

Court No. - 5

Case :- WRIT - A No. - 7471 of 2009

Petitioner :- Puspa Devi D/O Late Shivram

Respondent :- State Of U.P. Thru Secy. Basic Education And Ors.

Counsel for Petitioner :- Hari Bux Singh, Mahendra Kumar Misra

Counsel for Respondent :- C.S.C., R.K. Kushwaha

Hon'ble Irshad Ali, J.

1. Heard Shri Mahendra Kumar Misra, learned counsel for the petitioner and learned Standing Counsel for the respondent State.
2. By means of present writ petition, the petitioner has setup a claim for grant of appointment on compassionate ground due to death of her father on 12.4.2007.
3. Fact of the case is that father of the petitioner namely late Shri Shivram died leaving behind his wife and the petitioner. The claim of the petitioner for grant of compassionate appointment has been made before the respondents which is pending consideration before the respondents since long and till date no order whatsoever has been taken by the respondents.
4. Submission of learned counsel for the petitioner is that Division Bench of this Court in the case of **Vimla Srivastava and others Vs. State of U.P. and others (Writ-C No.60881 of 2015 decided on 04.12.2015) Laws (All) -2015-12-60** has decided the controversy by holding that married daughter also comes under the definition of daughter, therefore, the claim should be considered by the competent authority for appointment on compassionate ground.
5. The order of Division Bench was challenged before Hon'ble Apex Court in **Special Leave to Appeal (C) No.22646/2016; The State of Uttar Pradesh and another Vs. Neha Srivastava**, which has been decided vide judgment and order dated 23.07.2019 by dismissing the petition.
6. In view of the above, the ratio of the judgment of the Division Bench of this Court has been upheld.
7. In the light of the aforesaid, submission of learned counsel

for the petitioner is that the representation of the petitioner is pending consideration since long which is required to be decided in view of the law laid down by this Court as well as Hon'ble Apex Court in the aforesaid cases within a period stipulated by this Court.

8. On the other hand, learned Standing Counsel does not dispute the ratio of the judgment relied upon by learned counsel for the petitioner and submitted that the controversy in regard to appointment of married daughter in different government departments has been settled by Division Bench of this court as well as by Hon'ble Apex Court, therefore, the issue is no more res integra. He next submitted that in case claim set up by the petitioner is pending consideration before the respondents, the same shall be considered and decided within a reasonable period.

9. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

10. On perusal of the material on record, it is evident that the petitioner being married daughter of the deceased employee has made application for providing compassionate appointment on 21.8.2009 as her father has died while working on the post of Headmaster in Primary School, Rasoolpur, Block Khumbi, Tahsil Gola, District Lakhimpur-Khiri, but till date no order whatsoever has been taken by the respondents.

11. I have gone through the Division Bench judgment of this Court in the case of **Vimla Srivastava and others (Supra) and Special Leave to Appeal (C) No.22646/2016 (Supra)**. The Division Bench of this Court in the case of **Vimla Srivastava and others (Supra)** upon consideration of the relevant provisions for appointment on compassionate ground has recorded as under:

"We are in respectful agreement with the view which has been expressed on the subject by diverse judgments of the High Courts to which we have made reference above.

During the course of submissions, our attention was also drawn to the judgment rendered by a learned Single Judge of this Court in Mudita vs. State of U.P.13. The learned Single Judge while proceeding to deal with an identical issue of the right of a married daughter to be considered under the Dying-in-Harness Rules observed that a married daughter is a part of the family of her husband and could not therefore be expected to continue to provide for the family of the deceased government servant. The judgment proceeds on the premise that marriage severs all

relationships that the daughter may have had with her parents. In any case it shuts out the consideration of the claim of the married daughter without any enquiry on the issue of dependency. In the view that we have taken we are unable to accept or affirm the reasoning of the learned Single Judge and are constrained to hold that Mudita does not lay down the correct position of the law.

In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule 2 (c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

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

In consequence, we direct that the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would be at liberty to consider the claim for compassionate appointment on the basis of all the relevant facts and circumstances and the petitioners shall not be excluded from consideration only on the ground of their marital status.

The writ petitions shall, accordingly, stand allowed. There shall be no order as to costs."

12. The finding returned by the Division Bench was subject matter of challenge before the Hon'ble Supreme Court in **Special Leave to Appeal (C) No.22646/2016 (Supra)**, which was dismissed on 23.07.2019 by affirming the ratio of the judgment of the Division Bench of this Court.

13. On perusing of the finding returned on the point that whether a married daughter is entitled for consideration of appointment on compassionate ground or not, the Division Bench of this Court has held that the married daughter also comes under the definition of daughter, therefore, she is entitled for consideration of appointment on compassionate ground.

14. In view of the above, this writ petition is finally **disposed off** with liberty to the petitioner to file a comprehensive representation enclosing all relevant documents along with certified copy of this order before the respondents within a period of ten days from the date of production of a certified copy of this order. In case such a representation is filed by the petitioner within the aforesaid period, the respondents shall consider the claim of the petitioner for appointment of the petitioner in accordance with her qualification in the light of

observations made above and pass appropriate order in accordance with law within a period of six weeks thereafter

Order Date :- 2.11.2023

GK Sinha