

**Case :-** SERVICE SINGLE No. - 4157 of 2020

**Petitioner :-** Mala Devi

**Respondent :-** State Of U.P. Thru Prin.Secy. Medical & Health Lko. & Ors.

**Counsel for Petitioner :-** Vijay Kumar Bajapai,Bhavana

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Mathur,J.**

Heard Sri V.K. Bajapai learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

Petition has been filed against order dated 9th October, 2019/ 10th October, 2018 whereby petitioner's claim for compassionate appointment in terms of The U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 has been rejected on the ground of petitioner's marital status of being married.

As per averments made in the petition, petitioner's father, late Sita Ram while serving as Sweeper in District Police Line Hospital, Bijnor passed away in service on 7th March, 2019. Petitioner thereafter filed an application for consideration for appointment on compassionate basis in terms of the aforesaid rules but the same has been rejected by means of impugned order.

Learned counsel for petitioner has submitted that exclusion of married daughters from the ambit of expression, 'family' in Rule 2(c) of the Rules of 1974 has already been held to be unconstitutional and the word 'unmarried' in Rule 2(c) (iii) of the said Rules has been struck down by means of judgment and order dated 4th December, 2015 passed in Writ C No. 60881 of 2015 (Smt. Vimla Srivastava versus State of U.P. and others) and other connected matters.

Learned counsel has also drawn attention to another division bench judgment rendered by this Court vide judgment and order dated 23rd December, 2015 in Special Appeal (Defective) No. 863 of 2015 (Neha Srviastava versus State of U.P. and others) whereby the earlier division bench judgment in the case of Smt. Vimla Srivastava (supra) has been followed. Special leave to appeal No. 22646 of 2016 (State of U.P. and another versus Neha Srivastava) against the aforesaid judgment has also been dismissed vide order dated 23rd July, 2019 thereby granting finality to the said matter.

A perusal of the impugned order although indicates that certain

report has been sought for by the concerned authority but at the same time candidature of petitioner for compassionate appointment has been rejected only on account of fact that petitioner is married.

Once exclusion of married daughters from the ambit of expression 'family' under the aforesaid rules has already been held to be unconstitutional and the word 'unmarried' has already been struck down by two division benches of this Court as upheld by Hon'ble the Supreme Court, there is no further dispute required to be adjudicated upon due to which present writ petition is being decided at the admission stage itself.

In view of the fact that petitioner's candidature has been rejected only on the ground of her marital status, a writ in the nature of certiorari is issued quashing the order dated 9th October, 2019/ 10th October, 2018. A further writ in the nature of mandamus is issued commanding the opposite parties to reconsider petitioner's candidature for compassionate appointment ignoring her marital status. Appropriate orders with regard to same shall be passed by reasoned and speaking order within a period of four weeks from the date a copy of this order is produced before the concerned authority.

Consequently, the writ petition stands allowed.

**Order Date :-** 13.2.2020

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