

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 09/05/2017****Judgment Delivered on : 14/07/2017****Writ Petition (C) No. 1922 of 2016**

Smt. Rinku Sah Widow of Late Shri Rajkumar Sah, aged about 22 years
 Occupation - Nothing, R/o Block/A 108, 2nd B.N. Chhattisgarh Armed
 Force Residential Colony Sakri, Police Station Chakarbhatha, Civil And
 Revenue District Bilaspur, Chhattisgarh Permanent R/o Village
 Rasidpur, Post Nandpur, Police Station and Tahsil Manjhi, Distirct
 Chhapra Bihar

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Law and
Legislature, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. The Director General of Police, Administration Head Office of The
Chhattisgarh Police, Naya Raipur Chhattisgarh
3. The Assistant Director General of Police (Administration), Administration
Head Office of The Chhattisgarh Police, Naya Raipur Chhattisgarh
4. The Inspector General of Police, Bilaspur Range District Bilaspur
Chhattisgarh
5. The Collector, Civil and Revenue District Bilaspur Chhattigarh
6. The Superintendent of Police, Civil and Revenue District Bilaspur
Chhattigarh
7. The Superintendent of Police, Civil and Revenue District Janjgir
Champa Chhattisgarh

---- Respondents

For Petitioner : Shri Roop Naik, Advocate.
 For Respondent/State : Shri Y.S.Thakur, Additional Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan. Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C.A.V. Judgment**Per Thottathil B. Radhakrishnan, Chief Justice**

1. Petitioner was born on 09.10.1995. She was married on 29.06.2012 to
 Raj Kumar Sah, who was employed in the Government of Chhattisgarh as a
 Police Constable. He died on 15.02.2014. The service records of that
 deceased employee showed the Petitioner as his wife. She is being paid
 pension referable to the late Raj Kumar Sah and her name figures in the

pension papers. Following her husband's demise in harness, Petitioner applied for compassionate appointment. That stands rejected primarily on the ground that she is disqualified from being appointed to government service in terms of Rule 6(5) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961; for short 'General Rules'. The said Sub-rule is therefore challenged by the Petitioner as *ultra vires* the Constitution. Her application to be appointed as a Constable is rejected also on the ground that the materials produced by her, on cross-verification, do not establish that she possesses the minimum qualification required for that post. Hence, this writ petition is filed challenging such rejection of Petitioner's application for compassionate appointment; and also, Sub-rule (5) of Rule 6 of the General Rules.

2. In response to the writ petition, the State filed its pleadings standing by the impugned rule and pleading that the Petitioner has not been able to establish that she is the widow of the late Raj Kumar Sah and further that the Petitioner is not qualified to be appointed to the post of Police Constable for which she has applied. The Petitioner has filed her rejoinder. Alongwith her pleadings, she has placed documents as annexures.

3. The questions that arise for decision in this writ petition, at the outset, are as to the validity of Rule 6(5) of the General Rules and as to what, if any, is the relief that the Petitioner is entitled to on the face of that Sub-rule, if that provision were to stand.

4. Rule 6(5) of the General Rules reads as follows:

"6. Disqualification. - (1) xxx xxx xxx
(5) No candidate shall be eligible for appointment to a service
or post who is married before the minimum age fixed for
marriage."

The provision in Rule 6(5) of the General Rules is that a person who

married before the minimum age fixed for marriage shall not be eligible for appointment to a service or post to which the General Rules apply.

