

Court No. - 49

Reserved

Case :- WRIT - A No. - 17079 of 2022

Petitioner :- Roopali Rai

Respondent :- Union of India and others

Counsel for Petitioner :- Mr. Neeraj Shukla, Adv.

Counsel for Respondent :- A.S.G.I., Mr. Varun Singh, Adv.

Hon'ble J.J. Munir,J.

1. By this writ petition, the petitioner has questioned an order of the Staff Officer (Personnel), Integrated Water Supply System (IWSS), Northern Coalfields Limited, Khadia Project, District Sonebhadra dated 08.07.2022, rejecting the petitioner's claim for compassionate appointment. There are certain ancillary directions also sought against the respondents.

2. The petitioner's father, the late Akhilesh Rai, was employed as a Subordinate Engineer with the Northern Coalfields Limited, IWSS, Khadia Project, District Sonebhadra. The Northern Coalfields Limited is a subsidiary company of Coal India Limited, a *Maharatna* Company, fully owned by the Government of India. Akhilesh Rai died in harness on 21.04.2022. The deceased and his family comprised a total of four souls. The deceased himself, his widow, Smt. Nirmala Rai, a son, named Pradeep Rai and a daughter, Roopali Rai, the petitioner. Roopali Rai was married apparently during the deceased's lifetime. The petitioner says that her brother is far removed from the family of the deceased and domiciled in the United States of America. He has given a no objection certificate about the petitioner being appointed on compassionate grounds in her father's stead. The petitioner says that she is a disabled married daughter of the deceased employee and her husband is also a disabled man. Both live with her parents at their home and were entirely dependent

upon the late Akhilesh Rai for sustenance.

3. The petitioner has earned her degrees of B.A., B.Ed. and P.G.D.C.A. She is eligible for suitable government employ in the respondents' establishment. She applied for compassionate appointment, invoking the provisions of the Office Memorandum of the Coal India Limited dated 13.03.1981 and says that she is entitled to be considered in terms of the policy embodied in that memorandum. She says that along with her mother, the two were entirely dependent upon the deceased employee at the time of his demise, and, after his death in harness, the petitioner is on the verge of starvation. The petitioner's mother applied before the General Manager, respondent No.4, seeking employment on compassionate grounds for her daughter, the petitioner, on 04.06.2022. The petitioner's mother said there that her son is domiciled in U.S.A., whereas the daughter and the son-in-law are disabled, both of whom stay with her. It was her case that each of these three members of the deceased's family were entirely dependent upon the deceased employee's income for their sustenance. It is on these grounds, the petitioner's mother requested for a compassionate appointment for the petitioner.

4. The petitioner's claim was rejected by the Staff Officer (Personnel), IWSS, Khadia Project, District Sonebhadra *vide* order dated 08.07.2022.

5. Aggrieved, this writ petition has been instituted by the petitioner.

6. Notice of motion was issued on 20.10.2022 and in course of time, parties exchanged affidavits. Two supplementary affidavits have been filed in support of the petition and a counter affidavit on behalf of respondent Nos.3, 4 and 5 by

respondent No.5, the Staff Officer (Personnel), answering the affidavit as well as two supplementaries. A rejoinder has also been put in. Parties having exchanged affidavits, the petition was admitted to hearing on 19.11.2024, which proceeded forthwith. Judgment was reserved.

7. Heard Mr. Neeraj Shukla, learned Counsel for the petitioner and Mr. Varun Singh, learned Counsel appearing on behalf of respondent nos. 3, 4 and 5. No one appears on behalf of respondent Nos.1 and 2.

8. The sole question that arises for consideration is, whether a dependent married daughter of a deceased employee of Coal India Limited is ineligible for compassionate appointment under the scheme applicable to the respondents establishment.

9. The stand of the respondents is that in view of the Office Memorandum of Coal India Limited, bearing No. C-5(B)/50800/381 dated 13.03.1981, the married daughter of a deceased employee is not entitled to compassionate appointment. The other part of the stand taken in paragraph Nos.17 and 19 of the counter affidavit is that sufficient sum of money towards gratuity, life cover, coal mines provident fund, leave encashment and further assistance, has been proposed to be paid to the widow of the deceased, which would not entitle the petitioner to compassionate appointment. The details of the sums of money payable under different heads of entitlement to the deceased widow have been pleaded.

10. We do not think that this is a case where we can or ought judge whether the respondents are entitled to say that the deceased's family, on account of death benefits paid to the widow, are not a family, who can be said in financial distress, requiring consideration of the petitioner's candidature for

compassionate appointment. This is so because in the order impugned dated 08.07.2022, there is no consideration of the merits of the petitioner's claim for compassionate appointment. The petitioner's claim has been rejected on the ground of her ineligibility. Therefore, by affidavit, the respondents cannot urge grounds to support the impugned order, which do not figure there. Shortly put, the respondents cannot be permitted to supplement the impugned order by facts asserted in their affidavit that do not figure in the said order. This pegs down the controversy to the question of the petitioner's eligibility for compassionate appointment. Both parties, at the time the petition was instituted, have relied upon Coal India Limited's Office Memorandum No. C-5(B)/50800/ 381 dated 13.03.1981. The dependants, who would be eligible for compassionate appointment, have been spelt out in paragraph No. 1(v) of the said office memorandum. Paragraph No.1 of the Office Memorandum dated 13.03.1981 reads, where sub-para (v) occurs:

"The matter regarding appointment of dependants of the executives dying in harness has been under consideration of the management for some time and considering all aspects of the matter, principles and practice followed by the Government of India and other Public Sector Undertakings, it has been decided that from now onwards in Coal India Limited and its Subsidiary Companies appointment on compassionate ground of dependants of executives dying in harness will be considered and the following guidelines will be followed in this regard :

(i) Death of the executive concerned should be while in service, covering incidence of leave, suspension, training, deputation, etc. The criterion is that the officer should be on the roll of the company.

(ii) The case of executives who are totally disabled due to accident or otherwise while in service should also be treated as compassionate cases for this purpose.

(iii) Employment of dependants should only be in non-executive posts, according to job requirement of the post and qualification of the dependant. The

suitability of the candidate will be considered by a Selection Committee constituted for the purpose.

(iv) The candidate to be considered should have the minimum qualification including educational qualification and age requirement for the job for which he is considered. Limits of age requirement may be relaxed in deserving cases, but minimum qualification required will not be relaxed.

(v) Dependant for this purpose will mean dependent wife or husband as the case may be, son, unmarried daughter and widowed daughter.

(vi) Only one job for each compassionate case will be considered.

(vii) If a dependant is already in service, employment of additional dependant will not be considered."

(emphasis by Court)

11. The learned Counsel for the petitioner submits that the Office Memorandum dated 13.03.1981, insofar as it excludes a married daughter from eligibility, cannot be read on its face value because if that were done, the office memorandum would have to be held discriminatory and violative of Articles 14, 15, 16 and 39-A of the Constitution. He has placed reliance upon a Bench decision of this Court in **Smt. Vimla Srivastava v. State of U.P. and another, 2016 (1) ADJ 21 (DB)**, where *pari materia* provisions of Section 2(c)(iii) of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 (for short, 'the Rules of 1974'), which qualified the word 'daughter' with the word 'unmarried' and likewise with words 'unmarried adopted' has been struck down by this Court as unconstitutional. The said decision has been upheld by the Supreme Court in **SLP(C) No. 022646 of 2016, State of U.P. v. Neha Srivastava, decided on 23.07.2019**. Learned Counsel for the petitioner has also placed reliance upon an unreported judgment of the Madhya Pradesh High Court in **Smt. Premshila Devi and another v. The Chairman-cum-**

Managing Director, Northern Coalfields Limited and others, Writ Petition No.17283 of 2021, decided on 27.06.2022. He submits that in the said decision, relating to the respondents establishment themselves, discrimination in matters of compassionate appointment to married daughters was disapproved by the Court.

12. It is in the last contended on behalf of the petitioner that the Office Memorandum dated 13.03.1981 stands amended *vide* Coal India Limited's Office Memorandum dated 25.06.2024, which removes para 1 (v) and substitutes for 'son', 'unmarried daughter' and 'widowed daughter', the words 'children', including 'adopted children'. He submits, therefore, that the petitioner is entitled to be considered for compassionate appointment in terms of the amended Office Memorandum dated 25.06.2024, that has amended the earlier memorandum dated 13.03.1981. In this connection, learned Counsel for the petitioner has drawn the Court's attention to Annexure RA-1, annexed to the rejoinder.

13. The learned Counsel for the respondents, on the other hand, submits that married daughters are ineligible to be considered in terms of the Office Memorandum dated 13.03.1981 and the right to compassionate appointment, being a statutory right, as contra-distinguished from an inherent one, the petitioner cannot seek it to be enlarged or extended to her, if under the Rules she is not eligible. In support of his contention, he has relied upon the decision of the Supreme Court in **Director of Treasuries in Karnataka and another v. V. Somyashree, (2021) 12 SCC 20.**

14. We have carefully considered the submissions advanced by learned Counsel on both sides and perused the record.

15. It is true, no doubt, that the right to compassionate appointment is in no way an inherent right. It flows from statutory rules or a scheme framed by the employer and without doubt would be governed by its terms. The Court would not legislate to re-write the rules, disturbing the employer's policy, expressed in the rules or the scheme, governing compassionate appointment in their establishment. But, if the employer, as is generally the case, is the State or a face of the State, like the respondents, the rule or scheme that they frame for compassionate appointment, cannot be permitted to be read or applied by this Court in a manner that violates a citizen's fundamental right, like those protected under Articles 14 and 16. It is always open to any employer not to provide for compassionate appointment at all. They may have no scheme or rules offering such an appointment. It would be entirely their decision to extend that benefit or not in case of a death in harness of an employee. But, once a State establishment, like the respondents, introduce a scheme or frame rules, offering compassionate appointment, those cannot be permitted to be discriminatory or interpreted in a way that offends Articles 14, 15 or 16 of the Constitution, which would mostly be at play here.

16. There is no difficulty in reading the words in a compassionate appointment scheme or rules by the letter and going by it, so long as that does not bring about invidious discrimination against two similarly circumstanced citizens only on the ground of sex, as appears to be the case here. The Office Memorandum dated 13.03.1981 provides for eligibility in favour of the wife or the husband of a deceased, as the case may be, a son and unmarried or widowed daughter. While the son is not qualified by his marital status, the daughter is. The

daughter is, if literally read, a dependent unmarried daughter of a deceased employee is eligible for compassionate appointment and so is a widowed daughter, but a married daughter, though dependent in a given state of circumstances, is not. Even a divorced daughter is not mentioned amongst the eligibles. There is no issue about a divorced daughter and we, therefore, do not propose to delve upon it at all.

17. The question is, if a son is eligible, regardless of his marital status, why is the daughter's eligibility qualified by the factum of fortunes of her marriage. To understand why it is so, one has to look over the shoulder to the Indian social milieu, that has had grip of our society as the prevalent norms. That norm has always been that a daughter once married, is transplanted to the husband's family and no longer belongs to her parental family. The son, on the other hand, going by the same norm, marries to get a wife and perpetuate the family, what has been called in the law of inheritance as the male line. Therefore, this social norm of ancient origin has had expression in various spheres of the private law governing inheritance and succession etc. But, does this social norm conform to the constitutional ethos or creed? Regretively or otherwise, it does not. The constitutional norm is clear and unflinching. The State cannot discriminate against two individuals on the ground of sex alone. It holds true of public employment and there cannot be any invidious discrimination in matters of public employer. Even if it is by concession of the kind involved in compassionate appointment, the State in all matters of employment, while framing its rules or policy, has to work within the constitutional norms of non-discrimination on the prohibited grounds under Article 15 or do it in any manner that may violate Articles 14 or 16. Any rule, therefore, which offers or grants a

right, as in this case, for a consideration of compassionate appointment to a male, has to grant the same right to a female as well, who is similarly placed in relation to the deceased. A son and a daughter are without doubt both children of a government employee, who dies in harness. If the son has a right to be considered so has the daughter. To qualify the daughter's right with her marital status, while not doing the same for the son, would certainly be a case of invidious discrimination prohibited by Articles 14, 15 and 16 of the Constitution.

18. We cannot import into the interpretation of the constitutional principles, particularly, as sacrosanct as the fundamental rights, the social ethos to find a case of a valid classification, having some kind of a reasonable *differentia* with the object. It is true, therefore, that if there is a family where the daughter after marriage stays with her in-laws and is in no way dependent upon her father or mother, the employee, who dies in harness, would not be entitled to claim compassionate appointment. In this case, she would not be entitled, not because she is a married daughter, but because she is not dependent upon her father. She would not be entitled because she is a dependant of her husband, or may be economically independent altogether. This would equally apply to a son, who after marriage, finds means to earn his own bread and butter and is financially independent of his father or mother, whoever is the employee dying in harness. He too would be disentitled. In both cases, therefore, the only factor for the disentitlement would be the non-dependence of the son or the daughter for sustenance upon the deceased employee; not the marriage *ipso facto*.

19. In the present case, the petitioner's case is that both, she

and her husband, are disabled persons and both of them reside at her parents' home. Both of them were entirely dependent upon the deceased employee's gains. She has annexed a disability certificate dated 22.08.2022 for herself issued by the Chief Medical Officer, Sonebhadra. This is a duplicate certificate, the original of which was issued on 09.01.2014. It shows her to be a patient of cerebral palsy with physical disablement being 65%. The disability is shown to be non-progressive, but not likely to improve. The contents of paragraph No.6 of the writ petition have not been denied for a fact in paragraph No.15 of the counter affidavit, where the denial is vague and says that contents of paragraph Nos.5, 6 and 7 of the writ petition are denied for want of knowledge. The only plea, that is raised, that the petitioner has not impleaded her brother as a party. The fact, therefore, that the petitioner and her husband were dependent upon the deceased and lived in the same home, is not denied. The petitioner's dependency upon the deceased is, for that reason, clearly acknowledged by the respondents. A married daughter, who is dependent upon her father, cannot be denied the benefit of compassionate appointment on the foot of a literal reading of sub-para (v) of paragraph No.1 of the memorandum dated 13.03.1981. It has to be read and understood in a way that does not render the respondents' scheme for compassionate appointment bad for discrimination, prohibited by Articles 14, 15 and 16 of the Constitution.

20. The constitutional validity of a similar provision, which was in that case a statutory rule, unlike an office memorandum here, fell for challenge in **Smt. Vimla Srivastava** (*supra*) before a Division Bench of this Court. What was in question was the definition of family under Rule 2(c)(iii) of the Rules of 1974

framed under the proviso to Article 309 of the Constitution. The eligibility in that case limited it to the wife or husband, sons, including adopted sons, unmarried daughters, unmarried adopted daughters, widowed daughters-in-law, the other eligible family members not being of much relevance to the issue that arose in **Smt. Vimla Srivastava**. In **Smt. Vimla Srivastava**, the issue received a most comprehensive treatment at the hands of their Lordships, who held:

"9. 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".

10. The issue before the Court is whether

marriage is a social circumstance which is relevant in defining the ambit of the expression "family" and whether the fact that a daughter is married can constitutionally be a permissible ground to deny her the benefit of compassionate appointment. The matter can be looked at from a variety of perspectives. Implicit in the definition which has been adopted by the state in Rule 2 (c) is an assumption that while a son continues to be a member of the family and that upon marriage, he does not cease to be a part of the family of his father, a daughter upon marriage ceases to be a part of the family of her father. It is discriminatory and constitutionally impermissible for the State to make that assumption and to use marriage as a rationale for practicing an act of hostile discrimination by denying benefits to a daughter when equivalent benefits are granted to a son in terms of compassionate appointment. Marriage does not determine the continuance of the relationship of a child, whether a son or a daughter, with the parents. A son continues to be a son both before and after marriage. A daughter continues to be a daughter. This relationship is not effaced either in fact or in law upon marriage. Marriage does not bring about a severance of the relationship between a father and mother and their son or between parents and their daughter. These relationships are not governed or defined by marital status. The State has based its defence in its reply and the foundation of the exclusion on a paternalistic notion of the role and status of a woman. These patriarchal notions must answer the test of the guarantee of equality under Article 14 and must be held answerable to the recognition of gender identity under Article 15.

11. The stand which has been taken by the state in the counter-affidavit proceeds on a paternalistic notion of the position of a woman in our society and particularly of the position of a daughter after marriage. The affidavit postulates that after marriage, a daughter becomes a member of the family of her husband and the responsibility for her maintenance solely lies upon her husband. The second basis which has been indicated in the affidavit is that in Hindu Law, a married daughter cannot be considered as dependent of her father or a dependent of a joint Hindu family. The 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. Our society is governed by constitutional principles.

Marriage cannot be regarded as a justifiable ground to define and exclude from who constitutes a member of the family when the state has adopted a social welfare policy which is grounded on dependency. The test in matters of compassionate appointment is a test of dependency within defined relationships. There are situations where a son of the deceased Government servant may not be in need of compassionate appointment because the economic and financial position of the family of the deceased are not such as to require the grant of compassionate appointment on a preferential basis. But the dependency or a lack of dependency is a matter which is not determined a priori on the basis of whether or not the son is married. Similarly, whether or not a daughter of a deceased should be granted compassionate appointment has to be defined with reference to whether, on a consideration of all relevant facts and circumstances, she was dependent on the deceased Government servant. Excluding daughters purely on the ground of marriage would constitute an impermissible discrimination and be violative of Articles 14 and 15 of the Constitution.

12. A variety of situations can be envisaged where the application of the rule would be invidious and discriminatory. The deceased Government servant may have only surviving married daughters to look after the widowed parent - father or mother. The daughters may be the only persons to look after a family in distress after the death of the bread earner. Yet, under the rule, no daughter can seek compassionate appointment only because she is married. The family of the deceased employee will not be able to tide over the financial crisis from the untimely death of its wage earner who has died in harness. The purpose and spirit underlying the grant of compassionate appointment stands defeated. In a given situation, even though the deceased Government employee leaves behind a surviving son, he may not in fact be looking after the welfare of the surviving parents. Only a daughter may be the source of solace - emotional and financial, in certain cases. These are not isolated situations but social realities in India. A surviving son may have left the village, town or state in search of employment in a metropolitan city. The daughter may be the one to care for a surviving parent. Yet the rule deprives the daughter of compassionate appointment only because she is married. Our law must evolve in a robust manner to accommodate social contexts. The grant of compassionate appointment is not just a social

welfare benefit which is allowed to the person who is granted employment. The purpose of the benefit is to enable the family of a deceased Government servant, who dies in harness, to be supported by the grant of compassionate appointment to a member of the family. Excluding a married daughter from the ambit of the family may well defeat the object of the social welfare benefit.

13. The living tree - the Constitution - on which the law derives legitimacy is a liberal instrument for realising fundamental human freedoms. The law and the Constitution must account for multiple identities. Individuals - men and women - have multiple identities : as a worker in the work place; as a child, parent and spouse; identities based on preferences and orientation; those based on language, religion and culture. But from a constitutional perspective, they are protected and subsumed in the overarching privileges of citizenship and in the guarantee of individual freedoms.

25. During the course of submissions, our attention was also drawn to the judgment rendered by a learned Single Judge of this Court in *Mudita v. State of U.P.*, 2015(9) ADJ 16. 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."

21. In **Smt. Vimla Srivastava**, their Lordships struck down the word 'unmarried' in Rule 2(c) (iii) of the Rules of 1974 as violative of Articles 14 and 15 of the Constitution. The same principles are attracted to the present case.

22. This question fell for consideration before a Full Bench of

the Calcutta High Court in **The State of West Bengal and others v. Purnima Das and others**, 2017 SCC OnLine Cal 13121, where it was remarked:

"88. The classification here is brought about by excluding 'married daughters' of a deceased Government employee from the purview of compassionate appointment, and the so called "intelligible differentia" put forward is that 'married daughters' cease to be part of the family of the Government employee on marriage. As noticed earlier, the object of appointment on compassionate ground is to save the wrecked family by ensuring that the dependents have a few crumbs of bread and a few yards of cloth. This raises a few important questions. First, as to who could form a class to which the scheme for compassionate appointment would apply? The appropriate answer would be the immediate members of the family of the deceased employee. This question being answered, the incidental question would be who are the immediate family members? For a broad idea of who would constitute the family of a person, the relevant personal laws including family and succession laws may be looked at. However, in the context of compassionate appointment, such laws may not be seen because the purpose thereof is totally different. We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to 'a class'. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme. A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable.

89. From the notifications/SCHEME of the Government that embodies the policy decision in relation to compassionate appointment, it is manifest that from time to time *qua* daughters the

net has been spread far and wide. We can safely presume that the Government did so realising its mistake of failing to fulfil the constitutional mandate of guaranteeing equality and obeying the directives in Part IV of the Constitution that men and women equally have the right to an adequate means of livelihood. Initially and even till today 'married daughter' has not been included in the definition of 'dependent family member'; however, gradually, without removing the adjective 'unmarried' before the noun 'daughter', categorisation of daughters has been effected and we are inclined to the view that even a 'married daughter', as explained hereafter, is now impliedly included within the definition of a 'dependent family member'. The first category is that of daughters who were unmarried on the date of death of the Government employee but may have been married during the pendency of the applications for compassionate appointment. If such daughter were found to be otherwise eligible and suitable, she would be offered compassionate appointment notwithstanding her marital status. Therefore, it is an instance of a daughter being considered for appointment at a point of time when she is actually married. In the second category are married daughters who might have filed for divorce prior to death of the Government employees and had obtained divorce decrees after such death and during the pendency of the applications, with the rider that their cases would be considered for appointment only after the marital ties are dissolved by the decrees of competent courts. Thus, it is a reverse case of the first category, a 'married daughter' at the time of making application being considered for compassionate appointment at a point of time when she is unmarried or single. In both cases, it has to be proved to the satisfaction of the employer that such daughters, belonging to either of the two categories as aforesaid, were fully dependent on the Government employees on the dates of their death while in service. It is, however, obvious that the net is yet to be spread wider to cover a married daughter, who because of estranged relationship with her husband, might have been abandoned or deserted by him and compelled to survive under the care of her father/mother (Government employee) as a dependent of such employee and was also fully dependent on him/her on the date of his/her death, leading to a grievance of the present nature.

90. Curiously enough, the marital status of the son of a deceased employee is not regarded as

germane for telling him off at the threshold. His application for compassionate appointment would be considered and if found that he was not dependent on the earnings of his father/mother (Government employee), then only the application could call for rejection.

91. What follows from the aforesaid discussion is that even if a married daughter on the date of death of her father/mother was wholly dependent on him/her, she would have no right under the notifications/SCHEME to even apply and offer her candidature. Without even a bare assessment of the dependency factor, the application of the married daughter would stand rejected whereas such an application at the instance of a married son would be considered and then an appropriate decision taken, based on evidence that is before the employer, whether to allow or disallow the same. This is one area where the learned Judge in the decision in *Purnima Das* (supra) has taken exception and held that married daughters are subjected to discrimination. We unhesitatingly share such view.

92. Interestingly, we have noticed that while the adjective 'unmarried' has been used before the noun 'daughter', there is no such use of the adjective 'unmarried' before the noun 'sister' in paragraph 3 of the SCHEME. In the absence of user of such adjective, theoretically, even a married sister of an unmarried Government employee who dies-in-harness would be entitled to lay a claim for compassionate appointment and should she succeed in establishing that she had been fully dependent on her brother/sister (Government employee) prior to and at the time of death, and all other conditions as laid down in the SCHEME being fulfilled, her claim for compassionate appointment cannot be spurned based on her marital status and would obviously have to be considered further to take the same to its logical conclusion; but, howsoever precarious the condition of a married daughter dependent on her father/mother might be, she is shut out from even applying and, thus, there is no scope to consider whether she was at all dependent for her survival on the earnings of her deceased father/mother (Government employee) or not and also as to whether appointing her on compassionate ground would further its object or not.

93. Law relating to compassionate appointment, made by the legislature, has not come to our notice; rather, it is seen as a task of the executive to decide as a matter of policy how

best it could be framed for catering to the need of those in mind. While legislating on a subject, the legislators may not be expected to visualise all future situations and that precisely is the reason for which subordinate legislation is considered indispensable for filling up the gaps. Ideally, when the necessity to frame a scheme arises as a social welfare measure, we feel that it ought to be the duty of the framers to take into consideration all conceivable situations that such scheme could cover to satisfy its avowed object. Regrettably, the scheme of the Government is deficient by failing to provide for those married daughters who could, given a chance, establish their dependency on their bread-winner father/mother (Government employee) who passes away while in service. Instead of a total exclusion from the purview of the scheme of compassionate appointment, the Government could have considered qualifying such exclusion by stipulating that those married daughters having the support of their matrimonial homes would stand excluded. Such stipulation, apart from lending credence to the scheme, would be in accord with the equality clause enshrined in Articles 14 and 16 and the directive contained in Article 39(a). We are minded to make such observation bearing in mind that every law enacted or scheme introduced having the force of law, particularly welfare legislation for the benefit of the weaker section of the people, must be implemented in the proper spirit for achieving the noble object for which such law or scheme is brought into existence.

110. We would end this part of the discussion with the following concluding remarks. The endeavour of Mr. Majumdar to support the policy decision of the Government based on marriage of the daughter bringing about a change of status and proving fatal for an appointment on compassionate ground, appears to proceed in oblivion of husbands harassing and torturing wives in ample measure and thereby creating a situation for the wives to withdraw from the matrimonial household and return to her paternal home, usually the first refuge of one in distress. Such situations are not uncommon in Indian conditions. A probable situation could arise where a lowly paid Government employee dies-in-harness leaving behind him his widow, mother, a minor child and one married daughter (having the requisite qualification for appointment either on a Group 'C' or Group 'D' post) as his surviving heirs, but such a married daughter for whatever reasons is abandoned or

deserted by her husband and she comes back to the care of her father and is entirely dependent on the earnings of her father, when he suddenly passes away; although, the family passes the test of immediate need for relief in terms of the notifications/SCHEME but apart from the married daughter there is none in the family who is qualified for an appointment except such daughter. Should the marital status of the daughter, in such a case, stand in the way of her appointment? Upon marriage no doubt a daughter is regarded as a member of her husband's family but in our view that by itself may not be determinative of whether she could be deprived of even the right to apply and be considered for compassionate appointment, the object of which has need and dependency as paramount considerations for making a departure from the procedure of recruitment in accordance with Articles 14 and 16 of the Constitution. It does not behove the State Government to take a policy decision which, in effect, would be seriously prejudicial to a class of women who may have earlier exercised their right of marriage. Article 15(3) empowers the State to make special provisions for women and there is no reason as to why on the face of such an enabling provision, the Government should at all put in place such a restriction. Despite the marriage of a daughter, the bond of a father/mother with such married daughter is never broken; she continues to live in the heart of her parents. We are *ad idem* with the view expressed by the Division Bench of this Court in *Soleman Bibi* (supra) that "a daughter undoubtedly acquires a new relationship on marriage. She does not however lose the old relationship; she remains a daughter. Once a daughter always a daughter: qua relationship she is a daughter before, during and after marriage". We are, thus, not persuaded to hold that once married, the dependency factor altogether ceases. Proceeding on such an assumption, in our humble view, would be a misadventure."

23. The question also figured before a Full Bench of the Madhya Pradesh High in **Meenakshi Dubey v. Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd., 2020 SCC OnLine MP 383** upon a reference made to a Larger Bench. The question, that fell for consideration before their Lordships of the Full Bench of the Madhya Pradesh High Court, can best be recapitulated the way it is set forth in the opening part of the

report. It reads:

"This Larger Bench is called upon to decide the following issue:

"Whether in the matter of compassionate appointment covered by Policy framed by the State Government wherein, certain class of dependent which includes unmarried daughter a widowed daughter and a divorced daughter and in case of a deceased Govt. servant who only has daughter, such married daughter who was wholly dependent on Govt. servant subject to she giving her undertaking of bearing responsibility of other dependents of the deceased Govt. servant, Clause 2. 2 and 2. 4 can be said to be violative of Article 14, 15, 25 and 51A (e) of the Constitution."

