

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 01.03.2017

ORDER PRONOUNCED ON: 04.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.1042 of 2016 and 122 of 2017
and
C.M.P. (MD) .No.6078 of 2016

The Joint Registrar/Managing Director,
Virudhunagar District Central
Co-operative Bank Ltd,
Virudhunagar.

... Appellant/2nd Respondent in both appeals

Vs

1.P.Asothai ... 1st Respondent/Petitioner

2.The Registrar,
Co-operative Societies,
170, Periyar E.V.R.High Road,
P.B.No.1091, Kilpauk,
Chennai-600 010. 2nd Respondent/1st Respondent

3.The Special Officer,
Virudhu Nagar District Central Co-operative Bank Ltd.,
Virudhunagar.
... 3rd Respondent / 3rd Respondent

W.A. (MD) .No.1042 of 2016: Writ Appeal is filed under Clause
15 of Letters Patent against the order dated 04.01.2016
made in W.P. (MD) .No.21811 of 2015.

W.A. (MD) .No.122 of 2017: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 16.06.2015 made in W.P.(MD).No.9642 of 2015.

For Appellants :Mr.S.Seenivasagam

For R.1 :Mr.C.Muthusaravanan

For R.2&3 :Mr.Chandrasekar
Government Advocate

COMMON JUDGMENT

[Judgment of the Court was delivered by

J.NISHA BANU, J.]

Since the issue involved in both the Writ Appeals are one and the same, they are taken up together and decided by a common judgment.

2. The appellant herein is the second respondent in W.P(MD).No.21811 of 2015 as well as W.P.(MD).No.9642 of 2015 and the first respondent herein is the writ petitioner in both the writ petitions. However, for the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition.

3. Since the learned Judge has extensively dealt with the facts in W.P.(MD).No.21811 of 2015 in a detailed manner, we are not repeating it again. However, for the

purpose of deciding this case, the short facts are narrated below:-

3.1. The father of the writ petitioner was a Driver in the second respondent Co-operative Bank. He died on 17.03.2008. She made various representations seeking compassionate appointment.

3.2. Since her representations were not disposed of, she approached this Court by filing W.P.(MD)No.2506 of 2014 to consider her representation dated 10.01.2014 for compassionate appointment. This Court, disposed of W.P. (MD)No.2506 of 2014 on 17.02.2014, after hearing both sides. A direction was issued to the second respondent therein, who is the second respondent herein also, to pass orders on her representation relating to compassionate appointment on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of that order.

3.3. This led to the issuance of the impugned order dated 18.03.2014 rejecting her request on the ground that she was married at the time of death of her father and being a married daughter, she is not entitled to compassionate appointment.

3.4. The said order is questioned by the petitioner in W.P.(MD)No.9642 of 2015 and this Court disposed of W.P.(MD)No.9642 of 2015, after hearing both sides. This Court sets aside the impugned order therein on 16.06.2015, as the rejection was based on the marriage of the petitioner. A direction was issued to consider her request for compassionate appointment within a period of two months from the date of receipt of a copy of that order.

3.5. Thereafter, the second respondent passed an order dated 21.09.2015 refusing to provide compassionate appointment on two grounds, namely, (i) that the petitioner is a married daughter ; and (ii) that she crossed the age of 30 years at the time of death of her father. Hence, the petitioner is not entitled to compassionate appointment.

3.6. That was challenged by the petitioner vide W.P.(MD).No.21811 of 2015 dated 04.01.2016. The learned Judge, after hearing both sides, once again set aside the order impugned in the writ petition and directed the respondents to grant compassionate appointment to the petitioner. Challenging the same, both the writ appeals have been filed.

4. The learned counsel appearing for the official respondents, namely, for both the banks would submit that the writ petitioner was denied compassionate appointment by the impugned order, on the ground that she was married prior to the death of the Government servant and further, she has crossed the age limit and the writ petitioner is not entitled to get compassionate appointment. Moreover, there is no provision in the bye-law of the Banks to provide compassionate appointment to the writ petitioner. Furthermore, the learned Judges have erred in entertaining the writ petitions filed by the writ petitioner as against the judgment reported in **Marappan V. Deputy Registrar of Co-operative Societies, Namakkal Circle, 2006 (6) CTC 689** and therefore, prayed for allowing the writ appeals.

5. According to the learned counsel for the petitioner, the marriage cannot be cited as a reason to deny compassionate appointment to the daughter of the deceased Government servant. Furthermore, after setting aside the impugned order that the official respondents cannot discriminate the petitioner on the ground that she is a married woman, the official respondents cannot invent a new reason to thwart the claim of the petitioner stating that she crossed the age limit for providing compassionate appointment to the petitioner. Hence, he prayed for the

dismissal of both the writ appeals.

6. Though the second respondent has preferred two writ appeals, the second respondent has negatived the claim of the writ petitioner mainly on two grounds, which are as follows:-

- (i) that the petitioner is a married daughter and
- (ii) that she crossed the age of 30 years at the time of death of her father.

If those two issues are dealt with by us, we are of the view that there will be a quietus to the issue on hand.

7. Though voluminous records have been produced before this Court, as far as the first point is concerned, the issue involved in this writ petition is no more *res integra*. In W.A. (MD).No.941 of 2016 dated 24.01.2017, we have not only traced the history of the role played by women in our Indian Country, but also, we have extensively considered the very same issue and directed the official respondents therein to provide compassionate appointment to the petitioner therein. The important portion found in the said judgment is usefully extracted below:-

"4.After hearing both sides, the learned Judge relying on his own order in **W.P. (MD) No. 20437 of 2015 [A.VIMALA v. THE SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT]**, dated 09.07.2015, wherein the learned Judge has

quashed the impugned order fixing the cut-off date for providing compassionate appointment to the married daughter, as 29.11.2001. While passing the above order, the learned Judge has discussed various Government orders and various Judgements and in those GOs, the status of the married daughters for seeking compassionate appointment was relaxed little by little. By improving the GOs one after another and finally in G.O.Ms.No.96, dated 18.06.2012, the Government has decided that the married daughters also can claim for compassionate appointment provided their marriage should have been after 29.11.2001 and this condition was set aside by the learned Judge in the above W.P.(MD)No.20437 of 2015 and it appears that there is no appeal filed against the above order and therefore, the quashing of the condition in paragraph Nos.3 and 4 of G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012, has become final. Hence, the respondents cannot deny appointment to the petitioner citing her marriage. Now the point to be considered is whether the family is in indigent circumstances and whether the family pension received by the petitioner's mother and owning a house will stand in the way of getting compassionate appointment to the petitioner.

5. In my considered opinion, the compassionate appointment scheme is applicable for a Government servant whose legal heirs are automatically entitled for the terminal benefits

and family pension and if that is going to be a bar for getting compassionate appointment, then, the scheme of compassionate appointment can never be for a Government servant. That is the reason as to why the Hon'ble Supreme Court in the case of **BALBIR KAUR v. STEEL AUTHORITY OF INDIA LTD.**, reported in **2000 (6) SCC 493**, has specifically stated in paragraph No.13 as follows:-

"13. ... But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearners, but that would undoubtedly bring some solace to the situation."

6.From the above Judgement, it is very clear that the Court has rightly held that the grant of family pension and payment of terminal benefits cannot be treated as substitute for providing employment assistance. This proposition has been followed by the Hon'ble Supreme Court in **CANARA BANK v. M.MAHESH KUMAR** reported in **2015 (7) SCC 412**, and therefore, the Government cannot take a stand that the petitioner's mother is drawing family pension and she owned a house of

her own.

7. In the impugned order itself, it is stated that the sons of the deceased Government servant are working in Private Companies and they are leading a separate life and what is to be seen is whether the married daughter will take care of the family or not, which can be only ascertained by following certain procedures of giving affidavit by herself and her husband promising to take care of the mother and on that assurance, appointment can be given to the petitioner and it is not the case that such affidavit was not given by the petitioner.

8. Further it is Imperative to note that we are at an era, wherein women have risen above the challenges and dutifully discharged their responsibilities as an individual in different roles. "She" remains one of the supreme species, wherein her representatives are clocked 24/7 in different forms as a daughter, wife, mother, sister, friend, aunt, grandmother, daughter-in-law, mother-in-law, guardian, employee, so on and so forth. Women are not just the procreators of the clan, but have been welcomed to become that reliant person who can take care of her own family and her newfound family. "She" have risen from dependents to nurtures of relationship, and for a woman to take care of her own parents is not a norm, but a welcome trend in society as they are doing an impressive diligence at it. The

credibility and zeal is always there and our constitution does not discriminate its citizens on the basis of gender and therefore, the order of the learned Judge is well founded.

