
(2014) 10 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 11777 of 2007 (O.A. No. 5657 of 2002)

P.R. Renuka

APPELLANT

Vs

Director of Animal Husbandry

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2014) 8 MLJ 268

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner filed O.A. No. 5657 of 2002. On abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P. No. 11777 of 2007. The petitioner's father was working as an Office Assistant under the control of the 2nd respondent. He died on 22.02.1998, while in service. He left behind his wife, 3 married daughters and one unmarried daughter as his legal heirs. The petitioner was the first married daughter of the deceased government servant. She applied for compassionate appointment on the ground that she was deserted by her husband and living with her father. The petitioner also produced the order, dated 09.09.1999 granting decree of divorce by the First Additional Family Court, Chennai in F.C.O.P. No. 1012 of 1998.

2. While so, the first respondent passed the impugned order, dated 16.09.2002 declining to provide compassionate appointment on the ground that divorce was granted to the petitioner only after the death of her father and hence, she is not entitled to compassionate appointment. The said order is questioned in this writ petition.

3. A reply affidavit was filed by the respondents stating that the petitioner was wait listed for compassionate appointment at Sl. No. 252 in the office of the first respondent. On scrutinizing the divorce decree passed by the First Additional Family Court, Chennai, it was seen that the petitioner was granted divorce only on 09.09.1999, that is after the death of the Government servant. The reply

affidavit also referred to the Government letter dated 14.08.2002 in Letter No. 16118/AH2/2001-1, wherein and by which, the request of the petitioner to provide compassionate appointment was negated on the ground that she was not a divorcee at the time of death of her father.

4. Heard both sides.

5. The order of the first respondent declining to provide compassionate appointment is based on the letter of the Government dated 14.08.2002. In this regard, the said letter is extracted hereunder:

6. The impugned order dated 16.09.2002 is just representing the aforesaid content of the Government letter. The only reason for refusal of compassionate appointment to the petitioner is that she was not a divorcee at the time when her father died. No other reason is given for denying compassionate appointment.

7. It is submitted by the learned Additional Government Pleader that once a daughter is married, she is ineligible for compassionate appointment and only unmarried daughter and a daughter, who is a divorcee at the time of application of compassionate appointment, is eligible for such appointment.

8. It is not disputed by the learned Additional Government Pleader that a married son is not disqualified for compassionate appointment but a married daughter is disqualified for compassionate appointment.

9. It is the case of the petitioner that she was deserted by her husband and she was living with her father even before his death. The said fact is not disputed by the respondents as well as by the Government in its letter dated 14.08.2002. The only reason given in the impugned order as well as in the Government letter dated 14.08.2002 is that the petitioner obtained divorce only on 09.09.1999 and that is subsequent to the death of her father on 22.02.1998.

10. In my view, there cannot be any discrimination between a married son and a married daughter. When the petitioner has come with a plea that she was deserted by her husband and a decree of divorce was granted and she was under the care and control of her father at the time of his death, the Government cannot deny compassionate appointment on the ground that divorce was obtained after the death of her father. Making discrimination between a son and a daughter on the ground of marriage is arbitrary and violative of Articles 14, 15 and 16 of the Constitution.

11. This Court in Jayalakshmi Vs. Tamil Nadu Generation and Distribution Corporation Ltd., The Chief Engineer (Personnel), The Superintending Engineer and The Assistant Executive Engineer, , held that Government order making discrimination in the matter of compassionate appointment to a daughter on the ground that she is married is bad. In this context, it is relevant to extract paragraph 5 of the aforesaid order:

"5. In similar circumstances, the matter was considered by me in M. Sudha v.

District Collector, Thanjavur District W.P. (MD) No. 5183 of 2013 and I set aside the similar impugned order and issued direction to the respondent therein to consider the case of the petitioner therein for compassionate appointment, if the petitioner therein was otherwise eligible for appointment. In fact, in the said judgment, I followed the earlier judgment of mine in W.P. (MD) No. 8686 of 2011. The relevant paragraph 5 of the aforesaid judgment is extracted hereunder:

"5. As rightly contended by the learned counsel for the petitioner, the matter is squarely covered by a decision dated 2.7.2012 rendered by me in W.P. (MD) No. 8686 of 2011. Paragraph 9 of the judgment is extracted hereunder:

9. As stated above, if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also. At this juncture, it is relevant to take note of the statute, namely the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which places equal duty on both the son and daughter to take care of the parents at the old age. Therefore, in the case of death of the parents, there cannot be any unequal treatment among the children based on sex. Further, as rightly contended by the learned counsel for the petitioner, the judgment of this Court reported in G. Girija Vs. Assistant Director (Panchayat), Kancheepuram and others, , applies to the facts of this case. In the said case, the Government servant died on 26.2.1991. The daughter got married on 10.9.2006. She gave an application for compassionate appointment on 2.6.1997. This court quashed the order declining to give compassionate appointment holding that there cannot be any discrimination between sons and daughters in the case of giving compassionate appointment. The said judgment squarely applies to the facts of this case. Therefore, I have no hesitation to quash the impugned order. Accordingly, the impugned order is quashed and a direction is issued to the respondents to consider the claim of the petitioner for compassionate appointment without reference to the marriage of the petitioner and to pass appropriate orders in the light of this judgment within a period of eight weeks from the date of receipt of a copy of this order."

Applying the said principle, I am of the view that the impugned order is liable to be quashed and accordingly, it is quashed. The writ petition stands allowed. The third respondent is directed to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order, if there is no other impediment. No costs.