

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 2377 of 2015

Monowara Khatun

Vs.

The State of West Bengal & Ors.

For the petitioner:

**Mr. Ekramul Bari, Adv.,
Mr. Syed Mansur Ali, Adv.**

For the State:

**Mr. Pinaki Dhole, Adv.,
Ms. Indrani Nandi, Adv.**

Reserved on:

14.12.2023

Judgment on:

29.02.2024

ANIRUDDHA ROY, J.:

Facts:

1. The mother of the petitioner was an approved **Group-D** Staff at one **Karbula Satas Gram High Madrasah (H.S.), District: Dakshin Dinajpur** (for short, Madrasah). The mother had died-in-harness on **February 07, 2013**. On **April 04, 2003, Annexure P-1 at page 15** to the writ petition, the petitioner applied through the Madrasah authority before the respondent no.3 seeking compassionate appointment in the died-in-harness category. The Madrasah authority by its letter dated **May 6, 2013** forwarded the application of the

petitioner before the respondent no.3, **Annexure P-2 at page 16** to the writ petition.

2. The petitioner complied with all formalities. By a letter dated **July 19, 2014**, **Annexure P-3 at page 17** to the writ petition, the Madrasah authority made a prayer before the respondent no.3 for enlistment of the name of the petitioner in the enrolment for the name of the ward of the deceased employee under died-in-harness category.
3. By a communication dated **May 29, 2013** the respondent no.3 asked the Madrasah authority to submit a copy of the pension payment order of the deceased mother, **Annexure P-4 at page 18** to the writ petition, to ascertain the income of the family for determining the financial criteria for enrolment of the name of the petitioner in died-in-harness category register.
4. The respondent no.3 then by its communication/decision dated **October 21, 2014 Annexure P-6 at page 20** to the writ petition, rejected the claim of the petitioner seeking compassionate appointment, on the plea that there was no scope in the existing government order for considering the prayer of a **married daughter** for enrolment of her name in the register under the died-in-harness category.
5. Assailing the said decision of the respondent no.3 dated **October 21, 2014** the petitioner has filed the instant writ petition, inter alia, praying for cancellation and quashing of the said impugned decision dated October 21, 2014 and the enlistment of the name of the petitioner under the died-in-harness category and to issue letter of appointment in her favour.

6. The note of the registry dated **June 25, 2015** suggests that despite their being a direction of a coordinate bench dated **May 13, 2015** no counter affidavit was filed by the respondent to the writ petition.
7. Considering the issue involved in the writ petition, its long standing pendency and also the law being settled on the issue, this Court thought it fit that any further pendency of the writ petition would not serve any fruitful purpose by extending the time for filing affidavits and accordingly, the writ petition was taken up for final consideration.

Submissions:

8. Mr. Ekramul Bari learned counsel appearing for the petitioner submits that the petitioner is a married daughter of the deceased State employee. Referring to the application of the petitioner dated **April 4, 2013, Annexure P-1 at page 15** to the writ petition, he submits that at all material time the petitioner and her husband was residing with the deceased mother of the petitioner at her same residential house. The husband of the petitioner does not earn such, which can be sufficient to run the family. The husband of the petitioner has practically no independent source of income. The family of the petitioner was maintained by the deceased mother with her own income. The deceased mother was not under any regular pension scheme and she was under the scheme of contributory provident fund cum gratuity. In such situation, with the sudden and untimely death of the deceased mother, thwart the petitioner and her family practically into starvation and poverty.

9. Referring to a government order issued by the Education Department **bearing no. 897-Edn (S) dated October 12, 1992, Annexure P-5 at page 19** to the writ petition, learned counsel for the petitioner submits that if a daughter is wholly depending on fathers family for her maintenance, she may be considered for appointment on compassionate ground provided the other dependent will not get the financial benefit out of her earnings. He submits that the law is well settled that a married daughter of a deceased State employee who is totally depending on the earning of the said deceased employee, can maintain the claim for compassionate appointment. In support, he has relied upon a decision of a Coordinate Bench ***In the matter of: Smt. Usha Singh vs. State of West Bengal & Ors. reported at 2003 (2) L.L.N. 554*** and the decision of larger bench, inter alia, ***In the matter of: The State of West Bengal & Ors. vs. Purnima Das reported at (2017) 4 CHN 362.***
10. In the light of the above, Mr. Bari prays for quashing of the impugned decision of the respondent no.3 and compassionate appointment for the petitioner.
11. Mr. Pinaki Dhole, learned State Counsel appearing for the respondent nos. 1 to 3 submits that compassionate appointment is a matter of State policy and such appointment is not an alternative mode for generation of employment. To claim compassionate appointment is not a matter of right, it is the discretion of the State employer, but of course, the discretion has to be used within the framework of law and in judicious manner.
12. Referring to the application of the petitioner from page 15 to the writ petition, learned State counsel submits that it is not the case that the petitioner has

been deserted by his husband or marital family. Nowhere it was disclosed by the petitioner that the earning of the deceased family is such, it was impossible to survive for the petitioner with her husband and children. The petitioner had never disclosed the earning details of her husband. Mr. Dhole submits that the the petitioner is leaving with her husband and being looked after by her husband. The petitioner has her own independent and separate family.

13. The learned State counsel further submits that the only document available on record is the application of the petitioner seeking compassionate appointment dated **April 8, 2013, Annexure P-1 at page 15** to the writ petition, which is the basis of the claim of the petitioner for compassionate appointment. From a meaningful and close reading of the said application, it appears that the ratio of either of the judgments as referred to above on behalf of the petitioner shall be of no assistance to the petitioner and are not applicable to the facts of this case.
14. Referring to the impugned decision dated October 21, 2014, learned State counsel submits that sufficient reason is mentioned therein for rejecting the claim of the petitioner and the reasons are well founded and the finding was made on the basis of the available materials before him. Hence, there is no infirmity in the said order dated October 21, 2014 and the same does not require any interference of this Court.
15. In the light of the above, learned State counsel prays for dismissal of the writ petition.