9. The gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance and therefore, our constitution has not discriminated male from female and any order passed discriminating male from female will be only against the Constitution and it cannot be sustained. Thus, for all the reasons stated above, we confirm the order of the learned Judge passed in W.P.(MD).No.14643 of 2015, dated 04.01.2016. It is needless to say that the exercise of granting compassionate appointment to the petitioner shall be done within a period of four weeks from the date of receipt of a copy of this order."

8. Therefore, apart from paragraph No.20 of the order made in W.P.(MD).No.21811 of 2015 and in the light of the reasons assigned by us in our order dated W.A.(MD).No. 941 of 2016 dated 24.01.2017, we are not in agreement that the married daughter is not entitled to get compassionate appointment. In our view, denying employment to the petitioner on the ground of marriage is in violation of

Articles 14, 15 and 16 of the Constitution. Therefore, the first reason is answered against the respondents.

9. The second reason assigned by the respondents is that she has crossed 30 years of age and hence, she is not eligible to get compassionate appointment. As rightly pointed out by the learned Judge, the said reason was not assigned by the respondents at the time of passing the impugned order dated 18.03.2014 and they cannot go on inventing the reason after reason for denying the compassionate appointment to the petitioner. The other reason found out by the learned Judge is that though it was stated by the respondents that the petitioner had crossed the upper age limit, the respondents had conveniently not produced the bye-law of the Society, whereas, as per the Clause 8 of the Special Bye-law produced by the petitioner, the appointment for compassionate appointment is 40 years. Therefore, the learned Judge has rightly dealt with the matter and consequently, the second reason is also negatived against the respondent.

10. That apart, yet another contention raised by the respondents is that as per **Marappan V. Deputy Registrar of Co-operative Societies, Namakkal Circle**, reported in **2006 (6) CTC 689**, the writ petitions are not maintainable. Be that as it may, it is trite law that the writ petition

could be entertained against the co-operative society, when there is a violation of the provisions of the Industrial Disputes Act and the same was also reflected in the counter affidavit of the second respondent. Furthermore, if there is an infringement caused against the fundamental rights, like the case on hand, there is no bar in entertaining the writ petitions. In this case, there is a serious violation of fundamental rights. Furthermore, on earlier two occasions, the official respondents have entertained the case of the writ petitioner and the respondents had also made appearance through Government Advocate. Therefore, much water has flown and now, at this distance point of time, the respondents cannot go back to square one and state that the writ petitions are not maintainable. Hence, in these circumstances, we are of the view that the writ petitions were rightly entertained by the learned Judge and matters were rightly disposed of by the learned Judges.

11. Viewed from any angle, we are of the considered opinion that the order of the learned Judges do not warrant interference of this Court as there is no legal

infirmary or illegality in the orders passed by the learned Judges and hence, both the appeals stand dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs. Since the writ petitioner has been continuously knocking the doors of this Court, the official respondents are directed to appoint the petitioner on compassionate grounds within a period of four weeks from the date of receipt of a copy of this order. Consequently, all the connected miscellaneous petitions are closed.

[R.P.S.,J.]

[J.N.B.,J.]

Index : Yes/No
Internet : Yes/No
ssm

04.04.2017

To

1.The Joint Registrar/Managing Director,
Virudhunagar District Central
Co-operative Bank Ltd,
Virudhunagar.

2.The Registrar,
Co-operative Societies,
170, Periyar E.V.R.High Road,
P.B.No.1091, Kilpauk,
Chennai-600 010.

3.The Special Officer,
Virudhu Nagar District Central Co-operative Bank Ltd.,
Virudhunagar.

R. SUBBIAH, J.
and
J. NISHA BANU, J.
ssm

W.A(MD).No.1042 of 2016 and 122 of 2017

04.04.2017

Pre-delivery order made in
W.A. (MD) Nos.1042 of 2016 and 122 of 2017

To

THE HONOURABLE MR.JUSTICE R.SUBBIAH

From

THE HONOURABLE MRS.JUSTICE J.NISHA BANU