

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**AND**

**HON'BLE DR.JUSTICE SHAMEEM AKTHER**

**Writ Petition No.34843 of 2015**

**ORDER: (ORAL)**

(Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition the petitioners have challenged the order dated 12-6-2015, passed in O.A.No.2770 of 2015, whereby the learned Tribunal dismissed the O.A. filed by petitioners, while passing order as under :

“When there is availability of unmarried major daughter who is eligible for compassionate appointment, the question of considering the case of married daughter for compassionate appointment may not arise. The applicants failed to point out any Government Orders or circulars on this subject to the effect that even when there is unmarried major daughter available for compassionate appointment, the case of married daughter can be considered. Therefore, this Original Application does not lie. However, it is open to the second applicant and her unmarried daughter Sarika to pursue further steps in pursuance of Memo dated 21.4.2015 in Roc.No.C1/11931/2014-15 of Commissioner.”

2. The brief facts of the case are that the petitioner No.1 is the daughter of petitioner No.2. The husband of the second petitioner was working as Public Health Worker in Warangal Municipal Corporation. While so, he died in harness on 10-2-2013. As on the date of death of the deceased, the petitioner No.1 was already

married and her younger sister was pursuing studies and unmarried. Since unmarried younger sister wants to pursue her studies, she is not interested in job. As there was no earning member in the deceased family, the petitioner No.1 is only person to look after the family of the deceased. Accordingly, she made representation, dated 22.3.2013 for providing appointment on compassionate grounds consequent to death of her father. Vide proceedings Rc.No.C2/11931/2013, dated Nil.5.2013 it is informed by respondents that her request for appointment will be considered only on furnishing certificates/documents. Accordingly, she submitted representation along with documents as required by the authority and the same was received by respondents. Meanwhile, she was issued with proceedings Roc.No.C2/25990/2013 dated Nil.11.2013, directing her to submit documents which are enumerated in the proceedings. She again furnished documents on 20.9.2014 and also requested to provide employment on compassionate grounds consequent to death of her father. Since respondents have not taken any action, her mother – petitioner No.2 made series of representations dated 15.12.2014, 19.1.2015, 22.2.2015, 9.3.2015 and 6.4.2015. In all the representations made by her mother, it is stated that her younger daughter is not interested in doing the job, as she wants to pursue studies and to that extent, affidavit is also given by her. Accordingly, the petitioner No.2 made representation to give employment to petitioner No.1 on compassionate grounds. However, the respondent

has issued Roc.No.C1/11931/2014-15, dated 21.4.2015 stating that petitioner No.1's younger sister Ms.Sarika is major and she has to be considered for appointment and that the choice arises only to unmarried daughter happens to be minor and further directed petitioner No.1 to furnish documents in support of educational qualifications etc., of her younger sister for consideration of the appointment.

3. Being aggrieved, petitioners filed O.A. No.2770 of 2015 before the A.P. Administrative Tribunal, Hyderabad in not considering case of the petitioner No.1 for appointment on compassionate ground consequent to death of her father.

4. The learned Tribunal dismissed the O.A. on the ground that when there is availability of unmarried major daughter who is eligible for compassionate appointment, the question of considering the case of married daughter for compassionate appointment may not arise.

5. The counsel appearing on behalf of petitioners submits that after the orders of the Tribunal, again petitioner No.1 made representation dated 3.8.2015 to the Commissioner, Greater Warangal Municipal Corporation stating that there is no objection from her younger sister and also her mother. As per G.O. it is clear that even married daughter and minor daughter are eligible for appointment on compassionate ground and that the petitioner No.1,

being the elder daughter fulfilling the service conditions, applied for appointment and any member of the family can be given compassionate appointment.

6. Learned counsel further submits that the learned Tribunal failed to appreciate that the State Government under G.O.Ms.No.612, dated 30-10-1991 issued further guidelines to the scheme of compassionate appointment to the dependents of the Government employees. Para 2 (iii) of the G.O. reads as under :

“(iii) Where one deceased employee does not have any male child but leaves behind him a married daughter and an unmarried minor daughter, the choice of selecting one of them for appointment under the social security scheme shall be left to the mother.”

7. Learned counsel submits that as per the above, choice of selecting dependents for appointment under the social security scheme has been left to the widow of the deceased.

8. In the present case also mother of petitioner No.1 (petitioner No.2) has chosen married daughter to be provided with compassionate appointment. Therefore, the learned Tribunal ought to have allowed the petition filed by petitioners.

9. Learned Government Pleader appearing on behalf of the State has also drawn the attention of this Court to the scheme of compassionate appointment to the dependents of deceased Government employees vide G.O.Ms.No.612, dated 30.10.1991 as reproduced above.

10. Learned Government Pleader submits that the widow of the deceased has two choices to choose between married daughter and unmarried minor daughter. There is no third choice left to the widow of the deceased. He submits that when the second daughter of the petitioner No.2 viz., Ms.Sarika, who was major and unmarried at the time of death of the deceased i.e., on 10.2.2013, is available, the petitioner No.1, who is married daughter, cannot be appointed against the compassionate appointment, contrary to the scheme vide G.O.Ms.No.612, dated 30.10.1991.

11. We heard learned counsel for parties.

12. The petitioner No.2, widow of the deceased employee, has chosen for the elder married daughter – petitioner No.1 for compassionate appointment, but not the younger unmarried daughter. It is stated in the petition that unmarried major younger daughter by name Ms.Sarika refused to accept compassionate appointment. To this effect, she had filed affidavit giving 'No Objection' if the petitioner No.1 is appointed. However, for the satisfaction of this Court we asked the petitioner No.2 to present in Court vide order dated 13.6.2017. This Court interacted with petitioner No.2, widow of the deceased. She states that the marriage of the petitioner No.1 was performed 10 years before and she has two sons, her husband almost deserted her daughter and children, thus, petitioner No.1 and her children were dependent on the deceased and petitioner No.2 is staying with petitioner No.1 (elder daughter) from the date of death

of the deceased. She further states that younger daughter, Ms.Sarika is not interested to get the appointment on compassionate grounds, as she has high aim in life and wants to pursue further studies and get higher post. Thus, she has no other source of income to survive and she is totally dependent on petitioner No.1, her elder daughter.

13. Para 3 of Memo No.116417/SER.A/2003-1, dated 8.10.2003 issued by the Government of Andhra Pradesh, General Administration (Ser.A) Department reads as under.

“It is clarified that the policy of the Government is to provide compassionate appointment to the dependents of deceased Government employees to help the family in distress and accordingly if the deceased government employee was having more than one dependent married daughter and when the spouse of the deceased Government employee is not willing to avail the compassionate appointment, one of the dependent married daughters may be considered for compassionate appointment, subject to eligibility as per the scheme of compassionate appointment.”

14. As per the said memo it is clarified that if the deceased Government employee was having more than one dependent married daughter and when the spouse of the deceased Government employee is not willing to avail the compassionate appointment, one of the dependent married daughters may be considered for compassionate appointment, subject to eligibility as per the scheme of compassionate appointment. Accordingly, there is no bar to give compassionate appointment to dependent married daughter.

15. Paras 3 and 4 of G.O.Ms.No.350, dated 30-7-1999, issued by the General Administration (Ser.A) Department, Government of Andhra Pradesh, read as under :

“3. Certain cases have been referred to the Government seeking clarification for compassionate appointment of married daughter in cases where the deceased Government employee is having only a married daughter and spouse without any other children.

4. In such cases Government hereby clarify when there is only a married daughter to the deceased Government employee without older or younger brothers or sisters and the spouse of the deceased Government employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is dependent on the deceased Government employee and subject to satisfying, the other conditions and instructions issued on the scheme from time to time.”

16. As per the above, for compensatory appointment for married daughter in case where the deceased government employee is having only married daughter and spouse without any other children in addition to the married daughter, the married daughter can also be considered for compassionate appointment. It is up to the family who is in distress to decide the person who can be helpful for the family. The option is cast upon the spouse of the deceased to select the person among the eligible persons for compensatory appointment. The situation may be otherwise if two persons from the family are contending for appointment under compassionate appointment; in that case choice is left with the spouse of the deceased. In the present case, petitioner No.2, wife of the deceased, has two daughters, one, the petitioner No.1 (married) and another unmarried Ms.Sarika, who

has high aim in life and does not want to accept the compassionate employment. If this is the situation, then spouse of the deceased should not be compelled to ask for the appointment to a person who is not interested. The choice is left with the spouse of the deceased to select eligible person for compassionate appointment.

17. In para 4 of G.O.Ms.No.350, dated 30.7.1999, it is clarified by the Government that when there is only a married daughter to the deceased Government Employee without elder or younger brothers or sisters and the spouse of the deceased government employee is not willing to avail compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is dependent on the deceased Government employee.

18. As stated in the present petition the petitioner No.1 married 10 years before and having two sons and her husband had deserted her, thus she continued to depend upon the deceased.

19. In view of the above settled notifications issued by the Government, we are of the considered opinion that the petitioner No.1 is entitle to be appointed. Therefore, the petitioner No.1 is directed to submit her educational and other certificates within two weeks from today and respondents shall issue appointment within four weeks from the date of submission of the documents by the petitioner No.1, subject to her qualifications.

20. The Writ Petition is accordingly allowed. Consequently, the order dated 12-6-2015 in O.A.No.2770 of 2015 passed by the learned Tribunal is hereby set aside. There shall be no order as to costs.

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JUSTICE SURESH KUMAR KAIT

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DR.JUSTICE SHAMEEM AKTHER

Date: 21-06-2017  
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