

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2669 of 2008

<i>Basanti Nayak</i>		<i>Petitioner</i>
		<i>Mr. Sameer Kumar Das, Adv.</i>
	-versus-	
<i>State of Orissa and Ors.</i>		<i>Opposite Party</i>
		<i>Mr. Biplaba Mohanty, SC</i>
		<i>(for SC and ME Deptt.)</i>
		<i>Mr. H.K. Panigrahi, Adv.</i>
		<i>(SAT (Cuttack))</i>

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

04.

ORDER

27.10.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the order dated 08.04.2008 issued by the Inspector of Schools, Bhadrak Circle, whereby, the Petitioner assails the action of the Opposite Parties in not issuing the appointment order for recruitment to Class-III Non-Teaching Posts under the Rehabilitation Assistance Scheme even though the case of the Petitioner was recommended for appointment by the Director, Secondary Education, Odisha.
3. Shorn of unnecessary details, the substratum of matter presented before this Court remains that the Petitioner's

father while working as a Primary school teacher died in harness on 23.02.2001 leaving behind the widow and two daughters. The Petitioner (married) is the elder daughter and has +2 Arts qualification. Upon the death of her father, the Petitioner applied for appointment to the post of Class-III Non-teaching staffs under the Rehabilitation Assistance Scheme. On the receipt of the application form, the necessary distress certificate was obtained from the Collector and the case of the Petitioner was recommended for appointment by the Inspector of Schools.

4. The Director, Secondary Education, Odisha vide eligibility list in Annexure-4 series shortlisted the deserving candidates and the name of the petitioner finds place in the said list at Sl. No. 909. Subsequently, the petitioner was called for verification of documents by the Inspector of Schools, Bhadrak Circle vide letter no. 4335 dated 01.06.2007. In the list prepared by Inspector of Schools, the name of the petitioner finds place at Sl. No. 37. However, the lesser deserving candidates were appointed and the case of the petitioner was overlooked for appointment under the Rehabilitation Assistance Scheme.

5. The Petitioner approached the Tribunal in O.A No. 263 of 2008 against such inaction and the same was disposed of vide order dated 19.02.2008 with a direction to the Inspector of Schools to dispose of the representation made by the Petitioner. On receipt of the order passed by the Tribunal, the Inspector of Schools, Bhadrak Circle vide order dated 08.04.2008 rejected the claim of the Petitioner on the ground that it violated Instructions vide Para No. (i) in Govt. Letter No. 8510/SME dated 24.04.2007.
6. It is submitted by in Learned Counsel for the Petitioner that the Inspector of Schools, Bhadrak Circle has not applied his mind into the matter as no Government Circular prohibits the married daughter of a deceased person, in absence of a son, for recruitment under the Rehabilitation Assistance Scheme. Therefore, the Inspector of Schools on wrong appreciation of Government Circular passed the order rejecting the claim of the Petitioner and the same is liable to be set aside.
7. Furthermore, it is contended by Learned Counsel for the Petitioner that the Petitioner, even after her marriage, is staying at her parent's house along with her husband who also has no independent source of income and that

her mother and younger sister have also suggested that the employment under Rehabilitation Assistance Scheme be given to the petitioner keeping in view the distress condition of the family.

8. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that in respect of daughters eligible for appointment under the Rehabilitation Assistance Scheme, it should be ensured that they are still unmarried as R.A. Scheme provides for extending employment to unmarried daughters. Moreover, it was also contended by Learned Counsel for the Opposite Parties that the Petitioner's younger sister who is unmarried may apply for the requisite benefit under the R.A Scheme.
9. On perusal of the above-mentioned pleadings, this court is of the view that 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 appointment under the Rehabilitation Assistance Scheme, merely on the ground of marriage, is plainly arbitrary and violative of constitutional guarantees, as envisaged in Articles 14, 15, and 16(2) of the Constitution of India.

10. In *Umesh Kumar Nagpal v. State of Haryana*¹, the Supreme Court held that the object of compassionate appointment is to help the family tied over the crisis that befalls them on the circumstance, so that the family will not be put to jeopardy by being driven to impecuniosities and condemned by penury. It is for this reason the emphasis on appointment on compassionate grounds is immediacy of appointment. This principle has been laid down in various judgments of the apex Court and, as such, the compassionate appointment is by now too well settled that it is not a matter of right and not an alternate source of recruitment.

11. In the case of *C.B. Muthamma v. Union of India*², the Supreme Court in the context of Indian Foreign Service (Conduct and Discipline), Rules, 1961, which prohibits appointment of married woman to such service, held in paragraphs-6 and 7 as follows:

“At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things 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 woman’s thralldom. Freedom is indivisible, so is

¹ (1994) 4 SCC 138

² (1979) 4 SCC 260

justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis. half of India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern."

Similar view has also been taken by the Bombay High Court in *Ranjana Murlidhar Anerao v. State of Maharashtra*³.

12.In the case of *Kshirabadi Bala Behera v. Orissa Administrative Tribunal*⁴, this Court observed that:

"The Apex Court in number of cases repeatedly emphasized the need of compassionate appointment to the dependent of the deceased Government servant without any loss of time. The whole object of granting compassionate appointment to enable the dependent(s) of deceased's family to earn bread and butter for the

³(2014) 5 Mah LJ 543

⁴ W.P(C) NO. 14945 OF 2015

family and to come out from financial crisis, who suffers on account of unexpected and untimely death of deceased/Government servant therefore, the criteria to grant compassionate appointment should be 'dependency' rather than 'marriage'. In a given case, a 'married' daughter might be deserted wife, might have been abandoned wife, fully dependent upon her father, she might have been married to an indigent husband so that both the married daughter and son-in-law could have been dependent of the bread winner whose death left them to extreme financial hardship. There might be many other probabilities in which married daughter might be fully dependent upon the income of her father so that the death of the father to leave her and rest of the family members in extreme financial hardship. Therefore, the yardstick for extending the benefit of compassionate appointment should be dependency of the dependents on the deceased Government Servant and their marital status of dependent should not be impediment for his/her consideration on compassionate ground to wipe-out leaves from the eyes of the suffering family on account of loss of earning member in the family.

A 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."

13. As a fallout and consequence of aforesaid discussions, the order dated 08.04.2008 passed by the Inspector of Schools cannot be sustained in the eye of the law and the same is liable to be quashed. As a consequence, thereof, refusal to grant benefit to the 'married' daughter for consideration of compassionate appointment is hereby declared void and inoperative. Hence, the order impugned passed by the authority in rejecting the petitioner's case for compassionate appointment is hereby quashed.

14. Accordingly, the opposite parties are directed to reconsider the claim of the petitioner for being appointed under Rehabilitation Assistance Scheme afresh in accordance with law keeping in mind the fact that her father died on 23.02.2001 and her application was rejected on 08.04.2008, after seven years.

15. In the result, the Writ Petition is allowed. There shall be no order as to costs.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar