

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 5576 of 2014

**Judgment reserved on: 19.08.2016**

**Judgment delivered on: 07.09.2016**

Chandrani Sinha, D/o Late Shri Uttam Singh Sinha, aged about 24 years, R/o village Arjuni, Post Demar, District – Dhamtari (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Electricity Holding Company Limited, Daganiya, Raipur (C.G.)
2. Deputy General Manager, Chhattisgarh State Electricity Holding Company Limited, Daganiya, Raipur (C.G.)

---- Respondents

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| For Petitioner:  | Mr. Ajay Shrivastava, Advocate. |
| For Respondents: | Mr. K.R. Nair, Advocate.        |

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Hon'ble Shri Justice Sanjay K. Agrawal

**ORDER [C.A.V.]**

(1) Father of our nation said :-

“ I am uncompromising in the matter of women's right  
She should labour under no legal disability not  
suffered by men I should treat the daughters and sons  
on a footing of perfect equality.”

*“Mahatma Gandhi”*

(2) The above stated quote squarely applies to the following facts  
of the case, which are as under:-

(2.1) Shri Uttam Singh Sinha, father of the petitioner herein while working as Lineman with the respondents/Company died in harness on 7.4.2008 leaving her wife Manka Bai and two daughters namely Roshani Bai and the petitioner herein. At that time, Roshani Bai, her elder daughter was already married and petitioner herein/younger daughter was unmarried; and the petitioner herein, being unmarried daughter of the deceased/employee entitled for compassionate appointment in terms of policy of the Board applicable dated 28.02.2004, applied for compassionate appointment on 2.7.2008 but her application was not decided and meanwhile she got married on 29.4.2009.

(2.2) By the impugned order Annexure P-1, her application was rejected on the ground that now she is married and according to the Circular, married daughter is not entitled for compassionate appointment.

(2.3) The writ petition has been filed calling in question the paragraph 2 of the Circular dated 28.02.2004, by which only unmarried daughter is held entitled for compassionate appointment and the married daughter is not entitled for compassionate appointment. The petitioner also seeks to challenge the impugned order rejecting her candidature on the basis of above stated circular.

(3) Return has been filed opposing the writ petition stating inter alia that married people form a class by themselves. If married

daughters are taken out and classified as one group and married sons as another group from this class of married people, it cannot be said that it is a class legislation discriminating one group/class against the other. It has been pleaded that it is a reasonable classification of married daughters as one group as distinguished from the married sons classified as another group. The said classification has a nexus with the object sought to be achieved. Article 14 of the Constitution of India permits reasonable classification of a group from other groups, what it prohibits is a class legislation. It is not a class legislation but a reasonable classification of different people into different groups. There cannot be a comparison between one member of one group and another member of another group for alleging discrimination. Discrimination can be alleged only if two members of the same group are differently treated. That is not the case here and therefore there is no discrimination at all in the present case. The petition is founded on the allegation of discrimination which is non-existent in the present case and therefore the petition is not maintainable and is liable to be dismissed by this Court. It was further pleaded that the object of the scheme is to reach financial assistance to the deceased employee's family. It cannot be said that financial assistance can be provided only by giving employment to one member of the family. Grant of compassionate appointment is one of the ways recognized to achieve this object but that is not the only one. There is another way laid down by the compassionate

appointment scheme of the respondents. It is by way of payment of annuity (regular payment) which is an additional financial benefit over and above payment of family pension, gratuity, etc. The widow of the deceased employee has been in receipt of payment of annuity and therefore the claim of the petitioner is in fact for a second benefit out of the compassionate appointment scheme which is not permissible in law. Therefore, the petition is liable to be dismissed by this Court. It was also pleaded that after the retirement of the employee from service he and all his family members depend upon the retiral dues and after his death before or after his retirement, his widow is entitled to get family pension throughout her life. Therefore, it cannot be said that the widow, that is the mother of the petitioner, is dependent on the petitioner and the petitioner has to look after her like a son does. Physical help she may need which the petitioner can extend while remaining out of service. Financial help she may not need as she is in receipt of family pension every month. Since the widowed mother is alone, the family pension being paid to her every month should be taken as adequate for her maintenance. She is not therefore financially dependent upon her daughter, the petitioner.

(4) Shri Ajay Shrivastava, learned counsel appearing for the petitioner would submit that such provision in the Circular of Respondents Board barring the married daughter for compassionate appointment is unconstitutional and bad in law and also it is

arbitrary, discriminatory and violative of Article 14 & 16 of the Constitution of India. He would further submit that the above provision has been held to be invalid by this Court in the matter of **Smt. Sarojni Bhoi Vs. State of Chhattisgarh & others** decided on 30.11.2015 in Writ Petition (S) No.296/2014 and, therefore, such policy be struck down. He would also submit that the petitioner applied for compassionate appointment on 2.7.2008 when she was unmarried and at that time her application was not decided; and when she became married on 29.04.2009, her application was rejected by the impugned order in the year 2010 holding that now she has become married and, therefore, the writ petition be allowed and the respondents-Board be directed to reconsider her application for compassionate appointment in accordance with law.

