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W.P.No.3623 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.3623 of 2021

M.Priya

... Petitioner

Vs.

1.Canara Bank,
Rep by its Managing Director,
and Chief Executive Officer,
Head Office,
112 J C Road, Town Hall Junction,
Bengaluru, Karnataka 560 002.

2.The Assistant General Manager (HR),
Canara Bank
Head Office,
112 J C Road, Town Hall Junction,
Bengaluru, Karnataka - 560002.

3.The Zonal Manager / Chief General Manager,
Canara Bank, Circle Office,
No.524, Old No.563/1,
Venkataramana Centre 1st to 8th Floor,
Anna Salai, Teynampet, Chennai - 18.

4.The Branch Manager,
Canara Bank,
Armenian Street Branch
1st Floor, Leelavathi Building,
No.69, Armenian St., Chennai - 1.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare that para 3(c) of the Circular No.142-15-BC-PD-18-HRD dated 08.04.2015 and Circular No.062-2018-BC-HRD-18-HRMD, dated 31.01.2018 in so far as seeking to exclude the married daughter from the definition of "dependent family member" / "wholly dependent daughter" for the purpose of getting compassionate appointment under the Scheme for compassionate appointment of the first respondent Bank and the consequential rejection order dated 25.11.2019 in Ref.No.CO:HRD:2946:1650:CAR-2018 passed by the second respondent, rejecting the petitioner's request for compassionate appointment and treating her ineligible on the ground that she has got married at the time of death of her father and hence she cannot be termed as a "wholly dependent daughter" as per para 3(c) of the Scheme for Compassionate Appointment of the first respondent Bank as unconstitutional, discriminatory, arbitrary and unreasonable and violative of Article 14 and 16 of the Constitution of India and consequently, direct the respondents to provide her forthwith appointment on compassionate ground based on her educational qualification from the date of making of the application for compassionate appointment in the prescribed form on 30.06.2017 with all consequential benefits.

For Petitioner : Mr.V.Ajoy Khose
For Respondents : Mr.S.Raghunathan for
M/s.T.S.Gopalan & Co.



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ORDER

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This Writ Petition has been filed seeking issuance of a Writ of Declaration to declare that para 3(c) of the Circular No.142-15-BC-PD-18-HRD dated 08.04.2015 and Circular No.062-2018-BC-HRD-18-HRMD, dated 31.01.2018 in so far as seeking to exclude the married daughter from the definition of "*dependent family member*" / "*wholly dependent daughter*" for the purpose of getting compassionate appointment under the Scheme for compassionate appointment of the first respondent Bank and the consequential rejection order dated 25.11.2019 in Ref.No.CO:HRD:2946:1650:CAR-2018 passed by the second respondent, rejecting the petitioner's request for compassionate appointment and treating her ineligible on the ground that she has got married at the time of death of her father and hence she cannot be termed as a "*wholly dependent daughter*" as per para 3(c) of the Scheme for Compassionate Appointment of the first respondent Bank as unconstitutional, discriminatory, arbitrary and unreasonable and violative of Article 14 and 16 of the Constitution of India and consequently, direct the respondents to provide her forthwith appointment on compassionate



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ground based on her educational qualification from the date of making of the application for compassionate appointment in the prescribed form on 30.06.2017 with all consequential benefits.

2. Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Mr.S.Raghunathan, learned counsel for the respondents.

3. The petitioner has sought a compassionate appointment in the respondent Bank consequent to the death of her father D.Mathikumar, who died in harness on 27.01.2017. However, the application was rejected on the ground that the petitioner was married at the time of the death of her father and she was not dependent on the deceased employee. There is no disagreement in respect of the death of the petitioner's father who was working as an Attender in the Bank.

4. Mr.V.Ajoy Khose, learned counsel for the petitioner submitted that compassionate appointment ought not to have been denied to the



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petitioner on the ground that she is married. Law is well settled on the point that even married daughters are entitled for compassionate appointment. In support of the above contention, the attention of this Court was drawn to the judgment of this Court held in the case of ***Karpagam Vs. The Commissioner, Madurai Corporation, Aringar Anna Maaligai, Tallakullam, Madurai District, reported in 2017 SCC Online Mad 13138***. In the said judgment, the earlier judgment rendered in W.P.No.20437 of 2015 (***A.Vimala Vs. The Secretary of Government and others***) was referred and in that, it was held that compassionate appointment cannot be denied to a married daughter of the deceased Government Servant on the ground of her marriage.

5. Mr.S.Raghunathan, the learned counsel for the respondents submitted that the married daughter is no doubt entitled for compassionate appointment, provided she was wholly dependent on her father. The attention of this Court was drawn to the application submitted for Leave Travel Concession applied by the deceased Mathikumar, in which, the petitioner's name was not included. It is further submitted that



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the petitioner has been working as a Nurse in a private hospital by name Siloam Multi Speciality Hospital. But she left the job on her own volition without any valid reasons. So it is submitted that the petitioner will not come under the category of the daughter who is wholly dependent upon the income of her father and hence, it is right on the part of the respondents to pass an order rejecting the application of the petitioner seeking compassionate appointment. It is further submitted that the minimum qualification for the post of Attender under sub-staff cadre shall be 10th pass and the candidate should not have passed 10 + 2 qualification or its equivalent. So it is claimed that the petitioner has higher qualification and hence she cannot be considered for the appointment on compassionate grounds.

6. So far as the Leave Travel Concession is concerned, the married daughter does not come within the definition of family and hence it is obvious that the deceased employee would not have included his daughter's name in the Leave Travel Concession application. Even if the daughter happened to be a dependent on the father, as per the Leave



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Travel Concession Rules, the married daughter cannot be included in the Leave Travel Concession benefits. So the Leave Travel Concession application submitted by the deceased employee cannot be the basis for demeriting the application submitted by the petitioner for compassionate appointment.

7. However there are certain exemptions provided under the scheme for appointment on compassionate grounds, in which it is stated that the compassionate appointment under the scheme are exempted from observance of the normal recruitment procedure and the ban orders on filling up of the posts in the Government of India or any controlling authority, if any. Probably for this reason, in the impugned order the respondents have not stated any other reason with regard to her over qualification etc., but has pointed out only that the petitioner is a married daughter of the deceased employee and she was not dependent of the deceased employee.

8. Mr.S.Raghunathan submitted that misplaced compassion cannot



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be shown in the matter of compassionate appointment and cited a decision of the Hon'ble Supreme Court held in the case of ***Kerala Solvent Extractions Ltd., Vs. A.Unnikrishnan and Another, reported in (2006) 13 SCC 619.***

9. The rationale of that case is not at all applicable to the matter involved in this case for the very reason that in the above case, there was some suppression of truth and false representation as to the qualification of the petitioner and hence it was observed that the Court has to take those things seriously and there cannot be any compassion shown on wrong doer. But here is a case where a genuine claim has been made by the daughter of the deceased employee.

10. Mr.S.Raghunathan also cited the decision of this Court held in ***W.P.No.19408 of 2019 dated 30.08.2023***, wherein it is stated that compassionate appointment cannot be granted as a matter of right and the financial condition of the deceased family is also an important criteria for offering compassionate appointment.



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11. In the above said case, the petitioner who was a married daughter living separately from the father is found to be not dependent upon the father's income and hence the application was dismissed. But the cases of compassionate appointments are distinguishable on facts.

12. Had the intention for giving compassionate appointment to the married daughter, only if she was completely dependent on the income of the deceased Government Servant, the rules would have simply stated that a deserted or widowed dependent daughter alone is entitled for compassionate appointment. In fact the right for a married daughter for consideration of compassionate appointment in government service had been discriminatory all along and rules ensuring equality evolved only through an incremental improvement from time to time. At this juncture it is worthwhile to refer the judgment of the Madurai Bench of this Court rendered in *J.Selvajanaki Vs. The Inspector General of Police, Technical Services, Mylapore, Chennai-4 and another, reported in 2016 SCC Online Mad 14549*. The relevant part of the judgment which



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describes the incremental improvement of the rules is extracted as under:

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"6. In similar circumstances, this Court, in W.P.(MD)No.20477 of 2015, dated 09.07.2015, has held as follows:

"6. I have considered the entire issue including the validity of G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 in detail in my order dated 13.04.2015 in W.P.No.10565 of 2015 (R.GOVINDAMMAL VS. THE PRINCIPAL SECRETARY, SOCIAL WELFARE AND NUTRITIOUS MEAL PROGRAMME DEPARTMENT, SECRETARIAT AND OTHERS) and held that G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 declining to provide compassionate appointment to married daughter, if she got married before making application for compassionate appointment after the death of her father/mother, who was a Government servant, is violative of the provisions of the Constitution. In that order, I have also considered the judgments of this Court reported in G.GIRIJA VS. THE ASSISTANT DIRECTOR (PANCHAYATS), KANCHEEPURAM DISTRICT [2008 (5) CTC 686] and KRISHNAVENI VS. SUPERINTENDING



*ENGINEER, KADAMPARAI ELECTRICITY
GENERATION BLOCK, COIMBATORE DISTRICT [T
[2013 (8) MLJ 684].*

7. In Govindammal's case (cited supra), I traced the scheme of compassionate appointment in government service with regard to the married daughters. In the original scheme providing compassionate appointment in G.O.Ms.No.560 Labour and Employment Department, dated 03.08.1977, there is a total deprivation for married daughters to seek compassionate appointment. While married sons are eligible to make compassionate appointment, married daughters are ineligible to make application for compassionate appointment.

8. Later, the Government made certain improvements to G.O.Ms.No.560 by issuing G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993 after 16 years of the issuance of the first Government Order viz., G.O.Ms.No.560.

9. G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993 provided compassionate appointment to married daughters of government servant, if the daughter was abandoned by her husband



or a divorcee or a widow i.e., G.O.Ms.No.155 included certain categories of married daughters to claim compassionate appointment. However, discriminatory treatment was not removed in total, that is, while marriage is not a pre-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.

10. Thereafter, G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 was issued making further improvements in the Scheme. As per G.O.Ms.No.165, the married daughter could also claim compassionate appointment, if she was unmarried at the time of making application. In the said Government Order, it is stated that taking into account the decisions of this Court, such relaxation was granted in providing compassionate appointment to the married daughters, who got married subsequent to the death of the Government servant and more particularly after making application for compassionate appointment, i.e, G.O.Ms.No.165 also did not render full justice to women. Still discriminatory treatment was meted out to women. While no such condition is prescribed in the



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case of a son, that the son shall be unmarried at the time of making application after the death of the deceased government servant, a condition is prescribed in the case of daughter that she shall be unmarried at the time of making application for compassionate appointment.

11. Now a further improvement is made in the scheme providing compassionate appointment by issuing G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012, providing compassionate appointment to married daughter, if the marriage took place after 29.11.2001.

12. In fact, today i.e, 09.07.2015 in W.P.No. 20437 of 2015 [A.Vimala v. The Secretary to Government, L & E Department], I have quashed G.O.Ms.No.96, in so far as it declines compassionate appointment to daughters, who got married prior to 29.11.2001. It is relevant to extract the paragraphs 15 and 16 in this regard:-

"15. In my considered view, this Government order also does not put an end to the discriminatory treatment meted out to the daughters in the matter of providing



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compassionate appointment. Even as per this Government Order, marriage is a bar for a daughter, if she got married prior to 29.11.2001. The daughters, who got married after 29.11.2001 are alone entitled to seek compassionate appointment based on the death of her father/mother, who was a government servant. There is no explicit reason given as to why the cut-off date was fixed as 29.11.2001.

16. The reference column of G.O.Ms.No.96 refers to G.O.Ms.No.212 P & AR Department, dated 29.11.2001. That Government Order, namely G.O.212, is relating to imposition of ban on recruitment in Government service. Hence, I fail to understand as to how the date viz., 29.11.2001 has any nexus to the object of the scheme providing compassionate appointment to the married daughters. Hence, I have no hesitation to declare that the cut-off date fixed in G.O.Ms.No.96 dated 29.11.2001 is arbitrary, illegal and unconstitutional. By such declaration and by quashing paragraphs 3 and



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4 of the aforesaid G.O.Ms.No.96 in so far as fixing 29.11.2001 as the cut-off date, the discrimination meted out to married daughters will be totally wiped out. Accordingly, paragraphs 3 and 4 of G.O.Ms.No.96 Labour and Employment Department, dated 18.06.2012 fixing cut-off date as 29.11.2001 are quashed."

7. In the case on hand, the petitioner got married on 20.05.1999. As the G.O.Ms.No.96, dated 29.11.2001 was already quashed, the petitioner as a married daughter is eligible for appointment on compassionate grounds.

8. Considering the facts and circumstances of the case and also considering the fact that the purpose of providing employment on compassionate ground to a son or daughter or a near relative of the deceased government servant is only to render assistance to the family, which is found in indigent circumstances, I am of the view that the petitioner's case deserves consideration."

13. Even though the married daughters have crossed the first level challenge of coming within the ambit of the compassionate scheme, the other challenges continue. She is expected to prove that she had been depending on the income of her father. In our societal settings, a son



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who does not opt to constitute a nuclear family after his marriage live as a joint family with his father under the same roof and it is normalized.

