

(2016) 04 MAD CK 0082

In the Madras High Court

Case No : Writ Petition (MD) No. 3502 of 2011 and M.P. (MD) No. 1 of 2011

M. Muthuraj

APPELLANT

Vs

The Deputy General of Police

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 CTC 50 : (2016) 3 LLN 456 : (2017) 1 WritLR 376

Hon'ble Judges : Smt. Pushpa Sathyanarayana, J.

Bench : Single Bench

Advocate : Mr. P. Veerakathiravan, SC for Mr. S. Sundarapandian, Advocate, for the Appellant; Mr. S. Chandrasekar, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Pushpa Sathyanarayana, J.—Challenging the rejection of representation for compassionate appointment vide order dated 01.3.2011 passed by the office of the Director General of Police confirming the order of the Superintendent of Police, Tiruchirappalli District, the petitioner has come up with the present writ petition and has also sought for direction to the respondents to provide him employment on compassionate grounds.

2. One P. Malaiappan was functioning as a Sub-Inspector of Police and while in service, he expired on 08.4.2008 due to an accident. He was survived by the petitioner and his sisters born through the second wife and two wives. It is the case of the petitioner that his father originally married one Saroja, who was none other than his mother's elder sister and since she was issueless, his father married his mother as his second wife and they all lived in one house. The further case of the petitioner is that at the time of his father's death, he was studying degree of law and hence, his mother's sister, viz., first wife of the deceased, sent a representation dated 26.11.2008 to the second respondent Superintendent of Police, Tiruchirappalli District, requesting for his appointment on compassionate ground and the same was rejected by proceedings dated

08.11.2010 stating that compassionate appointment cannot be granted to the legal heirs of the deceased through the second wife. Hence, the petitioner sent representation to the first respondent Director General of Police and the same was also rejected by proceedings dated 01.03.2011 confirming the order of the second respondent. The said orders are impugned in the instant Writ Petition.

3. The respondents have contested the Writ Petition stating that the children born through the second wife are not entitled for compassionate appointment. Relying on Government Order in G.O. Ms. No. 34 Labour and Employment (Q-1) Department dated 16.4.2002, it is stated that the children born out of void marriages are entitled for the benefit in respect of the property of the deceased Government servant and that compassionate appointment cannot be equated to the status of the property of the deceased.

4. Learned counsel for the applicant argued that the law relating to compassionate appointment especially with reference to dependents, should be read in line with the provisions available in the Hindu Marriage Act. Section 16 of the said Hindu Marriage Act legitimizes the children born to a couple whose marriage may not be held legally valid. The children are entitled to inherit the property of the parents. The counsel submitted that the petitioner's status as a legitimate son of the deceased has also been recognised by Court by issuance of Succession Certificate to the effect that he was born to the deceased Malaiappan through his second wife. As such, according to the learned counsel, in matters of compassionate appointments also, when the first wife did not apply for herself for such appointment, the applicant being a legitimate son of the deceased should be considered for such appointment.

5. Learned Government Advocate representing the respondents contended that the deceased being a Hindu, was subject to the provisions of Hindu Marriage Act, which prohibits bigamy and thus, he was prohibited from marrying a second time during the life time of his first wife. Even where second marriage is permissible under the Personal Laws, in so far as Government servants is concerned, permission to contract the second marriage has to be obtained. Thus, his second marriage being void, the petitioner is not entitled to any compassionate appointment.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate representing the respondents and perused the records.

7. It is a policy of the Government that monogamy should be the Rule. As per the Service Rules, no Government servant shall enter into second marriage when the first spouse is living. Even in case of persons belonging to religions where plurality of wives is permitted, a Government servant cannot take a second wife, except with the prior permission of the Government. Therefore, in order to encourage monogamy, the Government has introduced these conditions which has stood the test of time and not challenged so far by anybody. Therefore, certain restrictions on Fundamental Rights and Personal Law are made in Service

rules in the larger public interest.

8. If once the second marriage itself is prohibited irrespective of the question whether it is permitted in Personal Law or not and when it is considered to be an offence under section 494 of the IPC, there is no bar for the Government to make it as a policy that second wife and children are not allowed to get compassionate appointment under the Service Rules. Rule is clear that second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the Personal Law, etc.

9. Firstly, compassionate appointment and right to inherit property have no correlation, nor can be equated in any manner. The compassionate appointment is not a property which can be subject matter of alienation and can be bequeathed whereas the devolving of property of a person is governed by the law, may it be customary or may it be statutory law, whereas the service and benefit arising out of services are governed by the frame of the contract of service or the rules governing the service of the employees and by the scheme, if framed by the employer. The compassionate appointment depends solely upon the frame of contract between the employer and employee and cannot be made subject matter to be governed by the personal law, when the employer has not provided so. Therefore, in the opinion of this Court, merely because illegitimate child has been put at par in the matter of inheritance, by specific and statutory provision, its benefit cannot be extended, so as to put a burden upon the employer when the employer specifically has disallowed such benefit to such successor of the employee.

10. Admittedly, the petitioner is the son of the deceased through his second wife and hence, he cannot be considered for compassionate appointment. This Court finds no reason to set aside the impugned orders.

11. In fine, this Writ Petition fails and the same stands dismissed. However, in the circumstances of the case, there shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.