

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 562 of 2016**

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 (Chhattisgarh)
3. General Manager South Eastern Coal Fields Limited, Sohagpur Area, Distt. Shahdol (Madhya Pradesh)
4. Dy. General Manager (Pers.) South Eastern Coalfields Limited, Sohagpur Area Distt. Shahdol (Madhya Pradesh)

---- Appellants**Versus**

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

---- Respondent

For Appellants	:	Dr. N.K.Shukla, Senior Advocate with Shri Vinod Deshmukh, Advocate.
For Respondent	:	Shri Ravindra Agrawal, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order On Board**06/12/2016****Per Deepak Gupta, C.J.**

Heard on I.A.No.01/2016, application for condonation of delay in filing the appeal.

2. For the reasons stated in the application, we allow the application and condone the delay in filing the appeal.

3. The challenge in this appeal is to the judgment delivered by a learned

Single Judge of this Court whereby he held that the clause discriminating between legally adopted son and legally adopted daughter violates Article 14 of the Constitution of India, and therefore, even the adopted daughter would be a daughter entitled to claim compassionate appointment under the Scheme for grant of compassionate appointment to dependents of a workman, who dies while in service.

4. Clause 9.3.3 of the National Coal Wage Agreement framed by the appellants provides that employment can be granted on compassionate basis to the following categories of dependents:

- i) Spouse;
- ii) Unmarried daughter;
- iii) Son;
- iv) Legally adopted son.

5. The argument before the learned Single Judge was that there cannot be any discrimination between the legally adopted son or a legally adopted daughter. The learned Single Judge came to the conclusion that the differentiation between the legally adopted son and the legally adopted daughter has been made only on the ground of gender and is, therefore, hit by the Article 14 of the Constitution of India. He, therefore, held as follows:

“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.”

6. It would be pertinent to mention that a learned Single Judge of this Court, in W.P.(S) No.296 of 2014 (*Smt. Sarojni Bhoi vs. State of Chhattisgarh and others, decided on 30.11.2015*) has already held that even a married daughter is entitled to claim compassionate employment and cannot be discriminated against, relying upon various judgments of the Apex Court.

7. In ***Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125***, the Apex Court, dealing with the role of women, held as follows:

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

8. In yet another decision rendered in the matter of ***Air India Cabin Crew Assn. v. Yeshaswineee Merchant, (2003) 6 SCC 277***, the Supreme Court authoritatively pronounced that the discrimination based only on sex is not permissible 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.....”

9. While dealing with the role of women, the Supreme Court, in the matter of

Voluntary Health Assn. of Punjab v. Union of India, (2013) 4 SCC 1, made the following relevant observation :-

“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.”

10. The Apex Court in the case of ***National Legal Services Authority vs. Union of India, 2014 (5) SCC 438***, clearly held that there should be provision for reservation even for persons belonging to the third gender. When our jurisprudence is evolving to such an extent, it is indeed a very sad state of affairs that we are denying opportunities of employment to women only on the ground of gender and nothing else.

11. In ***Charu Khurana v. Union of India, (2015) 1 SCC 192***, the Apex Court held in paras 33 & 41 as follows:

“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.”

12. The Apex Court has clearly held that there cannot be any discrimination solely on the ground of gender. As far as the present case is concerned, no ground other than the ground of gender has been pointed out in the stand of Coal India to justify its stand that only legally adopted male children are entitled to compassionate appointment. No reason has been given why legally adopted female children are not given the same benefit. We are, therefore, clearly of the view that this part / clause of the agreement is violative of Article 14 of the Constitution of India because discrimination has been made only on the basis of gender while denying the women the right to employment.

13. In a country where the female is worshipped as “Shakti”, it is indeed a sad state of affairs that when it comes to providing jobs, we are not willing to provide employment to women. In temples we will prostrate before the female form while praying for benefits for ourselves. If we are ready to bow down before the female idols to get benefit for ourselves, why should women not have some rights as men in real life. When we actually deal with women, what to talk of worshipping them like 'Devis' we are not even willing to give them the same benefits, which we are giving to other persons in society.

14. In view of above discussion, we are clearly of the view that the learned Single Judge was absolutely right in holding that the clause which limits compassionate employment being given only to legally adopted male children is

violative of Article 14 and 16 of the Constitution of India. We uphold the judgment of the learned Single Judge.

15. The appeal has no substance and is devoid of merit. The same is accordingly dismissed. However, the time given to consider the case of the petitioner / appellant for appointment as per the Rules is extended upto 31st March, 2017.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge