

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.3899 of 2016

- Nutan Khushbu Singh D/o Late Vinod Singh, Aged About 23 Years R/o Sanjay Nagar, Talapara, P.S. Civil Line Bilaspur, District Bilaspur, (Chhattisgarh)

---- Petitioner

Versus

1. South Eastern Coal Fields Ltd. Through Chairman- Cum- Managing Director, South Eastern Coalfields Limited, Bhatgaon Colliery, District Surguja, (Chhattisgarh)
2. Sub Area Manager, South Eastern Coalfields Limited, Bhatgaon Sub Area, P.O. Bhatgaon Colliery, District Surajpur, (Chhattisgarh)
3. Area Personnel Manager, South Eastern Coalfields Limited, Bhatgaon Sub Area, P.O. Bhatgaon Colliery, District Surajpur, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Chandresh Shrivastava, Advocate
For Respondents	:	Shri Vivek Chopra, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/07/2017

The only issue which arises for consideration is whether the petitioner in her capacity as dependent-sister of the deceased employee is entitled to employment under the Social Security Scheme of employment to one dependent of the worker, who died while in service.

2. Learned counsel for the petitioner submits that the only basis for discrimination is that the petitioner happens to be the sister though dependent of the deceased employee. He submits that as per provision contained in Rule 9.3.3 of the Social Security Scheme, the dependent-brother is entitled to

employment on compassionate basis other than the category of dependents like wife/husband as the case may be or unmarried daughter or son or legally adopted son. It is submitted that if brother of the deceased employee can be granted compassionate appointment, there is no reason to discriminate dependent-sister. In support of his submission, learned counsel for the petitioner relied upon two decisions of this Court passed in the case of ***Smt. Asha Pandey versus Coal India Ltd. And others (WPS No.4994 of 2015, order dated 15-03-2016)*** and ***Miss Himshikha Mallick versus Coal India Limited and others, (WPS No.4759 of 2014, order dated 17-06-2016)***.

3. The only issue which arises for consideration is with regard to discrimination in granting employment to dependant-sister of the deceased employee. In the aforesaid two decisions of this Court, gender discrimination was seriously deprecated.

4. In the case of ***Miss Himshikha Mallick*** (supra), it was held as under:

6. "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 criteria 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.”

5. In writ appeal (***W.A.No.562 of 2016, Coal India Ltd. And others Vs, Miss Himshikha Mallick***) filed against the decision of **Miss Himshikha Mallick** (supra), Writ Appellate Court also observed thus:

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.”

6. Therefore, in these circumstances, the petitioner is entitled for consideration of her case for grant of compassionate appointment, who happens to be dependant-sister of the deceased employee. Let her application be considered and appropriate order be passed within a period of three months from the date of receipt of a copy of this order.

SD/-
(**Manindra Mohan Shrivastava**)
Judge