



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.1355 of 2016
and
C.M.P. (MD) .No.9885 of 2016

Radha ... Petitioner/Appellant

Vs

1.The Director of Agriculture,
Office of the Directorate of Agriculture,
Chepauk,
Chennai - 600 005.

2.The Assistant Director of Agriculture,
Office of the Assistant Directorate,
Chinnamanur,
Theni District.

... Respondents/Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 27.01.2016 made in W.P.(MD).No.11408 of 2016.

Prayer in WP(MD). 11408/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent in A.Ni.P. 6/138883/2013 dated 28.11.2013 and quash the same and consequently direct the respondents to appoint the petitioner in any suitable post under the compassionate grounds within the period stipulated by this Honble court.

For Appellant :Mr.P.Krishnasamy

For Respondents :Mr.VR.Shanmuganathan
Spl.Govt.Pleader



JUDGMENT

[Judgment of the Court was delivered by **J.NISHA BANU, J.**]

By consent, this Writ Appeal is taken up for final disposal. The appellant herein is the petitioner in W.P(MD).No.11408 of 2016 and the respondents are the respondents in the said Writ Petition. However, for the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition.

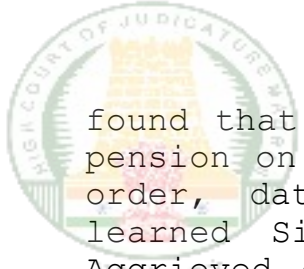
2. This Writ Appeal has been filed against the order dated 27.01.2016 made in W.P.(MD).No.11408 of 2016, in and by which, the impugned order passed by the second respondent, dated 28.11.2013, was confirmed by the learned Judge and compassionate appointment was denied to the petitioner citing the reason that she was married at the time of submitting the application to the respondents.

3. The short facts leading to filing of this Writ Appeal is as follows:-

3.1. The case of the petitioner is that her father while serving as Depot Manager in the second respondent office, due to sudden illness, died on 10.08.2013, leaving behind his wife and daughter, as his legal heirs. Being the legal heirs of the deceased, the petitioner submitted an application, claiming suitable appointment on compassionate ground by enclosing all the Certificates and also obtaining 'No Objection Certificate' from her mother on 08.11.2013, within a period of three years from the date of death of her father. But, the first respondent had rejected her application stating that, at the time of making Application, she got married and cited a Government Order in G.O.Ms.No.165, Labour and Employment Exchange (Q2), dated 30.08.2010.

3.2. Aggrieved over the order of the first respondent, learned counsel for the petitioner filed W.P(MD).No.11408 of 2016 and by taking aid from an order of this Court in **R.Govindammal vs. the Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Secretariat, and others** reported in **2015(5) CTC 344** and also citing one another judgment of the Honourable Apex Court in **Shreejith L. vs. Deputy Director (Education) Kerala and others** reported in **(2012) 7 Supreme Court Cases 248** attempted to canvass the learned Judge that the request for compassionate appointment of the petitioner cannot be rejected.

3.3. The learned Judge, however, found that the decisions cited by the petitioner cannot be made applicable to the present case for the reason that before two years of his death, the petitioner got married on 19.01.2011 and was living with her husband in a separate family. Therefore, the claim made by the petitioner that she was depending on the earnings of her father was not acceptable and as such, the question of dependency did not arise and hence, the first respondent had rightly rejected the case of the petitioner on the ground that she was not a dependent. He also



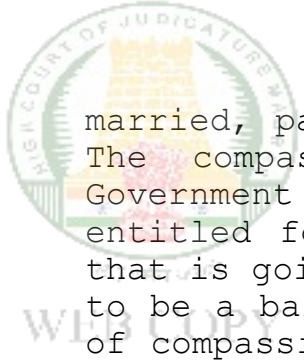
found that the mother of petitioner had been receiving the monthly pension on account of the death of her husband. By stating so, by order, dated 27.06.2016 made in W.P(MD).No.11408 of 2016, the learned Single Judge dismissed the claim of the petitioner. Aggrieved over the same, the petitioner has preferred the present Writ Appeal.

3.4. According to the learned counsel for the petitioner, time and again, this Court, in its various judgments have held that the marriage cannot be cited as a reason to deny compassionate appointment to the daughter of the deceased Government servant. Therefore, he prays for appropriate orders.

3.5. *Per contra*, the learned Additional Government Pleader for the respondents would submit that the petitioner was denied compassionate appointment by the impugned order, on the ground that she was married prior to the death of the Government servant and her claim for compassionate appointment is contrary to G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010. Therefore, there is nothing wrong on the part of the respondents in rejecting the claim of the petitioner. Hence, he prayed for sustaining the impugned order of the respondents as well as the order of the learned Judge.

4. It is pertinent to note that, this Court in its order in ***W.P. (MD) No. 20437 of 2015 [A.VIMALA v. THE SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT]***, dated 09.07.2015, has quashed the impugned order passed by the respondents therein by fixing the cut-off date for providing compassionate appointment to the married daughter, as 29.11.2001. While passing the said order, the learned Judge has discussed various Government orders and various Judgements and in those GOs, the status of the married daughters for seeking compassionate appointment was relaxed little by little. By improving the GOs one after another and finally in G.O.Ms.No.96, dated 18.06.2012, the Government has decided that the married daughters also can claim for compassionate appointment provided their marriage should have been after 29.11.2001 and this condition was also set aside by the learned Judge in the above W.P. (MD) No. 20437 of 2015 and it appears that there is no appeal filed against the above order and therefore, the quashing of the condition in paragraph Nos. 3 and 4 of G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012, has become final. Hence, the respondents cannot deny appointment to the petitioner citing her marriage.

5. In our considered opinion, the State cannot discriminate against women in providing compassionate appointment when the constitution provides equal opportunity to men and women. Needless to say that, nowadays, it is a common thing that a family have a single child; either male or female; thus, if a Government servant has only daughter, the widow of the Government servant cannot be denied compassionate appointment by stating her daughter was



married, particularly, when she has to solely rely on her daughter. The compassionate appointment scheme is applicable for a Government servant whose legal heirs are automatically entitled for the terminal benefits and family pension and if that is going to be a bar for getting compassionate appointment, then, the scheme of compassionate appointment can never be for a Government servant. That is the reason as to why the Hon'ble Supreme Court in the case of **BALBIR KAUR v. STEEL AUTHORITY OF INDIA LTD.**, reported in **2000 (6) SCC 493**, has specifically stated in paragraph No.13 as follows:-

"13. ... But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearners, but that would undoubtedly bring some solace to the situation."

6. From the above Judgement, it is very clear that that the grant of family pension and payment of terminal benefits cannot be treated as substitute for providing employment assistance. This proposition has been followed by the Hon'ble Supreme Court in **CANARA BANK v. M. MAHESH KUMAR** reported in **2015 (7) SCC 412**, and therefore, the Government cannot take a stand that the petitioner's mother is drawing family pension. Therefore, the issue on hand, is more *res integra*.

7. At this juncture, it is apt to mention that in one of the Judgements, wherein, I was an author in W.A.(MD) No.941 of 2016, I have unearthed the vital role played by a woman in this Indian Society in her career through her life, which is usefully extracted below:-

"8. Further it is Imperative to note that we are at an era, wherein women have risen above the challenges and dutifully discharged their responsibilities as an individual in different roles. "She" remains one of the supreme species, wherein her representatives are clocked 24/7 in different forms as a daughter, wife, mother, sister, friend, aunt, grandmother, daughter-in-law, mother-in-law, guardian, employee, so on and so forth. Women are not just the procreators of the clan, but have been welcomed to become that reliant person who can take care of her own family and her newfound family. "She" have risen from dependents to nurtures of
<https://hse-latestdocuments.in/> and for a woman to take care of her own parents is not a norm, but a welcome trend in society as they are doing an impressive diligence at it. The credibility and zeal is always there



and our constitution does not discriminate its citizens on the basis of gender and therefore, the order of the learned Judge is well founded.

9. The gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance and therefore, our constitution has not discriminated male from female and any order passed discriminating male from female will be only against the Constitution and it cannot be sustained."

8. On the whole, we are of the opinion that if the logic of the respondents is adopted in the case of getting compassionate appointment for a woman, it will be a mirage for the woman community and the purpose for which the compassionate appointment is introduced will be nullified.

9. For all the reasons stated above, we set aside the order of the learned Judge passed in W.P.(MD).No.11408 of 2016, dated 27.06.2016. It is needless to say that the exercise of granting compassionate appointment to the petitioner shall be done within a period of four weeks from the date of receipt of a copy of this order.

10. In the result, the Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Director of Agriculture,
Office of the Directorate of Agriculture,
Chepauk,
Chennai - 600 005.

2.The Assistant Director of Agriculture,
Office of the Assistant Directorate,
Chinnamanur,
Theni District.

+1cc to M/S Special Government Pleader, Sr No. 5026

MAS/SV-MMA:13.02.2017:5P/4C

W.A (MD) .No.1355 of 2016
30.01.2017