24. After surveying much authority on the point, it was held by the Full Bench in **Meenakshi Dubey (supra)**:

"17. We are not oblivious of the settled legal position that compassionate appointment is an exception to general rule. As per the policy of compassionate appointment, State has already decided to consider claims of the married daughters (Clause 2. 4) for compassionate appointment but such consideration was confined to such daughters who have no brothers. After the death of government servant, it is open to the spouse to decide and opt whether his/her son or daughter is best suited for compassionate appointment and take responsibilities towards family which were being discharged by the deceased government servant earlier.

The offending clause which restricts such consideration only for such married daughter is subject matter of consideration and examination. The Constitution Bench of Supreme Court in *Budhan Choudhry (Supra)* held that substantive law, procedural law or even an action can be interfered with if it does not pass the "litmus test" laid down in the said case. Hence, in a case of this nature, adjudication is not required regarding creation of right of married woman, indeed, judicial review is focused against curtailment of claim of such married woman when deceased government servant died leaving behind son/s.

18. The matter may be viewed from another angle. Human rights and fundamental freedom have been

reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (for short 'CEDAW') was ratified by the UNO on 18-12-1979. The Government of India who was an active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. Article 1 defines discrimination against women to mean – "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Article 2(b) makes it obligatory for the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women" to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the

basis of equality with men. Article 13 states that – “the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women”. Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms. Article 5(a) of CEDAW on which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-a-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and need for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures modify law/policy and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

19. In a recent judgment reported in 2020 SCC OnLine SC 200, *Secretary, Ministry of Defence v. Babita Puniya*, the Apex Court opined that–

“67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of nondiscrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in

matters of public employment under Article 16(1)."

20. This recent judgment in *Babita Puniya* (Supra) is a very important step to ensure "Gender Justice". In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2. 2 to the extent it deprives married woman from right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2. 4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2. 2, as noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and therefore, arbitrary and discriminatory in nature.

22. In nutshell, broadly, we are in agreement with the conclusion drawn by Indore Bench in *Smt. Meenakshi* (Supra) and deem it proper to answer the reference as under:

*"Clause 2.2 of the policy dated 29.09.2014 is violative of Articles 14, 15, 16 and 39(a) of the Constitution of India to the extent it deprives the married daughter from right of consideration for compassionate appointment. We find no reason to declare Clause 2. 4 of the policy as ultra vires. To this extent, we overrule the judgment of Indore Bench in the case of **Meenakshi** (Supra)""*

25. Following the Full Bench in **Meenakshi Devi**, a learned Single Judge of the Madhya Pradesh High Court in **Savitri Kumari v. The Chairman, Managing Director and others, Writ Petition No.13651 of 2016, decided on 19.11.2020**, held that the married daughter cannot be excluded from consideration on the basis of Clause 9.3.3 of the National Coal Wage Agreement, apparently because it would be discriminatory. This authority relates to the respondents establishment.

26. Similar view was taken, relating to the respondents establishment and Clause 9.3 of the National Coal Wage Agreement, by a learned Single Judge of the Madhya Pradesh High Court in **Shakila Begum (Siddiqui) v. Northern Coal Field Ltd., Singrauli and others, 2022 SCC OnLine MP 5373.**

27. The other question that was argued by the learned Counsel for the petitioner is that the Office Memorandum dated 13.03.1981 has been amended by a later memorandum of the Coal India Limited dated 25.06.2024, which no longer mentions a son or daughter to determine eligibility for compassionate appointment, but employs the omnibus word children. Since children is used in the memorandum dated 25.06.2024, the question of the daughter being married or unmarried loses significance. Learned Counsel for the petitioner had urged during his submissions that now the petitioner is entitled to a consideration of her candidature in accordance with the amended rule carried in the memorandum dated 25.06.2024. He made an application to the respondents for the purpose, but it was rejected by an order dated 21.09.2024, again passed by respondent No.5.

28. We do not agree that the petitioner would be entitled to the benefit of the memorandum dated 25.06.2024, providing for the amended rule for compassionate appointment. The reason is that it has already been held by me in **Bechan Giri v. Union of India and others, 2023 (8) ADJ 692**, following the Supreme Court in **Government Department of Education (Primary) v. Bheemesh alias Bheemappa, AIR 2022 SC 402**, that the right to be considered for compassionate appointment is governed by the law in force at the time of death in harness of the employee, whose dependant claims. It would not be governed by the law, as amended or subsequently enacted when the

dependant's application for compassionate appointment comes up for consideration.