5. The learned counsel for the Petitioner argued that the Sub-rule (5) in Rule 6 of the General Rules was introduced through amendment published on 10.03.2000 while the General Rules were part of those which governed the government servants of the State of Madhya Pradesh and hence, on and after the formation of State of Chhattisgarh, w.e.f 01.11.2000, in terms of the Madhya Pradesh Reorganization Act, 2000; for short 'Reorganization Act', the said Sub-rule cannot be treated to continue to operate, particularly in view of the deletion of that Sub-rule by the State of Madhya Pradesh as evidenced by what has been recorded by the Hon'ble Supreme Court of India in **Smt. Ratnarashi Pandey v. M.P Public Service Commission** which was before that Court as SLP(Civil) No. 11383 of 2012. It is further argued that the said Sub-rule is *ultra vires* the Articles 14, 15(3), 16, 19, 39(a), 46 and 309 of the Constitution of India and should not be enforced to punish a female who, as a girl child, was actually the victim of a child marriage, which is prohibited and punishable under the Prohibition of Child Marriage Act; for short 'PCM Act'. It is pointed out that the Petitioner, while a girl child, was given in marriage to Raj Kumar Sah, without her consent. It is accordingly argued that as the Petitioner's marriage was before she attained the majority and the minimum age fixed for marriage, she is eligible to be extended due protection and therefore deprivation of compassionate appointment applying Sub-rule (5) of the Rule 6 of the General Rules amounts to deprivation of the right to life. It is argued that the provisions contained in Rule 6(5) of the General Rules should be treated as at least not applicable to those girls who are victims of child marriages, having particular regard also to the social fabric and conditions of victims of child marriages in the State of Chhattisgarh.

6. Per contra, the learned Additional Advocate General argued that Sub-rule (5) of Rule 6 of the General Rules is part of the disqualifications prescribed through the rules made under Article 309 of the Constitution and the State is therefore entitled to enforce those rules. It is further argued that Rule 6(5) of the General Rules is a disqualification for appointment in government service and it would apply if the applicant for appointment to government service has married before the minimum age fixed for marriage and that no distinction can be made on case to case basis. It is contended that the mere fact that the State of Madhya Pradesh had omitted the particular rule from its rule book, does not tie down the State of Chhattisgarh in any manner affecting its rights as a State on and after 01.11.2000, when the Reorganization Act came into force.

7. The argument on behalf of the Petitioner that since the impugned Sub-rule was introduced before formation of the State of Chhattisgarh as per the provisions of the Reorganization Act, the deletion of such provision by the State of Madhya Pradesh would amount to non-applicability of that rule to the State of Chhattisgarh, is wholly unacceptable. Section 79 and 80 of the Reorganization Act read with Section 85 of that Act provides for continued application of those laws which are not altered, repealed or amended after its adoption by operation of those provisions. The second limb of the said plea of the Petitioner extended on the basis of what has been recorded by the Hon'ble Supreme Court while disposing of SLP (Civil) No. 11383 of 2012 **Smt. Ratnarashi Pandey** (supra) is not sustainable for two reasons. Firstly, **Smt. Ratnarashi Pandey** (supra) does not contain any law laid or even a consideration of the vires or applicability of the similar provision insofar as it applies to the State of Madhya Pradesh. More importantly, that order of the Apex Court is one issued merely recording that the State of Madhya Pradesh had decided to withdraw such provision. The effect that the State of Madhya

Pradesh had withdrawn the said provision and the Apex Court's order in **Smt. Ratnarashi Pandey** (supra) is therefore not decisive regarding any issue arising for decision in the case in hand.

8. Rule 6(5) of the General Rules are part of those rules made under Article 309 of the Constitution to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with affairs of the Union or of any State. Those rules are constitutional rules and have the same force as a statute. The impugned Sub-rule does not make any classification only on the basis of gender. Therefore, plainly and simply put, the said Sub-rule does not infract either Article 15(1) or Article 16(2) of the Constitution.

9. Petitioner's contention is that the restriction imposed on eligibility for appointment to government service as per the impugned Sub-rule, insofar as it relates to girl child, results in hostile discrimination and has been made ignoring the constitutionally recognized requirement to provide support and succor to the challenged sectors of the society, having particular regard to Article 15(3) of the Constitution which enables the State to make any special provision for women. It is in this context that the policy mentioned in Article 39(a) of the Constitution is referred to.

10. Petitioner's plea proceeds on the basis that the girl children who get to contract marriage are, by themselves an identifiable group; and that, treating such a group of female citizens at par with males would amount to what could be termed 'reverse discrimination'; meaning thereby, the treatment of differently and dissimilarly placed persons as equals.

11. The Child Marriage Restraint Act, 1929 was brought in to prevent child

marriages which were very common and were prevalent in almost all parts of India. The provisions of that Act were noticed to be ineffective in the practical sense. The said Act of 1929 was insufficient to effectively prevent the evil practice of solemnization of child marriages in the country. The National Commission for Women and the National Human Rights Commission came out with their opinions and recommendations which ultimately led to the Prohibition of Child Marriage Bill being introduced in the Parliament. Contextually, it is relevant to notice that the said Bill was introduced in the Lok Sabha by the then Minister of State for Women and Child Development. The debates on that Bill in the 14th Lok Sabha, as recorded, shows that the emphasis given by the various Members of the Parliament, all of whom spoken support of that Bill, was centered around the challenges faced by every girl child; particularly, those forced into child marriage. Those discussions indicate the national momentum to provide protection to the girl children from being subjected to child marriages. We make reference to those materials only for the limited purpose of noticing that the predominant thrust of the Prohibition of Child Marriage Bill was girl-child-centric. The enormous contextually relevant efforts put in by the social reformers even from the pre-independence era were, by and large, aimed at saving the girl children from the debacle of child marriages. When we say this, we are not oblivious of the fact that even male children were, and may be still are, vulnerable to child marriages. Bearing in mind, the challenges faced by the girl child from its conception to womanhood and also the social, economic and gender based challenges that they face, the provisions of PCM Act can be valued as having been made to predominantly insulate and guard the girl children. In terms of the Constitution and the laws, there appears to exist an identifiable group, which is that comprising of the girl children who are victims of the child marriages. Petitioner's contention and the argument on her behalf is that such persons cannot be brought to suffer the restriction imposed through Sub-rule

(5) of Rule 6 of the General Rules.

12. Article 14 of the Constitution guarantees the fundamental right to equality by directing 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. While clause (1) of Article 15 of the Constitution insulates the citizens from being discriminated against by the State on grounds only of, among other things, sex; clause (3) of that Article enjoins that nothing in Article 15 prevents the State from making any special provision for women and children. Article 16 of the Constitution delineates the fundamental right to equality of opportunity in matters of public employment. Clause (1) of that Article provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The provision in clause (2) is to the effect that no citizen shall be ineligible for, or discriminated against, in respect of, any employment or office under the State, on grounds only of, among other things, sex. Whether a particular classification would amount to discrimination only on the ground of sex and whether there could be a legitimate classification on the basis of sex taken alongwith certain other factors does not continue to be a virgin area in precedent law. Article 39, among the Directive Principles of the State Policy spread in Part IV of the Constitution, stands to advise the State to direct its policy towards securing various aspects mentioned in that Article. Clause (a) of Article 39 mentions the need that the State shall direct its policy towards securing that the citizens, men and women equally, shall have the right to an adequate means of livelihood. These provisions, taken as a whole, underscore the equality doctrine lying embedded in Articles 14, 15 and 16 of the Constitution, including against discrimination by the State only on the ground of sex; also enabling the State to make special provision for women and children. Constitutional authorisation to make provisions in favour of those classes, including women,

for whom such measures could be made, can be effectuated either through legislation or as part of executive function of the State. Such exercise can also take care of the requirement to eliminate any situation of 'reverse discrimination' as pleaded by the Petitioner. But, constitutional provisions enabling the State to make such provisions is one which recognizes the relevant policy making domain of the State. The effectuation of such policy could be through the executive function to the extent it is not necessary to make 'law' for such purpose, going by the constitutional provisions. However, in such matters, it is impermissible for the Courts to issue writs, orders or directions requiring the State to deduce a policy in a particular manner and to effectuate it through an executive decision. For support, see decision of the Hon'ble Supreme Court of India in **Dr. Gulshan Prakash v. State of Haryana; AIR 2010 SC 288**, rendered making reference also to the decision rendered by the Apex Court in **Indra Sawhney v. Union of India; (1992) Supp 3 SCC 217**.

13. In light of the aforesaid discussions, while we appreciate the Petitioner's plea that she and other similarly situated persons who are victims of child marriage belong to an identifiable group which may require support and succor by classifying them for such purpose, we do not see that absence of such a classification renders the impugned Sub-rule *ultra vires* the Constitution, including the power to make such rule as is referable to Article 309 thereof.

