

Court No. - 34

Case :- WRIT - A No. - 17295 of 2023

Petitioner :- Smt. Seema Devi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Akhilesh Kumar Pandey, Pratima Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. The petitioner who is married daughter of late Sri Ram applied for compassionate appointment on account of death of her father on 25th May, 2020 while in employment, however her claim has been rejected only on the ground that she was married daughter. He argues that married daughter has been included within the definition of daughter as per family of dependence of deceased employee in the light of division bench judgment of this Court in the case of **Smt. Vimla Srivastava v State of U.P and Another (Writ-C No. 60881 of 2015 decided on 04.12.2015)** later on it was followed in the case of **Smt. Seema Gupta v. State of U.P. and 3 Others decided on 13.7.2022.**

2. Learned Standing has submitted that amendments to the rules have been brought only in the year 2021 and father of the petitioner died prior to amendment.

3. Having heard learned counsel for the parties and having perused the record, I find that petitioner's father died in the year 2020 by which the judgment in the case of Smt. Vimla Prasad (*supra*) had already been delivered holding the provision that unmarried daughter to fall in the definition of family to be *ultra vires*. The division bench has held thus:

"While assessing the rival submissions, it must be noted at the outset that the definition of the expression "family" in Rule 2 (c) incorporates the categories of heirs of a deceased government servant. Among them are the wife or husband, sons and adopted sons, unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law. Clause (ii) of Rule 2 (c) brings a son as well as an adopted son within the purview of the expression "family" irrespective of marital status. A son who is married continues to be within the ambit of the expression "family" for the purpose of Rule 2 (c). But by the stroke of a legislative definition, a daughter who is married is excluded from the scope and purview of the family of a deceased government servant unless she falls within the category of a widowed daughter. The invidious discrimination that is inherent in Rule 2 (c) lies in the fact that a daughter by reason of her marriage is excluded from the ambit of the expression "family". Her exclusion operates by reason of marriage and, whether or not she was at the time of the death of the deceased government servant dependent on him. Marriage does not exclude a son from the ambit of the expression "family". But marriage excludes a daughter. This is invidious. A married daughter who has separated after marriage and may have been dependent on the deceased would as a result of this discrimination stand excluded. A divorced daughter would similarly stand excluded. Even if she is

dependent on her father, she would not be eligible for compassionate appointment only because of the fact that she is not "unmarried". The only basis of the exclusion is marriage and but for her marriage, a daughter would not be excluded from the definition of the expression "family".

4. The Division Bench also relied upon its earlier judgment in the case of Isha Tyagi v. State of U.P. & 3 Others, (Writ - C No. 41279 of 2014, decided on 26.08.2014) wherein, the married daughters of freedom fighter were directed to be considered while providing horizontal reservation in State services and then the Court held thus:

"It would be anachronistic to discriminate against married daughters by confining the benefit of the horizontal reservation in this case only to sons (and their sons) and to unmarried daughters. If the marital status of a son does not make any difference in law to his entitlement or to his eligibility as a descendant, equally in our view, the marital status of a daughter should in terms of constitutional values make no difference. The notion that a married daughter ceases to be a part of the family of her parents upon her marriage must undergo a rethink in contemporary times. The law cannot make an assumption that married sons alone continue to be members of the family of their parents, and that a married daughter ceases to be a member of the family of her parents. Such an assumption is constitutionally impermissible because it is an invidious basis to discriminate against married daughters and their children. A benefit which this social welfare measure grants to a son of a freedom fighter, irrespective of marital status, cannot be denied to a married daughter of a freedom fighter."

5. In view of the above, the Division Bench struck down as *ultra vires* the word 'unmarried' in Rule 2(C)3 of the Dying in Harness Rules. It is thereafter, that the State Government came to amend the U.P. Government Servants (Dying in Harness) Rules, 1974 vide amendment dated 12.11.2021. The State Government has also issued a gazette notification of the department of Secondary Education vide Madhyamik Shiksha Parishad, U.P., Prayagraj dated 06.12.2022 amending Regulation 103 of Chapter III of Intermediate Education Act, 1921.

6. Following the above judgment, this Court has passed the judgment in the case of **Radhika Baghel v. State of U.P. and 3 Others, (Writ A No. 494 of 2023) decided on 28.3.2023**, in which also the order impugned rejecting the claim for compassionate appointment on the ground that applicant was married was quashed.

7. Learned Standing Counsel does not dispute the above legal position.

8. In such above view of the matter, therefore, the order passed by the District Inspector of Schools dated 28.03.2023 impugned herein this petition is hereby quashed.

9. The matter is remitted to the District Inspector of School only for the limited purpose to examine the financial status of the petitioner and that of her husband. If it is found that the petitioner's husband is having good financial status in terms of landed property or otherwise which can be said to be sufficient enough for the survival of the family, the petitioner may not be

offered compassionate appointment as a rule because it is always to be seen whether even after a lapse of considerably long period a family still needs service for survival or does the family still need financial help to meet any crisis more especially in the circumstances when the widow may be receiving pension and all the daughters including the petitioner if were married.

10. It is made clear that upon above parameters, if petitioner stands successful, she will be offered compassionate appointment and will not be denied same for any technicality.

11. An appropriate decision shall be taken in the light of observations made herein above within a period of two months from the date of production of certified copy of this order.

12. In this view of the matter, petitioner would also be required to disclose the entire property of her husband and also her property that she owns.

13. With the aforesaid observations and directions, this petition stands disposed of.

Order Date :- 19.10.2023

Sanjeev