



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4672 OF 2018

- 1) Shri Dhanraj Navnath Bhoyar,
Aged about 29 years, Occ.- Nil,
R/o Patala, Tahsil Bhadravati,
District Chandrapur.
- 2) Sandhya Navnath Bhoyar,
Aged about 50 years, Occ.- Household,
R/o Maregaon, Tahsil – Maregaon,
District Yavatmal.

.... **PETITIONERS**

VERSUS

- 1) Western Coal Fields Ltd.,
through its Chairman cum Managing
Director, Coal Estate, Civil Lines,
Nagpur - 01.
- 2) Chief General Manager,
Western Coal Fields Ltd.,
Majri Area, At Kuchna, Post Kuchna,
Tahsil Bhadravati, District Chandrapur.
- 3) Area Planning Officer,
Western Coal Fields Ltd., Majri Area,
At Kuchna, Post Kuchna, Tahsil
Bhadravati, District Chandrapur.

.... **RESPONDENTS**

Mr. S.C. Mehadia, Counsel for the petitioners,
Mr. A.M. Ghare, Counsel for the respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 26th MARCH, 2024

ORAL JUDGMENT : (Per : NITIN W. SAMBRE, J.)

Heard Mr. S.C. Mehadia, learned Counsel appearing for the petitioners and Mr. A.M. Ghare, learned Counsel appearing for the respondents.

2. By consent, the petition is taken up for a final hearing. Hence, **Rule.** Mr. A.M. Ghare learned Counsel waives the rule. Rule is made returnable forthwith.

3. The challenge in the petition is to the communication dated 03-04-2018 (hereinafter shall be referred to as the “*impugned order*”) whereby the claim of petitioner No.1 for grant of appointment pursuant to Rehabilitation and Resettlement Policy of the respondent as the petitioner No.1’s grandfather’s land was acquired, came to be rejected. A further declaration is sought by the petitioners that the respondents are bound by the compromise at Annexure-IV entered into between the parties through their respective lawyers and also to declare the policy of respondents to refuse the prayer for grant of employment only on the basis of linear dependent is unconstitutional.

4. The undisputed facts as are necessary for deciding the present petition, are as under :

(a) Petitioner No.1 is the son of petitioner No.2- Sandhya- a daughter born to Maruti. Said Sandhya filed Regular Civil Suit

No.21/2015 in relation to the ancestral property. In the said suit, the respondents were defendant No.5 and the suit came to be disposed of through the compromise decree after the mediation was successful pursuant to an order dated 25-06-2015 on the compromise below Exhibit 29 executed *inter se* between the parties. Among others, the compromise decree provides for employment to be granted to the petitioners in case the same is permissible in law.

(b) Based on the aforesaid compromise decree, the petitioners appear to have approached the respondents for grant of appointment which prayer came to be rejected vide impugned order. As such, this petition.

5. Mr. S.C. Mehadia, learned Counsel appearing for the petitioners would urge that since it is not in dispute that the land of Maruti was acquired way back on 27-05-2011, the Rehabilitation and Resettlement Policy of 2008 (hereinafter shall be referred to as "*R. & R. Policy, 2008*") shall govern the relationship between the petitioners and the respondents. According to him, the definition of 'family' prescribed in the R. & R. Policy, 2008 covers the case of the petitioner No.1-grandson of deceased Maruti. According to him, in view of the amendment to the Hindu Succession Act, the daughter can be said to be a coparcener and as such petitioner No.1-grandson of Maruti can always claim the same benefit as that of a coparcener. In such an eventuality, his

contentions are, considering the beneficial piece of subordinate legislation from the respondents and the objects which are sought to be achieved, the respondents ought to have granted the appointment under R. & R. Policy, 2008 thereby covering the case of petitioner No.1 within the definition of 'family' prescribed therein. Mr. S.C. Mehadia, learned Counsel would draw support from the Division Bench Judgment of this Court delivered in Writ Petition No. 5802/2012 (Pradip s/o Vithoba Bhoyar v. Union of India and others) on 23-01-2014 which according to him, was already confirmed by the Apex Court in Petition for Special Leave to Appeal No.11821/2014. In addition, Ms. S.C. Mehadia, learned Counsel would urge that the only reason furnished in the order impugned passed by the respondents is that in case Maruti is entitled to employment under R. & R. Policy, the respondents can give employment only if the nominee is entitled under the said Policy. Reasons cited according to him, since R. & R. Policy does not refer 'son of daughter' to be dependent, the Western Coalfields Limited (hereinafter shall be referred to as "*W.C.L.*") is not in a position to offer such employment. Mr. S.C. Mehadia, learned Counsel would urge that such reasoning adopted by the respondents are in violation of Articles 14 and 15 of the Constitution of India as what is being sought by the petitioner is public employment. He would claim that the respondents, a public authority cannot take recourse to discrimination based on sex. So as to substantiate said contention, he has drawn

support from the Division Bench Judgment of the Allahabad High Court in the matter of *Isha Tyagi v. State of U.P and other, 2014 SCC OnLine All 15982*. As such, he would urge that there cannot be any discrimination between the son's son or daughter's son in the matter of public employment under the R. & R. Policy, 2008 framed by the respondents-W.C.L. As such, he would urge that the order impugned is liable to be quashed and set aside with directions to the respondents to grant employment to petitioner No.1.

6. As against above, Mr. A.M. Ghare, learned Counsel appearing for the respondents would urge that the petitioners have an alternate remedy of executing the compromise decree to which they have not taken recourse. He would further claim that in the facts and circumstances of the case, since the mother of petitioner No.1, for the first time, applied for a grant of employment under the then Rehabilitation & Resettlement Policy of 2012 (hereinafter shall be referred to as "*R.& R. Policy, 2012*"), the petitioners' case is not covered within the definition of 'family' of R. & R. Policy, 2012. He would further claim that the decision of this Court delivered in Writ Petition No. 5802/2012 was already distinguished and extended in a subsequent judgment of this Court in Writ Petition No.8206/2018 (Shankar Bodhe and another v. Western Coal Fields Ltd. and another) decided on 25-02-2022.

7. Even otherwise, according to him, the judgment of the Allahabad High Court in the Matter of *Isha Tyagi* cited supra does not have any applicability with the facts of the present case as there is no discrimination under Article 14 of the Constitution of India as neither son's son nor daughter's son is qualified under R. & R. Policy, 2012.

8. In this background, he would claim that the petition is devoid of merit and is liable to be dismissed. In addition, Mr. A.M. Ghare, learned Counsel would urge that the respondents are willing to offer monetary compensation to such members who are covered within the 'family' under R. & R. Policy, 2012. As such, he would claim that the petition is liable to be dismissed.

9. While countering the aforesaid, in rejoinder Mr. S.C. Mehadia, learned Counsel would urge that all the stakeholders of the acquired land are allowed to give no objection in favour of the petitioners for grant of employment under R. & R. Policy and that being so, the petitioner No.1's claim for grant of employment in view of land acquired is strengthened.

10. We have considered the rival submissions.

11. The admitted facts which are borne out of the record and also based on the submissions is the acquisition of the land of the grandfather of petitioner No.1, his mother i.e. petitioner No.2 filing

Regular Civil Suit No.21/2015 for partition and declaration, and said suit being compromised Vide recording compromise below Exhibit 29 on 25-6-2015. Such a compromise was duly signed not only by all the parties to the suit but also by the respondents-W.C.L. through its lawyer. Till this date, there is no dispute as regards the signing of the compromise decree by the lawyer representing the interest of the respondents and such a compromise decree came to be executed after the mediation was declared successful.

12. As a sequel of the above, the fact remains that the petitioners' claim for grant of employment pursuant to the R. & R. Policy as was existing was well within the knowledge of the respondents.

13. The fact that the land of the petitioner was acquired way back in 2011 can also be borne out of the record and in such an eventuality, in our opinion, the "*R. & R. Policy, 2008*" and not of 2012 shall govern the relationship between the parties.

14. The R. & R. Policy, 2008 defines the 'family' and said definition fell for consideration and interpretation before this Court in Writ Petition No.5802/2012. This Court in addition to the definition of 'family' reflected in R. & R. Policy, 2008 was conscious of the very object with which the R. & R. Policy, which in the form of subordinate legislation was brought into effect by the respondents. Based on the same, this Court has proceeded to grant the directions to the

respondents thereby granting employment to the daughter's son. The said judgment of this Court in the matter of Writ Petition No.5802/2012 has attained finality before the Apex Court in Petition for Special Leave to Appeal No.11821/2014 decided on 08-8-2014. As such it has to be held that the relationship between the petitioners and the respondents shall be governed by the R. & R. Policy, 2008, and not 2012 as has been claimed by the respondents as the land of the petitioner was acquired on 27-5-2011.

15. Apart from the above, the compromise decree was duly signed by the lawyer of the respondents and is also not disputed as to this date there is no challenge to the same.

16. The Division Bench of the Allahabad High Court had an occasion to consider a similar decision which is impugned in the present petition in the touchstone of the requirement under Articles 14 and 15 of the Constitution of India. The said Court while dealing with the issue has observed thus :

“4. The State Government has taken a policy decision to grant a horizontal reservation of 2% to the descendants of freedom fighters. While doing so, the State Government has qualified the condition of eligibility by stipulating that a son or a daughter would be entitled to the benefit of the reservation. However, it has been stated in the relevant condition that the law department had opined that this benefit can be extended only to an unmarried daughter of a freedom fighter. Consequently, whereas the son's son would be eligible to apply for admission, the children of a daughter stand excluded. Exclusion of a granddaughter is plainly an act

of hostile discrimination which is violative of the fundamental right guaranteed under Articles 14 and 15 of the Constitution. The condition which has been imposed by the State does not prescribe financial dependence. In fact, the clarification is to the effect that it is not necessary that the son of a freedom fighter should be financially dependent upon him. The basis and object of the horizontal reservation of 2% is to recognise the seminal role in the freedom struggle played by freedom fighters. It is in recognition of their contribution to the freedom struggle that a benefit of reservation is extended to descendants of freedom fighters. This being the rationale, there is no reason or justification to exclude a married daughter and consequently the children of a married daughter. Once a decision has been taken to extend the benefit of horizontal reservation to descendants of freedom fighters, whether the descendant is a son or a daughter should make no difference whatsoever. In fact, any discrimination against a daughter would be plainly discrimination on grounds of gender. The guarantee under Article 15 of the Constitution is broad enough to encompass gender discrimination and any discrimination on grounds of gender fundamentally disregards the right to equality, which the Constitution guarantees.

6. *It would be anachronistic to discriminate against married daughters by confining the benefit of the horizontal reservation in this case only to sons (and their sons) and to unmarried daughters. If the marital status of a son does not make any difference in law to his entitlement or to his eligibility as a descendant, equally in our view, the marital status of a daughter should in terms of constitutional values make no difference. The notion that a married daughter ceases to be a part of the family of her parents upon her marriage must undergo a rethink in contemporary times. The law cannot make an assumption that married sons alone continue to be members of the family of their parents and that a married daughter ceases to be a member of the family of her parents. Such an assumption is constitutionally impermissible because it is an invidious basis to discriminate against married daughters and their children. A benefit which this social welfare measure grants to a son of a freedom fighter, irrespective of marital status, cannot be denied to a married daughter of a freedom fighter. The progeny of the children of a freedom fighter cannot be excluded on the grounds of gender. Grandchildren, irrespective of gender,*

must be treated on an equal footing. Whether grandchildren should at all be entitled to the benefit of a welfare scheme is a matter of policy for the State to decide. However, what is clearly not open to the State is to confine the benefit to grandchildren of a particular category, based on the gender of the parent or the gender of the child. Marriage does not have and should not have a proximate nexus with identity. The identity of a woman as a woman continues to subsist even after and notwithstanding her marital relationship. The time has, therefore, come for the Court to affirmatively emphasize that it is not open to the State if it has to act in conformity with the fundamental principle of equality which is embodied in [Articles 14](#) and [15](#) of the Constitution, to discriminate against married daughters by depriving them of the benefit of a horizontal reservation, which is made available to a son irrespective of his marital status. Consequently, in the present case, we are of the view that the opinion of the law department of the State, which forms the basis of the condition which is in question, is just not sustainable and is fundamentally contrary to basic constitutional norms.”

17. As such, the discrimination which is sought to be practiced by the respondents is being duly answered and said to be covered by the judgment of the Division Bench of the Allahabad High Court in the matter of *Isha Tyagi* cited *supra* which has a similar factual matrix as that of the present case.

18. That being so, we hereby declare that the action of the respondent in passing the impugned order thereby discriminating based on linear i.e. petitioner No.1 being the son of daughter of deceased Maruti cannot be said to withstand the scrutiny of Articles 14 and 15 of the Constitution of India as it has not been for the respondents to discriminate on the basis of sex.

19. In this background, it has to be held that the respondents in taking a decision of not granting/denying employment to the petitioners under the R. & R. Policy, 2008 have acted discriminately.

20. Apart from the above, there is one more reason which prompts this Court to allow the present petition.

21. The fact that the land owners who are covered within the definition of 'family' are entitled to public employment is not in dispute. It is also not in dispute that such family members have already given no objection as could be inferred from the compromise decree for the grant of employment in favour of the petitioners. It is also not in dispute that the mother of the petitioner has having 1/5th share in the land in question which was acquired by the respondents. Despite the said fact and compromise decree, respondents-W.C.L. neither paid compensation to petitioner No.2 nor offered employment to petitioner No.1 or any family members of the petitioners. The said conduct on the part of the respondents shows that they are trying to deprive petitioner No.1 or his mother i.e. petitioner No.2 from getting compensation or employment as per the R. & R. Policy and compromise decree to which they are entitled.

22. That being so, we deem it appropriate to allow the present petition in terms of prayer clause (1) of the petition. We quashed and set aside the impugned communication dated 03-4-2018. We hereby

declare that petitioner No.1 is entitled for employment with the respondents pursuant to the R. & R. Policy, 2008. Petitioner No.1's claim for grant of such employment be considered having regard to the seniority of his candidature as was existing on the date of acquisition of the land.

23. Rule is made absolute in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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