

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.81 of 2016**

Smt.Pratyaksha Sahu, D/o Late Shri Rajeshwar Prasad Sahu,
aged about 35 years, R/o Village and Post Silyari, Tehsil
Raipur, District-Raipur (CG)

----- **Petitioner**

Versus

1. State of Chhattisgarh Through the Secretary, School Education Department, Mantralaya, Naya Raipur, District-Raipur (CG)
2. District Education Officer, Raipur, District-Raipur (CG)

----- **Respondent**

For Petitioner	: Ms Prakritee Jain, Advocate on behalf of Mr.Prateek Jain, Advocate
For Respondents	: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

15/12/2021

1. The petitioner herein calls in question the impugned order dated 10.8.2010 (Annexure P-1) by which her application for grant of compassionate appointment has been rejected by respondent No.2 on the ground that she is married daughter of deceased government servant and therefore, in view of policy prevalent, she is not entitled for privilege of compassionate appointment.
2. Ms Prakritee Jain, learned counsel appearing for the petitioner, would submit that in view of law declared by this Court in WPS No.296/2014 (**Smt.Sarojni Bhoi v. State of Chhattisgarh and others**) decided on 30.11.2015, the petitioner would be entitled for compassionate appointment though she is married daughter. Therefore, the impugned

order dated 10.8.2010 (Annexure P-1) is liable to be set aside.

3. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate appearing for the respondents/State, would submit that the impugned order was passed on 10.8.2010 and the present writ petition was filed on 6.1.2016 and as such, this writ petition suffers from delay and laches and therefore, the petitioner is not entitled for benefit of compassionate appointment. Even otherwise, the petitioner has survived for a fairly long time and therefore, no useful purpose would be served by directing for consideration of the petitioner's case for grant of compassionate appointment.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. Admittedly, the impugned order was passed on 10.8.2010 and the present writ petition was filed on 6.1.2016 i.e. after five years. Admittedly, no period of limitation has been prescribed for filing the writ petition against the order passed by the executive authority, but it must be filed within a reasonable period i.e. within a period of three years, but there is two more years delay in filing the application, which the learned counsel for the petitioner would respond that since the law whether married daughter is entitled for compassionate appointment was unclear and it was made clear by the pronouncement of this Court on

30.11.2015 in Smt.Sarojni Bhoi (supra), therefore, the petitioner after waiting for law to be declared and as and when the law was declared on 30.11.2015, she immediately filed this writ petition on 6.1.2016, which cannot be held to be barred by limitation. The argument appears to be reasonable. Even otherwise, matrimonial dispute is also pending consideration between the petitioner and her husband, which was finally culminated into the order of separation dated 5.1.2018, as such, it cannot be held that writ petition suffers from delay and laches. Delay, if any, has to be condoned. Accordingly, the writ petition is held to not suffering from delay and laches.

6. The question for consideration is, whether married daughter is entitled for compassionate appointment.
7. The question so posed is no longer res-integra and it stands concluded by decision of this Court in Smt.Sarojni Bhoi (supra), in which this Court held as under:-

"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 06/1/2011 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)."

8. In that view of the matter, the impugned order dated 10.8.2010 (Annexure P-1) passed by respondent No.2 is hereby set aside. The matter is remitted to respondent No.2 for consideration of the petitioner's application for compassionate appointment afresh in light of decision rendered by this Court in Smt.Sarojni Bhoi (supra) on its own merit in accordance with law within 30 days from the date of receipt of a copy of this order.
9. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-