

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.908 of 2015

Nagendra Kumar Yadav, S/o late Shri Muneeram Yadav,
aged about 34 years, R/o Kunj Nagar, Tahsil Surajpur,
P.S. Jainagar, District Surajpur (C.G.)

---- Petitioner

Versus

1. Food Corporation of India, Through its Chairman, H.Q., 16-20 Barakhamba Lane, "Khadya Sadan", New Delhi – 110 001
2. Executive Director (West), Food Corporation of India, Zonal Office (West), FCI New Building, Rajendra Nagar, Dattapada Road, Borivali (E), Mumbai-66 (MH)
3. General Manager (Region), FCI Regional Office, Kapa, Raipur (C.G.)
4. Area Manager, FCI District Office Bilaspur, Anugraha Bhawan, Maharana Pratap Chowk, Jarha Bhata, Bilaspur (C.G.)

---- Respondents

For Petitioner:	Mr. Sunil Pillai, Advocate.
For Respondents:	Mr. B.P. Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/01/2016

1. Excellent question that emanates for consideration is whether son of a deceased FCI employee can be disqualified for consideration for appointment on compassionate ground on the basis of his marriage.
2. The above-stated question arises for consideration in the

following factual matrix: -

3. The petitioner's father while working as Dusting Operator (Group-D service) in Food Corporation of India (for short 'the FCI'), died in harness on 30-6-2008 leading to making an application by the present petitioner being son for appointment on compassionate ground stating inter alia that on account of death of his father, financial position of the family is in distress and, therefore, the petitioner be given appointment on compassionate basis so as to relieve his family from financial hardship. The respondent FCI though took fairly long time for deciding the said application, but ultimately by order dated 5-2-2015 referring to its Zonal Office letter dated 19-1-2015, rejected the case of the petitioner holding inter alia that since the petitioner is already married, therefore, he is not entitled for such an appointment.
4. Questioning legality, validity and correctness of the order denying compassionate appointment, the instant writ petition has been filed pleading inter alia that the office memorandum dated 16-1-2013 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) whereby Scheme for Compassionate Appointment was framed. Clause 2 and Note I appended to such Scheme clearly

provides that son including adopted son is entitled for consideration on compassionate ground. It has further been pleaded that under clause 14 of the said Scheme, an undertaking for maintaining the family of the deceased employee has to be given to the FCI which the petitioner is ready and willing to do, but his application has been rejected solely on the ground that he is married son, which is per se illegal and unsustainable in law.

5. Return has been filed on behalf of the respondents stating inter alia that compassionate appointment cannot be claimed as a matter of right, it is given only to those who are eligible and in dire need of help due to death of the bread-earning member of the family. It has further been pleaded that the petitioner's case was considered on the basis of frequently asked questions on compassionate appointment dated 30-5-2013 issued by the Department of Personnel & Training, Government of India and in which under clause 13, it has been provided that "a married son is not considered dependent on a Government servant", therefore, married son is not entitled for compassionate appointment. It has also been pleaded that terminal dues of Rs.14,50,480/- was paid to the family of the deceased employee and as such, mother of the petitioner is getting pension of Rs.2,000/- per month and, therefore, the

petitioner is not entitled for such an appointment.

6. In rejoinder, the petitioner pleaded that frequently asked questions dated 30-5-2013 has been modified by the Central Government by **circular dated 25-2-2015** holding that married son can be considered for compassionate appointment if he fulfills all other requirements of the scheme and criteria laid down in the office memorandum dated 16-1-2013.
7. Mr. Sunil Pillai, learned counsel appearing for the petitioner, would submit that the Scheme for Compassionate Appointment Annexure P-1 dated 16-1-2013 clearly includes son as a dependent family member to whom the scheme is applicable and the scheme does not anywhere provides that married son is not a dependent family member, it is only by way of answering the frequently asked questions, the Department has answered the query raised by the concerned and it has been replied which is not part and parcel of the Scheme for Compassionate Appointment issued on 16-1-2013. Therefore, rejection of the petitioner's case on the ground of his status being married is unsustainable and bad in law. Elaborating his submission, Mr. Pillai would further submit that marriage is a social circumstance and by no stretch of imagination, on the ground of marriage, one can be held

disqualified for consideration on the basis of compassion and therefore, the impugned order denying employment on compassionate ground deserves to be set aside.

