

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 7059 OF 2021



Between:

...PETITIONER

AND

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ order or direction more particularly writ of mandamus declaring the action of the respondents in not granting appointment to the petitioner on compassionate grounds in the cadre of sweeper in the establishment of the 3rd respondent temple in the place of her father V. Jagadeesh as bad, illegal, arbitrary and violative of Articles 14, 16' and 21 of Constitution of India and consequently direct the respondents to appoint the petitioner as sweeper from the date of the death of her father i.e., w.e.f., 24.6.2013 and to grant all consequential service and monetary benefits and pass

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to consider the representations dated 20.3.2021, 29.1.2017, 13.6.2015, 21.1.2015, 11.10.2014.

Counsel for the Petitioner: SRI D. V. SASIDHAR

Counsel for the Respondent No.1: GP FOR SERVICES I

Counsel for the Respondent No.2: GP FOR ENDOWMENTS

**Counsel for the Respondent No.3: SRI K. MADHAVA REDDY, SC FOR
NDOWMENTS**

The Court made the following: ORDER

APHC010122462021



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3310]

FRIDAY ,THE EIGHTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 7059/2021

Between:

Siripalli Ammulu

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. D V SASIDHAR

Counsel for the Respondent(S):

1. K MADHAVA REDDY (SC FOR ENDOWMENTS AR)

2. GP FOR SERVICES I

3. GP FOR ENDOWMENTS

The Court made the following:

ORDER :

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

".....to issue writ order or direction more particularly writ of mandamus declaring the action of the respondents in not granting appointment to the petitioner on compassionate grounds in the cadre of sweeper in the establishment of the 3rd respondent temple in the place of her father V.Jagadeesh as bad illegal arbitrary and violative of Articles 14, 16 and 21 of Constitution of India and consequently direct the respondents to appoint the petitioner as sweeper from the date of the death of her father i.e., w.e.f 24.6.2013 and to grant all consequential service and monetary benefits and pass...."

2. The grievance of the petitioner is that her father while working as Sweeper on regular basis in the establishment of 3rd respondent temple has died on 24.06.2013 leaving behind his two daughters i.e., the petitioner herein and her elder sister namely Edukondalu Mohana. It is stated that after demise of her father, they have approached the office of the 3rd respondent temple seeking release of the monetary and service benefits of her father and submitted representations dated 11.10.2014, 21.1.2015, 13.6.2015 along with the Transfer Certificate and other relevant documents. Accordingly, the then Executive Officer has issued proceedings dated -06-2015 to produce the Succession Certificate. As such the petitioner has approached the Hon'ble Principal Senior Civil Judge, Vijayawada and filed S.O.P. No.95/2015 and obtained Succession Certificate vide order dated 4.2.2016. The then Executive Officer of the 3rd respondent temple has issued proceedings dated 25.11.2016 to produce the Decree copy of obtaining Divorce from her husband as the petitioner has requested to grant compassionate appointment as her husband deserted the petitioner. Thereafter, the petitioner has submitted representation dated 29.1.2017 informing to the then Executive Officer, she could not trace the whereabouts of her husband and requested to grant appointment on compassionate grounds in the place of her father. Later, the Executive Officer of the 3rd respondent temple has issued proceedings dated 8.2.2019 to release the death benefits of petitioner father to the petitioner and her sister.

While the matter stood thus, the petitioner has submitted another representation recently on 20.3.2021 to the respondents 2 & 3 requesting them to grant compassionate appointment in the cadre of sweeper in the place of her deceased father along with the relevant G.O. Ms.No.1357 dated 18.7.2011. but the respondents have not taken any action so far. Hence the present writ petition came to be filed.

3. The counter affidavit has been filed by the 2nd respondent denying all the allegations made in the petition. Inter alia, it is stated that the petitioner has to place material evidence before claim appointment on compassionate grounds that she is dependent on the deceased employee by the time of death of her father while in service. Admittedly the petitioner is a married daughter of deceased employee and she has been living along with her husband ever since her marriage and not living with her father after her marriage particularly at the time of death of her father. No doubt, as per G.O.Ms.No.350, GA (Ser.A) Department, dated 30.07.1999 the married daughter is eligible for appointment on compassionate grounds when there is only a married daughter to the deceased employee without older or younger brothers and sisters and the spouse of the deceased employee is not willing to avail the compassionate appointment, such married daughter may be considered, provided she is dependent on the deceased father / employee, subject to satisfying other conditions and instructions issued from time to time. But, the petitioner has not placed any material record in this case to

satisfy the above parameters to get appointment on compassionate grounds. The petitioner has averred that she is a divorced woman and not depending on her husband but the petitioner did not submit divorce order granted by competent court nor produced any other evidence to prove that she was depending on her father by the time of death of the employee.

4. The counter affidavit has been filed by the 3rd respondent. It is stated that, as per G.O.Ms.No.350, General Administration (SER-A) Dept., dt.30.07.1999, the married daughter is eligible for appointment on compassionate grounds when there is only a married daughter to the deceased employee without older or younger brothers or sisters and the spouse of the deceased employee is not willing to avail the compassionate appointment, such married daughter may be considered, provided she is dependent on the deceased employee subject to satisfying other conditions and instructions issued from time to time. It is stated that the petitioner has requested for appointment on compassionate grounds claiming that she is solely dependent on his father as she was deserted from her husband and staying with his father with her children. She was directed to produce divorce decree as proof of her claim. But she failed to produce the same and she could not produce dependence certificate as required. Hence her request for appointment on compassionate grounds was rejected vide this Devasthanam Rc.No.A1/2273/2014, Dt.09.07.2018 on the ground that

she failed to submit decree copy of divorce and her mother was predeceased to the death of her father and not come under compassionate grounds as per G.O MS No.350, Genera Administration Department, Dt.30.07.2019. Hence the writ petition is not maintainable and liable to be dismissed.

5. Heard Sri D.V. Sasidhar, learned counsel appearing for the petitioner; learned Assistant Government Pleader for Services-I and learned Assistant Government Pleader for Endowments appearing for the respondents.

6. On hearing, learned counsel for the petitioner while reiterating the averments made in the petition contended that, though the petitioner made representations to the respondents 2 & 3 requesting them to grant compassionate appointment in the cadre of sweeper in the place of her deceased along with the death certificate of her father, her husband death certificate, her mother death certificate, brother death certificate, family member certificate and no earning member certificate, the respondents have not taken any action in this is regard is highly illegal and arbitrary. He further contended that, in terms of G.O.Ms.No.350 dated 30.07.1999, the married daughters also entitled for consideration of appointment on compassionate grounds. This Court also held that married daughter is entitled for appointment on compassionate grounds. Under these circumstances, rejection of the claim of the petitioner on the ground that deceased daughter is married daughter is illegal, unjust and

contrary to the object of scheme of compassionate appointment He further submits that in similar circumstances, when there was no post in Amaravathi Temple, the 2nd respondent has issued proceedings in Rc. No.C2/COE/13021(43)/3/2021 dated 5.3.2021 granting compassionate appointment to one attender K.V. Ramya working on outsourcing basis in Amaravathi Temple by creating a supernumerary post of attender on regular basis. The petitioner herein also stand in the similar footing as there is a clear vacancy and she is eligible to claim compassionate appointment in the place of her deceased father. He further submits that the 1st respondent has issued G.O. Ms. 1357 dated 18.7.2011 extending compassionate appointment to the employees working in the Endowments Department, as such, the petitioner is eligible for appointment on compassionate grounds as per the said G.O. also. Unless the petitioner's case is considered on humanitarian grounds and she is granted the regular timescale in the cadre of sweeper on compassionate grounds, the petitioner will be put to irreparable loss and injury. Therefore, learned counsel requests this Court to pass appropriate orders.

7. Per contra, learned Assistant Government Pleader also reiterated the contents made in the counter and prayed to dismiss the writ petition.

8. On the other hand, learned Standing Counsel appearing for the respondents also while denying the contents made by the petitioner, submits that in the instant case, the spouse of the deceased Sweeper

of this Devasthanam namely Smt.Chandra died intestate on 21.10.1992 and the son of the deceased Sweeper namely Mallikarjuna was also died on 25.02.2007 i.e. much prior to the death of Sweeper. The petitioner and her sister got married during the life time of their father. The husband of the petitioner viz., Siripalli Narasimha Rao was died on 28.12.2020 as per the death certificate produced by her which all show that the petitioner is not dependent on the deceased Sweeper as on the date of his death and there are no dependent family members at the time of death of Sweeper and thus there is no scope for providing compassionate appointments to the family members in this case. He further submits that, admittedly the deceased employee is blessed with one son and two daughters including the petitioner herein in the wedlock. No doubt the son of the deceased employee was pre-deceased his father but admittedly the petitioner is having one sister who is alive. Therefore, the claim of the petitioner for appointment on compassionate grounds would not lie within the parameters mentioned in G.O.Ms.No.350, dated 30.07.1999 even consider no objection given by her sister. It is submitted that the petitioner's father / deceased employee has expired on dated 24.06.2013. She has not produced any evidence to show that she is dependent on her father by that time. Petitioner is bringing different contentions at the belated stage stating that for some time her husband whereabouts are not known and that he expired in the year 2020. But those facts will not prove that she is

dependent on her father at the time of his death. Therefore, the petitioner is not entitled for appointment on compassionate grounds in view of death of her father while in service in 3rd respondent-devasthanam and hence, prayed to dismiss the writ petition.

9. Perused the material on record.

10. The Government of Andhra Pradesh vide G.O.Ms.No.350, General Administration (Ser.A) Department, dated 30.07.1999 in which it was clarified that when there is only a married daughter to the deceased government employee without older or younger brothers or sisters and the Spouse of the deceased government employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is depending on the deceased government employee and subject to satisfying the other conditions and instructions issued on the scheme from time to time.

11. The relevant clauses of the scheme of compassionate appointment in the consolidated instructions issued by the State Government in Circular Memo No.60681/ Ser.A/2003-1, General Administration (Ser.A) Department, dated 12.08.2003 are extracted as hereunder:

II. Depending family members means;

(a) Spouse.

(b) Son/daughter of regular Government employees.

(i) x x x x

(ii) x x x x

(iii) When there is only a married daughter to the deceased government employee without older or the younger brothers or sisters and the Spouse of the deceased government employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is dependent on the deceased government employee.

12. On careful examination of G.O.Ms.No.350, General Administration (Ser.A) Department, dated 30.07.1999 and Circular Memo No.60681/ Ser.A/2003-1, General Administration (Ser.A) Department, dated 12.08.2003, it was mentioned therein that the married daughters also entitled for appointment on compassionate grounds subject to certain conditions.

13. The object of compassionate appointment is a social security measure to support the family of the deceased government servant, who dies in harness. The aim and object of the policy for compassionate appointment is to provide financial support to the family of the deceased employee, who left the dependents in distress and penury. The core aim of the object of providing compassionate appointment is to relief the family from financial sufferings being faced for the sudden demise of the Bread Winner of the family. The sufferings being faced by the dependents of the deceased employee for sudden demise of the Bread Winner could be solved for some extent by providing compassionate appointment to the one of the dependents of the deceased employee to look after the family. While the State Government and its instrumentalities implementing the scheme of compassionate appointments to help the destitute families of the deceased

employees, but incorporating such clause in eligibility criteria discriminating the daughters, who are being married is appears to be illegal and unjust.

14. It appears from the above condition of eligibility criteria that there is no such condition for 'son' whether he is married or unmarried. But with respect to the daughter, it was mentioned that 'unmarried daughter' is only eligible. The married daughters are declared as ineligible on the ground that she is married. Showing discrimination towards 'married daughter' because she is being married as and when there is no such ineligibility applicable to a 'married son' appears to be arbitrary and discriminatory.

15. This Court is of the considered opinion that the sons and daughters whether they are unmarried or married, they are part of the family of their parents for the entire life. Just because of the daughter is got married, saying that she is not the member of her parents family is nothing but atrocities. Because of her marriage the daughter would not cease her status as member of the family of her parents.

16. On careful consideration of the provisions of this Act, the obligation to look after or take care of their parents by the daughters after their marriage has not taken away. The married daughter also has the obligation and responsibility to attend the needs of her parents to lead normal life. As such, it is clear from the provisions of the Act No.56/2007 also there is no difference between the sons and daughters whether they

are married or unmarried in discharging their responsibilities and obligations towards their parents.

17. This Court has fortified the judgments rendered by various High Courts, which are extracted as hereunder:

18. In a case of **Smt.Bhuvaneshwari V. Puranik vs The State of Karnataka and others**¹, wherein the learned Judge of this Court, while dealing with the object of compassionate appointments succinctly dealt with the legal position and allowed a Writ Petition, wherein a challenge was laid to Rule 2(1) (a) (i), Rule 2(1) (b) and Rule 3(2) (i) (c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, holding inter alia as follows:

"If the marital status of a son does not make any difference in Law to his entitlement for seeking appointment on compassionate grounds, the marital status of a daughter should make no difference, as the married daughter does not cease to be a part of the family and Law cannot make an assumption that married sons alone continue to be the part of the family."

19. In **Mamata Devi vs. State of Himachal Pradesh & others**², the High Court of Himachal Pradesh at Shimla, in a similar issue arose with regard to non consideration of married daughter for compassionate appointment, it is observed as extracted hereunder:

True it is that under the Constitution of India it is impermissible for State to draw any assumption to use marriage as a rationale for practicing an act of hostile discrimination by denying benefit(s) to a daughter, when equivalent benefits are being granted to a son in terms of compassionate appointment. Marriage neither alters the relationship between the married daughters with her parents, nor creates severance of relationship. A son remains a son and his marriage does not alter or severe his relation with his parents, likewise, a daughter is always a daughter to her parents, her marriage also does not

¹2020 SCC Online Kar 3397

²2020 SCC OnLine HP 2125

alter or sever her relation with her parents. If, the State even draws a thin line of distinction based on gender, then that line has to withstand the test of Articles 15 of the Constitution of India, which prohibits discrimination on the basis of religion, race, caste, sex or place of birth. In the instant case, the classificatory distinction, as drawn by the respondents, debarring the married daughter is, could not withstand the test of Article 15 of the Constitution of India.

12. Another point, which we need to delve on, is whether with the marriage of a daughter, her dependency on her parents ceases or it remains unaffected? The daughters have all the rights, which are available to sons, be it succession, right(s) in property etc. and these rights don't cease with marriage of a daughter and remain alive even after marriage. In fact, marriage is a social circumstance and it does not affect the dependency, thus marriage cannot be regarded as a reasonable and acceptable ground to determine dependency. For dependency (herein financial dependency), many facets have to be looked into, one of them is a situation where a son is not in need of compassionate appointment, but a married daughter is in need of the same, then the State cannot shrug off from its responsibility, rather duty, to provide compassionate appointment to her and the State cannot turn its back to a daughter, on unacceptable ground that she is married, who looks towards the State with the eyes of hope.

20. In Smt. Vimla Srivastava and others vs. State of U.P. and others³, the High Court of Allahabad observed as hereunder:

"The issue before the Court is whether marriage is a social circumstance which is relevant in defining the ambit of the expression "family" and whether the fact that a daughter is married can constitutionally be a permissible ground to deny her the benefit of compassionate appointment. The matter can be looked at from a variety of perspectives. Implicit in the definition which has been adopted by the state in Rule 2 (c) is an assumption that while a son continues to be a member of the family and that upon marriage, he does not cease to be a part of the family of his father, a daughter upon marriage ceases to be a part of the family of her father. It is discriminatory and constitutionally impermissible for the State to make that assumption and to use marriage as a rationale for practicing an act of hostile discrimination by denying benefits to a daughter when equivalent benefits are granted to a son in terms of the compassionate appointment. Marriage does not determine the continuance of the relationship of a child, whether a son or a daughter, with the parents. A son continues to be a son both before and after marriage. A daughter continues to a daughter. This relationship is not effaced either in fact or in law upon marriage. Marriage does not bring about a severance of the relationship between, a father and mother and their son or between parents and their daughter. These relationship are not governed or defined by marital status. The state has based its defence in its reply and the foundation of the exclusion on a paternalistic notion of the role and status of a woman. These patriarchal notions must answer the test of the guarantee of equality under Article 14 and must be held answerable to the recognition of gender identity under Article 15.

The stand which has been taken by the state in the counter affidavit proceeds on a paternalistic notion of the position of a woman in our society and particularly of the position of a daughter after marriage. The affidavit postulates that after marriage, a daughter becomes a member of the family of her husband and the responsibility of her maintenance solely lies upon her husband. The second basis which has been indicated in the affidavit is that in Hindu Law, a married daughter cannot be considered as dependent of her father or a dependent of a joint Hindu Family. The assumption that after marriage, a daughter cannot be said to be a member of the family of her father or that she ceases to be dependent on her father irrespective of social circumstances cannot be countenanced. Our society is governed by constitutional principles. Marriage cannot be regarded as a justifiable ground to define and exclude from who constitutes a member of the family when the state has adopted a social welfare policy which is grounded on dependency. The test in matter of compassionate appointment is a test of dependency with defined relationships. There are situations where a son of the deceased government servant may not be in need of compassionate appointment because the economic and financial position of the family of the deceased are not such as to require the grant of compassionate appointment on a preferential basis. But the dependency or a lack of dependency is a matter which is not determined a priori on the basis of whether or not the son is married. Similarly, whether or not a daughter of a deceased should be granted compassionate appointment has to be defined with reference to whether, on a consideration of all relevant facts and circumstances, she was dependent on the deceased government servant. Excluding

³ 2016(1) ADJ 21 (DB)

daughters purely on the ground of marriage would constitute and impermissible discrimination and be violative of Articles 14 and 15 of the Constitution.

A variety of situations can be envisaged where the application of the rule would be invidious and discriminatory. The deceased government servant may have only surviving married daughters to look after the widowed parent- father or mother. The daughters may be the only persons to look after a family in distress after the death of the bread earner. Yet, under the rule no daughter can seek compassionate appointment only because she is married. The family of the deceased employee will not be able to tide over the financial crisis from the untimely death of its wage earner who has died in harness. The purpose and spirit underlying the grant of compassionate appointment stands defeated. In a given situation, even though the deceased government employee leaves behind a surviving son, he may not in fact be looking after the welfare of the surviving parents. Only a daughter may be the source of solace emotional and financial, in certain cases. These are not isolated situations but social realities in India. A surviving son may have left the village, town or state in search of employment in a metropolitan city. The daughter may be the one to care for surviving parent. Yet the rule deprives the daughter of compassionate appointment only because she is married. Our law must evolve in a robust manner to accommodate social contexts. The grant of compassionate appointment is not just a social welfare benefit which is allowed to the person who is granted employment. The purpose of the benefit is to enable the family of a deceased government servant, who dies in harness, to be supported by the grant of the compassionate appointment to a member of the family. Excluding a married daughter from the ambit of the family may well defeat the object of the social welfare benefit.

.....

Dealing with the aspect of marriage, the Division Bench held as follows:

"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."

21. In N. Uma vs. The Director of Elementary School Education & others, Writ Petition No.25366 of 2008, decided on 22.09.2017, the High Court of Madras has observed as hereunder:

"13. All the above judgments have clearly observed that the State Government should not discriminate inspite of giving compassionate appointment to the sons and daughters of the deceased employee. When the Government is giving appointment to the married sons, they should not deny to give employment to the married daughters. But in this case, only on the ground of marriage of this petitioner, who is the daughter of the deceased mother, is denied by citing marriage as a reason and such action of the State is against the very scheme of the Constitution. The preamble of the constitution ensures equality of status and opportunity to all its citizens. The Government should not discriminate or deprive to woman on the ground of marriage, while the same is r not a restriction in the case of a man. 14. Admittedly, in this case, the deceased employee has died during the course of the employment by leaving her two daughters viz., M.Manjula and M.Indra. Infact, the elder daughter of the deceased employee by viz., M.Manjula is a mentally retarded person and this petitioner, who is the second daughter of the deceased employee should take care of the first daughter. But, without considering all the above Government Orders and the judgments of this Court passed in the above writ petitions and the pathetic condition of the petitioner's family, the respondent mechanically passed the present impugned order by stating that the petitioner is a married woman and hence she is not entitled to the compassionate appointment. Again, the view of the respondent is totally illegal and he had not applied his mind. In all the above judgments cited supra, this Court directed the Government Authorities to give employment to the married daughter without discrimination but this respondent purposely rejected the request of the petitioner on the sole ground that she is a married daughter of the deceased employee.

.....

15. In fact, this Court in the case of R.Govindammal Vs. Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Chennai in 2015 (5) CTC 344 has directed the first respondent to provide compassionate appointment to the petitioner, if she is otherwise eligible, without reference to marriage. In the said order, the learned Judge of this Court issued a direction to the Chief Secretary of the Tamil Nadu Government, to suitably modify the Government Order in G.O.Ms.No.165, Labour and Employment Department, dated 30.08.2010 in the light of the observations made above.