Hence it is easier for him to claim that he had been fully or partially dependent on his father's income, irrespective of the fact of private employment. In such cases, the authorities concerned do not tend to confuse about the dependency aspect of the son. If married daughters choose to live with their parents or at the parents' house, it is considered as abnormal and hence eyebrows raised. A sudden or unconscious distrust is formed, if a married daughter states that she was dependent on her father either partially or fully.

14. In case a married daughter lives at her husband's residence or constitute a separate household with her husband, it becomes a herculean task for her to establish that the daughter was dependent on her father either fully or partially, irrespective of her employment. A married daughter sometimes / many times depends on her father or mother even after her marriage for medical attention or continuing education or for any other purpose which she might or might not prefer to reveal. This is irrespective of the fact whether she is well treated or not at her



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matrimonial home.

15. Quite often such contributions made by the parents to the life of a married daughter living at her matrimonial home go unnoticed, unaccounted or even unrecognised. Revealing those contributions of parents is often considered as something below the dignity of the husband of a married daughter or the family of her in-laws. Such an opinion is not always or essentially the perspective of the members of the matrimonial home. Even the married daughter herself might think that to reveal her parents' financial contributions would affect the dignity or image of her husband or her in laws. It is obviously for this reasons the married daughters cannot be insisted to produce records to show that she was fully or partially dependent on her father's income even after her marriage. Such culturally complicated sides of an issue would demand an empathetic approach and not just a pedantic approach attached to routine office files and formalities.

16. An act of Compassion includes both the elements of sympathy and empathy. Sympathy is an immediate emotional response to a fact situation like some one's loss. It does not stay longer. But empathy



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demands the intellectual involvement of the respondents, which is called '*understanding*'. Through empathy one tries to understand the situation by placing himself in the shoes of an affected person. Empathy prompts action and stays until the affected person recovers and gets back to normalcy. So the authorities concerned need to consider the requests for compassionate appointments with both sympathy and empathy. The matters of compassion not only requires an understanding by getting into the shoes of the applicant but also in the shoes of the deceased government servant, like how the deceased would have wished to settle his dependents in life, if he was alive. So providing compassionate appointment is more or like fulfilling an unwritten Will of the deceased government servant. Hence in the matters of compassionate appointment granting the appointment can be the rule and denying it may be an exception.

17. Further, the aspect of economical dependency cannot always be measured on a scale of bare minimum standard. Because the so called bare minimum is again a complex issue. What is luxury for one person can be a bare minimum for an another person. If one has to apply the



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bare minimum standard it should be in terms of how an employee was placed in society and what standard of life that employee had provided to his dependents with the salary he earned. So the employer cannot expect that the dependent applicant starve for food or live without a roof for getting a compassionate appointment.

18. In the instant case, much ado was made about the married daughter's employment as a nurse in a private hospital and her consequent resignation of the said job. Her very employment in a private hospital itself would show that she was in need of a job to make out her living and she is not living a life of luxury. Jobs in private establishments are subject to fluctuations and it cannot be considered as secured and well paid as that of a job in a government or its undertakings. There can be ever so many reasons or inconveniences for a person to give up a job in a private settings and hence the petitioner's resignation of the job of nurse at a private hospital cannot be understood as a mark of luxury. Without giving a holistic consideration for the matter with due empathy, the respondents have chosen to give a superficial appraisal and rejected



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the application of the petitioner.

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19. The relationship status of the petitioner with the deceased employee was not denied by the respondent Bank. The only reason given in the order is that she was married and hence not a dependent on the income of the father. As stated already, this aspect of the matter cannot be handled in a pedantic manner.

20. During the course of arguments for the respondents it is submitted that the petitioner has got over qualification. But that is not the reason for rejecting the application. As these conditions can be relaxed in the matters of compassionate appointments, the respondents need not consider this aspect as a hurdle for giving an order for compassionate appointment. Therefore, I feel it is appropriate to direct the respondents to appoint the petitioner in any job suiting to the scheme.

21. In view of the reasons and observations above stated, this Writ Petition is allowed and the order of the second respondent dated 25.11.2019 in Ref.No.CO:HRD:2946:1650:CAR-2018 is quashed and



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the respondents are directed to reconsider the application of the petitioner afresh in the light of the above observations and issue an order of appointment suiting to the scheme for appointment on compassionate grounds within a period of six weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

1.The Managing Director
and Chief Executive Officer,
Canara Bank,
Head Office,
112 J C Road, Town Hall Junction,
Bengaluru, Karnataka 560 002.

2.The Assistant General Manager (HR),
Canara Bank,
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