



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

Dated : 4th May, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.28 of 2018

Petitioner : Sarada Gautam

versus

Respondents : The State of Sikkim and Others

Application under Articles 226/227 of the Constitution of India

Appearance

Mr. A. K. Upadhyaya, Senior Advocate (Legal Aid Counsel) with Ms. Gita Bista, Advocate (Legal Aid Counsel) for the Petitioner.

Dr. Doma T. Bhutia, Additional Advocate General with Ms. Pema Bhutia and Mr. Shakil Raj Karki, Assistant Government Advocates for the State-Respondents No.1 to 2.

Ms. K. D. Bhutia, Advocate (Legal Aid Counsel) for the Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The apple of discord herein is the entitlement to Government service, granted in lieu of land donated by the father of the Petitioner, who is the father-in-law of the Respondent No.3, with both the Petitioner and Respondent No.3 staking claim to the service, based on a Government Scheme known as "Guidelines for appointment of Land Donors" of the State-Respondent No.2, the Human Resource and Development Department, Government of Sikkim.

2. The short facts leading to the dissension, is, that, one Narapati Gautam (hereinafter, the "donor"), on 19-01-2009, donated his self acquired land, bearing plot no.257, to the State-Respondent No.2 for the establishment of "*Sripatam Sanskrit Patshala, South Sikkim*". The State-Respondent No.2 apparently



issued a Scheme known as the "Guidelines for appointment of Land Donors" (undated), on the basis of which, on 25-07-2013, the donor petitioned the Government requesting that his daughter, the Petitioner, be appointed to the post of Peon, under the Human Resource and Development Department (now Education Department) or any other Department. The personal details of the Petitioner were furnished in his Petition which *inter alia* mentioned that she is a *bona fide* Sikkimese, holder of Certificate of Identification (C.O.I), belongs to the Below Poverty Line (BPL) category, and that no one in the donor's family was serving in the Government. Pursuant thereto, the Panchayat of the area on 12-08-2013 issued a certificate claiming to have no objection to the proposal. The School Managing Committee of Sripatam Sanskrit Patshala also certified (undated) that, a plot of land had been donated by the donor for construction of the said "Patshala", in lieu of which he had sought appointment of the Petitioner as a Peon, which had not materialised till then. Pursuant thereto, on 31-01-2017, vide Office Order No.2153/HRDD/ADM, the Petitioner along with fourteen others were appointed as Peons in various schools, under the Human Resource Development Department, on a consolidated pay of ₹ 5,500/- (Rupees five thousand and five hundred) only, each, per month. The Petitioner accordingly joined her place of posting on 13-02-2017. On 01-06-2017, the Respondent No.3 filed an objection before the State-Respondent No.2, complaining against the "illegal appointment" of the Petitioner in the post of school Peon, *inter alia* on grounds that, despite the Petitioner having withdrawn her Petition for the post of Peon, the Petition of Respondent No.3 was rejected. On 03-06-2017, the donor filed a representation to the State-Respondent



No.2 submitting therein that, his youngest daughter had been “rightly employed” in the school, in terms of the Government Scheme and he along with his family members had issued a “No Objection Certificate” (N.O.C), in this context. He also requested that there should be no interference in her appointment and she should not be ousted from the post. In the teeth of his representation, on 12-05-2017 the State-Respondent No.2 sought a written explanation from the Petitioner, as to why her services should not be terminated from the date of notice as per the norms of the Land Donors Scheme. On 03-06-2017, she submitted her response stating *inter alia* that, her brothers were employed and her father had partitioned his landed property, of which she was given no share, the employment being her share. On 01-08-2017, nevertheless, the appointment of the Petitioner came to be cancelled, with immediate effect. Hence, the instant Writ Petition *inter alia* praying that, the order of dismissal be set aside and Clause 4 of the Guidelines for appointment be struck down as discriminatory.

3. Learned Senior Counsel for the Petitioner contended that Clause 4 of the said Scheme is discriminatory as it excludes married daughters from the ambit of Government employment, even when the land is donated by their father or by any other person to whom they are legal heirs. That, despite the donor, her father, having categorically nominated the Petitioner for Government service, in lieu of the land donated by him, the State-Respondent No.2 ousted the Petitioner from service based on the discriminatory scheme. That, not only is she a C.O.I holder of Sikkim but she is also married to a Sikkimese C.O.I holder. That, in light of the above circumstances, Clause 4 of the Guidelines be



struck down, the order of dismissal be revoked and the Petitioner be reinstated in service with entire arrears of salary and increments as applicable during the period be paid to her.

4. Stridently repudiating the arguments above, Learned Counsel for the Respondent No.3 submitted that, the husband of the Petitioner was already employed as a Headmaster in a Government school and therefore the Petitioner did not fall within the umbrella of the BPL category, the category to which preference is to be given for employment under Clause 6 of the said Guidelines. That, if the Scheme is to be struck down as *ultra vires*, as sought for by the Petitioner then her appointment would also be without force as she had been appointed under the said Scheme. Admitting that there was no letter of the donor nominating his daughter-in-law for employment, it was contended that her appointment is necessitated on account of the fact that her husband is employed in a pharmaceutical company and is earning ₹ 9,000/- (Rupees nine thousand) only, per month, [bringing them within the ambit of Clause 6 (*supra*)] contrary to ₹ 15,000/- (Rupees fifteen thousand) only, per month, that the Petitioner has alleged that he earns. Hence, the Petition be dismissed.

5. Learned Additional Advocate General for the State-Respondent Nos.1 and 2 submitted that the Petitioner was appointed in deference to the Petition dated 25-07-2013, submitted by the donor, to the Government, which was later objected to by his son and Respondent No.3. The Petitioner's appointment was withdrawn on the objection raised by the Respondent No.3, in view of the fact that the Guidelines at Clause 4 specified that married daughters are not entitled to such appointment. Admitting that the Guidelines have no force of law, it



was contended that the issue is now in fact a family dispute in which the State-Respondents do not seek to be embroiled. That, should the parties decide who should be appointed, then the appointment will be issued to the said person.

6. The only question that requires determination by this Court is; Whether the Petitioner's appointment under the Clause 4 of the Guidelines for appointment of Land Donors framed by the Respondent No.2-Department is to be struck down as being discriminatory.

(i) The Guidelines (Annexure R-1) are extracted herein for quick reference;

"GUIDELINES FOR APPOINTMENT OF LAND DONORS

1. Essential Criteria for appointment :

- a) Land should be registered in the name of school/HRDD, copy of Land Parcha to be enclosed.
- b) Filled in Verification form mandatory
- c) Family NOC
- d) Marriage/Unmarried certificate compulsory in case of women candidates.
- e) All other necessary documents (COI, School certificate, employment card etc.))

2. Post offered: Group 'D' (Peon, Nightguard for males only and Safaikarmachari- whichever is vacant)

3. Appointments to be made in concerned school only

4. Nominees/other than legal heirs of land donors including married daughters are not entitled for appointment. All such applications stands rejected.

5. In case of clear cases where there is no vacancy in concerned school, appointment will be withheld till availability of clear vacancy.

6. Preference shall be given to applicants hailing from BPL families and such families having no member employed in Govt. service.

7. Decision to be made regarding applicants from schools that are closed due to poor enrolment.

8. Multiple Applicants

All such applications shall be forwarded to concerned SMCs. The SMC may nominate one applicant only and forward his/her application through concerned Joint Director for appointment.

The following criteria may be adopted for arriving at a decision;

Sarada Gautam vs. The State of Sikkim and Others

- Applicant from economically weaker family or family that does not have any earning member may be given preference.
- Monetary compensation may be arranged from school level or a written assurance for allotting all construction/civil works to those who surrenders the claim.
- Encouraging the donors to voluntarily surrender for greater good of school family.
- The candidate who have donated the largest chunk may be given preference.
- Any other criteria deemed fit.

If the SMC fails to solve the issue concerned Joint Director may be approached. And if the matters still remains unsolved, it may be forwarded to the head office for further course of action.

All multiple cases to be finalized and names of selected donor to be forwarded to the head office latest by **30th Nov. 2016**"

(emphasis supplied)

7. In *Narendra Kumar Maheshwari vs. Union of India and Others*¹ the Supreme Court explained that Guidelines are issued by Governments and statutory authorities in various types of situations. Where such Guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights, conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested, the persons whose rights are affected have a clear right to approach the court for relief. Sometimes Guidelines control the choice of persons competing with one another for the grant of benefits, largesses or favours and if the Guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. Guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law

¹ 1990 (Supp) SCC 440



situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the Guidelines and the statute under which they are issued are intended to achieve.

8. The scope and ambit of Guidelines have been succinctly delineated *supra* hence I refrain from further elucidation.

(i) Clause 4 of the Guidelines *supra* provides as follows;

"4. Nominees/other than legal heirs of land donors including married daughters are not entitled for appointment. All such applications stands rejected."

This clause *prima facie* is discriminatory and regressive, and is a glaring failure to recognize a married daughters' right as the legal heir of her father. In other words, it removes the married daughter from the ambit of being a legal heir of her father only by virtue of her marital status. An exemplary progress in legislation and mindset is manifested in Section 6 of the Hindu Succession Act, 1956, which was amended in the year 2005, conferring the status of a coparcener to the daughter of a male Hindu. The Section stipulates that on and from the commencement of the amended Act of 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son. By virtue of the new provision, a daughter of a coparcener in a joint Hindu family governed by the *Mitakshara* law now becomes a coparcener in her own right and thus enjoys rights equal to those hitherto enjoyed by a son of a coparcener. The implications of this fundamental change are wide. Since a daughter now stands on an equal footing with the sons of a coparcener, she is now invested with all the rights, including the right to seek partition of a



coparcenary property [See Mulla Hindu Law — 23rd Edition — LexisNexis].

9. This provision is being emphasised only for the purpose of highlighting the principle of equality that it embodies between all children of a male Hindu after the amendment. When such progressive legislation is being inserted to address inequalities between male and female legal heirs, this Court records its consternation with regard to the inequality Clause, being Clause 4 of the Guidelines (*supra*), which seeks to perpetuate discrimination on gender and short-changes a daughter only on account of her gender and marital status. Besides the donor vide his letter dated 25-07-2013 has specified his choice for appointment in the post of Peon and sought the appointment of the Petitioner, in lieu of his donation. On 03-06-2017 he has reiterated his option and urged that his daughter be allowed to continue in service, irrespective of any objection. The objection appears to be an oblique reference to the Petition filed by the Respondent No.3 on 01-06-2017. No proof has been furnished with regard to the BPL status of the Respondent No.3 which however does not even merit consideration, in light of the Petition of the donor. There is also no proof that the Petitioner had withdrawn her Petition seeking appointment, as claimed by Respondent No.3, which therefore is a false statement. Despite the preference flagged by the donor the State-Respondent No.2 decided to remove the Petitioner from service by relying on a Clause which places the married daughter on a back burner. The argument of Learned Counsel for Respondent No.3 that, should the Scheme be struck down as *ultra vires*, the appointment of the Petitioner would have no legs to stand in an erroneous understanding of the arguments advanced



by the Petitioner. The Petitioner's contention is that Clause 4 of the Guidelines requires to be struck down as it exhibits discrimination.

10. In my considered view, there is no fathomable reason, nor is one advanced by the State-Respondents, as to why married daughters should be excluded from the appointment in Government service under the Guidelines (*supra*). The preference of the donor and his recommendation has to be afforded due deference and given effect to by the State-Respondents.

11. On the cornerstone of the foregoing discussions, I am of the considered opinion that Clause 4 of the Guidelines (*supra*) being discriminatory and perpetuating inequality deserves to be and is accordingly struck down.

12. The order of dismissal dated 01-08-2017, is quashed and set aside.

13. Writ Petition is allowed.

14. It is ordered that the Petitioner be reinstated in service with immediate effect.

15. All arrears of salary and other dues that she is entitled to and that have accrued to her in the interregnum, during her dismissal, be paid to her.

(Meenakshi Madan Rai)
Judge

04-05-2023

Approved for reporting : **Yes**