

Court No. - 34

Case :- WRIT - A No. - 19776 of 2019

Petitioner :- Babita Thakur

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- P.K. Upadhyay, Vikram Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri P.K. Upadhyay, learned counsel for the petitioner and Ms. Archana Tyagi, learned Additional Chief Standing Counsel for the State-respondents.

2. Petitioner's claim for compassionate appointment has been rejected only on the ground that she was a divorced daughter and divorced daughter did not come within the definition of unmarried daughter as stood in the relevant rules framed for compassionate appointments namely UP Government Servant Dying in Harness Rules, 1974 (amended from time to time).

3. The order impugned dated 12.09.2019 has been assailed on the ground that the division bench judgment of this Court in ***Writ Petition No.60881 of 2015 (Smt. Vimla Srivastava v. State of U.P. & anr.) decided on 04.12.2015***, rendered words and expressions "unmarried daughter" as totally unconstitutional being discriminatory and arbitrary and, therefore, violative of Article 14 read with Article 16 of the Constitution of India. This judgment was later on followed in ***Special Appeal Defective No.863 of 2015 (Neha Srivastava vs. State of UP & anr) decided on 23.12.2015*** and further special leave petition against the judgment of ***Neha Srivastava*** came to be dismissed (SLP (C) No.22646 of 2016) on 23.07.2019.

4. *Per contra*, defending the order impugned, it is argued by Ms. Archana Tyagi, learned Additional Chief Counsel that the Court addressed the issue of claim *qua* 'married daughter' and 'unmarried daughter' and not the 'divorced daughter' as this expression not included in the rules. She further submits that the Dying in Harness Rules, 1974 came to be amended only in the year 2021 and now word 'daughter' is incorporated under 2c(iii) of the said rules. She submits that the amendments shall not have retrospective effect and now here onwards only the 'divorced

daughter', if at all, can be considered.

5. In rejoinder, learned Advocate appearing for the petitioner submits that Dying in Harness Rules, 1979 is a piece of beneficial legislation and, therefore, it is to be interpreted in light of the law laid down by division bench of this Court in the case of **Smt. Vimla Srivastava** (*supra*) followed in **Smt. Neha Srivastava** (*supra*).

6. Having heard learned counsel for the respective parties and the judgments cited before this Court, what I have come to notice is that earlier the provision 2c(iii) carried the words and expressions 'unmarried daughter', 'married daughter', 'widowed daughter' and 'widowed daughters-in-law'. Thus, there was no mention of 'divorced daughter'. The very intendment behind the legislation to incorporate the 'widowed daughter' in the amended provision has been to treat her back as member of the family of dependent and therefore exclusion of words and expressions 'divorced daughter' does not appeal to reason. Whether the daughter has gone widow on account of death of her husband or has been divorced, they stand on a same footing rather, it would be more appropriate to say that divorced daughter stands on a better footing because widowed daughter may get share in the properties of the deceased husband whereas the divorced daughter is completely divorced from everything belong to her ex-husband including his estate except the permanent alimony that she may get. This Court in **Vimla Srivastava**'s case while considered this aspect of the matter that the use of words and expressions 'unmarried daughter' to the exclusion of 'married daughter' was not a constitutionally sound provision as the married daughter stood discriminated against. The Court made note of the arguments :-

"The basic rationale and the foundation for granting compassionate appointment is thus the financial need of the family of a deceased government servant who has died in harness and it is with a view to alleviate financial distress that compassionate appointment is granted.

The submission which has been urged on behalf of the petitioners in challenging Rule 2 (c) (iii), insofar as it confines the zone of eligibility only to unmarried daughters, is two fold. Firstly, it has been submitted that in matters of public employment, marital status cannot disqualify an applicant and any discrimination on the ground of marital status would be violative of Articles 14 and 15 of the Constitution. Secondly, it has been urged that there can be no discrimination between a son and a daughter in the grant of compassionate appointment and any discrimination on the ground of gender violates Article 15 of the Constitution. "

7. The principle upon which the word and expression 'unmarried

daughter' was held to be unconstitutional was that it hit the very basis for which Article 14 & Article 16 stood. Relevant part of the judgment in the case of **Smt. Vimla Srivastava** (supra) is reproduced hereinunder:

"The principles underlying Articles 14 and 15 of the Constitution have an important bearing on gender identity. In C.B. Muthamma vs. Union of India³, the Supreme Court considered the legality of a rule in the Indian Foreign Service (Conduct and Discipline) Rules under which a woman member of the service was required to obtain the permission of the Government before her marriage was solemnized and could be required to resign from service after her marriage, if the Government was satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service. The Supreme Court held that "If a married man has a right, a married woman, other things being equal, stands on no worse footing". In the meantime the Central Government had indicated that the rule was being reconsidered and its deletion was being gazetted. "

8. The Court further held that *"assumption that after marriage, a daughter cannot be said to be a member of the family of her father or that she ceases to be dependent on her father irrespective of social circumstances cannot be countenanced."* The Court then referred to Division Bench judgment in **Isha Tyagi vs. State of UP & ors passed in Writ-C No.41279 of 2014** wherein it was held that *"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. Dealing with the aspect of the marriage, the Division Bench held that "Marriage does not have and should not have a proximate nexus with identity. The identity of a woman as a woman continues to subsist even after and notwithstanding her marital relationship. The time has, therefore, come for the Court to affirmatively emphasise that it is not open to*

the State, if it has to act in conformity with the fundamental principle of equality which is embodied in Articles 14 and 15 of the Constitution, to discriminate against married daughters by depriving them of the benefit of a horizontal reservation, which is made available to a son irrespective of his marital status." Then vide paragraph 28, the Court held rule 2(c) to be unconstitutional to the extent it excluded 'married women' and finally struck down the word 'unmarried'. Paragraph 28 is reproduced hereinunder:

"28. We, accordingly, strike down the word 'unmarried' in Rule 2(c)(iii) of the Dying-in-Harness Rules."

9. This above judgment was delivered on 04.12.2015 and was followed in **Neha Srivastava** (*supra*) which was decided on 23.12.2015 and against which special leave petition was dismissed on 23.07.2019, i.e. prior to 12.09.2019 when the decision was taken by the authority rejecting the claim of the present petitioner. Once the judgment was pronounced by this Court holding unmarried daughter as only category of dependent daughter of the deceased for the purposes of compassionate appointment under the dying in harness rules to be unconstitutional, it became law of the land and the State Government was to immediately act upon the same. The Court has dealt with the words and expression 'daughter' and so for the reasons that have been shown for holding the words and expression 'unmarried daughter' to be unconstitutional would equally apply to the 'divorced daughter' and 'widowed daughter'. The State in its wisdom correctly now has incorporated the word 'daughter'.

10. Thus a daughter does not lose her identity and status as daughter of her parents for marriage or subsequent dissolution of marriage whether by mutual consent or divorce. A daughter would remain a daughter of her parents whether married, unmarried, divorced or widowed. Further, I hold that a divorced daughter holds a better claim to be offered compassionate appointment than a widowed daughter as such a daughter falls back upon her parents for survival.

11. In the circumstances, therefore, I am not able to sustain the order impugned whereby the petitioner's claim has come to be rejected only on the ground that she was a divorced daughter. A daughter has to be considered for the purposes of compassionate appointment of deceased employee whether married or unmarried, widowed or divorced, in light of the judgment of the case of **Smt. Vimla Srivastava** (*supra*) and whether amendment or no amendment by the State Government, petitioner's claim for

compassionate appointment should not have been rejected on the ground it has been rejected.

12. Accordingly, the order impugned dated 12.09.2019 passed by the Additional District Magistrate (Finance and Revenue), Bijnor is hereby quashed. Matter is remitted to be decided afresh *qua* claim of the petitioner for compassionate appointment in light of the discussions and observations made hereinabove.

13. The appropriate order shall be passed within a period of two months from the date of presentation of certified copy of this order and if petitioner is found eligible for compassionate appointment, the same shall be given to her within next thirty days' time.

14. With the aforesaid observations and directions, this petition stands allowed.

Order Date :- 26.10.2023

P Kesari