



W.P.(MD)No.4810 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.4810 of 2024 &
W.M.P.(MD)No.4613 of 2024

A.K.Shakthi Priya

... Petitioner

VS.

1.The Union Ministry of State Finance,
Government of India,
Department of Expenditure, New Delhi.

2.The Principal Chief Commissioner of Income Tax,
Office of the Principal Chief Commissioner of Income Tax,
Aayakar Bhavan, 121, Mahatma Gandhi Road,
Chennai.

3.The Joint Commissioner of Income Tax,
Income Tax Office,
Nagercoil.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 2nd respondent in C.No. 26(2)/Estt/Comp/2013(3) dated 24.03.2017 and quash the same as illegal and consequently directing the 2nd respondent to provide compassionate appointment to the petitioner in any suitable post within a time stipulated by this Court.



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For Petitioner : Mr.R.Murugan

For Respondents : Mr.P.Sundaravadivel for R1

Mr.J.Parekh Kumar for R2 and R3

ORDER

Heard Mr.R.Murugan, learned counsel appearing for the petitioner, Mr.P.Sundaravadivel, learned counsel appearing for the first respondent and Mr.J.Parekh Kumar, learned counsel appearing for the respondents 2 and 3.

2. The petitioner has filed this petition seeking to quash the impugned order of the second respondent in C.No.26(2)/Estt/Comp/2013(3) dated 24.03.2017 as illegal and consequently direct the second respondent to provide appointment on compassionate grounds to her in any suitable post within the stipulated time.

3. The petitioner's father who worked as an Income Tax Officer in the third respondent Department died on 15.01.2013 during harness. Subsequently, the petitioner has made an application to the respondents



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on 10.06.2013 seeking appointment on compassionate grounds.

However, the same was rejected on the ground that the petitioner is a married woman living separately. Hence, the writ petition.

4. Mr.R.Murugan, learned counsel appearing for the petitioner submitted that the petitioner was unmarried when she made an application for appointment on compassionate grounds. The petitioner's mother was also called for to offer her willingness for appointment on compassionate grounds. However, the petitioner's mother expressed that it is not possible for her to take up any appointment and appointment can be given to the petitioner herself. It is his submission that the marriage of the petitioner alone will not disqualify her from getting an appointment on compassionate grounds, especially, when the petitioner remained unmarried when she made an application for appointment. Further, the eligibility of the married daughter to get an appointment on compassionate grounds has been upheld in various judicial pronouncements, hence, that point cannot be a *res integra* anymore.



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5. In this regard, it is worthwhile to refer the Judgment of the Principal Seat of this Court in W.P.No.3623 of 2021 dated 18.01.2024, wherein, it is held as under.

"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.

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

"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 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 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



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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 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."

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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 demands the intellectual involvement



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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 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.

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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"



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6. However, apart from the marital status of the petitioner, the impugned order also deals with the economical status. The order makes a mention about the terminal benefits of the Government Servant paid to the petitioner's family. Time and again, it is held that the appointment on compassionate grounds cannot be rejected by considering that the terminal benefits are bounty.

7. It is further stated in the impugned order that the petitioner has got independent source of income and she is living separately with her husband. Apart from the above facts, the petitioner is also affected by delay and laches. Though the order of rejection has been passed on 24.03.2017 itself, the petitioner has filed this writ petition only in the year 2024, that is, after a delay of more than six years.

8. The learned counsel appearing for the petitioner submitted that Covid-19 pandemic and the death of the petitioner's family members are the reasons for delay of more than six years in challenging the impugned order.



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9. However, the fact remains that the petitioner can make a livelihood during the interregnum and that would show that the petitioner does not live in penury consequent to the rejection of her application for appointment on compassionate grounds. In view of the same, the impugned order need not be interfered at this juncture.

10. Accordingly, the writ petition is **disposed of**. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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