

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4759 of 2014**

Miss. Hamshikha Mallick, D/o Late R.K. Mallick Aged About 19
Years R/o Qtr No. B - 200, SECL, Pragati Nagar, Dipika, Distt.
Korba C.G.

---- Petitioner**Versus**

1. Coal India Ltd. Through Its Chairman 10 Netaji Subhash Road,
Kolkata (West Bengal)
2. South Eastern Coalfield Ltd. Through Its Chairman Cum Managing
Director, Seepat Road, Bilaspur (C.G.)
3. General Manager South Eastern Coal Fields Limited, Sohagpur
Area, Distt. Shahdol (MP)
4. Dy. General Manager (Pers.) South Eastern Coalfields Limited
Sohagpur Area Distt. Shahdol (M.P.)

---- Respondents

For Petitioner	:	Mr. M.K. Bhaduri, Advocate.
For Respondents	:	Mr. H.B. Agrawal, Senior Advocate with Mr. Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/06/2016**

Heard.

1. The important issue arising for consideration in this petition is whether the action of the respondents in denying benefit of compassionate appointment to the adopted daughter of deceased employee is discriminatory and violative of Article 14 and 16 of the Constitution of India.

2. The factual details of the case are in narrow encompass and need to be dealt with quintessentially.

3. One Ranjit Kumar Malick who was working as Office Superintendent at Sohagpur area of South Eastern Coalfields Limited/respondent No.2, died in harness on 04.08.2010. He left behind his widow and unmarried minor adopted daughter, the petitioner Ms. Hamshikha Malick, who at the time of death, was aged about 14 years. A claim for compassionate appointment was made in terms of provisions contained in Clause 9.3.0 of the National Coal Wage Agreement, Chapter-IX Social Security. The claim, however, was rejected on the ground that the policy does not permit grant of compassionate appointment to a dependent, who happens to be adopted daughter.

4. Learned counsel for the petitioner submits that the denial of equal treatment is based solely on gender discrimination. Learned counsel for the petitioner submits that the policy provides for employment to one dependent of the worker based on laudable purpose that on account of death of sole bread earner of the family, immediate succor may be necessary to be provided for the family. This being the larger objective behind grant of compassionate appointment as a measure of social security in the public employment, there could be no rationale behind granting this benefit to legally adopted son only. He submits that once the respondents have decided in their policy that upon death of employee, one of the dependent, who may be unmarried daughter, son or legally adopted son may be granted compassionate appointment, the benefit must equally accrue to a legally adopted daughter as well. It is further submitted that the policy not only provides benefit of compassionate appointment to the category of unmarried daughter, son, legally adopted son or widow of the deceased employee but also to other category of dependents if the first category is not there. This clearly means that the purpose and object is to provide immediate succor and financial assistance to the dependents of various categories of the deceased employee, therefore, there is no reason why a legally adopted daughter should be deprived of this benefit, once, it has been found that she was actually dependent upon deceased employee.

5. On the other hand, learned Senior counsel appearing for respondent-South Eastern Coalfields Limited submit that the policy has

been framed after long drawn deliberation of 'Joint Bi Partite Committee' settling terms and conditions of service of workman in Coal Industries. The settlement has a statutory force under Section 18 of the Industrial Disputes Act, 1947. Therefore, the benefit of compassionate appointment could be given strictly in terms of provision of the settlement and not beyond the same. He submits that the policy consciously excludes legally adopted daughter because adopted son has been included as one of the dependent, who could be granted compassionate appointment, there is no mention of adopted daughter. Therefore, the petitioner is not entitled to benefit of compassionate appointment.

6. The policy of compassionate appointment is governed by Chapter-IX under the heading 'Social Security' of the Bi Partite Settlement between the Management and Representative of the Employees Association having statutory force. Clause 9.3.2 deals with employment to dependent of the worker who dies while in service being relevant, is extracted herein below :

“Clause 9.3.2 – Employment to one dependent of the worker who dies while in service - In so far as female dependents are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0. ”

7. Clause 9.3.3 provides for grant of employment on compassionate basis to following categories of dependents :

- (i) Wife/husband as the case may be;
- (ii) Unmarried daughter;
- (iii) Son;
- (iv) Legally adopted son;

There is a second category of dependents, who may be granted employment in case, the aforesaid category of dependents is not available, which includes following :

- (i) Brother;

- (ii) Widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased;

8. It would thus be seen that in Clause 9.3.3 while legally adopted son has been included in the category of eligible dependents, there is no mention of daughter, who may have been adopted in a given case. It has to be noted that as far as an unmarried daughter is concerned, she is entitled for employment. Moreover, in the absence of first category of dependents, as described above, the second category of dependents which may include a widowed daughter/widowed daughter-in-law or even son-in-law may also get employment provided, he is almost wholly dependent on the earnings of the deceased.

9. The object and purpose of granting compassionate appointment is to provide immediate succor to the dependent family members of the deceased employee. In a welfare State, the policy of compassionate appointment has been one of the important feature of public employment formulated and implemented in implementation of principle of social justice embodied in our constitutional ethics. One who is in public employment upon his death, may leave behind a family of dependents, who have no independent source of earnings. Sudden death of employee may result in severe financial hardship to the family before any other member of the family is able to secure employment. In the open market or arrange for any other source of livelihood through other vocation, business, private employment, agriculture activity etc. The object and purpose of compassionate appointment is to save the family of the deceased employee from this financial stress and likelihood of grave hardship due to sudden loss of source of earnings.

10. Looking to the very object of grant of compassionate appointment, it is invariably and undisputedly formulated only for the benefit of the dependent members of the family and not for any other purpose. It is well settled legal proposition as laid down by the Hon'ble Supreme Court and by this Court in a catena of decisions that the compassionate appointment is not an alternative source of appointment. Appointment to all posts in public employment have to be filled up by adopting a fair procedure consistent with Article 14 & 16 of the Constitution of India affording

opportunity to all the eligible persons who may apply in response to public advertisement. Compassionate appointment is only an exception to the general rule and recruitment to public employment, necessitated due to compelling needs of social justice. The benefit of compassionate appointment, as already noticed herein above, would be available only to those, who are dependent that means, those who for their bread and butter, clothes, living and survival, dependent on the deceased employee and not every member of the family. Not only, the scheme framed in the present case by the respondents employer but it is common knowledge that the policy of compassionate appointment framed in other public sectors including Government Services is only meant for those who were actually dependent on the deceased employee.

11. In view of above consideration, all those who were actually dependent upon the deceased employee constitute one class. Whether it be a male dependent or female dependent, does not matter. What is relevant is the dependency and not the sex of the dependent.

12. In the policy while widows, sons, daughters are eligible, an adopted son is also included obviously, for the reason that an adopted son may also be dependent. Thus, adoption is not made a basis to discriminate as between male dependents. If there is a dependent son, he may be entitled to compassionate appointment irrespective of whether he happens to be the biological son or adopted son.

13. Even a daughter of the deceased employee is also including in the list of eligible dependents, who may be granted employment on compassionate basis. There is, however, no rationale or reason in discriminating and excluding an adopted daughter from the benefit of employment on compassionate basis who may, in a given case, be also a dependent on the deceased employee. Like an adopted son, an adopted daughter would be equally entitled to compassionate appointment. As has been discussed herein above, it is the dependency and not the gender which is relevant for categorization and classification.

14. There is no worthy reason either in the circular or in the return of the respondents to satisfy the Court why adopted daughter has been excluded from the benefit of compassionate appointment even though,

she, for the purposes of livelihood was dependent on the deceased employee.

15. Thus, only reason surfacing on the records of the case is that the discrimination is based solely upon sex and nothing more.

16. This is constitutionally impermissible in view of provision contained in Article 16 of the Constitution which provides for equality of opportunity in the matter of public employment and mandates that no discrimination shall be practiced only on the ground of sex. While protective discrimination is constitutionally permissible in view of provision contained in Article 14, 15 & 16 in favour of women and children, exclusion of an adopted daughter while keeping an adopted son as a dependent is clearly violative of constitutional principle. It is quite unfortunate that despite plethora of judicial pronouncement of the Hon'ble Supreme Court deprecating general discrimination in every form, such kind of discriminatory practice are still prevalent in various public institution like the respondents which is a subsidiary Coal Company undoubtedly state under Article 12 of the Constitution of India.

17. In the case of **Smt. Duliya Bai Yadav Vs. State of Chhattisgarh and others (WPS No.5051 of 2014) decided on 18.01.2016**, an issue as to whether the State Government is justified in refusing to grant compassionate appointment to widowed daughter-in-law of the deceased Government servant came up for consideration. In the aforesaid case, it was held that exclusion of daughter-in-law without consideration whether she is dependent or not, is constitutionally impermissible after taking into consideration the judgment of the Supreme Court in the cases of **Umesh Kumar Nagpal V. State of Haryana and others, (1994) 4 SCC 138** and **Food Corporation of India and Others V. Raja Ram, (2010) 15 SCC 366** that the object behind grant of compassionate appointment is to provide immediate relief to the dependent of the deceased employee. This Court also considered the role and responsibility of a welfare State as adumbrated by the Supreme Court in the case of **Lala Ram (Dead) by Legal Representative and others v. Union of India and another, (2015) 5 SCC 813**.

18. In the case of **Smt. Sarojni Bhoi V. State of Chhattisgarh and**

others (WPS No.296 of 2014), the policy of the Government whereby married daughter of deceased Government servant was not included in the category of dependents for the purposes of grant of benefit of compassionate appointment was under consideration. In that case, this Court holding that such an exclusion would amount to gender discrimination, relying upon several judgments of the Supreme Court referred to therein.

19. The gender discrimination has been deprecated by the Hon'ble Supreme Court and various High Courts time and again. Though there are catena of decisions deprecating gender discrimination as constitutionally impermissible, violative of Article 14, 15 and 16 of the Constitution of India and against Constitutional ethos, I shall consider a few of them, which have also been noticed by this Court in the case of *Smt. Sarojni Bhoi (supra)*.

20. The Allahabad High Court in the matter of **U.P. Power Corporation Ltd. V. Smt. Urmila Devi in Special Appeal No.1026/2003** decided on 27.01.2011 has categorically held that the daughter-in-law is also entitled to be considered for appointment on compassionate ground.

21. The Rajasthan High Court in the matter of **Smt. Pinki V. State of Rajasthan and Others, 2012(1) WLC (Raj.) 431** has also held that widowed daughter-in-law of the deceased Government servant is entitled to compassionate appointment. The aforesaid decisions have been taken into consideration in the case of *Smt. Duliya Bai Yadav (supra)* referred to above.

22. In the case of **Miss. C.B. Muthamma V. Union of India and others (AIR 1979 SC 1868)**, the Supreme Court emphasized that our women is a sad reflection on the distance between Constitution in the book and Law in action. It was held that -

“6.....Our Women is a sad reflection on the distance between Constitution in the book and Law in action. And if the book and Law in action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of die-

hard allergy to gender parity is inevitable.”

23. In the case of **Madhu Kishwar V. State of Bihar, (1996) 5 SCC 125** also the discrimination was seriously deprecated in following words :

“28.....Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination”

In yet an another decision in the case of **Voluntary Health Assn. of Punjab V. Union of India, (2013) 4 SCC 1**, the Hon'ble Supreme Court again observed that gender discrimination is unacceptable to any society in following words :

“20. It would not be an exaggeration to say that a society that does not respect its women cannot be treated to be civilised. In the first part of the last century Swami Vivekanand had said:

'Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.' ”

24. In the matter of **Air India Cabin Crew Assn. V. Yeshaswinee Merchant, (2003 6 SCC 277)**, it was authoritatively pronounced that the discrimination based only on sex is not permissible subject to exception by observing as following :

“41. In English law “but-for-sex” test has been developed to mean that no less favourable treatment is to be given to women on gender-based criterion which would favour the opposite sex and women will not be deliberately selected for less favourable treatment because of their sex. It is on this “but-for-sex” test, it appears in *Nergesh Meerza* case the three-Judge Bench of this Court did not find the lower retirement age from flying duties of air hostesses as discrimination only based on sex. It found that the male and female members of crew are distinct cadres with different conditions of service. The service regulation based on the

agreements and settlement fixing lower retirement age of air hostesses was not struck down.

42. The Constitutional prohibition to the State not to discriminate citizens only on sex, however, does not prohibit a special treatment to the women in employment on their own demand.....”

25. In yet another authoritative pronouncement in the case **Bailadila Berozgar Sangh V. National Mineral Development Corporation Limited**, the Supreme Court reiterated well settled constitutional scheme and constitutional prohibition against gender discrimination in following words :-

“7. Coming now to the challenge to discrimination on the ground of sex, Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16(1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) of the Constitution further provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State. A reading of the aforesaid provisions of Articles 14 and 16 of the Constitution would show that in matters of recruitment to employment, the State will not discriminate between men and women and that a citizen will not be ineligible for employment or office under the State on the ground of sex only. It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation. Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of

sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so.”

26. In a recent decision in the case of **Charu Khurana v. Union of India, (2015) 1 SCC 192**, modern civilised societal concept of gender justice was noted by the Hon'ble Supreme Court and the role of the State as welfare State was also discussed as below :

“33.....On a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value. Clause (j) has to be understood in the backdrop that India is a welfare State and, therefore, it is the duty of the State to promote justice, to provide equal opportunity to all citizens and see that they are not deprived of by reasons of economic disparity. It is also the duty of the State to frame policies so that men and women have the right to adequate means of livelihood. It is also the duty of the citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

41. The aforesaid pronouncement clearly spells out that there cannot be any discrimination solely on the ground of gender. It is apt to note here that reservation of seats for women in panchayats and municipalities have been provided under Articles 243(d) and 243(t) of the Constitution of India. The purpose of the constitutional amendment is that the women in India are required to participate more in a democratic set-up especially at the grass root level. This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the Constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision-making process in a democracy that is governed by the rule of law. Their

active participation in the decision making process has been accentuated upon and the secondary role which was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.”

27. In the light of aforesaid decisions constitutional principles, exclusion of an adopted daughter like the petitioner in the present case from consideration for appointment on compassionate basis while at the same time including an adopted son as one of the dependents eligible for compassionate appointment, is based solely on gender discrimination and no other constitutionally permissible basis of classification. In other words, the classification is not based on any rational *integra* having reasonable nexus with the object sought to be achieved. In the matter of compassionate appointment, obviously, the object is to protect against financial stress, dependent of the deceased employee. If that is the object, exclusion only on the ground of petitioner being an adopted daughter is not only based on unreasonable classification but otherwise violative of Article 14 and 16 of the Constitution of India which prohibits discrimination only on the ground of sex.

28. In the result, the petition is allowed. The petitioner is held entitled for compassionate appointment. The respondents shall consider the petitioner's claim for compassionate appointment and pass necessary orders subject to petitioner's fulfilling other requirement of compassionate appointment within a period of four months from the date of receipt of copy of this order.

Sd/-
(Manindra Mohan Shrivastava)
Judge