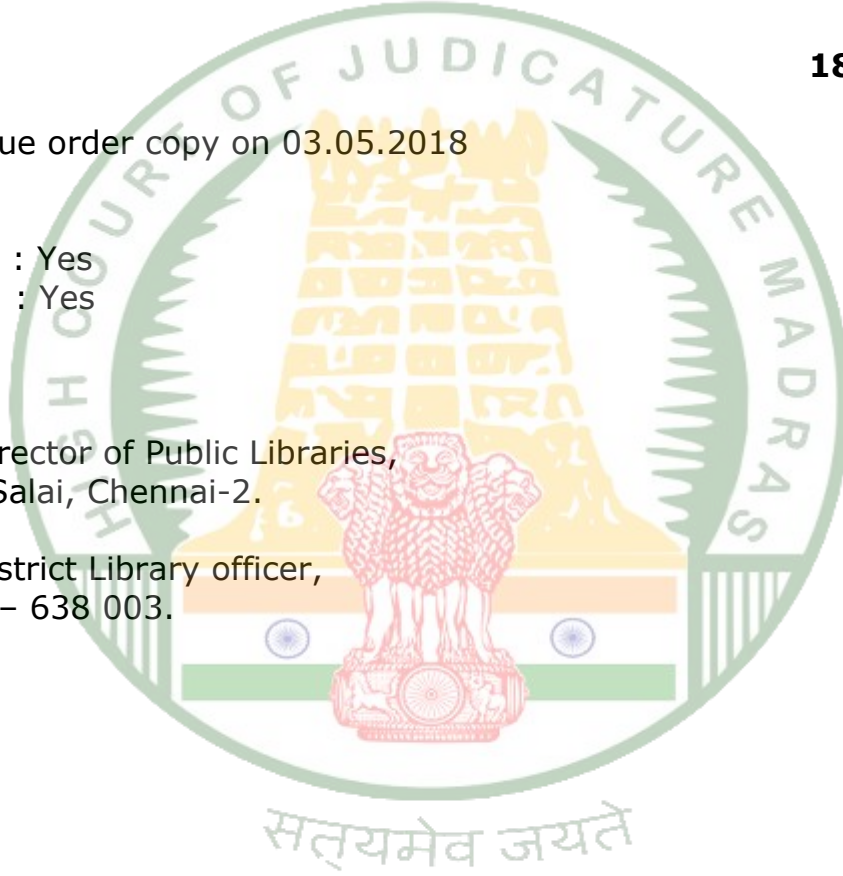
Note: Issue order copy on 03.05.2018
vs

Index : Yes
Internet : Yes

To

1. The Director of Public Libraries,
Anna Salai, Chennai-2.

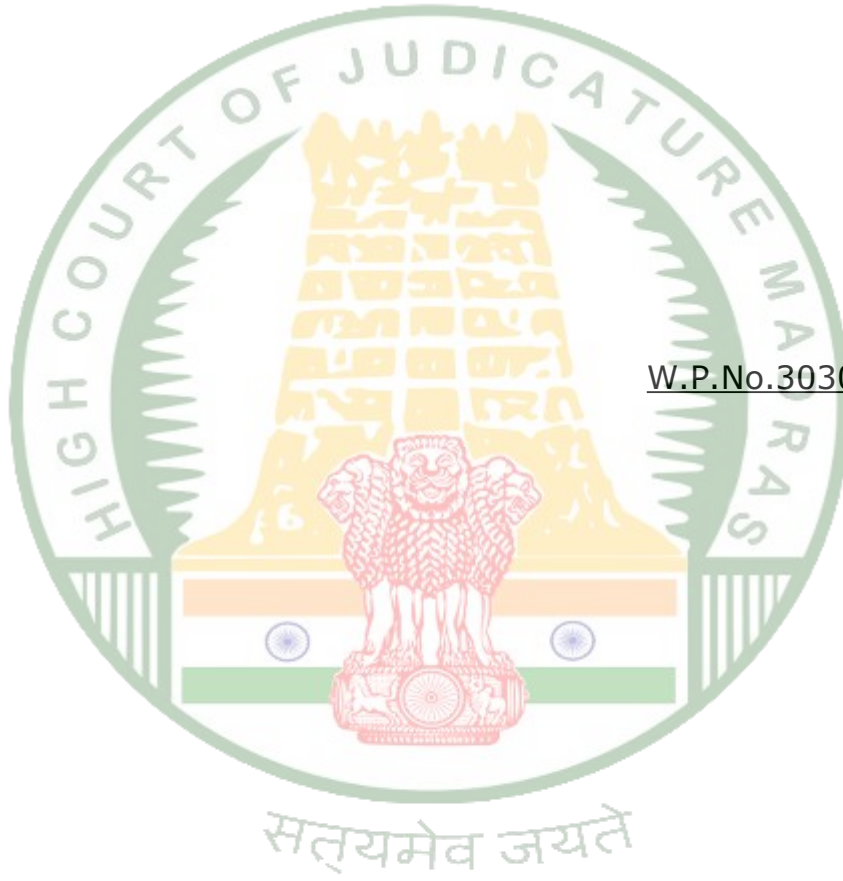
2. The District Library officer,
Erode - 638 003.



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M.V.MURALIDARAN, J.

VS



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