8. Mr. B.P. Gupta, learned counsel appearing for the FCI, while vehemently opposing the submissions raised by learned counsel for the petitioner, would submit that the petitioner's case was scrutinized in view of the frequently asked questions dated 30-5-2013 issued by the Department of Personnel & Training in which it has categorically been answered in S.No.13 that married son is not considered dependent on the Government servant and, therefore, the petitioner being married son of the deceased Government servant cannot be considered to be dependent and as such, he is not entitled for appointment and it has rightly been rejected by the FCI. Mr. Gupta would further submit that frequently asked questions though has been amended by the Government of India, Department of Personnel & Training by its circular dated 25-2-2015, but same is not applicable to the facts of the present case, as the petitioner's case has already been settled on 5-2-2015 and, therefore, the petitioner is not entitled for the benefit of subsequent change in frequently asked questions on compassionate ground issued by the Government of India and the writ petition deserves to be

dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made therein and also gone through the record with utmost circumspection.

10. It is not in dispute that the petitioner's father died in harness on 30-6-2008, but his case for compassionate appointment could not be considered and remained pending. In the meanwhile, the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), issued an office memorandum dated 16-1-2013 providing Consolidated Instructions on compassionate appointment which has been accepted and followed by the FCI by its circular dated 26-3-2013 and which provides the definition of dependent family member as under: -

“2. TO WHOM APPLICABLE

To a dependent family member -

(A) of a Government servant who -

(a) dies while in service (including death by suicide); or

(b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group 'D' Government servants); or

(c) is retired on medical grounds under Rule 38 of the CSS (Pension) Rules, 1972 or the corresponding

provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group 'D' Government servants); or

(B) of a member of the Armed Forces who -

(a) dies during service; or

(b) is killed in action; or

(c) is medically boarded out and is unfit for civil employment.

Note I “**Dependent Family Member**” means:

(a) spouse; or

(b) son (including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or

(e) member of the Armed Forces referred to in (A) or (B) of this para,

- who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

11. Clause 5 of the Scheme for Compassionate Appointment

provides Eligibility which reads as under: -

“5. **ELIGIBILITY**

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.”

12. Thereafter, Annexure R-1 i.e. Frequently Asked Questions

on Compassionate Appointment were answered by the

Central Government on 30-5-2013. Question No.13 and

its answer are as under: -

Whether 'married son' can be considered for compassionate appointment?	No. A married son is not considered dependent on a government servant.
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13. The above-stated instructions issued by the Central Government, which have been accepted and adopted by the FCI, clearly provide that dependent family member includes son including adopted son.
14. At this stage, the submission of Mr. Gupta that office memorandum dated 16-1-2013 accepted by the FCI vide its circular dated 26-3-2013 will not be applicable to the case of the petitioner and only the FCI has decided on the basis of frequently asked questions on compassionate appointment issued on 30-5-2013 subsequent to the petitioner's application, deserves non-acceptance.
15. Annexure P-1 dated 16-1-2013 is Consolidated Instructions on compassionate appointment which has been accepted and followed by the FCI. In the shape of clarification, frequently asked questions have been issued by the Government of India in which it has been answered by the Central Government that married son is not entitled for compassionate appointment as he is no longer dependent upon his father. Merely because some questions raised have been answered by the Department, the binding circular issued by the Government of India duly

adopted by the FCI cannot be held inapplicable to the petitioner as such, the stand of the FCI is contrary to the FCI's own stand that although the FCI has relied upon frequently asked questions dated 30-5-2013, which were issued clarifying the queries raised pursuant to the circular dated 26-3-2013, but is disclaiming by stating that the circular dated 26-3-2013 is not applicable to the petitioner. Therefore, it is held that the office memorandum dated 16-1-2013 is equally applicable to the case of the petitioner.

