

THE HIGH COURT OF MADHYA PRADESH**WA-398-2021**

(State of M.P. & Others Vs. Smt. Jyoti Sharma)

Gwalior, dated: 07.04.2021

Shri M.P.S. Raghuvanshi, learned Additional Advocate General for State.

Shri Jitendra Sharma, learned counsel for respondent.

Present intra-court appeal preferred u/S. 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails final order dated 25.11.2020 passed in W.P. No.15382/2020 (S) by learned Single Judge while exercising writ jurisdiction under Article 226 of Constitution of India allowing petition in question by which the challenge was made to an order dated 09.09.2020 passed by respondent No.2/appellant No.2 rejecting claim for compassionate appointment of respondent (petitioner in wp) who happened to be married daughter of deceased Government servant who died in harness on the post of ASI (M).

The order passed by learned Single Judge while allowing the petition directing for reconsideration of case of respondent/petitioner is based on the Larger Bench decision rendered by Bench comprising three Judges in case of **Meenakshi Dubey Vs. M.P. Poorva Kschetra Vidyut Vitran Co. Ltd**, on 02.03.2020 in W.A. No.756/2019, where the Larger Bench held thus :

"17. 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.

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

18. 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 19-6-1993 and acceded to CEDAW on 8-8-1993 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.

19. In a recent judgment reported in *2020 SCC OnLine SC 200 (Secretary, Ministry of Defence vs. 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).”

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)”

23. The issue is answered accordingly.”

Learned Additional Advocate General, Shri Raghuvanshi does not dispute the settled position of law that a judgment of a Court of law is always retrospective explaining the law or legal position as it stood, unless the judgment provides expressly for its prospectivity. [Please See : **Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited, (2008) 14 SCC 171**]

Shri Raghuvanshi also does not dispute that the decision of Larger Bench has not been assailed by the State in any higher forum.

In view of above, this court sees no reason to take a different view than the one taken by learned Single Judge.

Accordingly, appeal stands **dismissed**.

At this stage, learned counsel for respondent submits that for the sake of expediting the matter, some time frame may be fixed for competent authority to decide the claim of respondent (petitioner in wp) for compassionate appointment.

Accordingly, respondents No.2 & 3/appellants No.2 & 3 are directed to carry out the directions of learned Single Judge passed on 25.11.2020 in W.P. No.15382/2020 (S) by considering the claim of respondent/petitioner for compassionate appointment by passing a speaking order within a period of two months from date of receipt of copy of this order.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

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