

AFR

HIGH COURT OF ORISSA : CUTTACK.

WPC (OAC) No. 4231 of 2016

(In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950)

BHANUPRAVA GARNAIK
DAUGHTER OF
LATE KHITISH CHANDRA
GARNAIK AND
WIFE OF PABAN MAJHI
OF VILLAGE: BARASAH
P.S.: CHHENDIPADA
DISTRICT: ANGUL

Petitioner
Mr.Chhabilendu
Mohanty
proxy counsel
on behalf of Mr. Debi
Prasad Dhalsamanta,
Advocate for
the Petitioner

STATE OF ODISHA
REPRESENTED THROUGH
SECRETARY
DEPARTMENT OF
ANIMAL HUSBANDRY
ODISHA – 751 001
& OTHERS

VERSUS

Opposite parties
Mr. Manoj Kumar
Khuntia, Additional
Government Advocate
for opposite parties

Date of Hearing: 25.11.2022 :: Date of Judgment: 02.12.2022

CORAM:

MR. JUSTICE MURAHARI SRI RAMAN

P.T.O.

JUDGMENT

Murahari Sri Raman.—

1. Aggrieved by the return of the proposal of the Chief District Veterinary Officer, Angul-opposite party No.4 for consideration of appointment of Smt. Bhanuprava Garnaik-petitioner under the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990, (hereinafter referred to as “RA Rules”) by the Additional District Magistrate, Angul-opposite party No.3 *vide* Letter dated 18.03.2016 (Annexure-4), the petitioner has approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by way of Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, wherein following relief(s) is prayed for:

“7.1 That the order dated 18.03.2016 (Annexure-4) be quashed.

7.2. That direction be issued to the respondents particularly respondent No.4 to provide an appointment under rehabilitation assistance scheme to the applicant No.2

7.3. And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

****”*

- 1.1. Since both the mother-Sulochana Garnaik and the daughter-Bhanuprava Garnaik filed the Original Application, realizing that Bhanuprava Garnaik applied for consideration of appointment on compassionate ground under the RA Rules, the learned counsel prayed before the Odisha Administrative Tribunal for deletion of the name of Sulochana Garnaik. Accordingly, the learned Odisha

Administrative Tribunal passed the following Order on 16.06.2016:

*“*** Learned counsel for the applicant submitted that as the application filed by Applicant No.2 for appointment under the OCS (Rehabilitation Assistance) Rules, 1990 was rejected, she has approached this Tribunal. Hence the OA be confined to Applicant No.2 only and the name of Applicant No.1 be deleted.*

In view of such submission, name of Applicant No.1 is deleted and the OA is confined to Applicant No.2 only as the sole Applicant. Provisional petition is disposed of and the case be registered as OA.

Issue notice on admission.

Counter be filed within four weeks and rejoinder, if any, be filed within two weeks thereafter.

List this matter after six weeks.”

1.2. After the abolition of the Odisha Administrative Tribunal vide Notification F.No.A-11014/1-/2015-AT [GSR 552(E)], dated 02.08.2019, issued by the Central Government in Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), the Original Application, as transferred to this Court, is converted to writ petition and renumbered as WPC (OAC) No.4231 of 2016.

1.3. Though six years have been elapsed from the date of aforesaid order of the learned Tribunal, no counter is forthcoming from the opposite parties. Since this matter is of the year 2016 and relates to consideration of application for appointment under the RA Rules, this matter is taken up for hearing and final disposal based on the material available on record on the consent of the counsel for the respective parties.

The Writ Petition being WPC (OAC) No.4231 of 2016:

2. It is the case of the petitioner(s) that Khitish Chandra Garnaik, while working as Veterinary Attendant under the opposite party No.4 died in a road accident on 09.03.2015 and left behind wife and two daughters. Since he was the sole bread earner for the family, his wife-Sulochana Garnaik applied for an appointment under the RA Rules. She was directed to appear before the Medical Board on 15.12.2015. The District Medical Board examined her and opined that she was in bad state of health and found to be medically unfit for undertaking service. Therefore, the elder daughter, namely Bhanuprava Garnaik applied for consideration of her appointment under the provisions of the RA Rules after taking consent from the other daughter namely Rudrani Garnaik.
- 2.1. Though the opposite party No.4-the Chief District Veterinary Officer, Angul sent proposal for appointment of the petitioner-Bhanuprava Garnaik, the opposite party No.3-the Additional District Magistrate, Angul turned down such proposal on the plea that the petitioner, being married daughter of Khitish Chandra Garnaik does not come within the fold of the persons enumerated in the definition of the term “family members” of the deceased employee as per Rule 2(b) of the RA Rules and stated that “it is not possible to go ahead with this R.A. application”.
- 2.2. This action of the opposite party No.3 has brought the petitioner to knock the doors of this Court by way of present petition.

Arguments of the counsel for the petitioner:

3. The opposite party No.3 ought to have followed the procedure prescribed instead of refusing to accede to the proposal of the opposite party No.4. At the relevant point of time, the procedure for “mode of appointment” stood thus:

“8. Mode of appointment.—

- (1) (a) *Application for an appointment shall be made in Form A to these rules to the appointing authority under whom the deceased Government servant last worked, by registered post with A. D.*
- (b) *On receipt of the application the appointing authority shall send a requisition to the Collector of the district in which the family ordinarily resides calling for a report as to whether the family is in financially distress.*
- (c) *On receipt of a requisition from the appointing authority under Rule 8(b) the Collector of the district concerned shall cause an enquiry into the matter and furnish his report to the appointing authority within one month from the date of receipt of the requisition.*
- (d) *The appointing authority, upon receipt of the report, shall consider the same and in case of favourable report, appoint the applicant in a suitable available vacancy under his control. If a vacancy does not exist under his administrative control, the appointing authority may forward the application to the Head of the Department with suitable recommendations. The Head of the Department shall locate vacancies in other offices under his administrative control and direct Head of the Office where there is a vacancy to appoint the applicant. If no vacancy is immediately available the application shall be considered for the immediate subsequent vacancy. In cases arising in offices of Heads of Departments, the Head of the Department shall appoint the candidate in his office or in the offices subordinate thereto.*

- (e) *In the case, of the Departments in the Secretariat or the attached Offices the appointing authority, on receipt of application shall refer the case to the concerned Collector for enquiry and report as specified in Clauses (b) & (c) above and on receipt of the report of the Collector under Clause (i) of sub-rule (1) shall follow the procedure as specified hereunder, namely:—*
- (i) *The concerned Department may appoint the candidate against any post available under its control in the Department not being one in common cadre of the Secretariat.*
 - (ii) *In case of non-availability of suitable post, the Department may direct the Heads of Departments under its control to appoint the candidate against any suitable post under their control.*
 - (iii) *If it is proposed to appoint the candidate against a post in any common cadre of the Secretariat administered by the Home Department, the Administrative Department may forward the application with suitable recommendations to the Home Department who shall take steps to appoint the candidate against a suitable post in the common cadre.*
- (2) *Notwithstanding anything contained in Clause (b) of sub-rule (1) if the report of the Collector cannot be received within one month from the date of reference, the appointing authority may appoint the applicant subject to the condition that in case of adverse report made by the Collector, his services will be terminated without assigning any reason thereof.”*

3.1. Without conducting any enquiry as envisaged under the aforesaid rule, the opposite party No.3 erred in holding that the petitioner-Bhanuprava Garnaik, being married daughter of Khitish Chandra Garnaik, who died in harness, does not come within the fold of the

term “family members” and as such, she is not eligible for being considered for appointment under the RA Rules.

Arguments of the counsel for the opposite parties:

4. Mr. Manoj Kumar Khuntia, learned Additional Government Advocate submitted that in view of Rule 3 of the RA Rules, the assistance is applicable to a “member of the family” of the Government servant who died while in service. In the instant case, the opposite party No.3 is right in refusing to accord approval to the proposal of the opposite party No.4. It is further ground of objection raised by learned Additional Government Advocate that the case of the petitioner does not deserve consideration at this distance of time, *i.e.*, almost seven years after the death of Khitish Chandra Garnaik. It is mentioned with a remark of presumption that Sulochana Garnaik has been receiving pension. Under such premises, even though no counter has been filed, Mr. Khuntia insisted for dismissal of writ petition.

Question for consideration:

5. Whether Bhanuprava Garnaik, married daughter of Khitish Chandra Garnaik, who died while in Government service, is entitled to be considered for appointment having made application under the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990?

Analysis and decision in present Writ Petition:

6. Before proceeding to delve into merit of the matter, it is apt to notice concepts devised by different Courts in the context of compassionate appointment.

- 6.1. Following is the observation of the Supreme Court in the case of *Balbir Kaur Vrs. Steel Authority of India Ltd.*, AIR 2000 SC 1596 = (2000) 6 SCC 493:

*“*** The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family— this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation. ***”*

- 6.2. Reference may be made to the Judgment of the Hon’ble Supreme Court in the case of *Umesh Kumar Nagpal Vrs. State of Haryana and others*, reported in (1994) 4 SCC 138, wherein it has been observed as follows:

“As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden

crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.”

6.3. In the case of *General Manager (D&PB) and Others Vrs. Kunti Tiwary and Another*, (2004) 7 SCC 271 the Hon’ble Supreme Court was pleased to hold that criteria of “penury” is to be applied only by judging the condition of the petitioner-applicant, who is without any means of livelihood, and living hand to mouth so that compassionate appointment is required to be accorded.

6.4. In *Union of India and Another Vrs. Shashank Goswami and Another*, reported in (2012) 11 SCC 307 following is the observation at paragraph 9:

“9. *There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.*”

6.5. Under such background when the present case is analysed, it is seen from the legal heir certificate issued by the Revenue Officer in the Office of Tahasildar, Chhendipada under the Odisha Miscellaneous Certificates Rules, 1984, that Khitish Chandra

Garnaik has left behind wife, Sulochana Garnaik, and two married daughters. Copy of Medical Certificate indicates that Sulochana Garnaik suffers from ailment which disqualified her to take up Government service. Except two married daughters no other member enumerated under Rule 2(b) of the RA Rules is available in the family of Sulochana Garnaik.

6.6. At this juncture, it is noteworthy to refer to relevant provisions contained in the RA Rules.

“2. Definitions.—

In these rules, unless the context otherwise requires—

- (a) *‘Deserving Case’ means a case where the appointing authority is satisfied, after making such enquiry as may be necessary:*
- (i) *that the death of the employee has adversely affected his family financially because the family has no other alternative mode of livelihood;*
 - (ii) *that there is existence of distress condition in the family after death of the employee;*
 - (iii) *that none of the family members of the employee who has died while in service is already in the employment of Government/Public or Private Sector or engaged in independent business with an earning above Rs. 20,000 (Rupees twenty thousand) a year; and*
 - (iv) *that the family does not have adequate income from the immovable properties to earn its livelihood.*

Explanation.—

The income of any earning member will be taken into account for the purpose of assessing the annual gross income of the family if his separation from the family has not been established by registered partition deed made prior to the death of the Government employee.

(b) *'Family Members' shall mean and include the following members in order of preference—*

(i) *Wife/Husband;*

(ii) *Sons or step sons or sons legally adopted through a registered deed;*

(iii) *Unmarried daughters and unmarried step daughter;*

(v) *Widowed daughter or daughter-in-law residing permanently with the affected family;*

(vi) *Unmarried or widowed sister permanently residing with the affected family;*

(vii) *Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death.*

(e) *'Rehabilitation Assistance' means the assistance provided under these rules to a member of the family of Government servant who died while in service.*

3. *Applicability.—*

The assistance shall be applicable to a member of the family of the Government servant who dies while in service."

9. *Condition of service.—*

(6) *Application for appointment under these rules shall be considered if it is received within one year from the date of death of the Government servant."*

6.7. It is strongly objected by the learned Additional Government Advocate that since “married daughter” is not comprehended in the definition of the term “family members” as envisaged under Clause (b) of Rule 2 of the RA Rules, the rejection of application of the petitioner, the daughter of Khitish Chandra Garnaik, is justified. It is submitted by the learned counsel for the opposite parties that notwithstanding omission of the term “deserving cases” by way of amendment to clause (a) of Rule 2 as brought into the RA Rules by virtue of the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2016, the same can be taken into consideration for the purpose of understanding the law. However, the State Government having obliterated the mischief, there is little scope for the opposite parties to object to effectuate benevolence.

6.8. This Court is brought to the notice that clause (a) of Rule 2 of the RA Rules, 1990 has been omitted by virtue of the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2016 (published in the Extraordinary issue of the Odisha Gazette bearing No.1995, dated 07.11.2016). Rules 1(2) and 2 of said amendment rules lay down as follows:

“1. Short title and commencement.—

*(1) ****

(2) They shall come into force on the date of their publication in the Odisha Gazette.

2. In the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 (hereinafter referred to as the said rules), in rule 2, clause (a) and Explanation thereof shall be omitted.”

6.9. Though the term “deserving cases” has been omitted with effect from 07.11.2016, the words “family members” in clause (b) of Rule 2 has not been amended.

6.10. Reading of aforesaid provisions makes it clear that the term “married daughter” does not find place in Section 2(b) of the RA Rules, as such in view of provisions contained in Rule 3 *ibid.* is not applicable to “married daughter”. Notwithstanding such a provision, exception has been carved out in the said Rules itself. Rules 15 and 16 of said Rules are noteworthy of reference. Rules 15 and 16 stand thus:

“Overriding Effect.—

15. *The provision of these rules shall have effect notwithstanding anything to the contrary in any other recruitment rules made under the proviso to Article 309 of the Constitution including the Orissa ex-Service men (Recruitment to the State Civil Services and Posts) Rules, 1985.*

16. (1) *The State Government where satisfied that the operation of all or any provisions of these rules causes undue hardship in any particular case, it may dispense with or relax the provisions to such extent as it may consider necessary for dealing with the case in a just and equitable manner.*

(2) *Such cases shall be examined in General Administration Department and orders of Chief Minister shall be obtained.”*

6.11. Aforesaid provisions clearly indicate that the provisions of RA Rules have overriding effect and in cases of “undue hardship” “in any particular case” the effect of the provision can be dispensed with or relaxed and such fact can be examined in the General

Administration Department. The compassionate appointment is an exception to the general rule of appointment to public office. As a general rule appointment to public office is to be made strictly in accordance with mandatory requirement of Articles 14 and 16 of the Constitution of India. The object of compassionate appointment is to remove the financial constraints of the bereaved family on losing the bread earner and to enable the family of the deceased employee to tide over the sudden crisis. It has been laid down by the Hon'ble Supreme Court in *State of Maharashtra Vrs. Ms. Madhuri Maruti Vidhate (since after marriage Smt. Madhuri Santosh Koli)*, 2022 LiveLaw (SC) 820 = 2022 SCC OnLine SC 1327 as follows:

- “6. *As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.*
7. *Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to*

give such family a post much less a post held by the deceased.”

6.12. In the present case, it is culled out that Sulochana Garnaik, wife of the deceased Government employee, was found unfit for undertaking Government service as per the Medical Certificate enclosed to the writ petition which is not disputed by the opposite parties. Furthermore, from the Legal Heir Certificate issued under the provisions of the Odisha Miscellaneous Certificates Rules, 1984 by the Revenue Officer in the Office of Tahasildar, Chhendipada shows that no other person in her family is available who falls within the meaning of “family members” as per Section 2(b) of the RA Rules. Therefore, in order to save the family from the distress condition, relaxation provisions could have been invoked by the opposite party No.3-Additional District Magistrate, Angul.

6.13. This Court taking note of Rule 16 of the RA Rules, 1990, in the case of *Chakradhar Das Vrs. Orissa Bridge and Construction Corporation Limited, 1996 LabIC 1621* held that even though “son-in-law” is not placed within the definition of “family members” under Rule 2(b) of the RA Rules, he is entitled to be considered for compassionate appointment. This Court held that son-in-law, though does not come within the meaning of ‘family members’ can be considered by relaxing Rule 16(1) of the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 as a deserving case. This Court, accordingly, directed the concerned department to consider if on the facts and circumstances of that case relaxation as provided under Rule 16(1) could be done. In yet another case being *Smt. Ketaki Manjari Sahu Vrs. State of Orissa*,

1998 (II) OLR 452, this Court directed the State Government to consider if on the ground of hardship, prayer of a married daughter can be considered in view of Rule 16 of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990, which provides that the State Government may consider the applicability of the Rule considering the undue hardship suffered by the applicant. This Court reiterated in the case of *Prem Sagar Naik Vrs. State of Odisha & Ors.*, W.P.(C) No. 18981 of 2016, vide Judgment dated 21.08.2017 that Rule 16 of the RA Rules provides that the State Government where satisfied that the operation of all or any provisions of these rules causes undue hardship in any particular case, it may dispense with or relax the provisions to such extent as it may consider necessary for dealing with the case in a just and equitable manner.

6.14. This Court had many occasions to deal with cases of persons who did not fall within the category of enumerated persons contained in the definition of the term “family members” in Rule 2(b).

6.15. In *Basanti Nayak Vrs. State of Odisha & Ors.*, WPC (OAC) 2669 of 2008, vide Order dated 27.10.2022, this Court observed as follows:

“11. In the case of *C.B. Muthamma Vrs. Union of India*, (1979) 4 SCC 260, 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 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, (2014) 5 Mah LJ 543.

12. *In the case of Kshirabadi Bala Behera Vrs. Orissa Administrative Tribunal, W.P(C) No. 14945 of 2015 [Judgment of Division Bench on 24.08.2022], 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 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 wipeout 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."*

6.16. The High Court of Madhya Pradesh [3-Judge Bench] in the case of *Meenakshi Dubey Vrs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. & Ors., W.A. No.756 of 2019, vide Judgment dated 02.03.2020 [2020 SCC OnLine MP 383]* discussed the issue of non-inclusion of married daughter under the Rehabilitation Scheme and observed as follows:

- “13. *The ancillary question cropped up before the Larger Bench was whether the classification created by Government by depriving the married daughter from right of consideration for compassionate appointment is a valid classification. Deepankar Datta, J. speaking for the Bench opined as under:*

‘.....We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to ‘a class’. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme. A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable.’

14. *In no uncertain terms, it was held that it is the dependency factor that would merit consideration and not the marital status of the applicant. The Calcutta High Court considered its previous judgment in the case of Smt. Usha Singh Vrs. State of West Bengal, 2003 (2) WBLR (Cal) 94 = 2003 SCC OnLine Cal 76 wherein it was opined as under:*

‘..... Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is eligible but an unemployed married daughter is ineligible irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the father. Take the case of a teacher who died-in-harness leaving him surviving his WA No.756/2019 illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned Advocate, this

family cannot be helped. Is this the intended result of the rule? Or does this interpretation advance the object of the rule? What is the basis for the qualification which debars the married daughter? and what is the nexus between the qualification and the object sought to be achieved? In my view, there is none. If anyone suggests that a son married or unmarried would look after the parent and his brothers and sisters and that a married sister would not do as much, my answer will be that experience has been otherwise. Not only that the experience has been otherwise but also judicial notice has been taken thereof by a Court no less than the Apex Court in the case of Savita Vrs. Union of India reported in (1996) 2 SCC 380 wherein Their Lordships quoted with approval a common saying:

‘A son is a son until he gets a wife. A daughter is a daughter throughout her life’.

15. Consequently, the Larger Bench answered the question as under:

‘111. Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of ‘dependent’ and ineligible to even apply, is not constitutionally valid.

112. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective ‘unmarried’ before ‘daughter’, is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death and agree to

look after the other family members of the deceased, if the claim is to be considered further.'

16. *The Judgment of Purnima Das etc. (2017 SCC Online Cal 13121) was unsuccessfully challenged by the State of West Bengal before the Supreme Court in SLP(C) No.17638-17639 of 2018 which were dismissed on 23.07.2019. The similar question came up for consideration before a Larger Bench of High Court of Uttarakhand in the case of Udham Singh Nagar District Cooperative Bank Ltd. and another Vrs. Anjula Singh and others, AIR 2019 Utr 69. The relevant question posed before the Larger Bench reads as under:*

“(ii) Whether non-inclusion of a ‘married daughter’ in the definition of “family”, under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India ?”

17. *The answer reads thus:*

‘(ii) Question No.2 should also be answered in the affirmative. Non-inclusion of ‘a married daughter’ in the definition of a ‘family’, under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.’

18. *It is noteworthy that similar view was taken by Karnataka High Court in ILR 1992 Kar 3416 (R. Jayamma Vrs. Karnataka Electricity Board). In the said case, it was held as under:*

‘10. This discrimination, in refusing compassionate appointment on the only ground that the woman is married is violative of Constitutional Guarantees. It is out of keeping with the trend of times when men

and women compete on equal terms in all areas. The Electricity Board would do well to revise its guidelines and remove such anachronisms.'

19. *The Madras High Court in 2015 (3) LW 756 (R. Govindammal Vrs. The Principal Secretary, Social Welfare and Nutritious Meal Programme Department & others) opined thus:*

'14. Therefore, I am of the view that G.O.Ms. No. 560 dated 03.08.1977 depriving compassionate appointment to married daughters, while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15(3) of the Constitution. But the State cannot discriminate women in the matter of compassionate appointment, on the ground of marriage.'

20. *In R. Govindammal (Supra), the Madras High Court took note of a Judgment reported in 2013 (8) MLJ 684 (Krishnaveni Vrs. Kadamparai Electricity Generation Block, Coimbatore District) in which it was ruled that if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also.*

21. *The Bombay High Court in Sou. Swara Sachin Kulkarni Vrs. Superintending Engineer, Pune Irrigation Project Circle, 2013 SCC OnLine Bom 1549 opined as under:*

'3. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the

daughter was dependent on the deceased and his income till her marriage.'

22. *It was further held as under:*

'3. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State.'

23. *In a recent Judgment by High Court of Tripura in Debashri Chakraborty Vrs. State of Tripura and others, 2020 (1) GLT 198, the court has taken note of various judgments of the High Courts including the judgment of Allahabad High Court in Vimla Shrivastava and others vs. State of UP and others reported in MANU/UP/2275/2015 and judgment of Karnataka High Court in Manjula Vrs. State of Karnataka, 2005 (104) FLR 271. After taking note of series of judgments authored by different High Courts, the court answered the question as under:*

'ii. Question No.2 should also be answered in the affirmative. Non- inclusion of 'a married daughter' in the definition of a 'family', under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.

iii. We, however, read down the definition of 'family', in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a 'married daughter' shall also be held to fall within the inclusive definition of the 'family' of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations.'