16. The submission of Mr. Gupta based upon frequently asked questions issued by the Government of India on compassionate appointment that married son is not considered dependent on Government servant and, therefore, he is not entitled for compassionate appointment.
17. Clause 14 of the Scheme for Compassionate Appointment issued by the Central Government clearly provides that the person getting compassionate appointment has to maintain himself including other family members of the deceased Government servant who were dependent upon the deceased Government servant.
18. Now, the question would be whether exclusion of the petitioner, son of the deceased FCI servant, on the ground that he is married son is a permissible classification.

19. It is well settled that marriage is an institution/sacred union not only legally permissible but also basic civil right of a man and woman. One of the most important inevitable consequences of marriage is the reciprocal support and marriage as an institution has great legal significance. Right to marry is necessary concomitant of right to life guaranteed under Article 21 of the Constitution of India as right to life includes right to lead a healthy life. 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.

20. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical Union. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on, on this planet. (See **Mr. 'X' v. Hospital 'Z'**¹.)

21. In the matter of **Indra Sarma v. V.K.V. Sarma**² Their Lordships of the Supreme Court have clearly held that marriage is one of the basic civil rights of man/woman and observed pertinently in paragraphs 24 & 25 as under:-

“24. Marriage is often described as one of the basic civil rights of man/woman, which is

1 (1998) 8 SCC 296

2 (2013) 15 SCC 755

voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the *Consortium Omnis Vitae* which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage is an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

25. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a women, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in *Dawood v. Minister of Home Affairs* (2000) 3 SA 936 (CC) noted as follows:

“Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound

significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends....”

22. Time and again, Their Lordships of the Supreme Court in umpteen number of cases repeatedly emphasized the need of compassionate appointment to the dependent of the deceased Government servant expeditiously. The whole object of granting compassionate appointment is to enable the bereaved member of the deceased Government servant to earn both the ends. Therefore, whether or not the son of the deceased Government servant should be granted compassionate appointment is to be decided with reference to the fact that whether on consideration of all relevant facts and circumstances, he or

she is dependent on the deceased FCI servant excluding purely on the ground of marriage is absolutely impermissible in law. The yardstick for extending the benefit of compassionate appointment should be dependency of the dependents on the deceased FCI servant. Marital status of the dependent should not be an impediment for his/her consideration on compassionate ground, as the object of such an appointment is to wipe-out his tears from the eyes of the suffering family on account of loss of sole breadwinner in the family, other consideration would defeat the object of the social welfare benefit which the Union of India has framed to see that deceased family survives after the death of FCI servant. Though the policy of the Central Government was accepted by the FCI, the policy does not contain any such prohibition that married son is not entitled for compassionate appointment, but frequently asked questions which are claimed to be the policy is not in accordance with law. It has been assumed that on account of marriage, son ceases to be dependent on the FCI servant which is an erroneous approach on the part of the respondents. It cannot be assumed without examining the facts and without taking into consideration the attendant circumstances that married son is not dependent on the Government servant. In a given

situation, son even after marriage may not be earning and may be fully dependent upon the earnings of his father. Therefore, the assumption that once one is married, he becomes no longer dependent on his father is an incorrect proposition, and it cannot be accepted, as such, denial of compassionate appointment to the son of the deceased FCI employee on the ground of his marriage is violative of Articles 14 and 15 of the Constitution of India.

23. Accordingly, the writ petition is allowed. The order dated 5-2-2015 passed by the respondent FCI is hereby quashed. The FCI is directed to consider the case of the petitioner in accordance with law, notwithstanding the fact that the petitioner is married, within 45 days from the date of receipt / production of certified copy of this order. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

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Nagendra Kumar Yadav

Versus

Food Corporation of India and three others

HEAD NOTE

Denial of compassionate appointment to son of the deceased FCI employee on the ground of his marriage is violative of Articles 14 and 15 of the Constitution of India.

भारतीय खाद्य निगम के मृतक कर्मचारी के पुत्र को, उसके विवाह होने के आधार पर, अनुकम्पा नियुक्ति से इंकार किया जाना भारतीय संविधान के अनुच्छेद 14 एवं 15 का उल्लंघन है।