29. Much reliance was placed by the learned Counsel for the respondents upon the holding of the Supreme Court in **V. Somyashree** (*supra*) to submit that all the law about discrimination laid down by the various High Courts in the country pale into insignificance. In **V. Somyashree**, it was observed:

"9. While considering the submissions made on behalf of the rival parties a recent decision of this Court in *N.C. Santhosh* [*N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617 : (2020) 2 SCC (L&S) 861] on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependants of the deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed that he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the government employee.

10. The law laid down by this Court in *N.C. Santhosh* [*N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617 : (2020) 2 SCC (L&S) 861] on grant of appointment on compassionate ground can be summarised as under:

10.1. That the compassionate appointment is an exception to the general rule.

10.2. That no aspirant has a right to compassionate appointment.

10.3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India.

10.4. Appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy.

10.5. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

14. From the aforesaid Rules it can be seen that only "unmarried daughter" and "widowed daughter" who were dependent upon the deceased female government servant at the time of her death and living with her can be said to be "dependant" of a deceased government servant and that an "unmarried daughter" and "widowed daughter" only can be said to be eligible for appointment on compassionate ground in the case of death of the female government servant. Rule 2 and Rule 3 reproduced hereinabove do not include "divorced daughter" as eligible for appointment on compassionate ground and even as "dependant".

15. As observed hereinabove and even as held by this Court in *N.C. Santhosh* [*N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617 : (2020) 2 SCC (L&S) 861], the norms prevailing on the date of consideration of the application should be the basis of consideration of claim for compassionate appointment. The word "divorced daughter" has been added subsequently by Amendment, 2021. Therefore, at the relevant time when the deceased employee died and when the original writ petitioner-respondent herein made an application for appointment on compassionate ground the "divorced daughter" were not eligible for appointment on compassionate ground and the "divorced daughter" was not within the definition of "dependant".

16. Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25-3-2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25-3-2012. Immediately on the

death of the deceased employee, the respondent initiated the divorce proceedings under Section 13-B of the Hindu Marriage Act, 1955 on 12-9-2012 for decree of divorce by mutual consent. By judgment dated 20-3-2013, the learned Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21-3-2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground.

17. The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground. Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as "divorced daughter". This is one additional ground to reject the application of the respondent for appointment on compassionate ground."

30. A reading of the holding in **V. Somyashree**, considering the facts there, spares little doubt that their Lordships did not have before them canvassed for a principle that a rule that excluded married daughters, would be discriminatory. The decision essentially turned on the point as to which would be the rule that would govern the claim for compassionate appointment, to wit, the rule at the time when the deceased government servant passed away or the rule prevailing on the date of consideration of the application. There is no doubt about that principle that the rule applicable would be with reference to the date of death of the government servant, whose dependant applies and not the date of consideration of the application for compassionate appointment. Also, the facts in **V. Somyashree** were very different, which suggest that the married daughter was really not dependent upon the father, but had pulled together a hurried act of some kind of a sham divorce by mutual

consent in order to claim compassionate appointment. On the date that the respondent's father died in harness in **V. Somyashree**, the rule did not include a divorced daughter in the definition of dependents of a deceased male government servant. The claim being judged by their Lordships entirely with reference to the rules prevalent on the date of death of the government servant, the petitioner was held disentitled to relief. **V. Somyashree** is, therefore, not at all an authority for the principle involved here, that is to say, the question of discrimination being involved in excluding a married daughter from consideration for compassionate appointment because of her marital status alone and *a fortiori* her sex alone.

31. We may venture to say that we have not gone into the merits of the petitioner's claim, because she was held disentitled or ineligible for a consideration by the respondents while passing the order impugned. Therefore, once this matter goes back to the respondents, they will consider the petitioner's claim on all parameters that the rules in force at the time of demise of the petitioner's father prescribe, but will not reject her claim on ground that the petitioner is ineligible.

32. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 08.07.2022 passed by the Staff Officer (Personnel), Integrated Water Supply System (IWSS), Northern Coalfields Limited, Khadia Project, District Sonebhadra is hereby **quashed**. A *mandamus* is issued to respondent Nos.3, 4 and 5 to ensure amongst themselves that the petitioner's case for compassionate appointment is considered and decided within a period of **six weeks** of the date of communication of this order, bearing in mind the guidance in this judgment.

33. Costs easy.

34. Let a copy of this judgment be communicated to the General Manager, I.W.S.S Khadia Area, District- Sonbhadra, U.P.-231222 and the Staff Officer (Personnel), I.W.S.S Khadia Area, District- Sonebhadra, U.P.-231222 through the learned Chief Judicial Magistrate, Sonebhadra by the Registrar (Compliance).

35. Let a copy of this judgment be also communicated to the Chairman-cum-Managing Director, Northern Coal Field Limited, District Singrauli, Madhya Pradesh through the learned Registrar General of the High Court of Madhya Pradesh by the learned Registrar General.

Order Date :- 21.4.2025
Anoop

(J.J. Munir)
Judge