

(2016) 04 MAD CK 0085

In the Madras High Court

Case No : W.A. No. 449 of 2016 and CMP. No. 6366 of 2016 (W.P.No.23475 of 2011)

Director General of Police

APPELLANT

Vs

R. Manikandan

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) LIC 2415

Hon'ble Judges : Mr. Satish K. Agnihotri and Mr. M. Venugopal, JJ.

Bench : Division Bench

Advocate : Mrs. Srijayanthi, Special Government Pleader, for the Appellant; Mr. Ravi Shanmugam, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellants/Respondents 1 & 2 have focused the instant Writ Appeal before this Court as against the order dated 26.02.2013 in W.P. No. 23475 of 2011 passed by the Learned Single Judge.

2. The Learned Single Judge while passing the impugned order dated 26.02.2013 in W.P.No.23475 of 2011 (filed by the Respondent/Petitioner) at paragraph 5 had observed the following:

"5.The petitioner seems to be prosecuting the matter from the beginning and the petitioner's mother was made to understand that her application for appointment on compassionate ground was pending with the Director General of Police. Therefore, the respondents cannot now harbour that the petitioner has approached the authorities seeking appointment on compassionate ground very belatedly. The petitioner in fact seems to have produced the certificate from the Tahsildar Namakkal District dated 16.10.2002 wherein he has stated that the family of the petitioner is in indigent circumstances."

and resultantly, set aside the orders of the Appellants/Respondents 1 & 2 and

allowed the Writ Petition. Further, the Learned Single Judge had directed the Appellants/Respondents 1 and 2 to consider the claim of the Respondent/Petitioner to provide employment consequent to the death of his father Ramasamy who worked as Grade-I Police Constable at Namakkal District, within a period of six weeks from the date of receipt of the copy of the order.

3. Assailing the legality and correctness of the order dated 26.02.2013 in W.P.No.23475 of 2011 passed by the Learned Single Judge, the Appellants have filed the present Writ Appeal before this Court, contending that the order passed by the Learned Single Judge in W.P.No.23475 of 2011 is contrary to Law and Government Orders in force.

4. The Learned Special Government Pleader appearing for the Appellants submits that one Ramasamy, Grade-I Police Constable 783 of Nilgiris District, married one Pappammal who died on 17.06.1983 and after her death, he married one Vijayakumari on 12.11.1983. As a matter of fact, the said Ramasamy expired while he was in service on 15.06.1994.

5. It is represented on behalf of the Appellants that the Respondent/Writ Petitioner is the second wife's son of the deceased Police Constable Ramasamy and he applied for compassionate ground appointment for himself on 27.08.2002 and the said request was declined by the First Appellant/Director General of Police, Tamil Nadu, as per letter in Ref.No.116456/CA2/2008 dated 09.02.2009 in the light of the Government letter (Ms) No.34, Labour and Employment Department dated 16.04.2002, whereby it was ordered that children born out of void marriages are not entitled for an appointment under compassionate ground.

6. Proceeding further, the Learned Special Government Pleader for the Appellants contends that the Respondent/Petitioner had not applied for the compassionate ground appointment within the specified time of three years from the date of death of the Government Servant. Therefore, the Government was addressed for clarification by means of communication in Ref.No.150381/CA2/2010 dated 25.08.2010 by the First Appellant and that the Government had rejected the claim of the Respondent/Petitioner as per their letter bearing No.98982/Pol.XV/2010-1 dated 05.01.2011, quoting the Government Letter (Ms) No.202, Labour and Employment Department dated 08.10.2007, which mentions that time limit shall be three years for filing the application from the date of death of Government Servant and applicable to all cases including where the Government Servant had died in service even before 26.06.1995.

7. The emphatic stand of the Appellants is that children born out of void marriages are entitled for family pension and DCRG and not for compassionate ground appointment. Moreover, the deceased Government Servant viz., Ramasamy had not obtained prior permission for his second marriage and as such, the said marriage was void. Therefore, the Appellants take a plea that the application for compassionate ground appointment sought for by the Respondent/Petitioner was not considered by the First Appellant/Director General of Police,

Tamil Nadu, Chennai and in this regard, he was informed as per memo Rc.No.116456/CA2/2008 dated 09.02.2009.

8. Advancing her argument, the Learned Special Government Pleader strenuously contends that in respect of an application for compassionate appointment made belatedly after several years from the date of death of a particular Government Servant, the family in question cannot be considered in indigent circumstances. Furthermore, in Government Letter (Ms) 202 dated 08.10.2007, it was mentioned that the very purpose of providing compassionate appointment is only to help the family of the deceased Government Servant to tide over the sudden indigent circumstances, created by the sudden and untimely death of a Government Servant. That apart, in the present case on hand, the Respondent/Petitioner had submitted the application seeking compassionate appointment belatedly after 9 years from the date of death of the Government Servant.

9. Finally, the plea taken on behalf of the Appellants is that the Respondent/Petitioner is not at all eligible for consideration in respect of an appointment on compassionate ground as per Rules and Government Orders. Therefore, the impugned order dated 26.02.2013 passed by the Learned Single Judge in allowing the W.P.No.23475 of 2011 is unsustainable in Law.

10. As far as the present case is concerned, one cannot brush aside a primordial fact that the Respondent/Petitioner's deceased father (Ramasamy) married the Respondent/Petitioner's mother only after the death of his first wife. In reality, his deceased father married his mother Vijayakumari on 12.11.1983. In this connection, it is to be remembered that the first wife died on 17.06.1983. Viewed in that perspective, the contra plea taken on behalf of the Appellants is not accepted by this Court. Indeed, the Respondent/Petitioner had produced the certificate from the Tahsildar, Namakkal District dated 16.10.2002, wherein, it was mentioned that the Respondent/Petitioner's family is in indigent circumstances. Apart from that, the Respondent/Petitioner was keeping track of the subject matter in issue from the beginning and also his mother was given to understand that her application for appointment on compassionate ground was pending before the First Appellant/Director General of Police, Tamil Nadu, Chennai.

11. Coming to the plea taken on behalf of the Appellants that the Respondent/Petitioner's deceased father's second marriage with his mother viz., Vijayakumari is a void one, this Court pertinently points out that by no stretch of imagination, the second marriage of the Respondent/Petitioner's deceased father with his mother cannot be considered to be a void one because of the reason that only after the demise of the first wife, the Respondent's deceased father (Ramasamy) had married his mother. For such a marriage, no prior permission is required to be obtained under any rule or from any authorities.

12. In the upshot of detailed discussions and also, this Court on going through the impugned order dated 26.02.2013 in W.P.No.23475 of 2011 passed by the

Learned Single Judge in setting aside the orders of the Appellants/Respondents 1 & 2 and allowing the Writ Petition by issuing consequential directions thereto, is of the considered view that the said order does not suffer from any material irregularities or patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

13. In fine, the Writ Appeal is dismissed and resultantly, the impugned order passed by the Learned Single Judge in W.P.No.23475 of 2011 dated 26.02.2013 is confirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is also closed. No costs.