

(2015) 11 MAD CK 0042

In the Madras High Court

Case No : W.P.(MD) No. 19927 of 2015 and M.P.(MD) No. 1 of 2015

A. Kavitha

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Citation : (2015) 11 MAD CK 0042

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : S. Malaikani, for the Appellant; J. Gunaseelan Muthiah, GA, for the Respondent

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J.—The father of the petitioner was working as Village Assistant in Poiyundar Kudikadu Village under the respondents. He died on 06.09.2012, while in service, leaving the petitioner, her sister and mother as legal heirs. The petitioner got married before the death of her father/government servant.

2. When the petitioner submitted an application for compassionate appointment dated Nil, the same was declined by the second respondent, vide impugned order dated 17.01.2013 on the sole ground that she was married at the time of death of the government servant.

3. Heard both sides.

4. While the learned counsel for the petitioner submits that the marriage cannot be cited as a reason to deny compassionate appointment to the daughter of the deceased Government servant, learned Government Advocate appearing for the respondents sought to sustain the impugned order.

5. The petitioner was denied compassionate appointment by the impugned order dated 17.01.2013 on the sole ground that the petitioner was married at the time

of submitting the application. According to the respondents, since the petitioner is a married daughter, she is not entitled to compassionate appointment. It is relevant to note that the deceased Government servant had no male issues and he has only two daughters.

6. At this juncture, it is useful to trace the history relating to compassionate appointment and in fact I have traced the same in my order dated 09.07.2015 in W.P. No. 20437 of 2015 [A. Vimala V. The Secretary to Government, Labour and Employment Department], wherein, I have quashed the G.O. Ms. No. 96, dated 18.06.2012, insofar as fixing the cut off date for providing compassionate appointment to the married daughter as 29.11.2001. It is useful to extract the following paragraphs in the said order dated 09.07.2015 which read as follow :

"9. 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 v. 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. Assistant Director (Panchayat), Kancheepuram and others, and Krishnaveni Vs. The Superintending Engineer, , which are referred to by the learned counsel for the petitioner.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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. It is useful to extract the entire Government Order, namely, G.O. Ms. No. 96:--"

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 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 as 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.

17. In fact, the third respondent passed the impugned order without any application of mind and also in violation of G.O. Ms. No. 96 dated 18.06.2012.

The daughters, who got married after 29.11.2001, are entitled to seek compassionate appointment as per G.O. Ms. No. 96. In the impugned order, the third respondent has mentioned the date of marriage of the petitioner as 01.05.2002. If that be so, the petitioner is entitled to compassionate appointment even as per G.O. Ms. No. 96. In fact the date of marriage is erroneously mentioned in the impugned order as 01.05.2002, whereas, the date of marriage is 19.02.1999. Since the marriage of the petitioner took place on 19.02.1999, which is prior to the cut-off date of 29.11.2001 as fixed in the G.O. Ms. No. 96, the impugned order declined to provide compassionate appointment, based on G.O. Ms. No. 96.

18. Since I have quashed the fixation of 29.11.2001 as cut-off date for married daughters to claim compassionate appointment, the impugned order, dated 20.03.2013 is also set aside and a direction is issued to the third respondent to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order."

7. From the above said judgment, it is clear that this Court held in categorical terms that the Government cannot deny compassionate appointment to the daughter of the deceased Government servant on the ground of marriage and quashed the Government Orders denying compassionate appointments to the married daughters. It is relevant to note in this case that the deceased Government servant left behind only two daughters and he had no male issues.

8. For all the foregoing reasons, the impugned order is quashed and a direction is issued to the respondents to provide compassionate appointment to the petitioner, without reference to marriage. Such exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition stands allowed to the extent indicated above. No costs. Consequently, M.P.(MD)No.1 of 2015 is closed.