(5) On the other hand, Mr. K.R. Nair, learned counsel for the respondent would oppose the writ petition and submit that the compassionate appointment scheme of the respondents does not permit appointment of a married daughter as she is no longer dependent upon her parents after her marriage. She may be a legal heir of the deceased employee but not a dependent of the deceased employee after her marriage. Since she is not dependent family member of the deceased employee, she does not fulfill the eligibility criteria laid down in the scheme. He also submits that compassionate appointment cannot be claimed as of right. It cannot be made a source of recruitment. Compassionate appointment can

be granted strictly according to the scheme and no deviation from it is permissible. He further submits that clause 7(a) of the compassionate appointment scheme of the respondents provides for grant of compassionate appointment only to a dependent of the family member of the deceased employee if his annual income is less than Rs.60,000/- (Annexure R-1). The petitioner's mother receives a family pension of Rs.5,614/- per month which disqualifies any dependent member of the deceased employee's family to get compassionate appointment. The compassionate appointment scheme is a matter of policy and no employer can be compelled to make compassionate appointment contrary to its policy. He lastly submits that the petitioner is not competent to challenge the compassionate appointment scheme of the respondents and therefore the challenge to the scheme is not sustainable in law.

(6) I have heard learned counsel appearing for the parties & considered their rival submissions made hereinabove and perused the order impugned with utmost circumspection.

(7) It is not in dispute that the Circular dated 28.2.2004 (Annexure P-3) was in force at the time of death of petitioner's father and applicable to the petitioner. The petitioner was unmarried at that time, she immediately applied for compassionate appointment on 2.7.2008 and when she became married on 29.4.2009 her application was rejected holding that now she has become married.

(8) Paragraph 2 of the policy dated 28.02.2004 states as under:-

‘मृतक कर्मचारी के किसी एक पारिवारिक सदस्य पत्नि, पुत्र एवं अविवाहित पुत्री (दत्तक पुत्र/पुत्रियाँ शामिल रहेंगे) को अनुकंपा नियुक्ति केवल उसी सीन पर प्रदान की जावेगी जहां पद रिक्त है, किसी स्थान/कार्यालय में रिक्त पद के विरुद्ध दूसरे स्थान/कार्यालय में पदस्थ नहीं किया जावेगा। अनुकंपा नियुक्ति प्राप्त सदस्य के पदस्थापना सील में जाने से इन्कार करने पर अनुकंपा नियुक्ति का आदेश निरस्त कर दिया जायेगा एवं अनुकंपा नियुक्ति की पात्रता समाप्त हो जायेगी”

(9) Now, the question for consideration is whether implied exclusion of married daughter for compassionate appointment in view of clause 2 of the Circular dated 28.02.2004, is in accordance with Article 14 or 15 of the Constitution of India ?

(10) It is well settled that marriage is an institution/sacred union, not only legally permissible but also basic civil right of a man and a woman. One of the most important inevitable consequences of marriage is the reciprocal support and marriage is 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.

(11) 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'**<sup>1</sup>.)

(12) In the matter of **Indra Sarma v. V.K.V. Sarma**<sup>2</sup> 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 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

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<sup>1</sup> (1998) 8 SCC 296

<sup>2</sup> (2013) 15 SCC 755

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....”

(13) In a very recent decision in the matter of **Malathi Ravi, M.D. v. B.V. Ravi, M.D.**<sup>3</sup>, Their Lordships of the Supreme Court have held as under:

“Marriage as a social institution is an affirmation of civilised social order where two individuals,

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<sup>3</sup> (2014) 7 SCC 640

capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation. It stands as an embodiment for continuance of the human race.”

(14) In the matter of **Miss C.B. Muthamma v. Union of India and others**<sup>4</sup> in the context of Indian Foreign Service (Conduct and Discipline) Rules, 1961, which prohibited appointment of married woman to such service, the Supreme Court has held as under:-

“6.....Our women is a said 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.”

(15) In the matter of **Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai and another**<sup>5</sup>, Their Lordships of the Supreme Court while considering the provisions of Section 125 of the Code of Criminal Procedure, 1973 have held that a daughter after her marriage does not cease to be a daughter of her father or mother.

(16) In the matter of **Savita Samvedi (Ms) and another v. Union of India and others**<sup>6</sup>, Their Lordships of the Supreme Court have quoted the following saying with approval: -

“6. A common saying is worth pressing into service to blunt somewhat the Circular. It is —

<sup>4</sup> AIR 1979 SC 1868

<sup>5</sup> (1987) 2 SCC 278

<sup>6</sup> (1996) 2 SCC 380

“A son is a son until he gets a wife. A daughter is a daughter throughout her life.””

Their Lordships further held that provision in Railway Board Circular restricting the eligibility of married daughter, of the retiring official, only to cases where such official has no son or the daughter is the only person prepared to maintain the parents and the sons are not in a position to do so, suffers from gender discrimination by holding as under: -

“7. The retiring official’s expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official’s judgment on the point and be not respected by the Railway authorities irrespective of the gender of the child. There is no occasion for the Railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The Railway Ministry’s Circular in that regard appears thus to us to be wholly unfair, gender-biased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be placed on a par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above-quoted.”

(17) In the matter of **Air India Cabin Crew Assn. v. Yeshaswinee**

**Merchant**<sup>7</sup>, Their Lordships of the Supreme Court have held that the discrimination only on the basis of sex is not permissible subject to one exception and observed as under:-

“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.....”

(18) In the matter of **Shreejith L. v. Director of Education,**

**Kerala**<sup>8</sup>, Their Lordships have held that marriage by itself does not disqualify the person concerned from seeking employment and held as under:-

“28. ...While it is true that marriage by itself does not in view of the language employed in the scheme, disqualify the person concerned from seeking a compassionate appointment...”

(19) Very recently, in the matter of **Charu Khurana v. Union of**

**India**<sup>9</sup>, Their Lordships of the Supreme Court while considering the question of gender justice observed as under:

<sup>7</sup> (2003) 6 SCC 277

<sup>8</sup> (2012) 7 SCC 248

<sup>9</sup> (2015) 1 SCC 192

“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.”

(20) In the matter of **National Legal Services Authority v. Union of India**<sup>10</sup>, the Supreme Court recognized that gender identity, is an integral part of sex within the meaning of Articles 15 and 16 of the Constitution of India and no citizen can be discriminated on the ground of gender. The Supreme Court observed as follows:

“We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

(21) Thus, from the principle of law flowing from aforesaid judgments, it is quite vivid that marriage is a social circumstance and basic civil right of man and woman, and marriage by itself is not a disqualification. Thus, denial of compassionate appointment to married daughter of employee of Chhattisgarh State Electricity Holding Company Limited is gender biased, unreasonable, irrational and violative of Articles 14 and 15 of the Constitution of India and it is clearly impermissible in law.

(22) It is pertinent to mention that when the petitioner applied for compassionate appointment on 2.7.2008, when she was unmarried.

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<sup>10</sup> Manu/SC/0309/2014 : (2014) 5 SCC 438

The respondent sat tight over her application by not deciding her application and later on, when she became married on 29.04.2009, her application was rejected holding that now she is married. The respondent cannot be allowed to take advantage of his own wrong by not deciding the application right in time and subsequently reject the application holding that the petitioner is married and policy bars such an appointment. Such a course is clearly impermissible in law in addition to being arbitrary.

- (23) As a fallout and consequence of aforesaid discussion, the writ petition is allowed and consequently clause 2 of circular dated 28.04.2004 regarding compassionate appointment only to the unmarried daughter is held to be violative and discriminatory and the said clause to the extent of impliedly excluding married daughter from consideration for compassionate appointment is hereby declared void and inoperative. Resultantly, impugned order Annexure P-1 rejecting the petitioner's claim for compassionate appointment on the ground of her marriage is hereby quashed being unsustainable in law and it is directed that Clause 2 of the Circular/policy dated 28.02.2004 be read in the manner to include the married daughter also as one of the eligible subject to fulfillment of other conditions. As a consequence, the respondents are directed to consider the claim of the petitioner for compassionate appointment afresh in accordance with law keeping in view that her father died way back on 07.04.2008, preferably within a period of 45

days from the date of receipt of certified copy of this order. The petitioner is entitled for a sum of Rs.10,000/- within 45 days from today from the respondents.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Writ Petition (S) No. 5576 of 2014

Chandrani Sinha

Versus

Chhattisgarh State Electricity Holding Company Limited,  
Daganiya, Raipur & another

**Head Note**

The policy Circular of Chhattisgarh State Electricity Holding Company Limited dealing Compassionate appointment to married daughter of its employee is gender biased and violative of Article 14 & 15 of the Constitution of India.

छत्तीसगढ़ राज्य विद्युत होल्डिंग कंपनी लिमिटेड का नीति परिपत्र जो कि कर्मचारी की विवाहित पुत्री को अनुकंपा नियुक्ति के संबंध में है लैंगिक आधार पर पक्षपातपूर्ण है तथा भारतीय संविधान के अनुच्छेद 14 व 15 का उल्लंघन है ।