

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.9.2017

CORAM :

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

Writ Petition No.25366 of 2008

N.Uma

.. Petitioner

Vs.

- 1 The Director of Elementary School Education
DPI Compound, Chennai - 600 006.
- 2 The District Elementary Education Officer
Salem.
- 3 The Additional Assistant Educational Officer
Kadaianpatti Village
Omalar Taluk, Salem District.

.. Respondents

PRAYER:

Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to proceedings No.5693/B2/08, dated 14.9.2008 issued by the second respondent, to quash the same and direct the second respondent to consider the petitioner's application for compassionate appointment.

For Petitioner : Mr.R.Subramanian

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to proceedings No.5693/B2/08, dated 14.9.2008 issued by the second respondent, to quash the same and direct the second respondent to consider the petitioner's application for compassionate appointment.

2. The facts in a nutshell are as under: The petitioner's

father was working as Headmaster in Panchayat Union Elementary School, Naimarkadu, Kadaianpatti. He died in harness on 13.3.1994, leaving behind his wife and four daughters. Since the petitioner's father died in harness, an application for appointment of any one of the legal heirs on compassionate ground was made in 1998. The other legal heirs gave no objection for the petitioner being considered for appointment on compassionate grounds.

3. It is further stated that the respondents ascertained from the authorities concerned qua the financial status of the petitioner's family and the Tahsildhar, Omalur, issued a certificate dated 21.4.1999 to the effect that apart from the annual pension of Rs.25,092/-, the petitioner's family has no other income. However, since the petitioner was married, it was held that she is not entitled to be considered for compassionate appointment.

4. In such backdrop, the present writ petition is filed for the relief stated supra.

5. It is the contention of the learned counsel appearing for the petitioner that the married daughter is entitled to be considered for appointment on compassionate grounds and inasmuch she had made an application in the year 1997 and the same was rejected only on 7.12.2007, in view of ban in recruitment till 2006, in the light of the decision of this Court in G.Girija v. The Assistant Director (Panchayats), Kancheepuram and others, reported in 2008 (5) CTC 686, she is entitled to be considered on compassionate grounds.

6. The learned counsel further contended that inasmuch as the other legal heirs have given no objection for appointment of the petitioner way back in 1998, the stand of the respondent authorities in the impugned order that the educational qualification of the other legal heirs could not be ascertained does not hold water, more so as the family is in financial crisis having lost the sole breadwinner.

7. The learned Additional Government Pleader appearing on behalf of the respondent reiterated the reasons that weighed with the respondent authorities in passing the impugned order and submitted that a married daughter is not entitled to seek appointment on compassionate grounds.

8. I heard Mr.R.Subramanian, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents and perused the documents available on record.

9. The facts are not much in dispute and, therefore, it is not necessary to traverse through the same once again. The core question to be considered is whether the petitioner, who applied for appointment of compassionate ground in 1997, which application was rejected in the year 2007/2008 after lifting of the ban in recruitment by the Government, is entitled to be considered for such appointment, despite being married in the interregnum period.

10. The issue involved in this case is no longer res integra. A learned Single Judge of this Court in *G.Girija v. The Assistant Director (Panchayats), Kancheepuram and others*, supra, held as under:

"5. The ban order issued by the Government was lifted on 21.2.2006. Thereafter, the petitioner was required to submit certain particulars and the same was also furnished by the petitioner. In the meantime; the petitioner got married on 10.9.2006. The said fact was also duly intimated to the first respondent through the letter of the petitioner dated 6.11.2007. Now the petitioner's claim is rejected by the impugned order by stating that since the petitioner is now married, she is not entitled to get appointment on compassionate ground.

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 *W.P.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.

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.'

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."

(emphasis supplied)

11. Under identical circumstances, of course qua appointment on compassionate grounds in the Tamil Nadu Electricity Board, a learned Single Judge of this Court in Krishnaveni v. The Superintending Engineer, Coimbatore, (2013) 8 MLJ 684, held as under:

"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 impugned 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 10.9.2006. 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.'

(emphasis supplied)

12. I had an occasion to deal with an identical issue in M.Indra v. The Director, Institute of Mental Health, 2016 4 CTC 870, wherein it was held as under:

"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 by 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."

(emphasis supplied)

13. The above said decisions apply on all fours to the case on hand. In the instant case, the deceased Government servant

has no male issue. If the other legal heirs have given no objection to the petitioner being granted appointment on compassionate grounds, it cannot be stated that the petitioner is not entitled to appointment merely because she is married. That apart, Maintenance and Welfare of Parents and Senior Citizens Act places equal responsibility on both the son and daughter to take care of their parents.

14. There can be no artificial classification between married son and married daughter only on the basis of sex, as the same would tantamount to gender discrimination. If married son is considered to be a part of the family, this Court is at a loss to understand as to why a married daughter should not be included in the definition of family. Son and daughter are supposed to take care of the parents at the old age. The married son is to be treated at par with the unmarried daughter. Not considering the married daughter for compassionate appointment merely on the basis of marriage is patently arbitrary and unreasonable.

15. For the foregoing reasons, this writ petition is allowed and the impugned order dated 14.9.2008 passed by the second respondent is set aside and the second respondent is directed to consider the application of the petitioner and provide appointment to her on compassionate grounds, if she is otherwise eligible, without reference to her marriage. Such exercise shall be undertaken within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To:

- 1 The Director of Elementary School Education
DPI Compound, Chennai - 600 006.
- 2 The District Elementary Education Officer, Salem.
- 3 The Additional Assistant Educational Officer
Kadaampatti Village, Omalur Taluk, Salem District.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.70545

W.P.No.25366 of 2008

AK(CO)
CS/03/01/2019