

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU
W.A. No. 1696 of 2015

1. The Registrar,
Tamil Nadu Veterinary and
Animal Sciences University,
Madhavaram Milk Colony,
Chennai - 600 051.
 2. The Dean,
Madras Veterinary College,
Vepery,
Chennai - 600 007. ...Appellants/Respondents
- Vs-
- H. Priyadharshini ...Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order made in W.P. No. 22186 of 2014 dated 25.06.2015.

Petition filed Under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the orders passed by the 2nd respondent herein vide his proceedings No.10529/Estt./ B3/2013 dated 11.2.2014 and quash the same as illegal arbitrary unreasonable being violative of the rules and principles of natural justice and thereby direct the respondents to provide appointment to the petitioner on compassionate grounds in any suitable post commensurate with her Educational Qualification.

For Appellants : Mr. S. Vijayakumar

For Respondent : Mr. A.R. Suresh

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 25.06.2015 in W.P. No. 22186 of 2014 passed by Learned Judge of this Court. The parties are hereinafter referred to as per their

description in the Writ Petition for the sake of convenience.

2. The father of the Petitioner, viz., P. Hariharan, who was working as Professor and Head of the Department, Department of Veterinary Pharmacology and Toxicology at Madras Veterinary College, Vepery, Chennai, died in harness on 30.07.2013 leaving behind his wife, daughter and son as legal heirs. According to the Petitioner, the untimely death of her father, who was the sole earning member of the family, had left them in indigent circumstances without any source of income and the retiral benefits granted by the Respondents had to be utilized for the discharge of the debts incurred by the said P. Hariharan during his last days for medical treatment and for discharge of debts incurred for the marriage of the Petitioner. The marriage of the Petitioner with Mr. Sivraj Kumar was solemnized on 27.01.2013 and after the death of the father of the Petitioner, her mother and brother are living with the Petitioner and her husband. The mother of the Petitioner had made an application to the Respondents on 05.09.2013 requesting to provide compassionate appointment to the Petitioner and produced necessary documents including undertaking letter of the Petitioner and her husband to maintain her mother and brother till their death and a no objection certificate from her brother. However, by a letter dated 11.02.2014, it had been informed by the Second Respondent, viz., the Dean, Madras Veterinary College to the Petitioner as follows:-

"In pursuance of the reference cited, Tmt. S. Girija Kumari, W/o. (Late) Dr. P. Hariharan, Professor and Head, Department of Veterinary Pharmacology and Toxicology, Madras Veterinary College, Chennai for seeking employment on compassionate grounds to her daughter has not been considered by the University, since the nominee Tmt. H. Priyadharshini has got married."

The aforesaid order had been challenged by the Petitioner in W.P. No. 22186 of 2014 before this Court and she had sought for a consequential direction to provide appointment to her on compassionate grounds in any suitable post commensurate with her educational qualification.

3. The Learned Judge, who heard the Writ Petition, by order dated 25.06.2015 in W.P. No. 22186 of 2014 after referring to the certain decisions of the Hon'ble Supreme Court of India and this Court held that it would be discriminatory to refuse appointment on compassionate grounds to the married daughter of the deceased employee and since no other reason had been stated in the impugned order, it was incumbent upon the Respondents to

provide compassionate appointment to the Petitioner, if she was otherwise eligible, without reference to marriage, and allowed that Writ Petition. The Respondents have assailed the aforesaid order passed by the Writ Court in this appeal.

4. We have heard S. Vijayakumar, Learned Counsel appearing for the Respondents, Mr. A.R. Suresh, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

5. Though there cannot be any controversy to the legal proposition that the daughter of a deceased employee cannot be denied appointment on compassionate ground merely because she has been married, we are unable to agree with the Learned Judge that the Respondents were bound to appoint her on compassionate ground as no other reason had been stated for refusing such appointment in the order impugned in the Writ Petition.

6. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], in which the principles relating to compassionate appointment have been succinctly stated as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting

compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

It has been cautioned in Union Bank of India -vs- M.T. Latheesh [(2006) 7 SCC 350] that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth. Again, in State Bank of India -vs- Somvir Singh [(2007) 4 SCC 778], the following observations have been made:-

"Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to

compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer."

Viewed from this perspective, when the legal position is that the employer has to take into consideration all the aforesaid factors, which are relevant for appointment on compassionate grounds viz-a-viz the public interest involved to ensure equality of opportunity in public employment to all the citizens of the country, it would not be possible to brush aside the same on the specious plea that it had not been mentioned in the order refusing compassionate appointment at the earliest opportunity itself. The principle laid down in *Mohindhr Singh Gill -vs- Chief Election Commissioner* [(1978) 1 SCC 405] that the validity of an order must be judged by the reasons mentioned therein and cannot be supplemented by the fresh reasons in the shape of affidavit or otherwise, has to be confined to situations dealing with private rights in statutory orders as pointed in the subsequent ruling in *Sachidanand Pandey -vs- State of West Bengal* [(1987) 2 SCC 295], and cannot be applied where overriding public interest assumes significance when granting such relief for the mere asking would unwittingly amount to unduly favouring persons, like the Petitioner in the instant case, to the detriment of other citizens, whose gravity of suffering may comparatively be of higher magnitude.

7. Further, it has been aptly pointed out in a series of decisions in *General Manager (D&PB) -vs- Kunti Tiwary* [(2004) 7 SCC 271], *Punjab National Bank -vs- Ashwini Kumar Taneja* [(2004) 7 SCC 265], *State Bank of India -vs- Jaspal Kaur* [(2007) 9 SCC 571] and *State Bank of India -vs- Surya Narain Tripathi* [(2014) 15 SCC 739] that in considering the claim for compassionate appointment, the financial condition of the family of the deceased at the time of his demise has to be examined and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis, then the job could be offered to an eligible member of the family. Obviously, for such purpose, the extent of terminal benefits received by the family members on the death of the deceased would be certainly relevant to take the same into consideration along with the amount of family pension payable every month, in addition to other factors including the sources of income for the family, the employment status of the adult members, the age and number of dependents, etc., so as to ascertain whether the same would suffice to maintain the family of the deceased. In the backdrop of this unassailable legal position, the decision in *Balbir Kaur -vs- Steel Authority of India Ltd.* [(2000) 6 SCC 493], in which it has been held that family of the deceased, who

were entitled to terminal benefits, would not deprive their right to seek appointment on compassionate ground, cannot be read to mean as if the amount of terminal benefits received is not at all a relevant aspect for considering the necessity of extending compassionate appointment for tiding over the sudden crisis in the family due to the death of the bread winner.

8. In the Counter Affidavit filed by the Respondents, the following terminal benefits received by the family members of the deceased in this case, have been shown:-

1.	Family Pension	Rs.77,311/- pm*
2.	Death-cum-Retirement Gratuity	Rs.10,00,000/-
3.	Family Security Fund	Rs.1,50,000/-
4.	Special Provident Fund cum Gratuity Scheme 1984	Rs.22,908/-
5.	Special Provident Fund cum Gratuity Scheme 2000	Rs.16,088/-

* including the Dearness Allowance

It is seen from the aforesaid data that apart from the lumpsum of about Rs.12,00,000/- received on account of the Death Cum Retirement Gratuity and other security funds, the widow of the deceased is eligible to a substantial amount of family pension of Rs.77,311/- every month (including dearness allowance), which cannot, by any stretch of imagination, be said to be inadequate to meet the needs of the mother and brother of the Petitioner. Moreover, having regard to the fact that the Petitioner is married and living with her husband, who is presumed to be employed on account of his undertaking to take care of the mother and brother of the Petitioner, it appears that the Petitioner was not a dependent of the deceased employee at the time of his demise. These circumstances, taken as a whole, go to show that the family of the deceased cannot be said to be in penury so as to require compassionate appointment to one of its members.

9. As such, we are of the considered view that the present case was not a fit one to direct the Respondents to consider the Petitioner for compassionate appointment. It is needless to add here that nothing precludes the Petitioner, if she is otherwise eligible to apply during recruitment in the usual course for any vacant post in Madras Veterinary College, for which she is qualified, when it is notified, so that if she is selected, she could provide monetary assistance to her mother and brother, if she so intends.

10. In the result, the Writ Appeal is allowed and the order dated 25.06.2015 in W.P. No. 22186 of 2014 is set aside and the Writ Petition is dismissed. No costs.

vjt

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram Milk Colony,
Chennai - 600 051.
2. The Dean,
Madras Veterinary College,
Vepery,
Chennai - 600 007.

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.12015

W.A. No. 1696 of 2015

Kak(11/03/2019)



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