

V. Valarmathi Vs. The Director General of Police, Chennai and Others

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Court : Chennai Madurai

Decided On : Nov-25-2015

Judge : D. Hariparanthaman

Appeal No. : W.P. (MD) No. 20860 of 2015

Appellant : V. Valarmathi

Respondent : The Director General of Police, Chennai and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order Ref.C.No.L3/13448/2015 dated 01.09.2015 on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent No.3 to appoint the petitioner under compassionate grounds to any available post according to the qualification of the petitioner in the light of G.O.Ms.No.96 dated 18.06.2012 of Labour and Employment Department within the time stipulated by this Court.)

1. The father of the petitioner was employed as Police Constable Grade-1 in the Police Department. He died on 19.02.1999 in a road accident. He left behind him, the petitioner, her elder brother, elder sister and her mother. In these circumstances, the widow, ie., mother of the petitioner, made a request to provide compassionate appointment for her son, ie., compassionate appointment was

sought to the brother of the writ petitioner. Based on the representation, he was included in the waiting list for providing compassionate appointment. While so, he died on 24.05.2001. In fact, the first respondent issued the proceedings in Na.Ka.No.168438/Sa.A.Ni.1/2001 dated 27.10.2001 directing the brother of the petitioner to appear for verification of certificates, to provide compassionate appointment.

2. While so, the petitioner made a representation dated 24.11.2001 to the first respondent seeking to provide compassionate appointment since her brother died on 24.05.2001. However, the third respondent passed an order in Na.Ka.No.L3/41145/03 dated 28.01.2005 rejecting the request of the petitioner for compassionate appointment, on the ground that the petitioner was a married daughter and hence the scheme providing for compassionate appointment does not provide compassionate appointment to such persons.

3. According to the petitioner, later the Government issued a Government Order in G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 providing compassionate appointment to married daughters. However, the said G.O. made a restriction in providing compassionate appointment to the married daughters. As per the G.O., the daughter should have been unmarried at the time of making application after the death of the deceased Government servant, otherwise the daughter of the deceased Government servant is not entitled to seek compassionate appointment, ie., if the daughter of the deceased Government servant is married before she made an application for compassionate appointment due to the death of her father, she would not claim compassionate appointment.

4. However, the said G.O. was modified later by the Government by another G.O. in G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012. G.O.Ms.No.96 also made some restriction in the matter of providing compassionate appointment to the married daughters. The said G.O. states that the daughters of Government servants, who got married before 29.11.2001, are not entitled to compassionate appointment.

5. While so, the petitioner sought compassionate appointment based on G.O.Ms.No.96 as she got married only on 08.09.2002. But, the claim of the

petitioner for compassionate appointment was rejected by the third respondent by the impugned order dated 01.09.2015.

6. There are two reasons given for rejecting the compassionate appointment. The first reason is that the petitioner failed to make application within three years from the date of death of the deceased Government servant. In my view, the said reason is not sustainable for the obvious reason that the brother of the petitioner sought compassionate appointment due to the death of her father. Her father died on 19.02.1999. Her brother died on 24.05.2001. Only thereafter, the petitioner made a claim. She made the claim immediately thereafter. Hence, it cannot be said that the petitioner made the claim for compassionate appointment belatedly. The application of the petitioner should be treated as if the same was made on the date of her brother made the application for compassionate appointment. Hence, I am of the view that the said reasoning is bad.

7. The second reason is based on G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010. As per G.O.Ms.No.165, the daughter of a deceased Government servant should not have been married at the time when she made the application for compassionate appointment, after the death of her father. In fact, the said reasoning also is bad, in view of the subsequent G.O. passed in G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012. In G.O.Ms.No.96, the Government said that the daughters of the deceased Government servant, who got married after 29.11.2001, are entitled to compassionate appointment. Therefore, this reason also is bad and accordingly, the impugned order is liable to be set aside.

8. However, I would like to state that I considered both the Government Orders, ie., G.O.Ms.Nos.165 and 96 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], and I set aside those G.Os., that discriminate the married daughters in the matter of providing compassionate appointment. It is useful to extract the following paragraphs in the said order dated 09.07.2015 which reads 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 VS. 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. THE ASSISTANT DIRECTOR (PANCHAYATS), KANCHEEPURAM DISTRICT [2008 (5) CTC 686] and KRISHNAVENI VS. SUPERINTENDING ENGINEER, KADAMPARAI ELECTRICITY GENERATION BLOCK, COIMBATORE DISTRICT [2013 (8) MLJ 684], 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:-"

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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 and 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. ?

9. In this case, after the death of the brother of the petitioner, the only persons left out for compassionate appointment are the two daughters of the deceased Government servant and the widow. The petitioner is one of the two daughters. The other daughter who is also married, gave no objection to provide compassionate appointment to the petitioner. In the circumstances, compassionate appointment cannot be denied to the petitioner on the ground of marriage.

10. For all the aforesaid reasons, the impugned order is set aside with a direction to the respondents to provide compassionate appointment to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

11. The writ petition is allowed in the above terms. No costs.

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