

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Case No.	Writ Petition No.15841 of 2021
Parties Name	<i>Shakila Begum (Siddiqui) & another Vs, Northern Coal Field Ltd. & others</i>
Date of Order	14/02/2022
Bench Constituted	Justice S.A.Dharmadhikari
Order passed by	Justice S.A.Dharmadhikari
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri Shri Akash Choudhary, learned counsel. For Respondents/State : Shri Greeshm Jain, learned counsel.
Law laid down	If a sister is not included as a dependent under Clause 9.3.3 of NCWA then the same would amount to a clear case of gender bias which is against the spirit of Article 14, 15, 16 and 39 (a) of the Constitution of India. Clause 9.3.3 of NCWA is declared to be unreasonable, unjustified and contrary to the view taken in Madhubala Sinha (supra) and by the Full Bench in the case of Meenakshi Dubey (supra), which would not come in way of the petitioner for granting her compassionate appointment.
Significant paragraph numbers	Para Nos. 9 & 10.

(S.A.DHARMADHIKARI)
JUDGE

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

**ON THE 14th OF FEBRUARY, 2022
WRIT PETITION No. 15841 of 2021**

Between:-

1. **SHAKILA BEGUM (SIDDIQUI)**

2. **SULEKHA SIDDIQUI**

.....PETITIONER

***(SHRI AKASH CHOUDHARY, LEARNED COUNSEL
FOR THE PETITIONERS)***

AND

1. **NORTHERN COAL FIELD LTD. THR
ITS CHAIRMAN CUM MANAGING
DIRECTOR DISTT. SINGRAULI (M.P.)
(MADHYA PRADESH)**

2. **NORTHERN COALFIELDS LTD.
THROUGH GENERAL MANAGER
(PERSONNEL AND INDUSTRIAL
RELATION) DISTT.SINGRAULI**

(MADHYA PRADESH)

**3. THE CHAIRMAN COAL INDIA LTD.
KOLKATTA (WEST BENGAL)**

.....RESPONDENTS

**(SHRI GREESHM JAIN, LEARNED COUNSEL FOR
THE RESPONDENTS)**

This petition coming for admission on this day, the court passed the following:

ORDER

This petition has been filed under Article 226 of the Constitution of India, challenging the order dated 09.07.2021 (Annexure P/1), whereby the claim of the petitioner for grant of compassionate appointment has been rejected by the respondents on the ground that there is no provision in the respondent-establishment to grant compassionate appointment to a married daughter.

2. Brief facts leading to filing of this petition are that father of the petitioner late Shri Abdul Latif Siddiqui, who was working on the post of Dumper Operator (hereinafter referred to as the 'workman'), died in the year 2008 while in service. Thereafter, elder son of the workman namely Mohammad Sajid Siddiqui was granted compassionate appointment in the year, 2009 on the post of General Majdoor. Unfortunately, Mohammad Sajid Siddiqui also died in a road accident. After the death of Mohammad Sajid Siddiqui, younger son of workman namely Shri Zakir Siddiqui was granted appointment on compassionate basis on the post of General Majdoor Category-1 vide order dated 01.11.2016. The workman has two sons and one daughter alongwith wife in his family. After the death of father and elder brother, Zakir Siddiqui was taking care of the family as he was granted compassionate appointment by the respondents. Unfortunately, he also died.

Thereafter, the wife of the workman submitted a representation to the authorities to grant compassionate appointment to the only surviving child i.e. petitioner No.2 Ku. Sulekha Siddiqui. The application was rejected vide order dated 09.07.2021 on the ground that Clause 9.3.0 of the National Coal Wage Agreement (NCWA) forbids grant of compassionate appointment to a daughter, and therefore, the same cannot be granted.

3. Being aggrieved by the said order, the petition has been filed seeking quashment of the order and also the provisions of the Policy of the respondent-establishment under which Clause 9.3.3 prohibiting the married daughter from the benefit of grant of compassionate appointment.

4. Learned counsel for the petitioner has relied upon the decision passed by the Full Bench in *W.A.No.756/2019 (Minakshi Dubey vs. M.P.P.K.V.V.C.L and others)*. Learned counsel has also placed reliance on the judgment passed by the Division Bench of the Jharkhand High Court at Ranchi in *LPA No.617/2017 (Madhubala Sinha vs. M/s Central Coalfields Ltd. and other)*, in which Hon'ble High Court has categorically held as under:-

“24, So far as the sister is concerned, we find from a plain reading of Clause 9.3.3 of NCWA quoted above that the brother of the deceased workman dying unmarried, if fully dependent upon him, is also entitled to be considered for appointment on compassionate ground. In that view of the matter, there is no reason as to why, sister, whether married Or unmarried, should be deprived of such benefit. If a sister is denied the benefit of compassionate appointment only on the ground that she is not included as dependent under Clause 9.3.3 of NCWA, this is a clear case of gender bias and the same cannot be sustained in the eyes of law, also on the touchstone of Articles 14 and 15 of the Constitution of India. At this juncture, we are tempted to quote Section 13 of the General Clauses Act, even though the General Clauses Act relates to Central Acts and Regulations. We are referring to this Section as admittedly the respondent Coal India Ltd is also 'State' within the meaning of Article 12 of the Constitution of India, and Section 13 of the General Clauses Act aims at nondiscrimination only

on the basis of gender. In other words, it prohibits gender discrimination. Section 13 of the General Clauses Act reads as follows:-

"13. Gender and number.- In all Central Acts and Regulations, unless there is anything repugnant in the subject or context;—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice-versa."

A plain reading of this Section clearly shows that all the words importing the masculine gender shall be taken to include females and in that view of the matter also, if brother is included in the list of dependents under Clause 9.3.3 of NCWA, there is no reason as to why the word 'brother' shall not include sister also.

25. We are of the considered view that the case of the appellants is fully covered by the decisions relied upon by learned counsels for the appellants herein before. The non-inclusion of the parents and sister of the deceased workman dying in harness, in the list of dependents to be appointed on compassionate ground, cannot be said to be based on any rational basis, rather this is wholly unfair and absolutely unjust. It is also not based on any intelligible differentia, and frustrates the very object the scheme for compassionate appointment. These immediate blood relations cannot be denied the benefit of compassionate appointment, if they are otherwise entitled for the same, simply because of the fact that they may be entitled to the compensation under the workman compensation benefits admissible under the Workmen's Compensation Act, as they fall within the definition of 'dependent' given in Section 2(1)(q) of the said Act."

5. Shri Greeshm Jain, learned counsel for the respondents has also submitted and relied upon the reply filed by them saying that Clause 9.3.3 of National Coal Wage Agreement is applicable all over in Coal India and its subsidiaries. He submits that a joint bi-partite agreement has been executed between the CIL Management and Four Central Trade Unions. He submits that JBCCI is also a necessary party which has played important role in formulating the National Coal Wage Agreement (NCWA) and, therefore, without impleading it as a party, the writ petition is liable to be dismissed as the same suffers from non-joinder of necessary party. It is also stated by the respondents that the

deceased employee left behind him two sons and a daughter. As per NCWA if son is available then he gets priority over any other dependent. There is no provision of providing compassionate appointment to the sister of the deceased brother Zakir Siddiqui. Therefore, petitioner was rightly denied the compassionate appointment. The fact regarding the dependency of the present petitioner with the parents was also denied. It is stated by learned counsel for the respondent that grant of compassionate appointment is not an additional method of providing the employment violating Article 14 of the Constitution of India but this is provided with an object to provide social security to the bereaved family. He submits that there is no infirmity and illegality in Clause 9.3.3 of NCWA and therefore the same cannot be declared illegal.

6. Learned counsel further submitted that a new National Coal Wage Agreement (NCWA) has come into force w.e.f. 2018, in which also there is no provision for grant of compassionate appointment to the married daughter/sister. It is further submitted that W.A.No.673/2019 arising out of W.P.No.13598/2016 as well as W.A.No.399/2021 arising out of W.P.No.13651/2016 are pending before the Division Bench for consideration.

7. Heard the learned counsel for the parties.

8. After taking into consideration, the identical orders passed by the Coordinate Bench of this Court in W.P.No.13598/2016 as well as in W.P.No.13561/2016 and also considering the view taken by the Full Bench in the case of **Meenakshi Dubey (supra)**, this Court is of the opinion that Clause 9.3.3 of NCWA runs contrary to Articles 14,15,16 and 39(a) of Constitution of India. Taking note of various judgments of Supreme Court, this Court in **Meenakshi Dubey (supra)** in paras 13,17,18 and 19 has observed as under :-

The common string in the aforesaid judgments of various High Courts is clear like a cloudless sky that the action/clauses of the policy which deprives married daughter from right of consideration for compassionate appointment runs contrary to Articles 14, 15, 16 and

39(a) of the Constitution. We concur with the above view taken by various High Courts. 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-a-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.

9. In view of above, now it is crystal clear that clause under which claim of the petitioner has been considered and denied on the ground

that the petitioner is a sister and is not entitled to be appointed on compassionate basis is without any justification and the same is contrary to directions in the case of **Madhubala Sinha** (supra). As per the finding with regard to the sister is concerned, in **Madhubala Sinha** (supra), it is held that Clause 9.3.3 of NCWA, the brother of the petitioner died unmarried, if fully dependent upon him, is also entitled to be considered for appointment on compassionate ground. However, this Court fails to fathom as to why the sister should be deprived of such a benefit, whether married or unmarried. If it is treated that the sister is not included as a dependent under Clause 9.3.3 of NCWA then the same would amount to a clear case of gender bias which is against the spirit of Article 14, 15, 16 and 39 (a) of the Constitution of India.

10. Accordingly, petition is **allowed**. Impugned order dated 09/07/2021 (Annexure-P-1) is set aside. Clause 9.3.3 of NCWA is declared to be unreasonable, unjustified and contrary to the view taken in **Madhubala Sinha** (supra) and by the Full Bench in the case of **Meenakshi Dubey** (supra), which would not come in way of the petitioner for granting her compassionate appointment. The respondent-department is, therefore, directed to consider the claim of the petitioner afresh for grant of compassionate appointment ignoring the fact that in view of Clause 9.3.3 of policy she is not entitled to get compassionate appointment only because she being a sister. The aforesaid exercise be completed by the authority within a period of three months from the date of receipt of certified copy of this order and pass order accordingly.

11. In view of the aforesaid facts and circumstances there shall be no order as to costs.

(S. A. DHARMADHIKARI)
JUDGE

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