

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 14393/2019

1. Kshama Devi Wife Of Shri Balram Singh Daughter Of Late Shri Mohan Singh, Aged About 31 Years, Resident Of Village Vishda, Post Jharoli, Sewar Thana, Teh. And District Bharatpur.
2. Smt. Rajwati Wife Of Late Shri Mohan Singh, Aged About 55 Years, Resident Of Village Vishda, Post Jharoli, Sewar Thana, Teh. And District Bharatpur.

----Petitioners

Versus

State Of Rajasthan, Through Principal Secretary, Home Department, Secretariat, Jaipur.

Superintendent Of Police, Bharatpur, Distt. Bharatpur.

----Respondents



For Petitioner(s) : Ms. Anita Agarwal with
Mr. Laxmi Kant

For Respondent(s) :

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE INDERJEET SINGH**

Order

27/08/2019

1. The petitioners challenge the validity of Rule 2(c) of the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servant Rules, 1996 (hereinafter to be referred as 'the Rules of 1996').
2. It is contended that the rule, to the extent it excludes from its purview (for the benefit of compassionate appointment) married daughters, is discriminatory and contrary to Article 15 of the Constitution of India.
3. Learned counsel for the petitioners relies upon the decision of Division Bench of Madras High Court in the case of *The Joint Registrar/Managing Director, Virudhunagar District Central*

Co-operative Bank Ltd vs. P.Asothai & Ors dated 4.4.2017. The Madras High Court held as under:-

7. Though voluminous records have been produced before this Court, as far as the first point is concerned, the issue involved in this writ petition is no more *res integra*. In W.A.(MD).No.941 of 2016 dated 24.01.2017, we have not only traced the history of the role played by women in our Indian Country, but also we have extensively considered the very same issue and directed the official respondents therein to provide compassionate appointment to the petitioner therein. The important portion found in the said judgment is usefully extracted below:-



"4. After hearing both sides, the learned Judge relying on his own order in W.P. (MD).No.20437 of 2015 [A. VIMALA v. THE SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT], dated 09.07.2015, wherein the learned Judge has quashed the impugned order fixing the cut-off date for providing compassionate appointment to the married daughter, as 29.11.2001. While passing the above order, the learned Judge has discussed various Government orders and various Judgments and in those GOs, the status of the married daughters for seeking compassionate appointment was relaxed little by little. By improving the GOs one after another and finally in G.O.Ms.No.96, dated 18.06.2012, the Government has decided that the married daughters also can claim for compassionate appointment provided their marriage should have been after 29.11.2001 and this condition was set aside by the learned Judge in the above W.P.(MD).No.20437 of 2015 and it appears that there is no appeal filed against the above order and therefore, the quashing of the condition in paragraph Nos.3 and 4 of G.O.Ms.No.96, Labour and Employment Department, dated 18.06.2012, has become final. Hence, the respondents cannot deny appointment to the petitioner citing her marriage. Now the point to be considered is whether the family is in indigent circumstances and whether the family pension received by the petitioner's mother and owning a house will stand in the way of getting compassionate appointment to the petitioner.

5. In my considered opinion, the compassionate appointment scheme is applicable for a Government servant whose legal heirs are automatically entitled for the terminal benefits and family pension and if that is going to be a bar for getting compassionate appointment, then, the scheme of compassionate appointment can never be for a Government servant. That is the reason as to why the Hon'ble Supreme Court in the case of *BALBIR KAUR v. STEEL AUTHORITY OF INDIA LTD.*, reported in 2000(6) SCC 493, has specifically stated in paragraph No.13 as follows:-



13..... But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump sum amount being made available to the family? this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearners, but that would undoubtedly bring some solace to the situation?

6. From the above Judgment, it is very clear that the Court has rightly held that the grant of family pension and payment of terminal benefits cannot be treated as substitute for providing employment assistance. This proposition has been followed by the Hon'ble Supreme Court in *CANARA BANK v. M. MAHESH KUMAR* reported in 2015(7) SCC 412, and thereafter, the Government cannot take a stand that the petitioner's mother is drawing family pension and she owned a house of her own.

7. In the impugned order itself, it is stated that the sons of the deceased Government servant are working in Private Companies and they are leading a separate life and what is to be seen is whether the married

daughter will take care of the family or not, which can be only ascertained by following certain procedures of giving affidavit by herself and her husband promising to take care of the mother and on that assurance, appointment can be given to the petitioner and it is not case that such affidavit was not given by the petitioner.

8. Further it is imperative to note that we are at an era, wherein women have risen above the challenges and dutifully discharged their responsibilities as an individual in different roles. She remains one of the supreme species, wherein her representatives are clocked 24/7 in different forms as a daughter, wife, mother, sister, friend, aunt, grandmother, daughter-in-law, mother-in-law, guardian, employee, so on and so forth. Women are not just the procreators of the clan, but have been welcomed to become that reliant person who can take care of her own family and her newfound family. She have risen from dependents to nurtures of relationship, and for a woman to take care of her own parents is not a norm, but a welcome trend in society as they are doing an impressive diligence at it. The credibility and zeal is always there and our constitution does not discriminate its citizens on the basis of gender and therefore, the order of the learned Judge is well founded.

9. The gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance and therefore, our constitution has not discriminated male from female and any order passed discriminating male from female will be only against the Constitution and it cannot be sustained. Thus, for all the reasons stated above, we confirm the order of the learned Judge passed in W.P. (MD).No.14643 of 2015, dated 04.01.2016. It is needless to say that the exercise of granting compassionate appointment to the petitioner shall be done within a period of four weeks from the date of receipt of a copy this order."



8. Therefore, apart from paragraph No.20 of the order made in W.P.(MD).No.21811 of 2015 and in the light of the reasons assigned by us in our order dated W.A. (MD).No.941 of 2016 dated 24.01.2017, we are not in agreement that the married daughter is not entitled to get compassionate appointment. In our view, denying employment to the petitioner on the ground of marriage is in violation of Articles 14, 15 and 16 of the Constitution. Therefore, the first reason is answered against the respondents."

4. Counsel for the petitioners reiterated the reasoning of the Madras High Court in her arguments and contended that the rule to the extent it, *per se*, discriminates against married women and denies benefit of compassionate appointment – regardless of the actual facts i.e., whether the deceased employee had a son or not, is arbitrary.

5 This Court by Division Bench ruling in the case of *Sumer Kanwar (Smt.) vs. State of Rajasthan & Ors [D.B. Civil Writ Petition No. 4716/2010]* decided on 12.8.2011, has upheld the validity of the Rule 2(c) of the Rules of 1996 and stated as follows:-

"In our considered opinion, it is not for the Courts to expand the definition of the dependant. It is matter of policy. The dependants are defined to be spouse, son, unmarried or widowed daughter, adopted son/adopted unmarried daughter, legally adopted by the deceased Government servant. Married daughter cannot be said to be dependant on the deceased employee. The definition of dependant is with a view to give appointment to spouse, son, unmarried or widowed daughter, widow, etc. who are real dependants of the deceased. Such matters are within the purview of the policy of the State Government. It is for the State Government to define such matters and it is not for the Court to widen the scope of the Rules as compassionate appointment cannot be claimed as a matter of right. The definition in Rule 2(c) cannot be said to be unconstitutional and arbitrary in any manner. Exclusion of married daughter from the purview of dependants is appropriate. She is not dependant on premarital family. It is trite law that Courts cannot enlarge scope of such policy/rules. It is not for the Court to rewrite the policy/rules. The provision of Rule 2(c) cannot be said to be illegal or arbitrary in any manner."

6. The Division Bench further noted that the compassionate appointment is not a matter of right and cannot be

ordered in absence of a scheme; it was also recounted that such class of appointment is not a source of recruitment, but rather by way of exception to general rule that the appointment and recruitment should be after following the process compatible with Article 14 of the Constitution of India.

7. This Court is also bound and in agreement with the ruling in the case of *Sumer Kanwar* (supra). That apart, the essential premise on which the Madras High Court proceeded, in our opinion, is incorrect because compassionate appointment under the scheme cannot be equated with the right to receive family pension. The latter is a right that accrues in favour of a deceased employee's family members regardless of anything else; it is an extension of service benefit for loyal and continuous service and part of deferred salary (i.e. pension) compassionate appointment on the other hand, essentially is an exception to the rule against discrimination on the ground under Article 16(2) of the Constitution of India. Therefore, it is recognized as a benefit to tide over emergency or a crisis on account of bread earners / public servants' untimely death, and is universally granted only in the lowest rank of public service.

8. For the above reasons, the Court finds no merit in the present petition; is accordingly dismissed.

(INDERJEET SINGH), J

(S. RAVINDRA BHAT), CJ

Anil Makwana/s-125

सत्यमेव जयते