

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment reserved on: 10.10.2014**

% **Judgment delivered on: 11.11.2014**

+ **W.P.(C) 6908/2014 and C.M. No. 16286/2014**

MADAN MOHAN SHARMA ..... Petitioner  
Through: Petitioner in person.

versus

MIN. OF HEALTH & FW ..... Respondent  
Through: Mr. Abhay Prakash Sahay, CGSC  
along with Mr. Amit Kishore Sinha &  
Ms. Archana Gaur, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

## **J U D G M E N T**

### **VIPIN SANGHI, J.**

1. The present writ petition, preferred under Article 226 of the Constitution of India assails the order dated 31.07.2014 in T.A. No.36/2013 passed by Central Administrative Tribunal (hereinafter referred to as “CAT”), Principal Bench, New Delhi, whereby the CAT held that the Office Order dated 31.12.1993 bearing No.B-12014/7/92CGHS(P), insofar as it relates to exclusion of the healthy dependant sons of the Government

Servant (such as the petitioner) from coverage under the Central Government Health Scheme (CGHS) was not discriminatory and violative of fundamental rights guaranteed by the Constitution of India.

2. The petitioner is a retired Central Government employee. CGHS of the Central Government provided a facility for free medical care to all central government employees, serving or retired, and all their dependents prior to 31.12.1993. The respondent Ministry through its Office Order No. B-12014/7/92 CGHS (P) dated 31.12.1993 withdrew its medical facility with respect to a dependent son after he attained the age of 25 years, irrespective of the fact that he is unemployed, whereas the medical facility continued to be provided to the dependent unmarried daughter, widowed daughter and widowed sister of the serving/ retired Central Government employee, irrespective of the age bar. The O.M. reads as follows:

“ *MH & FW OM No. B-12014/07/92=CGHS (P)*

*dt.31.12.1993*

***Age Limit of Dependent Children of the***

***Government Servant and Pensioners for availing CGHS***

***Facilities,***

*The undersigned is directed to say that the matter regarding fixation of age limit for dependents of Government Servants/pensioners for the purpose of availing medical facilities under CS (MA) Rules, 1944 and CGHS rules has been under consideration of the Government for quite some time past. It has now been decided to fix the age limit as indicated below:*

*I. Son-Till start earning or attains age of 25 years, whichever is earlier\**

*II. Daughter-Till start earning or gets married, irrespective of the age limit whichever is earlier.*

*III. Son-Suffering from any permanent disability of any kind (physically or mentally) irrespective of age limit.'*

*IV. Widowed sister and Widowed daughters- As per the present definition irrespective of the age limit.*

*The other condition of dependency and normally residing with the Govt. servant will remain the same.*

*The orders will be effective from the date of issue.*

*The orders are issued with the concurrence of ministry of Finance (Department of Expenditure) vide their U.O. No. 993/E, V, /93 dated 11.10.1993 and U.O. No. 114/E, V./93 dated 29.10/93.*

*In so far as persons serving in the office of the Comptroller & Auditor General are Concerned, these orders are issued in consultation with C& AG vide their U.O. 585- Audit- 1/34-2 dated 30.12.1993."*

The applicant came to know about the said office order when CGHS Card was issued to him excluding the name of his son, who was claimed to be dependent upon him, though not suffering from any permanent disability.

3. Consequently, the aforesaid O.M. was challenged by the petitioner in W.P.(C) No. 2542/1996 before this Court. At that time the petitioner's son was aged 30 years, and was dependent on the petitioner. On 22.09.1997, this Court stayed operation of the aforesaid office order. The stay continued to operate for about 10 years. However, the said writ petition was dismissed in default on 26.11.2006 as none was present on behalf of the petitioner.

Thereafter, the petition restored and transferred to CAT/ Tribunal on 21.05.2013 on account of it being a service matter. The CAT dismissed the TA by the impugned order.

4. The petitioner, appearing in person, submitted that the aforesaid Office Order is in violation of Articles 14, 15 and 21 of the Constitution of India. Due to the aforesaid Office Order, the medical facilities could not be availed by a dependent son of a Central Government employee after attaining the age of 25 years, which was discriminatory and in breach of Article 14, as the same facility continued to be available to a dependent unmarried or widowed daughter – irrespective of her age. The petitioner contended that a dependent son was as much a responsibility of a parent, as a dependent daughter. The CGHS was creating a distinction between the children of an employee based on their gender, which is an infringement of the fundamental right of equality guaranteed by Article 14 of the Constitution.

5. The petitioner submitted that the special provision for the daughters of a Central Government employee provided by the aforesaid Office Order was not saved by Article 15(3) of the Constitution. The availability of medical care facility was not a special provision – as earlier it could be availed by both – the son and the daughter, whereas now it is available to only one gender, thereby discriminating between the two genders, which is an infringement of the dependent son's fundamental right. It is also his submission that without the basic health facilities and health care, the right to life and liberty cannot be enjoyed and the said exclusion directly infringes

his dependent son's right to life and liberty guaranteed under Article 21 of the Constitution.

6. On the other hand, learned counsel for the respondent submitted that the order dated 31.12.1993 contains a policy decision of the Government. It is not for the Courts/ Tribunals to interfere in such policy matters of the State. Learned counsel placed reliance on *Netai Bag and Others V. The State of West Bengal and Others*, AIR 2000 SC 3313, and *Shanmuga Patro V. Ministry of Finance*, W.P.(C) No. 5174/2011, in support of his submission.

7. The respondents further submit that the differential treatment of daughters is based on the socio-economic status of women in our country. Daughters in our country are not given parental approval to work, or earn their livelihood. Therefore, they are dependent on their parents uptill their marriage, and are assumed to become dependent upon their husband/ in-laws after marriage. Thus, it is not deemed appropriate to fix an age limit for unmarried and non-earning daughters for coverage under the Scheme.

8. Having heard the petitioner, learned counsel for the respondent, perused the impugned order and considered the rival submissions, we are of the view that the CAT rightly dismissed the aforesaid T.A. as no case of discrimination has been made out by the petitioner against the rights and interest of unmarried dependent sons vis-à-vis unmarried dependent daughters, for purpose of availability of the benefits of the CGHS Scheme.

9. The Supreme Court in *Netai Bag* (supra), and this Court in *Shanmuga Patro* (supra) held that the Courts/ Tribunals should refrain from

interfering in policy matters/ decisions of the Government, unless such policy violates the mandate of the Constitution, or any statutory provision, or is otherwise actuated by mala fides. Therefore, the only issue to be considered is whether, or not, the policy of the Government is either arbitrary, or unreasonable. If, for the purpose for which the female dependent children have been treated as a separate and distinct class – apart from male dependent children of the Government Servant, a reasonable basis exists – which has a nexus with the object sought to be achieved, the classification of the dependant unmarried daughters would be justified, and their preferential treatment would not tantamount to invidious discrimination.

10. This Court believes that the impugned office order acknowledges a socio-economic reality, namely that women must overcome far greater barriers towards joining the formal work-force than men. These barriers could be created by custom, social mores, cultural expectations, familial compulsions, or a combination of all of these. This reality forms the basis of a number of female-oriented, beneficial provisions, such as those of maintenance law. The respondent has echoed the aforesaid reality in their counter-affidavit filed before the CAT, which has been taken note of in the impugned order. The stand of the respondents – taken note of by the CAT in the impugned order, reads as follows:

*“The criterion for putting no age limit for daughter of serving/retired Government employee is based on the socio economic status of daughters in the country where daughters are not given appropriate education/parental approval to take up jobs and start earning their livelihood. In many of the*

*conservative families of the Indian society, daughter is not encouraged to do a job or to join any service and marriage is regarded as her main future and she is expected to devote herself to the husband's home exclusively in future. Thus, it would not be appropriate to fix any age limit for an unmarried and non-earning daughter in so far as dependency under CS (MA Rules/CGHS is concerned. It was in this context that the Ministry of Finance did not consider it appropriate to fix any age limit for a dependent daughter and the respondent thus concurred with the stand in December 1993 while issuing the order dated 31.12.1993 (ibid). Although the restriction of age of 25 years for son has been put in the order dated 31.12.1993 (ibid) and the same has not been put for an unmarried and non-earning daughter, yet there is a restriction in the case of daughter relating to marriage which has not been put for a son and so the facility to the non-earning daughter is to be extended only till the marriage. Hence, the restriction against both the son and the daughter is on the basis of social customs and norms prevailing in their respective cases. Since the general framework of rules and regulations till now is supportive of a traditional family and societal structure, it is but natural that the order dated 31.12.1993 (ibid) has been issued keeping in view the traditional norms where an unmarried and non-earning daughter has been given the concession of being treated as dependant till she starts earning or gets married, whichever is earlier, irrespective of age limit.”*

11. The aforesaid cannot be said to be an unrealistic assessment of the prevailing socio-economic status of the female child/ daughter – by and large, in our society. Thus, the classification cannot be said to be unfounded on an intelligible differential which does not have nexus with the object sought to be achieved.

12. Article 15(3) of the Constitution states:

*“(3) Nothing in this article shall prevent the State from making any special provision for women and children”*

This Court notes that Article 15(3) is an enabling and facilitating provision, that allows the State to take measures to ameliorate the unequal socio-economic status of men and women by creating and implementing beneficial measures for the latter. As a number of Supreme Court judgments have held, under the equality scheme of the Constitution, contained in Articles 14, 15 and 16, the “special provisions” enabled by Articles 16(4) and 15(4) are facets of the substantive guarantee of equality contained in Articles 15(1) and 16(1). (*State of Kerala Vs. N.M.Thomas*, AIR 1976 SC 490; *Indra Sawhney Vs. Union of India*, AIR 1993 SC 477; *Ashoka Kumar Thakur Vs. Union of India* (2008) 6 SCC 1. Since Article 15(3) follows the same structure as 15(4) and 16(4), the same considerations apply. In this context, the Office Order provides for medical care facility for unmarried dependent daughters with no age limit, whereas there is an age limit for dependent sons. Thus, the Office Order seeks to further the aim and object for which Article 15(3) of the Constitution is framed, by giving a special status to the dependent daughters, differentiating them from dependent sons. Therefore, the provision of free medical care for un-employed dependent daughters is saved by Article 15(3) of the Constitution from attack on the ground of discrimination. For this reason as well, the Office Order cannot be said to violate the fundamental rights of dependent sons of Central Government employee under Article 14 or 21 of the Constitution.

13. The Supreme Court in ***Rajesh Kumar Gupta and Ors. V. State of U.P. and Ors***; (2005) 5 SCC 172, held that Constitution enables the

Government to make special provisions for women and children under Article 15(3), and that it does not lead to violation of Article 14. It observed as follows:

*“14. The Division Bench took the view that Articles 15(3) of the Constitution enables the State government to make special provision for woman and children notwithstanding the prohibition contained in Article 15(1). Particularly viewed in the background of the fact that a large number of young girls below the age of 10 years were taught in the primary school and recognizing that it would be preferable that such young girls are taught by women, the reservation of 50% of the posts in favour of female candidates was held to be justified. The classification made was justified and cannot be styled as arbitrary or liable to be hit by Article 14.”*

14. In ***Government of Andhra Pradesh V. P.B. Vijaykumar and Another***, (1995) 4 SCC 520, the Supreme Court held as follows:

*“7. The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16.”*

15. In view of the aforesaid discussion, we are of the view that the Office Order No. B-12014/7/92 CGHS (P) dated 31.12.1993 does not infringe any of the fundamental rights of a dependent son of the Government Servant. The said Office Order confers a benefit upon the dependent daughters, which is enabled and saved by Article 15(3) of the Constitution.

16. The writ petition is dismissed in the above terms.

**(VIPIN SANGHI)**  
**JUDGE**

**(S. RAVINDRA BHAT)**  
**JUDGE**

**NOVEMBER 11, 2014**