14. As noticed in paragraph No. 8 above, the General Rules are constitutional rules and have the same force as that of a statute. The impugned Rule 6(5) among the General Rules forbids the appointment to a service or post, of a candidate who is married before the minimum age fixed for marriage. That is a prohibition by law. To make an appointment in violation

thereof will be to do a thing forbidden by law. No writ, order or direction in the nature of mandamus can be issued directing to do such thing which is forbidden by law. In this context, we refer to the decision of the Hon'ble Supreme Court that in **Life Insurance Corporation of India v. Mrs Asha Ramchhandra Ambekar; JT 1994 (2) SC 183**, laying down that the High Courts and the Administrative Tribunals ought not to confer benediction impelled by the sympathetic consideration and that no mandamus will be issued directing to do anything forbidden by law. Hence, in exercise of jurisdiction under Article 226 of the Constitution, no judicial command can be issued to provide employment to the Petitioner on the face of the impugned rule and in the absence of any special provision made by the State by identifying the female children who could be treated as victims of child marriages on the basis of the different, relevant socio-economic reasons and other relevant matters, as may fall for consideration within the policy making domain of the State.

15. Though in the return of the State, different aspects are stated touching the question as to whether the Petitioner has established that she is the wife of the late Raj Kumar Sah, that issue cannot be now raised by the State for a simple reason that in the service records and for disbursement of pension due on account of the late Raj Kumar Sah, the Petitioner has been treated and recognized as his widow by the Government, for all intents and purposes. Annexure P/7, Succession Certificate and Annexure P/8, Pension Authorisation stand testimony to this. Petitioner's marriage to the late Raj Kumar Sah is a fact on which the State had acted, as her husband's employer. Her name is entered in the employment records of the late Raj Kumar Sah. The fact that the Petitioner has been treated as the widow and survivor of the late Raj Kumar Sah by the Government, including for purposes of pension, is well established by the official records. Having regard to the materials on

record, the sustainability of the matrimonial tie between the Petitioner and the late Raj Kumar Sah, until it was snapped by the husband's demise, cannot be agitated by the Government anymore. That issue is therefore conclusively against the State and cannot be raised to refuse the Petitioner's claim for compassionate appointment on the ground referable to the death of her husband Raj Kumar Sah, in harness.

16. On the question of the Petitioner's qualification, there are two aspects. Going by the second paragraph of letter dated 21.04.2016 issued by the Police Headquarters to the Inspector General of Police, Bilaspur Range, the competent authority is shown to be not satisfied with the materials provided by the Petitioner or ascertained through the District Education Officer, as regards her qualification. The competent authority has expressed suspicion on the question whether the Petitioner has attained requisite qualification for being considered for appointment as a Constable. Such suspicion appears to be based on the incongruity between the communication of the District Education Officer and the list forwarded alongwith the letter of the District Education Officer based on the inputs from the Headmaster. Therefore, on facts, it was the requirement that the Petitioner was given due opportunity to place further reliable data and materials before the competent authority, before finally concluding on that issue. That apart, even if she does not possess the qualification for being appointed to the post of Constable, for which she applied on compassionate grounds, she could have been considered for appointment to the lower category for which she would be qualified.

17. For the foregoing reasons, we repel the challenge levied by the Petitioner against Rule 6(5) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961, but hold that the decisions contained in order dated 21.04.2016 issued by Respondent No. 3 and the consequential

orders dated 26.04.2016 issued by Respondent No. 4 and order dated 29.04.2016 issued by Respondent No. 7 (collectively; Annexure P/2 to the writ petition) are arbitrary and bad in law to the extent they amount to holding that the Petitioner cannot be treated as the widow of the late Raj Kumar Sah and that her application for appointment cannot be considered for compassionate appointment because she did not possess the qualification to be appointed to the post for which she applied.

18. In the result,

(i) The Petitioner's challenge to Rule 6(5) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 is repelled.

(ii) The impugned order dated 21.04.2016 issued by Respondent No. 3 and the consequential orders dated 26.04.2016 issued by Respondent No. 4 and order dated 29.04.2016 issued by Respondent No. 7 (collectively; Annexure P/2 to the writ petition) are quashed to the extent that they amount to holding that the Petitioner cannot be treated as the widow of the late Raj Kumar Sah and that her application for appointment cannot be considered for compassionate appointment because she did not possess the qualification to be appointed to the post for which she applied.

(iii) Subject to relief No.(ii) granted above, this writ petition is dismissed.

(iv) No costs.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE