HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 647/2022

Rani Jenda (Smt.) D/o Shri Heeralal Ji Jenda W/o Shri Hemant Parihar, Aged About 43 Years, R/o Hanuman Chowk, Ganglav Talab, Chandpole Road, Jodhpur, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Medical And Health Department, Rajasthan, Jaipur.
2. Director (Administration), Medical And Health Department, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur, Rajasthan.
3. Chief Medical And Health Officer, Pali, Rajasthan.

----Respondents

For Petitioner(s)	:	Dr. Nikhil Dungawat.
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG assisted by Mr. HS Chundawat.

HON'BLE MR. JUSTICE ARUN MONGA
Order (Oral)

01/05/2024

1. Grievance of the petitioner stems out of orders dated 05.02.2021 (Annex.7) and 23.03.2012 (Annex.3), vide which the candidature of the petitioner was rejected on the ground that married daughter cannot be considered as a dependent of the deceased government servant. Further, she seeks direction to the respondents to re-consider her application and grant compassionate appointment to her pursuant to notification dated 28.10.2021 (Annex.09) with all consequential benefits.

2. Relevant facts as pleaded in the petition are that the mother of petitioner was working on the post of Health Worker at Sub

Health Centre when she died in harness on 02.11.2011. After her death, the petitioner, being daughter, moved an application on 25.01.2012 and then another one on 22.01.2021 seeking compassionate appointment.

2.1. On 23.03.2012 (Annex.2), the application of the petitioner was rejected vide impugned order dated 05.02.2021 (Annex.7) on the ground that being a married daughter of the deceased employee, she cannot be considered for compassionate appointment.

2.2. A notification was issued on 28.10.2021 (Annex.9), whereby the Rules of 1996 were amended and the married daughter was also included as a dependent of deceased government servant. Hence, the instant petition.

3. Copy of the reply is though not on record, but the same was supplied to learned counsel for the petitioner, who has passed on a photocopy thereof during the course of hearing.

3.1. Perusal of the same reflects that the sum and substance in the stand taken is in para No.4, which is reproduced as hereinbelow:-

> *" 4. That the averments made in para No.4 of the writ petition are admitted to the extent that the married daughter does not fall under the category of dependent. It is also submitted that as per The Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (hereinafter referred as "Rules of 1996") erstwhile, the married daughter of deceased government employees does not fall under the category of dependents for compassionate appointment. It is also submitted that the married daughter falls under the category after the amendment in Rule 2 vide notification dated 28.10.2021. Therefore, it is relevant to mention here that the petitioner was not eligible as per the Rules prevailing at that time. Accordingly, the application of the petitioner for compassionate appointment was rightly rejected vide order dated 23.03.2012. It is further submitted that when the application for grant of compassionate appointment of the*

petitioner was rejected vide order dated 23.03.2012 then the petitioner is required to challenge the same in year 2012 itself but petitioner is not challenged same for a period of more than ten years and now this writ petition is filed in year 2022, therefore, the writ petition of the petitioner would be dismissed on the ground of delay and laches."

4. In the aforesaid backdrop, I have heard the rival contentions and gone through the case file.

5. On the very threshold, I am constrained to observe that the defence taken by the respondents in the reply and so are their arguments to defend the rejection of the petitioner's application, are complete moonshine to say the least. Let us see how.

6. Reference may be had to Full Bench rendition of this Court in the case of ***Priyanka Shrimali Vs. State of Rajasthan : Civil Reference No. 01/2022*** decided alongwith other connected matters on 13.09.2022, wherein in no uncertain terms, speaking for Full Bench, my learned brother Arun Bhansali, J., (as His Lordship then was in this Court) opined as below:-

"Consequently, the reference is disposed of. The re-framed question in the reference, is answered as under:-

The provision of Rule 2(c) of the Rules of 1996, which excludes the married daughter from definition of dependent prior to its amendment vide notification dated 28.10.2021, is discriminatory and violative of Articles 14 to 16 of the Constitution of India and as such, the word 'unmarried' from the definition of 'dependent', is struck down. Further, in Rule 5 of the Rules of 1996 also the word unmarried daughters/adopted unmarried daughter, shall be read as daughters/adopted daughter.

The judgment in the case of Sumer Kanwar (supra) and all other judgments, which have followed the judgment in the case of Sumer Kanwar (supra), upholding the denial of compassionate appointment to married daughter, are overruled.

As a consequence, it is directed that on account of striking down of the word 'unmarried' from the definition – (i) the same shall not effect any case, wherein compassionate appointment has already been granted under the provisions as they stood before this order; (ii) the same by itself would not provide a cause of action to any applicant and would apply to cases which are either pending before the competent authority and/or to the cases where litigation is pending on the date of this order only; (iii) the provisions and other requirements of the definition regarding the

applicant being wholly dependent on the deceased government servant at the time of his/her death would be scrupulously applied; (iv) all the parameters as laid down by Hon'ble Supreme Court for grant of compassionate appointment, shall also be scrupulously followed and that (v) all other provisions of the Rules except the inclusion of the 'married daughter' in the definition of 'dependent', shall have full application.

The matters be now placed before the Division Bench for appropriate orders."

7. In light of the aforesaid, the instant writ petition is allowed and the impugned orders dated 23.03.2012 (Annex.3) and 05.02.2021 (Annex.7) are set aside with consequences to follow.

8. Needless to say that the application of the petitioner shall be considered in tune with the ratio laid down by the Full Bench in the case of Priyanka Shrimali (supra) and subject to verification of the financial status of the petitioner as per Rule 2C (iii) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 as has been mentioned in the Full Bench judgment, ibid.

9. Pending application(s), if any, stand disposed of.

(ARUN MONGA),J

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Whether fit for reporting- Yes / No