24. *The common string in the aforesaid judgments of various High Courts is clear like a cloudless sky that the action/clauses of the policy which deprives married daughter from right of consideration for compassionate appointment runs contrary to Articles 14, 15, 16 and 39(a) of the Constitution. We concur with the above view taken by various High Courts.*
25. *The Constitution Bench of Supreme Court in Budhan Choudhry Vrs. State of Bihar, (1955) 1 SCR 1045 = AIR 1955 SC 191 made it clear that to pass a test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. In view of this decision, Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. As noticed, the various High Courts held that the classification made by impugned clause amounts to an artificial classification which divides a homogenous class and creates a class within the class.*
26. *The Apex Court in Dr. (Mrs.) Vijaya Manohar Arbat Vrs. Kashirao Rajaram Sawai, (1987) 2 SCC 278 opined that a daughter after her marriage does not cease to be a daughter of her father or mother and observed as under:*
 - '12. *We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that it is the moral obligation of the children to maintain their parents. In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.*

13. *After giving our best consideration to the question, we are of the view that Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself.'*
27. *It is noteworthy that in the case of Vijaya Manohar, (1987) 2 SCC 278, the Apex Court was talking about 'moral obligation' of children to maintain their parents. The Parliament in its wisdom introduced The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This Act places equal duty on both, sons and daughters to take care and maintain the parents. In view of this Act, the obligation to take care of parents assumes more importance and it is not only a 'moral duty', it became a 'statutory duty' of children as well. This aspect was considered in Krishnaveni's case (supra) wherein it was held as under:*
- '28. *The case on hand is a classic case, wherein, the deceased Government servant has no male issue. Nowadays, it is a common thing that a family have a single child; either male or female. Thus, if a Government servant has only daughter, as in this case, the widow of the Government servant cannot be stated that her married daughter could not be provided compassionate appointment, particularly, when she has to solely rely on her daughter. As stated above, Maintenance and Welfare of Parents and Senior Citizens Act, also now places equal responsibility on both the son and daughter to take care of their parents.'*
28. *We are not oblivious of the settled legal position that compassionate appointment is an exception to general rule. As per the policy of compassionate appointment, State has already decided to consider claims of the married daughters (Clause 2.4) for compassionate appointment but such consideration was confined to such daughters who have no brothers. After the death of government servant, it is open to the spouse to decide and opt whether his/her son or daughter is best suited for compassionate appointment and take responsibilities towards family which were being discharged by the deceased government servant earlier.*

29. *The offending clause which restricts such consideration only for such married daughter is subject matter of consideration and examination. The Constitution Bench of Supreme Court in Budhan Choudhry (Supra) held that substantive law, procedural law or even an action can be interfered with if it does not pass the "litmus test" laid down in the said case. Hence, in a case of this nature, adjudication is not required regarding creation of right of married woman, indeed, judicial review is focused against curtailment of claim of such married woman when deceased government servant died leaving behind son/s.*
30. *The matter may be viewed from another angle. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (for short 'CEDAW') was ratified by the UNO on 18.12.1979. The Government of India who was an active participant to CEDAW ratified it on 19.06.1993 and acceded to CEDAW on 08.08.1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. Article 1 defines discrimination against women to mean –*

'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental

freedoms in the political, economic, social, cultural, civil or any other field.'

Article 2(b) makes it obligatory for the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting 'appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women' to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that –

'the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women.'

Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean

'the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.'

Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the

human rights and fundamental freedoms. Article 5(a) of CEDAW on which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-à-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and need for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures modify law/policy and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

31. *In a recent judgment reported in 2020 SCC OnLine SC 200 (Secretary, Ministry of Defence Vrs. Babita Puniya and others), the Apex Court opined that—*

‘67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of nondiscrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1).’

32. *This recent judgment in Babita Puniya, (2020) 7 SCC 469 is a very important step to ensure “Gender Justice”. In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2.2 to the extent it deprives married woman from right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as*

noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of 'unmarried' is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature.

33. *Looking from any angle, it is crystal clear that clause 2.2 which deprives the married daughter from right of consideration cannot sustain judicial scrutiny. Thus, for different reasons, we are inclined to hold that Indore Bench has rightly interfered with Clause 2.2 of the said policy in the case of Smt. Meenakshi (Supra).*

34. *In nutshell, broadly, we are in agreement with the conclusion drawn by Indore Bench in Smt. Meenakshi (Supra) and deem it proper to answer the reference as under:*

'Clause 2.2 of the policy dated 29.09.2014 is violative of Articles 14, 15, 16 and 39(a) of the Constitution of India to the extent it deprives the married daughter from right of consideration for compassionate appointment. We find no reason to declare Clause 2.4 of the policy as ultra vires. To this extent, we overrule the judgment of Indore Bench in the case of Meenakshi (Supra).' "

6.17. The tenor and tone of Division Bench of this Court in the case of *Kshirabadi Bala Behera Vrs. Orissa Administrative Tribunal, W.P.(C) No. 14945 of 2015, vide Judgment dated 24.08.2022*, is required to be reflected in the present context:

"16. In view of propositions of law, as laid down by the apex Court, it is made clear that 'marriage' is an institution/sacred union not only legally permissible but also basic civil right of the man and woman and one of the most important inevitable consequences of marriage is the reciprocal support and the marriage is an institution has great legal significance and right to marry is necessary concomitant of right to life guaranteed under Article 21 of

the Constitution of India as right to life includes right to lead a healthy life.

17. *It is very often said that 'married' daughter has no obligation to maintain her parents even if they are unable to maintain themselves. In Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai, (1987) 2 SCC 278, the apex Court held that a daughter after her marriage does not cease to be a daughter of her father or mother, and observed in paragraphs 12 and 13 as follows:*

'12. We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that it is the moral obligation of the children to maintain their parents. In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, in that case, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.'

13. *After giving our best consideration to the question, we are of the view that Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself. Section 488 of the old Criminal Procedure Code did not contain a provision like clause (d) Section 125(1). The legislature in enacting Criminal Procedure Code, 1973 thought it wise to provide for the maintenance of the parents of a person when such parents are unable to maintain themselves. The purpose of such enactment is to enforce social obligation and we do not think why the daughter should be excluded from such obligation to maintain their (sic her) parents.'*

18. *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 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 probability 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.*
19. *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.*
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.*
22. *In Shreejith L. Vrs. Director of Education, Kerala, (2012) 7 SCC 248, the apex Court held that marriage by itself does not disqualify the person concerned from seeking employment.*
23. *In Secretary, Ministry of Defence (supra), the apex Court, while considering gender equality/equality of opportunity in case of claim for Permanent Commissions by women officers engaged in Short Service Commissions officers in Army, held that women officers who are granted Permanent Commission are entitled to all consequential benefits at par with male officers.*

24. *In Manjul Srivastava, (supra) learned Single Judge of Allahabad High Court, while considering the claim for compassionate appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, directed the authority to consider the claim of compassionate appointment in accordance with law, which shall mean without reference to her marital status.*
25. *In Udham Singh Nagar District Cooperative Bank Ltd (supra), the Full Bench of Uttarakhand High Court, while considering the definition of “Family” in Rule 2(c) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 and in the note below Regulation 104 of the U.P. Cooperative Committee Employees Service Regulations, 1975 that any of the members, referred to which includes a ‘married’ daughter would be entitled to compassionate appointment even if they were not dependent on the Government servant at the time of death and also struck down the non-inclusion of ‘married’ daughter within the definition of ‘family’ under Rule 2 (C) of 1975 Rules and in the note of Regulation 104 of 1975 Regulation holding that same is discriminatory and in violation of Articles 14, 15 and 16 and Part-III of the Constitution of India.*
26. *Reverting back to the case at hand, exclusion of “married daughters” in the Rules, as mentioned above, is based on the premise that, on her marriage, a daughter ceases to depend on her father and is, thereafter, dependent on the her husband and her in-laws. While this premise may, possibly, have been justified in the social environment prevalent half a century ago, such a premise ignores the realities of present day society where the number of destitute women abandoned by their husbands, or those who are divorced and are not even provided maintenance, are on rise. The policy, based on the marriage of a daughter proving fatal for appointment on compassionate grounds, proceeds in oblivion of husbands harassing and torturing wives in ample measure, and thereby creating a situation for the wives to withdraw from the matrimonial household, and return to her paternal home, usually the*

first refuge of one in distress. Such situations are not uncommon in Indian conditions. These destitute women invariably come back to their parental home, and are supported by their parents both financially and otherwise. This premise of the State Government, in making the Rule/Regulation, is completely flawed and ignores present day social realities.

27. *Considering the question of dependence, it matters little whether or not the son or the daughter is married for, if a married son dependent on the deceased Government servant is eligible for compassionate appointment, there is no justifiable reason why a married daughter, merely because of her 'marriage', should be held disentitled to be considered for compassionate appointment, even if she fulfills the requirement of being dependent on the deceased Government servant at the time of his demise. Just as a son continues to be the son of the deceased Government servant, both before and after marriage, so does the daughter. The mere fact that she is married does not result in her ceasing to be the daughter of the deceased Government servant. Just as sons (married or unmarried) or daughters (widowed or unmarried) may also have an independent means of livelihood and would therefore not be eligible to be considered for compassionate appointment as they are not dependent on the deceased Government servant, likewise a married daughter, who is not dependent on the deceased, would also be ineligible for being considered for compassionate appointment.*
28. *No doubt, a daughter acquires a new relationship on marriage; she does not, however, lose the old relationship; qua relationships she is a daughter before, during and after marriage; once married, the dependency factor does not altogether cease; and proceeding on such an assumption would be a misadventure. Therefore, drawing a distinction between "married sons" on the one hand and "married daughters" on the other, should satisfy the requirement of a classification based on an intelligible differentia. It should, in addition, fulfill the other test of having a reasonable relation to the object sought to be achieved thereby.*

29. *If “dependency” is the intelligible differentia, which distinguishes those included in the group from those excluded therefrom, then a classification, which excludes “married daughters dependent on the deceased Government servant” from within its ambit, would not satisfy the test of a valid classification, as it would then not be based on an intelligible differentia. A valid classification should also have a reasonable nexus with the object sought to be achieved by the Rules/Regulations which, in the present case, is to provide immediate succor, to the deceased Government servant’s family in financial distress, by providing appointment on compassionate grounds to a dependent.*
30. *Violation of gender equality is in violation of the fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution. The guarantee under Article 15 of the Constitution encompasses gender discrimination, and any discrimination on grounds of gender fundamentally disregards the right to equality, which the Constitution guarantees. There cannot be any discrimination solely on the ground of gender. 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, it clips her capacity and affects her individual dignity. Gender identity is an integral part of sex and no citizen can be discriminated on the ground of gender identity. Discrimination, on the basis of gender identity, includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying the equal protection of laws guaranteed under our Constitution.*
31. *In the context of compassionate appointments, various High Courts in Manjul Srivastava; Ranjana Murlidhar Anerao (supra); State of West Bengal v. Purnima Das, 2017 SCC Online Cal 13121; Anjula Singh and Smt. Sarojni Bhoi (supra) have held that ‘married’ women cannot be denied entry into service by way of compassionate appointment, merely on the ground of marriage.*
32. *The exclusion of married daughter is based on the assumption that, while a son continues to be a member of*

the family, and that upon marriage he does not cease to be a part of the family of his father, a daughter upon marriage ceases to be a part of the family of her father; it is discriminatory and constitutionally impermissible for the State to make that assumption, and to use marriage as a rationale for practicing an act of hostile discrimination by denying benefits to a daughter, when equivalent benefits are granted to a son in terms of compassionate appointment; marriage does not determine the continuance of the relationship of a child, whether a son or a daughter, with the parents; the State has based its defence, and the foundation of the exclusion, on a paternalistic notion of the role and status of a woman; these patriarchal notions must answer the test of the guarantee of equality under Article 14; and it must be held answerable to the recognition of gender identity under Article 15.

33. *The inclusion of 'married daughter', in the definition of a 'family', would enable her alone to get the benefit from two families (that of her parents and of her husband) does not merit acceptance. If the test is of dependence, a married daughter who is dependent on her husband and her in-laws would not be entitled to be extended the benefit of compassionate appointment on the death of her parent, since she would then not be dependent on them. It is exclusion of only those destitute women, who are abandoned/ignored by their husbands, who do not have any other source of livelihood, and have perforce to depend on their parent for their survival, from the ambit of a 'family', which is unreasonable, irrational and arbitrary.*
34. *A larger Bench of Madhya Pradesh High Court in Meenakshi Dubey (supra) held that Clause-2.2 of policy of compassionate appointment of the State Government dated 29.09.2014 is violative of Articles 14, 16 and 39(a) of the Constitution of India to the extent it deprives a 'married' daughter from consideration for compassionate appointment.*
35. *Adverting to the prayer made to declare the provision as ultra vires, it means beyond powers, in strict sense. Therefore, the expression is used to mean any act performed in excess of powers of the authority or the*

person, who performs the act. Prof. Wade, H.W.R.: *Administrative Law*, observes as follows:

'The ultra vires doctrine is, therefore, not confined to cases of plain excess of power; it also governs abuse of power, as where something is done unjustifiably, for the wrong reasons or by the wrong procedure. In law the consequences are exactly the same; an improper motive or a false step in procedure makes an administrative act just as illegal as does a flagrant excess of authority. Unless the Courts are able to develop doctrines of this kind, and to apply them energetically, they cannot impose limits on the administrative powers which Parliament confers so freely, often in almost unrestricted language.'

36. The term 'ultra vires', therefore, not only means 'beyond powers' but also "wholly unauthorized by law" and thus void. Basically, ultra vires character of an act may be two-fold, (i) simple ultra vires, and (ii) procedural ultra vires.

(i) Simple ultra vires—

An act may be said to acquire the character of simple ultra vires when the person does the act in excess of the power conferred on him.

(ii) Procedural ultra vires—

Procedural ultra vires may happen when there is a failure to comply with mandatory procedural requirements. All procedural requirements as laid down by statute should be complied with.

37. The development of the doctrine of ultra vires now refers to not only the lack of power to do any act but also to any situation like improper or unauthorized procedure, purpose or violation of the law of natural justice in exercising the power that is lawfully conferred on the authority concerned.

38. In *Shri Sitaram Sugar Company Ltd. Vrs. Union of India*, (1990) 3 SCC 223, the apex Court observed that

'a repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or by acting in

bad faith or for an inadmissible purpose or for irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. Act any of the repository of power, whether legislative, administrative or quasi-judicial, is open to challenge if it violates the provisions of the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.'

39. *In Express Newspapers (P) Ltd Vrs. Union of India, AIR 1986 SC 872, the apex Court observed that*

"the doctrine of ultra vires can cover virtually all situations where statutory power is exercised contrary to some legal principles. Where a public authority is held to have acted for improper motives or irrelevant considerations, its action is ultra vires and void".

40. *In National Institute of Mental Health and Neuro Sciences v Dr. K. Kalyana Raman, AIR 1992 Supp (2) SCC 481, the apex Court observed that*

'the procedural fairness is the main requirement in administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed.'

41. *In Km. Srilekha Vidyarthi v. State of U.P., (1991) SCC 212, the apex Court observed that*

'arbitrariness and abuse of power is the antithesis of the rule of law and hence every action involving arbitrary decision and abuse of power is ultra vires.'

42. *Article 14 of the Constitution guarantees to every person in India equal treatment before law and extends protection of the laws in equal measures to all.*

43. *In D.K. Yadav Vrs. J.M.A. Industries Ltd, (1993) 3 SCC 259, the apex Court held that Article 14 has a pervasive processual potency and versatile quality, equalitarian in its social and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness.*

44. *In Savitri Cairae Vrs. U.P. Avas Ebam Vikas Parishad, AIR 2003 SC 2725, the apex Court observed that*

‘equality clause in Article 14 is of wide import and it permits reasoning classification based on intelligible differentia having nexus with the object sought to be achieved. Ordinarily equality clause cannot be invoked in the enforcement of a State legislation vis-à-vis a Parliamentary legislation or the legislation of another State.’

45. *In Maneka Gandhi Vrs. Union of India, AIR 1978 SC 597, the apex Court observed that*

‘Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.’

46. *From the factual and legal analysis, as made above, 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 guarantees, as envisaged in Articles 14, 15, and 16(2) of the Constitution of India. Accordingly, the word ‘unmarried’, as prescribed in Rules, 1990 and Rules, 2020 is hereby struck down being unconstitutional and ultra vires being violative of Articles 14, 15 and 16 of the Constitution of India.*

47. *As a fallout and consequence of aforesaid discussions, the orders dated 06.05.2015 and 29.06.2015 passed by the Tribunal in O.A. No.1063 (C) of 2015 and M.P. No.637(C) of 2015 respectively cannot be sustained in the eye of law and accordingly the same are liable to quashed and are hereby 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. Accordingly, the opposite parties are directed to reconsider the claim of the petitioner for being appointed on compassionate ground afresh in accordance with law keeping in mind the fact that her father was died on 12.12.2010 and her application was rejected on 17.11.2014 after four years.

48. *Before parting with the case, this Court strongly condemns the attitude of the Tahasildar, Khairā, who was discharging his duty at the relevant point of time, in not providing the enquiry report to the Collector, Balasore in spite of repeated communications being made through Deputy Collector, Addl. District Magistrate and Collector, Balasore for issuance of distress certificate in favour of the petitioner in time. The Tahasildar concerned shall be communicated with regard to displeasure of this Court and compliance thereof shall be filed before this Court by the State Government within three months hence."*

6.18. Similar is the view of the Andhra Pradesh High Court in the case of *Ch. Damayanthi Vrs. APSRTC rep by its Managing Director & Ors.*, 2021 SCC OnLine AP 382 = (2021) 2 ALT 238 = (2021) 2 ALD 582 = (2021) 2 AmLJ 320 = 2021 Lab IC 4652.

6.19. Taking into view the aforesaid legal position as enunciated by different Courts including this Court with reference to RA Rules particularly Rule 2(b) which does not include "married daughter", this Court is of the considered opinion that the reason assigned by the Additional District Magistrate, Angul-opposite party No.3 for rejecting the proposal of the Chief District Veterinary Officer, Angul-opposite party No.4 vide Letter dated 18.03.2016 (Annexure-4) cannot be held to be tenable in the eye of law. Hence, the Writ Petition/Original Application is bound to succeed.

7. Since the word ‘unmarried’, as provided in the RA Rules, 1990 and the RA Rules, 2020 is struck down by this Court in Division Bench in the case of *Kshirabadi Bala Behera Vrs. Orissa Administrative Tribunal, W.P.(C) No. 14945 of 2015 [Judgment of Division Bench on 24.08.2022]*, there is no other option but to set aside the decision of the opposite party No.3-Additional District Magistrate, Angul and, accordingly, the prayer of the petitioner to quash the Order of refusal contained in Letter dated 18.03.2016 *vide* Annexure-4 enclosed to the writ petition is allowed.

7.1. The Division Bench of this Court, following the Judgment dated 24.08.2022 rendered in *Kshirabadi Bala Behera Vrs. Orissa Administrative Tribunal, W.P.(C) No. 14945 of 2015*, in *Sarojini Rout Vrs. State of Odisha, WP(C) No.20508 of 2014*, *vide* Order dated 16.09.2022 directed as follows:

“6. Considering the contentions raised by learned counsel for the parties and after going through the records, since the case of the petitioner is covered by the ratio decided by this Court in *Kshirabadi Bala Behera (supra)*, the order dated 09.04.2013 under Annexure-6 passed by the District Education Officer, Puri, as well as the order dated 29.09.2014 passed by the Tribunal in O.A. No.1178 (C) of 2013 cannot sustain in the eye of law. Accordingly, the same are quashed. Therefore, this Court directs the State-opposite parties to consider the case of the petitioner for compassionate appointment, as she is entitled to get the said benefit as OCS (RA) Scheme, 1990 is applicable to her. Needless to say the State-opposite parties shall examine and pass appropriate order within a period of four months from the date of communication/production of certified copy of this order.”

7.2. This Court is not oblivious of the principles *qua* compassionate appointment propounded in the Judgment of the Hon’ble Supreme

Court of India rendered in the case of *State of Maharashtra Vrs. Ms. Madhuri Maruti Vidhate (since after marriage Smt. Madhuri Santosh Koli)*, 2022 LiveLaw (SC) 820 = 2022 SCC OnLine SC 1327. Said principles as summarized in the said case are reproduced herein below:

- “5. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of *Director of Treasuries in Karnataka and Anr. Vrs. V. Somyashree*, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in *N.C. Santhosh Vrs. State of Karnataka*, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:
- (i) that the compassionate appointment is an exception to the general rule;
 - (ii) that no aspirant has a right to compassionate appointment;
 - (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
 - (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
 - (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.”

ORDER:

8. As a consequence of aforesaid discussions, the Order of refusal to go ahead with the application of the petitioner-Bhanuprava Garnaik under the RA Rules as communicated to the opposite party No.4-Chief District Veterinary Officer, Angul by the opposite party No.3-Additional District Magistrate, Angul on 18.03.2016 *vide* Annexure-4 to the Writ Petition/Original Application on the ground that petitioner is married daughter cannot be sustained in the eye of law and therefore, the same is set aside.
9. Accordingly, the opposite parties are directed to examine and pass appropriate order within a period of four months from the date of communication/production of certified copy of this judgment keeping in mind the fact that Khitish Chandra Garnaik, the father of the petitioner-Bhanuprava Garnaik, died while in Government service on 09.03.2015 and her mother-Sulochana Garnaik is found to be not suitable to undertake Government service on account of health issues and also provisions of Rule 16 of the RA Rules. Needless to point out here that while considering the application under the RA Rules, the competent authority shall bear in mind the principles laid down by the Courts as referred to above and take a decision in accordance with law. With the above terms, the writ petition stands allowed, but there is no order as to costs in the facts and circumstances of the case.

(M.S. RAMAN)
JUDGE