

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.4968 of 2021

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus declaring the action of the respondent Nos.1 to 4 in not passing any orders considering the representations submitted by the petitioner for compassionate appointment in suitable post and also payment of death benefits to her, considering her representations dt.11-01-2018 and 30-09-2020 along with order passed in succession O.P.No.426 of 2008, on the file of the Principal District Judge at Karimnagar dt.11-08-2017, is nothing but arbitrary, illegal, null and void and violative of Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondent Nos.1 to 4 to consider the representations of the petitioner dt.11-01-2018 and 30-09-2020, for compassionate appointment in suitable post and also pay the death benefits of her late husband late Boddupalli Srinivas who worked as office sub ordinate in the respondent Nos.1 to 4 company.

2. Heard Sri K.Venumadhav, learned counsel for the petitioner, Sri Zakir Ali Danish, learned Standing Counsel for the TSNPDCL, appearing for respondent Nos.1 to 3 and Ms. Vanaparathi Vaishali, learned counsel for 5th respondent.

3. It has been contended by the petitioner that she is the first wife of one Boddupalli Srinivas who was working as an Office Subordinate with the respondents and the petitioner's husband has expired while discharging duties as Office Subordinate on 17-09-2007. The grievance of the petitioner is that the 5th respondent is also claiming to be the wife of the petitioner's husband and 5th respondent's name was incorporated in the service records as a nominee of the petitioner's husband and 5th respondent has filed succession O.P.No.426 of 2008 and O.S.No.18 of 2011 was also filed by one Boddupalli Shankaraiah, who is the brother of the deceased employee, before the Principal District Judge, Karimnagar, and the petitioner was also arrayed as one of the respondents in the said succession O.P.

4. Learned counsel for the petitioner has contended that the Principal District Judge, Karimnagar, was pleased to allow the succession O.P. in favour of the 5th respondent vide orders dt.11-08-2017 and Succession Certificate was issued in favour of the 5th respondent. However, the 5th respondent was directed to issue security for half share to be paid to the petitioner. Learned counsel for the petitioner has further contended that the Principal District Judge, Karimnagar, has given a specific finding that the deceased employee is married 5th respondent without dissolving the marriage with the petitioner and that the marriage of the petitioner's husband

with the 5th respondent is not a valid marriage. Learned counsel for the petitioner has further contended that the 5th respondent has filed W.P.No.13145 of 2020 seeking compassionate appointment and the 5th respondent has not impleaded the petitioner as a party-respondent and this Court was pleased to dispose of the said Writ Petition vide orders dt.07-12-2020 directing the official respondents to consider the case of the 5th respondent for compassionate appointment and pass appropriate orders within a reasonable period of time.

5. Learned counsel for the petitioner has further contended that the petitioner is a legally wedded wife of the deceased employee and she is entitled for compassionate appointment. The 5th respondent though has filed succession O.P.No.423 of 2008 before the Principal District Judge, Karimnagar, she has claimed only the pension and pensionary benefits of the deceased employee but not claimed any compassionate appointment which itself shows that the 5th respondent is not interested any compassionate appointment. Therefore, the petitioner has submitted detailed representation to the respondents on 11-01-2018 and 30-09-2020 requesting the respondents to consider the case of the petitioner for compassionate appointment.

6. Learned Standing Counsel for the respondent Nos.1 to 3 has contended that there is a rival claim for compassionate appointment between the petitioner and the 5th respondent and since

both the parties are claiming to be the legally wedded wives of the deceased employee, the official respondents cannot adjudicate the matter and it is for the parties to approach the competent Civil Court and get a finding as to which party is entitled for compassionate appointment. He has further contended that since there is a dispute, this Court cannot examine the case of the petitioner as well as the 5th respondent as there are disputed question of facts are involved and disputed question of facts cannot be adjudicated under Article 226 of the Constitution of India. Therefore, Writ Petition is liable to be dismissed and let the petitioner as well as the 5th respondent approach the competent Civil Court and get a specific finding as to which contesting party is entitled for compassionate appointment.

7. Learned counsel for the 5th respondent has contended that the 5th respondent has filed succession O.P. No.426 of 2008 before the Principal District Judge, Karimnagar, and the said succession O.P. was decreed in her favour vide orders dt.11-08-2017 and accordingly, Succession Certificate was awarded in favour of the 5th respondent. Therefore, the 5th respondent deserves to be considered for compassionate appointment.

8. Having regard to the rival submissions made by the parties, this Court is of the considered view that though the 5th respondent has filed succession O.P.No.426 of 2008 before the Principal District Judge, Karimnagar, nowhere she has claimed about

compassionate appointment and she has filed that succession O.P. only in respect of Rs.1,14,002/- which was to be given to the 5th respondent as the 5th respondent was a nominee of the deceased employee and she never claimed for compassionate appointment.

9. The issue as to whether the petitioner is entitled or the 5th respondent is entitled for compassionate appointment was never adjudicated by the Principal District Judge, Karimnagar, in succession O.P.No.426 of 2008. Therefore, it is left open for the parties to approach the competent civil Court to get a specific finding as to whether the petitioner is entitled or the 5th respondent is entitled for compassionate appointment. Since it is rival claim between the petitioner and the 5th respondent, this Court cannot interfere in such disputes and this Court is not inclined to entertain the present Writ Petition as the disputed question of facts are involved and the petitioner as well as 5th respondent are claiming compassionate appointment and the 5th respondent and the petitioner are disputing rival claims.

10. Therefore, the Writ Petition is not maintainable and same is accordingly dismissed. It is always open for both the parties to approach the competent Civil Court to get a Succession Certificate in respect of their respective claims for compassionate appointment. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 10-11-2021

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