

(2015) 02 MAD CK 0129

In the Madras High Court

Case No : Writ Petition(MD) No. 18059 of 2014 and M.P.(MD) Nos. 1 and 2 of 2014

R. Kanimozhi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

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

Citation : (2015) 02 MAD CK 0129

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : S.A. Ajmalkhan, for the Appellant; V. Muruganantham, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Babu, J.—The petitioner is aggrieved against the order of the third respondent dated 20.06.2014 and consequently she is seeking a direction to the respondents to give appointment to her on compassionate ground.

2. The case of the petitioner is as follows:-

The petitioner passed SSLC and DTE and belongs to Backward Class Community. Her father, by name, K.Ramasamy, who was working as Secondary Grade Teacher and died in harness on 22.09.1999, while he was in service. The petitioner submitted an application on 01.04.2000 seeking for compassionate appointment. Again on 24.04.2002, the petitioner made a representation as there was no response to the earlier application. In the meantime, there was a ban imposed by the Government through G.O. Ms.No. 212, Personal and Administrative Reforms (P) Department, dated 29.11.2001. The said ban was lifted in the year 2006 through G.O. Ms.No. 16 Personal and Administrative Reforms (P) Department, dated 21.02.2006. The petitioner again approached the fourth respondent and made a representation on 01.04.2006 followed by another

representations on 24.04.2007 and 18.06.2007. It is stated that the fourth respondent forwarded the request to the third respondent. However, the third respondent through proceedings dated 19.05.2008 refused the request of the petitioner on the ground that the application was not submitted within three years from the date of death of the employee. The petitioner challenged the said proceedings in W.P.(MD) No. 278 of 2011 and this Court, set aside the order and directed the respondents therein to consider the name of the petitioner for appointment on compassionate ground without reference to the delay. Thereafter, the present impugned order came to be passed on 20.06.2014 rejecting the request of the petitioner once again by stating that the petitioner was a married woman and therefore, she is not entitled for compassionate appointment. 3. The third respondent filed a counter affidavit reiterating the contention made in the impugned order. It is stated that the petitioner could not be considered as destitute widow as she was not divorced on the date of submitting her application for compassionate appointment.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. The above stated facts and circumstances would show that the petitioner had approached the respondents and sought for compassionate appointment in pursuant to the death of her father. Originally said request was rejected on the reason that the application was not made within a period of three years from the date of death of the employee. The said order was challenged before this Court in W.P.(MD) No. 278 of 2011 and this Court, by an order dated 02.04.2012 set aside the impugned order therein and directed the District Educational Officer, Ramnad to consider the name of the petitioner for appointment on compassionate ground without reference to the delay as put forth in the impugned order therein. Thereafter, the present impugned order came to be passed on the reason that the petitioner was married on the date of the application and she is not a destituted women as she has not obtained any divorce from her husband.

6. Therefore, the point for considering in this writ petition is as to whether the petitioner's claim for appointment can be rejected on the reason that she was married woman on the date of her application and that she has not produced any document to show that she is a divorced lady. In my considered view both the grounds referred to in the impugned order cannot be sustained on the very simple reason that the issue involved in this case has already been considered and decided in respect of similarly situated persons like that of the petitioner in their favour. Being the married daughter of the deceased employee cannot be a disqualification to reject the request for compassionate appointment. The said issue was considered by this Court in P.R. Renuka Vs. Director of Animal Husbandry, , wherein the learned Single Judge of this Court after considering various orders passed by this Court, has found that there cannot be any discrimination between a married son and daughter and making discrimination

between son and daughter on the ground of marriage is arbitrary and violation of Article 14, 15, and 16 of the Constitution of India. Relevant paragraphs 11, 12 and 13 reads as follows:-

"11. 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.

12. This Court in W.P. No. 22171 of 2013 dated 13.08.2013 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 the 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 26.02.1991. The daughter got married on 10.09.2006. 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.

13. Applying the said principal, 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."

7. Myself has considered the very same issue in W.P.(MD) No. 5314 of 2009 dated 31.01.2013 and W.P.(MD) No. 180 of 2015 dated 19.01.2015 and rejected the similar contention of the respondent therein. Therefore, following the earlier decision passed by this Court, this Writ Petition is allowed and the impugned order is set aside and consequently, the third respondent is directed to pass appropriate orders on the petitioner's application seeking for compassionate appointment, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.