



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 21.12.2016
ORDER PRONOUNCED ON: 24.01.2017

WEB COPY

CORAM:

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

W.A. (MD) No.941 of 2016
and
C.M.P. (MD) No.5647 of 2016

1. The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai.
2. The Director of Agriculture,
Ezhilagam, Chepauk, Chennai - 5.
3. The Joint Director of Agriculture,
Office of the Joint Director of Agriculture,
Thanjavur.
4. The Assistant Director of Agriculture,
Orathanadu, Thanjavur District. ... Appellants/Respondents

Vs

Mahalakshmi ... Respondent/Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 04.01.2016 made in W.P. (MD) No.14643 of 2015.

W.P. (MD) No.14643 of 2015

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, or any other writ or order or direction in the nature of Writ calling for the records relating to the Impugned Order passed by 2nd Respondent proceeding in ANeep.6/50274/2014 dated 09.02.2015, quash the same and consequently directing the Respondents to provide the petitioner suitable employment to her on compassionate grounds depending upon the Petitioner qualification.

For Appellants : Mr.N.S.Karthikeya
Additional Government Pleader
For Respondent : Mr.A.Ragul

JUDGMENT

<https://hcservices.ecourts.gov.in/hcservices/>

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

By consent, this Writ Appeal is taken up for final disposal. The appellants herein are the respondents in W.P (MD) No.14643 of



2015 and the respondent is the Writ petitioner 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 04.01.2016 made in W.P.(MD).No.14643 of 2015, in and by which, the impugned order passed by the second respondent, dated 09.02.2015, was quashed directing the respondents to provide compassionate appointment to the petitioner, without reference to her marriage within a period of eight weeks from the date of receipt of a copy of that order. Aggrieved over the same, the respondents are before this Court.

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

3.1. Since the facts had been extensively dealt with by the learned Judge, we summarise the same for the purpose of deciding this appeal alone. The parties are referred to as per the order made in the Writ Order.

3.2. The case of the petitioner is that her father was working as Assistant Agriculture Officer in the office of the fourth respondent. He died on 07.05.2010, while in service, leaving his wife, two sons and daughter/petitioner herein as legal heirs. The petitioner got married prior to the death of her father/Government servant.

3.3. After getting No Objection Certificate from the other legal heirs, when the petitioner submitted an application for compassionate appointment, the same was declined by the 2nd respondent, vide impugned order dated 09.02.2015, on the ground that she was married prior to the death of the Government Servant.

3.4. According to the learned counsel for the petitioner, the marriage cannot be cited as a reason to deny compassionate appointment to the daughter of the deceased Government servant.

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 that the sons of the deceased Government servant are working in private companies and thus, the family is not in indigent circumstances. He would further submit that since the petitioner got married prior to the death of the Government servant, her claim for compassionate appointment is contrary to G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010.

4. After hearing both sides, the learned Judge relying on his own order in **W.P. (MD) No. 20437 of 2015 [A. VIMALA v. THE SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT]**, dated 09.07.2015, wherein the learned Judge has quashed the impugned order, directing the cut-off date for providing compassionate appointment to the married daughter, as 29.11.2001. While passing the above 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



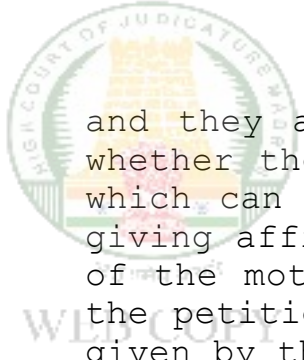
appointment was relaxed little by little. By improving the GOs one after another and finally in G.O.Ms.No.96, dated 18.06.2012, the Government has decided that the married daughters also can claim for compassionate appointment provided their marriage should have been after 29.11.2001 and this condition was 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. Now the point to be considered is whether the family is in indigent circumstances and whether the retirement benefits and family pension received by the petitioner's mother and owning a house will stand in the way of getting compassionate appointment to the petitioner.

5. In our considered opinion, 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 the Court has rightly held 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 and she owned a house of her own.

7. In the impugned order itself, it is stated that the sons of the deceased Government servant are working in Private Companies



and they are leading a separate life and what is to be seen is whether the married daughter will take care of the family or not, which can be only ascertained by following certain procedures of giving affidavit by herself and her husband promising to take care of the mother and on that assurance, appointment can be given to the petitioner and it is not the case that such affidavit was not given by the petitioner.

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 nurturers of relationship, 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 and 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. Thus, for all the reasons stated above, we confirm the order of the learned Judge passed in W.P.(MD).No.14643 of 2015, dated 04.01.2016. 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 dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

<https://hcservice.courts.madras.gov.in/>
 The Secretary to Government,
 Agriculture Department,
 Fort St. George, Chennai.



2.The Director of Agriculture,
Ezhilagam, Chepauk, Chennai - 5.

3.The Joint Director of Agriculture,
Office of the Joint Director of Agriculture,
Thanjavur.

4.The Assistant Director of Agriculture,
Orathanadu, Thanjavur District.

+1 cc to MR.A.RAHUL,ADVOCATE, SR NO:4324

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO:4169

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W.A(MD) .No.941 of 2016
24.01.2016