Decision:

16. After hearing the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, facts are admitted as would be borne out from the writ petition.
17. On a close scrutiny of the impugned order dated October 21, 2014 passed by the respondent no.3, it further appears to this Court that, the basis for rejection of the claim of the petitioner for compassionate appointment was solely on the ground that the petitioner is a married daughter and cannot claim any compassionate appointment due to her marital status.
18. The larger bench ***In the matter of: Purnima Das & Ors. (supra)*** had laid down the law holding that the married daughters in certain circumstance are eligible to apply for compassionate appointment. The Coordinate Bench ***In the matter of: Smt. Usha Singh (supra)*** was of the same opinion at a prior in point of time than the larger bench decision. Since the larger bench decision is there, this Court is bound by the same and proceeds further accordingly.
19. ***In the matter of: Purnima Das & Ors. (supra)*** the larger bench had observed as under:

"113. The relevant paragraph from the decision in Usha Singh (supra) reads as follows:

"10. The rationale of the rules quoted hereinabove in that the son or the daughter who applies for an appointment in the died-in-harness category should have been dependent upon the income of the deceased so that his untimely death left him/her/them in extreme economic hardship. The Avowed object of the rules is to provide relief to the family which is in extreme financial hardship and for this purpose an unemployed son can apply whether married or unmarried.

Why then is the restriction upon a daughter that she should be unmarried in order to be eligible for appointment? A married daughter can be a divorcee fully dependent upon the father. She may have been an abandoned wife again fully dependent upon the father. She may have been married to an indigent husband so that both the married daughter and the son-in-law would have been dependent upon the income of the bread winner whose death led them to extreme financial hardship. The concept of a 'Ghar Jamai (one who lives at one's father-in-law's house) is well accepted in Indian society particularly in those families where there is no son. There may be many other probabilities in which a married daughter may be fully dependent upon the income of her father so that death of the father would leave her and the rest of the members of the family in extreme economic hardship. 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 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 any one 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 v. 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'."

114. *Without hesitation, we concur with whatever has been expressed in the aforesaid excerpt.*

115. *In the decision in Smt. Vimla Srivastava (supra), the rule under consideration was similar to the clause in the notifications under consideration before us. The Hon'ble the Chief Justice of the Allahabad High Court speaking for the Division Bench, upon consideration of the decision in C.B. Muthamma (supra) and a previous coordinate Bench decision of the same Court in Isha Tyagi v. State of U.P. (Writ-C No. 41279 of 2014), proceeded to uphold the challenge for the reasons assigned and held that "excluding daughters purely on the ground of marriage would constitute an impermissible discrimination and be violative of Articles 14 and 15 of the Constitution". Their Lordships' accordingly struck down the word 'unmarried' in rule 2 (c)(iii) of the relevant Rules. A perusal of paragraph 24 of the decision would reveal the agreement of the Division Bench with the view expressed in Purnima Das (supra).*

116. *We are in complete agreement with the aforesaid line of decisions and are, therefore, of the clear opinion that the relevant notifications issued under the 1999 Act or for that matter the SCHEME, in the manner it has been framed, do not appear to be reasonable. The restriction on married daughters being eligible to apply and to be considered for compassionate appointment is likely and has, in fact, given rise to a legitimate grievance in the minds of married daughters, who unfortunately are not looked after by their husbands, perforce have to take shelter in their parental/maternal home, survive on the benevolence showered by their fathers/mothers (Government employees) and owing to untimely demise of the Government employees, are left high and dry along with other members of the deceased's family who have to depend on such married daughter to feed and provide the basics to cover their body.*

117. *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.*

118. *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.

119. *The exception taken by Mr. Majumdar to the ultimate direction in Purnima Das (supra) need not be dealt with since such direction is rendered redundant having regard to the findings that we have recorded.*

120. *The judgment and order under appeal in FMA 1277 of 2016 is, thus, upheld to the extent as indicated above”.*

20. In view of the foregoing reasons and discussions and law laid down ***In the matter of: Purnima Das (supra)***, the impugned decision/order of the respondent no.3 dated **October 21, 2014 Annexure P-6 at page 16** to the writ petition, stands **set aside** and **quashed**.
21. The respondent no.3 shall proceed to consider the claim of the petitioner for compassionate appointment in the light of the observations made by the larger bench ***In the matter of: Purnima Das (supra)*** which has already been quoted above and then shall dispose of the claim of the petitioner by passing a reasoned order on the basis of the existing materials on which the said impugned order dated October 21, 2014 was passed. The entire exercise as directed above shall be carried out and completed by the **respondent no.3** positively within a period of **six weeks** from the date of communication of this order. The respondent no.3 shall then communicate the reasoned order to the petitioner within a further period of **two weeks** from the date of communication of this order.

22. If, however the claim of the petitioner succeeds, the respondent no.3 and/or any further authority or authorities shall take all necessary and consequential steps to give effect to the said reasoned order in every manner strictly in accordance with law positively within a period of **four weeks** from the date of the said reasoned order to be communicated to such authorities.
23. It is however, made clear that this order shall not create any right or equity in favour of the petitioner, in the event the petitioner is otherwise not eligible to receive her claim strictly in accordance with the relevant rules and law, even after following the dictum of the larger bench ***In the matter of: Purnima Das (supra)***.
24. With the above observations and directions this writ petition **WPA 2377 of 2015** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)