IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 756 of 2017

Ruchika Tomar ……...Petitioner

Vs.

State of Uttarakhand and another ……..Respondents

with

Writ Petition (M/S) No. 3236 of 2015

Km Kriti Bishnoi Minor ……...Petitioner

Vs.

State of Uttarakhand and another ……..Respondents

with

Writ Petition (M/S) No. 156 of 2017

Pankaj Singh and others ……...Petitioners

Vs.

State of Uttarakhand and another ……..Respondents

with

Writ Petition (M/S) No. 344 of 2017

Aditya Tyagi ……...Petitioner

Vs.

State of Uttarakhand and another ……..Respondents

with

Writ Petition (M/S) No. 997 of 2017

Balwant Singh ……...Petitioner

Vs.

State of Uttarakhand and another ……..Respondents

Mr. Tapan Singh, Advocate with Mr. Nalin Saun, Advocate for the petitioner.
Mr. N.S. Pundir, Dy. Advocate General for the State of Uttarakhand.

JUDGMENT

Sharad Kumar Sharma, J. (Oral)

The petitioner has preferred this writ petition as against the action of the respondent of not extending the benefits to the petitioner which was otherwise according to the petitioners was available to the dependents of freedom fighter under the various schemes floated by

Government of India and State Government as well under the Act called as "The Uttar Pradesh Public Services (Reservation for Physically Handicapped Dependents of Freedom Fighter and Ex-Servicemen) Act, 1993" on the premise that the petitioner would not be entitled for the benefit because she happens to be granddaughter (daughters' daughter "Natini") of the deceased freedom fighter and would not be covered in the definitions of family.

2. The only argument which has been extended by learned counsel for the petitioner is that the petitioner since being daughters daughter was a member of the family of deceased freedom fighter, irrespective of the fact that she got married to another person, that ought not deprive the petitioner from availing the benefit under the freedom fighter scheme on the premise that she is married granddaughter of the deceased freedom fighter, on the ground of gender discrimination.

3. The argument of the learned counsel for the petitioner is also from the view point that when the grandson (i.e. son's son) of the freedom fighter is included under the definition of the dependants of the family of freedom fighter in that eventuality that granddaughter i.e. daughters daughter or son i.e. (Nati and Natini) as called in the normal dialect (Natini) would also be entitled for the benefit under the scheme. In support of his contention, the learned counsel for the petitioner has made a reference the ratio as propounded by the Division Bench of Allahabad High Court in the case of ***Isha Tyagi Vs. State of U.P. and others***, reported in ***2014 (9) ADJ 331*** though the question therein was with regards to the discrimination being created in relation to the daughter/son for the grant of compassionate appointment since being violative the Article 14 and 15 of the Constitution of India. The Division Bench has held that the married daughter would fall within the definition of the family and she would be entitled for grant of compassionate appointment. The relevant paragraphs of the aforesaid judgment read as under :-

> *"6. In National Legal Services Authority Vs Union of India1, the Supreme Court held that any discrimination*

on the basis of gender identity would be contrary to Articles 14, 15 and 21 of the Constitution:

> *"82. Article 14 has used the expression "person" and Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender neutral" evidently refer to human beings. ...Gender identity as already indicated forms the core of one's personal self, based on self-identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity. ...*
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> *83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, ..."*

7. 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 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 emphasise 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".*

4. The said issue also travelled before this Court in a Full Bench judgment, wherein the ratio as laid down by Division Bench of Allahabad High Court has been affirmed and it was held that the married daughter, her son or daughter of an employee claiming appointment under Dying and Harness Rules cannot be discriminated on the basis of gender discrimination since being violative of Article 14 & 15 of the Constitution of India and ultimately it was held that they would be included in the definition of the family as contained therein under Section 2(c) of Dying and Harness Rules, 1974. The said ratio is propounded in para 65 and 66 of Full Bench judgment of this Court which is quoted herein under :

> *"65. Any person, who is a part of the "family" of the deceased Government servant, would also be included within the said definition. Consequently, a "married daughter" would also fall within the definition of a "family" both in Rule 2(c) of the 1974 Rules, and under the note below Regulation 104 of the 1975 Regulations. Needless to state that the members of the "family" of the deceased Government servant in Clauses (i) to (iii) of Rule 2(c) of the 1974 Rules, and the note below Regulation 104 of the 1975 Regulations, which would include a "married daughter", would be entitled to be considered for compassionate appointment only if they were dependent on the Government servant at the time of his death, and satisfy all the other conditions stipulated in the 1974 Rules and the 1975 Regulations.*

(v) Conclusion:

66. We answer the reference holding that:-

i. Question No.1 should be answered in the affirmative. It is only a dependent member of the family, of the Government servant who died in harness, who is entitled to be considered for appointment, on compassionate grounds, both under the 1974 Rules and the 1975 Regulations.

ii. Question No.2 should also be answered in the affirmative. 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.

iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations."

5. This ratio as settled down by the Full Bench judgment would be applicable in relation to extension of benefit of the daughter, granddaughter or grandson (i.e. Nati and Nitini) of the freedom fighter as they cannot be discriminated on the basis of gender discrimination. Consequently, in accordance with The Uttar Pradesh Public Services (Reservation for Physically Handicapped Dependents of Freedom Fighter and Ex-Servicemen) Act, 1993.

6. This Court is of the view in the light of the ratio propounded by the Full Bench of this Court, the daughters' daughter i.e. granddaughter or daughter/son of freedom fighter would fall to be within the definition of the dependents as well as the family of the freedom fighter and cannot be discriminated on ground of gender hence would be

covered by benefit to be extended to them under the Act and the scheme framed for the benefit of freedom fighter.

7. Even the learned Standing Counsel too admits that the same principle as enunciated by the Division Bench of Allahabad High Court, which had been subsequently affirmed by the Full Bench of this Court, the same principle would be applicable in the instant case too. As there cannot be a deprivation of benefits to the daughters or her children as on the ground of gender discrimination as that would be voilative of Article 14 and 15 of the Constitution of India.

8. Accordingly, the writ petition stands disposed of with a direction that they cannot be any gender discrimination in relation to claim raised by the petitioner being daughters' daughter (Natini) of the freedom fighter. The same principles as enshrined by Full Bench of this Court, would be applicable and the claim as raised in the writ petition is directed to be considered by respondents provided that there is no any other legal impediment against the petitioner.

9. However, thee would be no order as to costs.

(Sharad Kumar Sharma.J.)
01.05.2019

JKJ