

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

W.P. No.27616 of 2016 and
W.M.P. No.1314 of 2017

A. Chithra Devi

... Petitioner

-vs-

1.The Registrar,
Co-operative Societies,
N V Natarajan Maaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

2. The President,
Maligaikottam Primary Agricultural
Co-operative Bank, Pennadam,
Cuddalore District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the connected records pertain to the impugned order dated 19.07.2016 of the 2nd respondent and quash the same as illegal and void and consequently direct the respondents to consider and grant appointment to the petitioner in any suitable post on compassionate ground in the 2nd respondent bank or in any other society under his control.

For Petitioner : Mr.Ramesh Ganapathy

For Respondents : Mr.L.P.Shanmugha Sundaram
Special Government Pleader

ORDER

This writ petition is directed against the impugned order dated 19.07.2016 passed by the President of Maligaikottam Primary Agricultural Co-operative Bank, Pennadam, Cuddalore District, the second respondent refusing the prayer of the petitioner for compassionate appointment on the ground that she got married even before the death of her father.

2.Assailing the impugned order, learned counsel appearing for the petitioner submitted that the petitioner's father late S.Antony, while serving as a Night Watchman from the year 1986 in the second respondent Co-operative Bank which comes under the control of the first respondent/Co-operative Society, died on 21.11.2011 leaving behind his widowed wife and herself, due to heart attack and her family had incurred a huge medical expenses of Rs.2,00,000/- for the death of her father, as a result the petitioner being the only daughter and legal heir, has to repay the same. In view thereof, she applied to the first respondent seeking compassionate appointment on 23.01.2014 and the receipt of the representation has been acknowledged by the first respondent. According to the learned counsel for the petitioner, even earlier to the said representation, the petitioner and her mother had been representing to the various authorities concerned for grant of employment assistance to the family in order to help them to overcome the sudden crisis. But no action has been taken on the said representation. Finally, the petitioner has come to this Court by filing a Writ Petition in W.P. No.1763 of 2016 seeking a direction to the respondents to consider her representation for compassionate appointment. This Court, by order dated 21.01.2016 directed the respondents to consider the said representation, on merits and in accordance with law and pass appropriate orders, within a period of eight weeks therefrom. Pursuant thereto, the impugned order has been passed rejecting the claim of the petitioner only on the ground that she was married even before her father's death and therefore, she was not entitled to be considered for compassionate appointment.

According to the learned counsel for the petitioner, when it is a settled legal position that there cannot be no discrimination between man and woman in the matter of compassionate appointment, the second respondent herein discriminating the petitioner, wrongly rejected the petitioner's representation stating that she was married even before her father's death and therefore, the reasoning given in the impugned order is liable to go.

In support of his argument, learned counsel for the petitioner has also placed on order dated 13.04.2015 passed in W.P. No.10565 of 2015 in which it has been held that the G.O. Ms.No.560 L& E department, dated 03.08.1977 which deprives compassionate appointment to married daughters is unconstitutional. While marriage is not a condition prescribed in the matter of providing compassionate appointment to sons of a deceased Government servant, the same was placed as a condition in the case of daughters and therefore, such discriminatory treatment is liable to be set aside. He has also

placed another order dated 30.01.2017 passed by the Division Bench in the case of Radha vs. the Director of Agriculture, Chennai and another to show that the married daughters also can claim for compassionate appointment. Learned counsel for the petitioner pleaded that although the petitioner is aged about 44 years, there is a provision for relaxing the age condition under Rule 48 of Tamil Nadu State and Subordinate Services Rules. Therefore, a direction be issued to the second respondent to consider and grant appointment to the petitioner by quashing the impugned order.

3.By reiterating the averments made in the counter affidavit filed by the first respondent, learned Special Government Pleader appearing for the respondents would submit that as per Government Orders in G.O. Ms. No.165 Labour and Employment (Q2) Department dated 30.08.2010 and G.O. Ms. No.96 Labour and Employment (Q1) Department dated 18.06.2012, compassionate appointments can be offered and appointment be given only to, in the case of females, who stand unmarried at the time of application. Since the petitioner herein married on 01.09.2003 much before the date of death of her father namely on 23.11.2011, the petitioner is not eligible for compassionate appointment. Learned Special Government Pleader would further submit that though sons and daughters are alike and equal, in the case on hand, when the petitioner got married long before the death of her father and living away from her widowed mother with her husband in a separate village, the impugned order rejecting the request of the petitioner cannot be found fault with.

4.I also find merits on the submission made by the learned counsel appearing for the respondents. Admittedly, the petitioner got married on 01.09.2003 and her father late S.Antony, while working as a Night Watchman in the second respondent's Society, died in the year 2011, due to heart attack. Thereafter, the petitioner gave representation seeking compassionate appointment to the respondents. Since there was no improvement or development took place on her representation, she came to this Court with the above Writ Petition in W.P. No.1763 of 2016 seeking a direction to the respondents to consider her representation for compassionate appointment. This Court, by order dated 21.01.2016, while disposing of the above writ petition, directed the respondents to consider the said representation, on merits and in accordance with law and pass appropriate orders, within a period of eight weeks. Thereafter, the impugned order has been passed by the second respondent rejecting the petitioner's request for compassionate appointment. It is an admitted fact that the petitioner has been living with her husband away from her parental home, after her marriage. When the petitioner is a married daughter and living

with her husband from 01.09.2003 onwards, after the death of her father namely, after eight years, she cannot come to this Court seeking the above prayer. Even seven years prior to the death of her father late S.Anthony in the year 2011, the petitioner got married on 01.09.2003. Therefore, her independent living for more than seven years show that there was no any indigent circumstances for her, which is the basic pre-requisite for considering her claim for appointment on compassionate ground. Hence, on this score, I do not find any merit in the writ petition filed by the petitioner and accordingly, it is dismissed as devoid of any merit. Besides these

factual aspects have not been considered in the above judgments referred to. No costs. Consequently, connected W.M.P. is closed.

vga

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Co-operative Societies,
N V Natarajan Maaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
2. The President,
Maligaikottam Primary Agricultural
Co-operative Bank, Pennadam,
Cuddalore District.

+1cc to Mr.Ramesh Ganapathy, Advocate, S.R.No.4116

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.4525

W.P. No.27616 of 2016 and

W.M.P. No.1314 of 2017

kji(CO)

kak(25/02/2019)

WEB COPY