16. The learned Additional Government Pleader, for the respondent Mr.R.Vijayakumar, argued that the impugned order dated NIL was passed in accordance with the above Government Orders. Since, the Government Order is restricted to give employment to the married daughters and hence, he sustained the impugned order.

17. In my considered opinion and by going through the above judgments and on perusing the impugned order passed by the respondent it is unfortunate to note here that the respondent without considering the pathetic situation of the petitioner's case that the elder sister viz., M.Manjula, is a mentally retarded person and she ought to have been taken care of by her family members, the respondent has passed the impugned order in a mechanical manner without mentioning any other ground except the ground of married daughter. All the above cases cited supra has rightly directed the respondent authorities to provide compassionate appointment without reference to the marriage of the petitioner. In the present case also, the above judgment is squarely applicable." (emphasis supplied)

18. The above said decisions apply on all fours to the case on hand. In the instant case, the deceased Government servant has no male issue. If the other legal heirs have given no objection to the petitioner being granted appointment on compassionate grounds, it cannot be stated that the petitioner is not entitled to appointment merely because she is married. That apart, Maintenance and Welfare of Parents and Senior Citizens Act places equal responsibility on both the son and daughter to take care of their parents.

19. There can be no artificial classification between married son and married daughter only on the basis of sex, as the same would tantamount to gender discrimination. If married son is considered to be a part of the family, this Court is at a loss to understand as to why a married daughter should not be included in the definition of family.

20. Son and daughter are supposed to take care of the parents at the old age. The married son is to be treated at par with the unmarried daughter. No considering the married daughter for compassionate appointment merely on the basis of marriage is patently arbitrary and unreasonable.

22. In Udham Singh Nagar District Cooperative Bank Ltd. & another vs. Anjula Singh and others⁴, the High Court of Uttarakhand (Full Bench) held as hereunder:

"non-inclusion of a "married daughter" in the definition of a "family", under rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India. Resultantly, a "married daughter" was also held to fall within the inclusive definition of "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations. Thus, the judgment (supra) is fully applicable to the present case."

23. In C.B. Muthamma vs. Union of India⁵, the Hon'ble Apex Court at para Nos.6 and 7 observed as extracted hereunder:

⁴ 2019(3) STC 570 (Uttarakhand) = (2019) 2 UPLB EC1

6. At the first blush this rule is in defiance of Article

16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even 2019(3) STC 570 (Uttarakhand) = (2019) 2 UPLB EC1 (1979) 4 SCC 260 diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules.

24. In Ranjana Murlidhar Anerao vs. State of Maharashtra⁶, the High Court of Bombay (DB) held at para No.13 as extracted hereunder:

13. From the aforesaid discussion, we have no hesitation in coming to the conclusion that the Government Resolution dated 20-2-2004 to the extent it excludes a married daughter from being considered as a member of the "family" a deceased retail license holder is violative of the provisions of the Articles 14, 15 and 19(1)(g) of the Constitution of India. The Hon'ble Minister, Food and Civil Supplies and Consumer Protection while passing the impugned order dated 17-6-2009 has taken into consideration the position as obtained from Government Resolution dated 20-2-2004. Hence the claim of the petitioner for being treated as a legal representative of deceased Godavaribai J. Jadhav has not been considered as the petitioner was considered to be a married daughter. In view of our aforesaid findings, the revision application under clause- 16 of the Licensing Order, 1979 will have to be remitted back for fresh decision in the light of our aforesaid findings. Hence, we pass the following order:

(a) The Government Resolutions/Circulars dated 22-12-1997, 16-8-2001, 10-12-2003 and 20-2-2004 to the extent they exclude a married daughter from being considered as a member of the "family" of a deceased retail license holder (2014) 5 Mah LJ 543 are held to be violative of the provisions of Articles 14, 15 and 19(1)(g) of the Constitution of India;

25. In Sou.Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni) vs. The Superintending Engineer, Pune Irrigation Project Circle and another⁷, the Bombay High Court held at para No.2 as extracted hereunder:

2. The petitioner claims that her name has been deleted only because she is married. A married daughter could not have laid a claim for compassionate employment, because in the perception of the respondent nos. 1 and 2, she is no longer a part of the family of the deceased. It is this stand, which is questioned before us, in this writ

⁵ (1979) 4 SCC 260

⁶ (2014) 5 Mah LJ 543

⁷ 2013 SCC OnLine BOM 1549 (DB)

petition. Mr. Kulkarni, appearing on behalf of the petitioner submitted that the facts in this case are peculiar. The deceased only had daughters. Both daughters are married.

The second daughter is not interested in the job. The petitioner is interested in the job because she is supporting her widowed mother. The mother has nobody to look forward to except the petitioner - daughter. The petitioner has asserted that even after her marriage she is looking after her mother in her old age. In such circumstances, the deletion of her name from the list is violative of the constitutional mandate of Article 14 and 16 of the Constitution of India.

26. In **Commissioner of Police, Hyderabad City and others vs. K. Padmaja**⁸, the High Court of Andhra Pradesh while considering an identical issue that respondent- applicant in the said case was married daughter and she failed to produce any proof to show that she was staying with the deceased father at the time of his death and she was residing in a separate house along with her husband and was eking her livelihood by sewing the garments, and despite that, this Court held as under:

"Even if the applicant is residing in a separate house that by itself, is not a ground to reject the claim of appointment. So far as the income of the applicant is concerned, it is proved that she is not having any independent income to live on her own and she is also taking care of the mother (widow of the deceased employee). No valid reasons are recorded by the authorities to reject the claim of the applicant for compassionate appointment."

27. In **V. Shashi Kala vs. District Collector, Anantapuramu and others**⁹, the High Court of Andhra Pradesh held as extracted hereunder:

"In the present case, undisputedly the petitioner is the elder daughter of the deceased and she along with her husband is staying at the place of the deceased even after her marriage. In the society, there are two types of families - one is wealthy and the other is poor. The wealthy people ask their daughters after marriage either to stay with them or to stay separately by making necessary arrangements. In the second category, the daughters continue to stay with their parents depending upon their income even after their marriage when they do not have source of income. The present case is of the second category."

28. In view of the foregoing reasons and in view of the decisions of Hon'ble Apex Court referred to above, this Court deems fit to allow of the present writ petition, while declaring the action of the respondents in not

⁸ 2013(4) ALT 501 (D.B)

⁹ 2019(3)ALD 338 (DB)

granting appointment to the petitioner on compassionate grounds in the cadre of sweeper in the establishment of 3rd respondent temple in the place of her father V.Jagadeesh, as illegal and arbitrary.

29. Accordingly, the Writ Petition is allowed. The respondents are directed to appoint the petitioner as sweeper or in any suitable post, from the date of death of her father i.e., w.e.f. 24.06.2013 with all service benefits only within a period of eight (08) weeks from the date of receipt of a copy of this order. However, the petitioner is not entitled to claim monetary benefit, as she was not appointed to the post on the principle of 'NO WORK – NO PAY". No order as to costs.

30. As a sequel, interlocutory applications, if any pending, shall stand closed.

//TRUE COPY//

Sd/- N. NAGAMMA
ASSISTANT REGISTRAR

SECTION OFFICER

One fair copy to the DR JUSTICE K. MANMADHA RAO
(for His Lordships Kind Perusal)

To,

1. The Principal Secretary, Revenue (Endowments) Dept., State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi..
2. The Commissioner, Endowments Department, A.P. Gollapudi, Vijayawada.
3. The Executive Officer, Sri Durga Malleswara Swamy Varla Devasthanam, Indrakeeladri, Vijayawada, Krishna District.
4. One CC to Sri D. V. Sasidhar, Advocate [OPUC]
5. One CC to Sri K. Madhava Reddy, SC for Endowments[OPUC]
6. Two CCs to GP for Services-I, High Court of Andhra Pradesh. [OUT]
7. Two CC's to GP for Endowments, High Court of A.P. at Amaravati[OUT]
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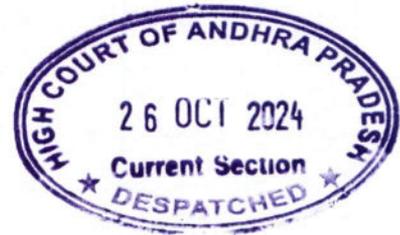
ssb

HIGH COURT

DATED:18/10/2024

ORDER

WP.No.7059 of 2021



ALLOWING THE W.P. WITHOUT COSTS