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WP-15322-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 31st OF AUGUST, 2026WRIT PETITION No. 15322 of 2016*SHASHI PRABHA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Pravesh Naveriya - Advocate for the petitioner.

Smt. Shraddha Tiwari - Panel Lawyer for the respondents/State.

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ORDER

The petitioner has filed the present petition under Article 226 of the Constitution of India seeking following relief:-

"1. That, this Hon'ble court may kindly be pleased to issue an appropriate writ in favor of the petitioner by allowing an application Annexure P/1 dated 18-10-12 made by the petitioner before respondent No.3 accordingly impugned orders/letters dated 12-05-2014 (Anx.-P/4) and 23-08-2016 (Anx.-P/5) passed by the respondentno.-3 be set-aside.

2 That, this Hon'ble court may kindly be pleased to direct the respondents to give compassionate appointment to the petitioner as she prayed in her application Annexure P/1 dated 18-10-12.

3 Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this petition.

2. It is submitted by the learned counsel for the petitioner that the petitioner's father died in harness on 05.11.2007. The petitioner was married during the life time of her father. Thereafter, the petitioner was deserted by her husband and a notarized divorce deed was executed between them.

3. It is submitted that as per the policy of the State, the petitioner



submitted an application on 18.10.2012 claiming compassionate appointment as a divorced daughter of the deceased employee.

4. By letter dated 11.12.2012 (Annexure P/2), the respondent No.3 informed the petitioner that the divorce deed produced by her was merely notarized and was not a decree of divorce passed by a competent court. The petitioner was accordingly directed to produce a decree of divorce passed by a competent court. Thereafter, vide order dated 30.11.2013 (Annexure P/3) passed in Lok Adalat in FA No. 649/2009, this Court granted decree of divorce to the petitioner on mutual consent.

5. The petitioner thereafter immediately produced the aforesaid order before the respondent. However, by the impugned order dated 12.05.2014 (Annexure P/4), respondent No.3 rejected the application of the petitioner.

6. Thereafter, the petitioner represented before the respondent No.4 stating that the petitioner had been living with and dependent upon her father after being deserted by her husband for about six to seven years during her father's lifetime. However, without considering the same, respondent No.3 passed the order dated 23.08.2016 (Annexure P/5) rejecting the petitioner's claim.

7. Per contra, on the basis of reply, learned counsel for the respondents has submitted that the petitioner's father was serving as Head Master in Government Middle School, Biharipura and died on 05.11.2007. At the time of the death of the father, the petitioner was married and was not wholly dependent upon her father. The petitioner subsequently applied for compassionate appointment claiming herself to be a divorced daughter of the



deceased employee. However, under Clause 2.2 of the State Government policy dated 18.08.2008, a divorced/widow daughter is eligible for consideration only if she was wholly dependent upon the deceased employee at the time of his death. Since the petitioner was already married on the date of her father's death and subsequently subjected to divorce, she was not eligible for compassionate appointment under the said policy.

8. It is submitted that the petitioner's claim is governed by the applicable policy of the State Government and in terms thereof, the petitioner has no vested right to compassionate appointment.

9. Heard learned counsel for the parties and perused the record.

10. The only contention made by the learned counsel for the petitioner is that the application for compassionate appointment of the petitioner has been rejected on the ground that at the time when the death of the father of the petitioner occurred, the petitioner was married and subsequently she was divorced, therefore, she was not entitled for compassionate appointment. However, this question is no more *res integra* since the Full Bench of this Court in the case of **Meenakshi Dubey vs. M.P. Poorva Kshetra Vidyut Vitran Com. Ltd. and others - WA No.756/2019** decided on 02.03.2020 has declared such condition as *ultra vires*.

11. The Full Bench of this Court in **Meenakshi Dubey (supra)** has held as under:-

"19. In a recent judgment reported in 2020 SCC OnLine SC 200 *Secretary, Ministry of Defence v. Babita Puniya*, 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)."

This recent judgment in *Babita Puniya(Supra)* 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.

21. 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).

22. 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)".

12. Considering the facts of the present case and in view of the law laid down by the Full Bench of this Court in the case of **Meenakshi Dubey (supra)**, the impugned order dated 12.05.2014 (Annexure P/4) and consequential order dated 23.08.2016 (Annexure P/5) are hereby quashed. The matter is remanded back to the competent authority to decide the application of the petitioner for compassionate appointment afresh absolutely in consonance of the conditions of the policy and in the light of the judgment passed in the case of **Meenakshi Dubey (supra)** within a period of three



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months from the date of production of certified copy of this order.

13. With the aforesaid, the petition is allowed and disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA