



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.3536 OF 2017

WEB COPY

M.Selvarani

.. Petitioner

vs.

1.The Corporation of Madurai,
represented by its Commissioner,
Arignar Anna Maaligai,
Thallakulam,
Madurai - 625 002.

2.The Assistant Commissioner(Personnel),
Madurai Corporation,
Arignar Anna Maaligai,
Thallakulam,
Madurai - 625 002.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent in No.Ma.Ni.4/36514/2013, dated 1.2.2017 and to quash the same and to direct the respondents to grant compassionate appointment to the Petitioner.

For Petitioner : M/s.R.Subramanian
For Respondents : Mr.R.Prabhu Ramachandran

O R D E R

The petitioner has filed the above writ petition for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent in No.Ma.Ni.4/36514/2013, dated 1.2.2017 and to quash the same and to direct the respondents to grant compassionate appointment to the Petitioner.

2.The case of the Petitioner is that Writ Petitioner is the daughter of one K.S.Muthukrishnan, who was employed as Office Assistant in the first respondent Office and while in service, the Petitioner's father passed away on 4.2.2013, leaving behind her mother Anusuya, the Petitioner and her sisters Revathy, Vijayalakshmi and her brother Prabhu as his legal heirs. Since the other family members/survivors are not in a position to go for work, the Petitioner herein submitted an application on 1.2.2016 along with the consent letter of the family members to provide employment to the Petitioner on compassionate grounds. Even though



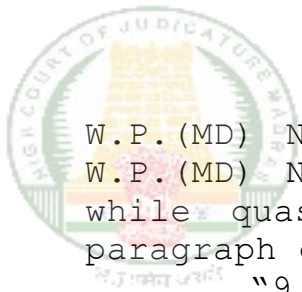
relevant records were produced, the second respondent rejected the claim of the Petitioner on 1.2.2017, stating that married daughters are not entitled to employment on compassionate grounds.

3. The petitioner submitted that in terms of the decision of the Full Bench of this Court in **R.Sivakumari vs. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam {2007 (5) CTC 561}**, the right to seek employment in Public Services is a valuable right and the Constitution guarantees equality of opportunities in matters relating to employment or appointment to any office under the State. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts, which have fallen vacant and the same aspect has been discussed in detail by the Apex Court in **State Bank of India vs. Anju Jain {2008 (8) SCC 475}**. The petitioner further submitted that it is obligatory on the part of the State to ensure that all citizens irrespective of gender discrimination equally have the right to adequate means of livelihood in the light of Article 39(a) of the Constitution and Article 21 of the Constitution comes to her rescue, which specifies that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

4. The petitioner further submitted that in view of the decision reported in *G.Giriya vs. The Assistant Director (Panchayats) {2008 (5) CTC 686}*, marriage is not a bar in the case of son and the same yardstick shall be applied in the case of daughter also, as it is the duty cast upon the children to take care of the parents at their old age, and in terms of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, there cannot be any unequal treatment among the children based on sex. The petitioner submitted that G.O.(Ms) No.96, dated 18.6.2012 is unconstitutional, ultra vires of the Constitution, arbitrary and discriminatory in nature, hence liable to be quashed. The petitioner further submitted that, fixing a cut-off date, that too only for female legal heirs of deceased employees is nothing but discriminating females from male gender and it is against equality. It is settled law that equals must be treated equally and unequal treatment to equals would be violative of Article 14 of the Constitution. Thus, it is the Constitution of the petitioner that she has to be equally treated on par with the male, as she hails from a poor and downtrodden family.

5. I have heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.R.Prabhu Ramahandran learned counsel appearing for the respondents.

6. When the Government decides to treat the son and the daughter on the same footing, fixing a cut off date is not correct. That apart, this Court in a decision dated 23.4.2013 in



W.P.(MD) No.6763 of 2013 and another decision dated 2.7.2012 in W.P.(MD) No.8686 of 2011, has granted relief to the petitioner, while quashing the impugned order of rejection. The relevant paragraph of the said order is extracted hereunder:

"9. As stated above, if a marriage is not a bar in the case of son, the same yardstick shall be applied in the case of 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 785 # (G.Girija vs. The 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. Her application was rejected on the ground that she was married when she gave an application for compassionate appointment. This Court quashed the order declining to give compassionate appointment holding that there cannot be any discrimination between the 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."

7. In W.P.(MD) No.6763 of 2013 dated 23.4.2013, the daughter of the deceased employee got married in 2002, but whereas her father died in 2009. In this case, prior to the demise of her father, the petitioner got married. I had an occasion to consider the case of compassionate appointment which is reported in 2014 (1) LLN 515 (Mad.)-R.Kanagasanthi vs. Tamil Nadu Civil Supplies Corporation}, in which, in paragraph 12, it is stated as follows:-

"12. At this juncture, it is relevant to point out Paragraph No.20 of a decision reported in Bhawani Prasad Sonkar vs. Union of India and others {2011 (3) LLN 37 (SC) : 2011 (4) SCC 209, wherein the Hon'ble Apex Court has held as follows:

Thus while considering a claim for employment on compassionate ground, the following factors have to be



borne in mind:-

(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largessee irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz., parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

In Bavani Prasad's case, the Hon'ble Apex Court, while granting the relief of compassionate appointment to the petitioner therein, fixed certain Guidelines for consideration of appointment on compassionate ground. As far as the case in hand is concerned, the Application for compassionate ground appointment was made within the time limit. It has also been held in a catena of decisions of the Hon'ble Apex Court that to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner, Compassionate Appointment has got to be made. This has been established by the petitioner. The spirit of the Compassionate Appointment was to provide relief to the family members of the deceased persons and that on the basis of application of yardstick of social justice, such relief cannot be withdrawn retrospectively as the Government stopped appointments for certain periods and when there was a modification, after lifting the ban, the new scheme or modification has to take effect only prospectively. The Writ Petitioner has rightly contended that when there is a change in policy on 5.4.2007, while lifting the Ban, it could not result in denial of Compassionate Appointment to the petitioner, as any change would only be prospective in nature.

8. In the present case on hand, though the petitioner has not given the employment particulars of her husband, taking note of the fact that there cannot be any discrimination; that there should be uniformity and that there cannot be any cut off date,



when the Government has decided to consider a man and a woman equally, this Court has no other option, but to hold that the Government Order dated 18.6.2012 in so far as fixing the cut off date is illegal. Since the cut off date fixed by the Government is illegal, the consequential order has to go.

9.Hence, this writ petition is allowed and while allowing the writ petition, I direct the second respondent to consider the case of the petitioner and provide appointment on compassionate grounds to the petitioner in the next vacancy arising in Class III or IV, if the petitioner is otherwise eligible and if there are no legal impediments. The Petitioner's request shall be considered based on the seniority for the post for which the Petitioner is eligible in the next vacancy. No costs.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar

To

1.Commissioner,
The Corporation of Madurai,
Arignar Anna Maaligai,
Thallakulam,
Madurai - 625 002.

2.The Assistant Commissioner(Personnel),
Madurai Corporation,
Arignar Anna Maaligai,
Thallakulam,
Madurai - 625 002.

+1cc to Mr.R.Prabhu Ramachandran,Advocate,SR.11495

+1cc to Mr.R.Subramanian,Advocate,SR.11559

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VSN

KK/KKR/SAR2-07.06.2017-5P-5C