

HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No. 28931 of 2021

ORDER:-

The Writ Petition is filed aggrieved by the proceedings dated 22.09.2021 issued by the 3rd respondent as also letter dated 21.10.2021 of the 4th respondent in rejecting the case of the petitioner for compassionate appointment as illegal, arbitrary, unjust, to quash the same and for a consequential direction to the respondents to appoint the petitioner, in any suitable post, on compassionate grounds.

2. Heard Mr.M.R.S.Srinivas, learned counsel for the petitioner and the learned Assistant Government Pleader for Services-III representing the respondents.

3. The basic facts, as set out in the affidavit filed in support of the Writ Petition, may be stated for better appreciation of the petitioner's case.

4. The petitioner is the only daughter of one Peddisetty Uma Maheswara Rao, who died on 05.05.2021 due to COVID-19, while he was working as watchman in P.W.D. Workshop Division, Sitanagaram, Guntur District. The wife of the said Uma Maheswara Rao is uneducated, dependent on the deceased and the petitioner being the daughter of the

deceased, not survived by siblings, sought for compassionate appointment claiming *inter alia*, that there is no earning member in the family and further that her husband one Sri Y.Srinivasa Rao is not also gainfully employed. Though she submitted the relevant certificates, the respondents rejected her case mainly on the ground that the petitioner is a married daughter and as such she is not entitled for compassionate appointment. In this regard reliance was placed on Government Memo No.406/10/A.I/Admn.II/2004 dated 20.03.2004.

5. Learned counsel for the petitioner, *inter alia*, submits that as per G.O.Ms.No.350, General Administration (SER-A) Department dated 30.07.1999 when there is only a married daughter to the deceased Government employee, without elder or younger brother or sisters and the spouse of the deceased Government employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is dependent on the deceased Government employee subject to satisfying other conditions and instructions issued on the scheme from time to time. In the light of the said G.O., the learned counsel submits that the Memo referred to above, has no statutory or legal basis and the same cannot override

G.O.Ms.No.350 dated 30.07.1999. He further submits that the petitioner's only brother predeceased their father and the petitioner has to look after her mother and further that there is no other earning member in the family, including the petitioner's husband. The learned counsel also contends that the petitioner was dependent on her father as her husband is not gainfully employed and the order of rejection solely on the ground that the petitioner is a married daughter amounts to discrimination as the married daughters are placed under a separate class, which has no proximate nexus and object sought to be achieved to mitigate financial difficulties and provide support to the family of the deceased employee, who dies in harness. He also states that the Government of Andhra Pradesh, G.A.D.(SER.A) Department issued Circular Memo No.1512950/Ser.A/2021 dated 21.10.2021 to provide compassionate appointments to the kith and kin of the Government employees, died due to COVID-19. The learned counsel further places reliance on the judgment of a Division Bench in **Commissioner of Police and Others v. K.Padmaja**¹ and also a recent judgment of a learned Single Judge in W.P.No.10340 of 2014 dated 26.02.2021 and urges that the Writ Petition deserves to be allowed, in the light of the above referred judgments.

¹ 2013 (4) ALT 501

6. *Per contra*, the learned Assistant Government Pleader while reiterating the contentions raised in the counter-affidavit submits that the case of the petitioner is not considered by the authorities as the petitioner is a married daughter, who is not dependent on her deceased father and as such the proceedings impugned in the Writ Petition cannot be found fault with. He submits that the cause of death of the petitioner's father is not mentioned in the Death Certificate produced by the petitioner and therefore she is not entitled for the benefit of the Government Orders issued in Circular Memo No.1512950/SER.A/2021 dated 21.10.2021. The learned Assistant Government Pleader also places reliance on the Memo issued by the Government dated 20.03.2004 and contends as per the clarification the said memo, once marriage is performed, a daughter is not dependent on her father/mother even if she is an unemployee or her husband is un-employee and further that a married daughter is dependent on her father/mother if she is living with her father/mother when her husband deserts or disappears for years together or dies. The learned Assistant Government Pleader also places reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.9280-9281 of 2014 in **N.C.Santosh v. State of Karnataka and**

Others². Accordingly, he prays for dismissal of the Writ Petition.

7. Considered arguments of both the learned counsel and perused the material on record. The only point that falls for consideration is, as to whether the petitioner is entitled for compassionate appointment and if so, the impugned orders are liable to be set aside?

8. There is no dispute that the petitioner is the daughter of the deceased Government Employee. The family member Certificate dated 10.06.2021 and No-earning Member Certificate dated 26.06.2021 issued by the concerned Tahsildar, Mangalagiri, reveals the status of the petitioner as legal heir of the deceased and her financial status and that the petitioner and her mother are non-earning members, respectively. In the counter-affidavit, there is no specific denial to the petitioner's pleaded case that her husband is not gainfully employed, except doing stray works and that the petitioner was dependent on her deceased father. A reading of the counter-affidavit would disclose that the petitioner's case was rejected only on the ground that she is a married daughter and living with her husband and therefore, she is not dependent on her deceased father.

² (2020) 7 SCC 617

Reliance is placed on the Memo dated 20.03.2004 referred to above in this regard.

9. The Government *vide* G.O.Ms.No.612, General Administration (SER-A) Department dated 30.10.1991 provided that where the deceased employee does not have any male child but leaves behind him/her, a married daughter and unmarried minor daughter, the choice of selecting one of them for appointment under the Social Security scheme shall be left to the spouse of the deceased. Thereafter, the Government *vide* G.O.Ms.No.350 dated 30.07.1999, clarified that when there is only a married daughter to the deceased Government employee without older or younger brothers or sisters and the spouse of the deceased Government employee is not willing to avail the compassionate appointment, such married daughter may be considered compassionate appointment, provided she is dependent on the deceased Government employee and subject to satisfying the conditions and instructions issued on the scheme from time to time.

10. The above said Government Order dated 30.07.1999 and subsequent memo dated 20.03.2004 were considered by the Hon'ble Division Bench in K.Padmaja's case referred to supra. The Hon'ble Division Bench while dealing with the

Writ Petition filed by the Department against the orders passed by the erstwhile A.P.A.T., in O.A.No.6938 of 2012, considered similar contentions advanced and dismissed the Writ Petition confirming the orders in favour of the applicant for compassionate appointment. In the said judgment, the Hon'ble Division Bench, *inter alia*, opined that even if the applicant is residing in a separate house, that by itself is not ground to reject the claim of the appointment. The Hon'ble Division Bench also held that merely because family pension is paid to the wife of the deceased, the same is not a ground to deprive the benefit of compassionate appointment under the scheme notified by the Government for the children of the deceased, who dies in harness.

11. In view of the above legal position, the contentions of the learned counsel for the petitioner deserves to be upheld and the submissions made by the learned Assistant Government Pleader are liable to be rejected.

12. In **Ch.Damayanthi's v. APSRTC's** case *vide* W.P.No.10340 of 2014, a learned Single Judge of this Court had extensively dealt with the matters pertaining to compassionate appointments *visa-a-vis* the claims of the married daughters and allowed the Writ Petition, *inter alia*, holding as follows:

"41. In the present case the deceased employee left behind his wife and the petitioner only. There are no brothers or sisters to the petitioner only. There are no brothers or sisters to the petitioner. The claim of the mother of the petitioner for compassionate appointment was rejected. Now after demise of her father, it is the responsibility cast upon the petitioner to take care of her old aged and widow mother, as she is the only daughter to her parents and there is nobody to take care of her mother for her remaining life. Due to this reason also, the case of the petitioner has to be considered, besides, the petitioner and her husband not having any permanent source of income for their survival.

42. If the petitioner, who has to take care of her widowed mother, is not given compassionate appointment, the whole family will be pushed to indigenuous condition and to penury and the core aim and object of the compassionate appointment scheme will be defeated. As such, this Court hold that the petitioner is entitled for compassionate appointment under the "Bread Winner Scheme".

Above referred judgments, in the considered opinion of this Court, applies to the facts of the present case.

13. Insofar as the judgment relied on by the learned Assistant Government Pleader in **N.C.Santosh** case referred

to supra, the Hon'ble Supreme Court was dealing with compassionate appointments as provided in Karnataka Civil Services Rules, 1996. The Hon'ble Supreme Court in the said judgment *inter alia*, opined that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. The said judgment has no application to the facts of the present case.

14. It may not be out of place here to refer to a judgment in **Bhuvanewari V.Puranik**³. The learned Judge while dealing with the object of compassionate appointments succinctly dealt with the legal position and allowed a Writ Petition, wherein a challenge was laid to Rule 2(1) (a) (i), Rule 2(1) (b) and Rule 3(2) (i) (c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, holding *inter alia* as follows:

"If the marital status of a son does not make any difference in Law to his entitlement for seeking appointment on compassionate grounds, the marital status of a daughter should make no difference, as the married daughter does not cease to be a part of the family and Law cannot make an assumption that married sons alone continue to be the part of the family."

3 2020 SCC Online Kar 3397

15. In the aforementioned view of the matter, the proceedings impugned in the Writ Petition are liable to be set aside.

16. Accordingly, the Writ Petition is allowed and the impugned proceedings are set aside. The respondents are directed to consider the case of petitioner for compassionate appointment, in any suitable post, within a period of six (6) weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

NINALA JAYASURYA, J

.01.2022.
BLV

HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.28931 of 2021

Dated .02.2022

BLV