

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5747 of 2014**

- Smt. Shyama Sahu, W/o Vikas Pandey, Aged About 36 Years, R/o Adarsh Nagar Ward No.15, Basna, PS Basna, Civil and Revenue District Mahasamund (C.G.)

----- Petitioner**Versus**

- 1.State Of Chhattisgarh Through Secretary, Aadim Jati Tatha Anusuchit Jati Vikas Vibhag Mantralaya Naya Raipur, Chhattisgarh
- 2.Aayukt, Karyalaya Aaykut, Aadim Jati Tatha Anusuchit Jati Vikas Chhattisgarh, Raipur, Chhattisgarh
- 3.Sahayak Aayukt, Adivasi Vikas, Kanker, District North Bastar, Kanker, Chhattisgarh
- 4.Collector, Office Of Collector, Adivasi Vikas Shakha, Kanker, Distt North Bastar, Chhattisgarh

----- Respondents

For Petitioner	Mr. A. W. Khan, Advocate
For Respondent-State	Mr. Siddharth Dubey, Dy. GA

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****08/10/2021**

1. Though the matter is listed for admission, but it is taken up for hearing with the consent of learned counsel for the parties.

2. Mr. Khan, learned counsel for the petitioner, would submit that the petitioner's father Late Pawan Kumar Sahu died in harness on 25.06.2008 while working as Principal, Government Higher Secondary School, Dhanelikanhar. Thereafter, the petitioner applied for the compassionate appointment, but the same has been rejected holding that under Clause 5 of the circular dated 14.06.2013 issued by the State Government, the married daughter of the deceased government servant is not entitled to the compassionate appointment, which runs contrary to the decision rendered by this Court in the matter of Smt. Sarojni Bhoi vs State of Chhattisgarh and others, decided on 30.11.2015 in WPS No.296/2014, therefore, the impugned order deserves to be set aside.
3. Mr. Dubey, learned State counsel, would support the impugned order and submit that since the petitioner is a married daughter, she is not entitled to the compassionate appointment under Clause 5 of the circular dated 14.06.2013 issued by the State Government. He would further submit that the petitioner's father

died on 25.06.2008, whereas the petitioner applied for the compassionate appointment on 24.12.2013 i.e. after more than 5 years and according to Clause 16 of the circular dated 14.06.2013, the application is required to be filed within 3 years from the date of death of the government servant, thus the application is barred by limitation, as such the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
5. A careful perusal of the impugned order (Annexure-P/1) would show that the petitioner's application for grant of compassionate appointment has not been rejected on the ground of delay and laches, but the same has been rejected on the ground that the petitioner is a married daughter, therefore, she is not entitled to the compassionate appointment under Clause 5 of the circular dated 14.06.2013, as such the submission of State counsel deserves to be rejected.

6. This Court in the matter of Sarojni Bhoi (supra) has clearly held that the application for compassionate appointment cannot be rejected on the ground that the person claiming compassionate appointment is a married daughter and the married daughter is also entitled for compassionate appointment. The similar issue has also been considered and decided by the various High Courts. In paras 19 to 29 of WPS No.296/2014, this Court has held as under:-

"19. The policy of State Government that unmarried daughter(s) is/are entitled to be considered for compassionate appointment is based on the ground that on marriage she becomes a member of her husband's family and ceased to be member of her father's family. A daughter even after marriage remains the daughter of her father and she cannot be treated as not belonging to her father's family. Their Lordships of the Supreme Court while dealing with the welfare provision contained in 125(1)(d) Cr.P.C. have clearly held in Dr. (Mrs.) Vijaya Manohar Arbat (supra) that daughter after her marriage doesn't cease to be daughter of the father or mother and obliged to maintain their parents and daughter cannot be allowed to escape its responsibility on the ground that she is now married, therefore, such a policy of the State Government disqualifying, a married daughter and excluding her from consideration apart from being arbitrary and discriminating is retrograde step of State Government as

welfare State, on which stamp of approval cannot be made by this Court.

20. Article 14 of the Constitution mandates 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. Clauses (1) and (2) of Article 15 of the Constitution prohibit the State from discriminating any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 of the Constitution which contains the fundamental right of equality of opportunity in matters of public employment, by sub-clauses (1) and (2) thereof guarantees that:

"16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

16. (2) 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."

21. Article 16(2) of the Constitution prohibits discrimination only on sex but clause (3) of Article 15 enables the State to make "any special provision for women and children". Articles 15 and 16 of the Constitution read together prohibit direct discrimination between members of different sexes if they would have received the same treatment as comparable to members of the opposite gender. The constitutional mandate is infringed only where the females would have received same treatment with males but for their sex.3.50cm

22. In the matter of **Air India Cabin Crew Assn. v. Yeshaswinee Merchant**¹, 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-forsex" 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....."

23. In the matter of **Shreejith L. v. Director of Education, Kerala**², Their Lordships have held that marriage by itself does not disqualify the person concerned from seeking employment and

1 (2003) 6 SCC 277

2 (2012) 7 SCC 248

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....."

24. The Division Bench of this Court in the matter of Bailadila Berozgar Sangh v. National Mineral Development Corporation Limited, while dealing with question of discrimination held as under:-

"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."

25. Very recently, in the matter of **Charu Khurana v. Union of India**³, Their Lordships of the Supreme Court while considering the question of gender justice observed as under:

"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

³ (2015) 1 SCC 192

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."

26. At this stage, it would be appropriate to notice paragraphs-5 & 6 of the decision rendered by the Supreme Court in the matter of C.B. Muthamma (supra) which states as under:-

"5. Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species. Rule 18 of the Indian Foreign Service (Recruitment Cadre, Seniority and Promotion) Rules, 1961, run in the same prejudicial strain:

(1) to (3)

(4) No married woman shall be entitled as of right to be appointed to the service."

"6. At the first blush this rule is in defiance of Art. 16. If a married man has a right, a married

women, other thing being equal stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against women's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Arts. 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity viz....."

27. In above-stated judgment with reference to Constitutional provisions, it has clearly been held by Their Lordships of the Supreme Court that no discrimination can be made in public employment on gender basis as Article 16(2) of the Constitution of India clearly provides that no citizen shall on the ground of sex be ineligible or discriminated against in respect of any employment or office under the State. In the case in hand, the married son is entitled for compassionate appointment on account of death of his father or mother as the case may be but that is not so with the unmarried daughter as such disqualification is based on sex. Thus, it is a clear case of discrimination on the basis of sex which is in teeth of Constitutional mandate guaranteed under Article 16(2) of the Constitution of India.

28. Thus, from the aforesaid analysis, it emanates that institution of marriage is an important and basic civil right of man and woman and marriage by itself is not a disqualification and impugned policy of the State Government barring and prohibiting the consideration of the married daughter from seeking compassionate appointment merely on

the ground of marriage is plainly arbitrary and violative of constitutional guarantee envisaged in Article 14, 15 and 16(2) of the Constitution of India being unconstitutional.

29. As a fallout and consequence of aforesaid discussion, writ petition is allowed and consequently Clause 3(1) (c) of policy relating to compassionate appointment dated 10/06/2003 and Clause 5(c) of policy dated 14/06/2013 being violative and discriminatory to the extent of excluding married daughter for consideration from compassionate appointment are hereby declared void and inoperative and consequently the impugned order (Annexure-P/3) rejecting the petitioner's case for compassionate appointment is quashed. The respondents/State is directed to reconsider the claim of petitioner for being appointed on compassionate ground afresh in accordance with law keeping in view that her father died on 06/01/2011 and her application was rejected on 28/09/2011, preferably within a period of forty five days from the receipt of certified copy of order. No order as to cost(s)."

7. In that view of the matter, the impugned order/letter dated 21.01.2014 (Annexure-P/1) is quashed and it is held that the petitioner being the married daughter of the deceased government servant is entitled to be considered for compassionate appointment, subject to fulfillment of educational qualification and

other qualifications as per rules, that will be considered within a period of 30 days from the date of receipt of copy of this order.

8. The writ petition is allowed to the extent indicated herein-above. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala