



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.06.2017

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A(MD)No.396 of 2017

M.Usha : Appellant

Vs.

1.The Director General of Police,
O/o. the Director General of Police,
Chennai-04.

2.The Superintendent of Police,
O/o. the Superintendent of Police,
Nagercoil,
Kanyakumari District.

: Respondents

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent Act, praying to allow the Writ Appeal and set-aside the order passed in W.P.(MD) No.10420 of 2016 dated 21.06.2016 on the file of this Hon'ble Court.

Prayer in WP(MD). 10420/ 2016 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the Respondents to consider the petitioner for compassionate appointment within the time stipulated by this Honble Court.

For Appellants : Mr.T.Lajapathi Roy
For Respondent : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM.J.)

Heard Mr.T.Lajapathi Roy, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader, appearing for the respondents.

2.By consent on either side, this Writ Appeal itself is taken up for disposal.

3.This appeal is directed against the order passed in W.P.(MD) No.10420 of 2016 dated 21.06.2016, filed by the appellant herein. The appellant sought for issuance of a Writ of Mandamus, directing the respondents to consider the appellant for appointment on Compassionate Ground.



4. The appellant's father was working as a Grade-I Police Constable and died in harness on 13.09.1996, leaving behind the appellant's mother, the appellant and her elder sister as the three legal heirs. Immediately after the demise of the appellant's father, the appellant's mother submitted an application on 24.06.1996, requesting appointment on Compassionate Ground to the Appellants elder sister Asha. This application was considered and it was wait listed.

5. It is evident from the original files produced by the learned Special Government Pleader that while the matter was pending for consideration, the appellant's elder sister got married on 08.12.2000. Thereafter, the appellant's mother submitted the second application dated 26.12.2001, requesting that appointment to be granted to the appellant. This was rejected by an order dated 16.10.2003. Thereafter, the appellant has made representations and has approached the Writ Court. The Writ court dismissed the writ petition on the ground that the appellant's sister being a married women was not entitled for consideration for appointment on Compassionate Ground and the said embargo would be equally applicable to the appellant. Secondly, it is held that the appellant's father died in the year 1996, and till now, the family is able to survive. Therefore, the question of granting Compassionate Ground appointment does not arise.

6. It is no doubt true that the appellant did not challenge the order of rejection of the application, as being time barred. Nevertheless, we do not wish to stand on technicalities to examine the matter on the principles, which has been laid down by this Court. The first of such is that there is no bar for a married woman to be considered for appointment on Compassionate Ground and this issue has been settled in several decisions. Hence, the conclusion of the writ Court otherwise, in the impugned order requires interference. The second aspect is whether the application of the appellant was belated. As noticed by us, the first application given by the appellant's mother on behalf of the appellant's sister was on 24.06.1996, which was considered and her candidature was wait listed. Admittedly, the said application was not rejected. It is only when the appellant's mother gave the second application for the appellant on 26.12.2001, the department took a stand that it is belated. The stand taken by the Department in the order dated 16.10.2003, that the application is belated is not correct owing to the fact that this application is in continuation of the first application dated 24.06.1996, which was pending consideration, and in fact, wait listed. Therefore, the respondents could not have rejected the appellant as time barred. The last aspect which is to be considered is whether direction should be issued by us at this juncture, especially when the



7. The above mentioned facts reveal that the family has been continuously adjudicating the rights. The appellant's father was a Grade-I Police Constable and appeared to have died at a very young age as the respondent's mother was only 37 years as on the date of demise and the sister Asha was 19 years and the appellant was 17 years. The additional affidavit clearly sets out her family circumstances. The appellant is married to Mr.S.Shankar and the marriage took place on 16.06.2006. She has stated that she has two children and her mother is along with her ever since her father's demise. They have given a solemn undertaking that they do not own any immovable property and the family is being supported by her husband so far. We do not doubt the veracity of the averments set out in the additional affidavit filed by the appellant.

8. In the result, this Writ Appeal is allowed and the impugned order is set aside. The respondents are directed to consider the case of the petitioner for granting appointment on Compassionate Ground to any post that is commensurate with her qualification. Such consideration shall be done and orders be passed within a period of three months from the date of receipt of a copy of this order.

9. Accordingly, this Writ Appeal is allowed. No costs.

Sd /-

ASSISTANT REGISTRAR(P&A)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Director General of Police,
O/o. the Director General of Police,
Chennai-04.

2. The Superintendent of Police,
O/o. the Superintendent of Police,
Nagercoil,
Kanyakumari District.

+1 CC TO MR.T.LAJAPATHI ROY, ADVOCATE, SR NO.60944

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.60900

MR/TSG

MAS/MR-KKR/SAR2:04.07.2017:3P-5C