



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 11993/2017

Smt. Shobha Devi D/o Shri Ganpat Singh Chouhan, By Caste Rajput Hajuri, Resident Of Mainpura, Gandhi Chowk, Jaisalmer District Jaisalmer Raj..

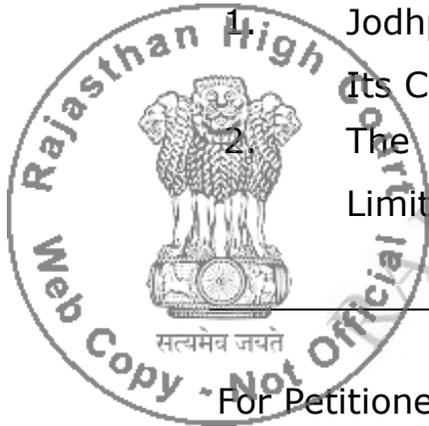
----Petitioner

Versus

1. Jodhpur Vidhyut Vitran Nigam Limited, Jodhpur Through Its Chairman Cum Managing Director.

2. The Secretary Admn., Jodhpur Vidhyut Vitran Nigam Limited, Jodhpur.

----Respondents



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For Petitioner(s) : Mr. Trilok Joshi on VC  
For Respondent(s) : Mr. Pankaj Sharma, AAG on VC  
Mr. Kuldeep Mathur a/w Mr. DS Sodha on VC

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Judgment**

**Reportable**

**12/01/2022**

1. In wake of instant surge in COVID-19 cases and spread of its highly infectious Omicron variant, lawyers have been advised to refrain from coming to the Courts.

2. The petitioner has preferred this writ petition claiming the following reliefs:-

*"A). By an appropriate writ, order or direction, the order impugned dated 06.06.2017 (Annex.10) may kindly be declared illegal and the same may kindly be quashed and set aside.*



*B). By an appropriate writ, order or direction, the respondents may kindly be directed to reconsider the case of the petitioner for grant of appointment on compassionate ground and offer her appointment as per her qualification.*

*C). Any other appropriate relief which this Hon'ble High Court deems just and proper may kindly be granted in favour of the petitioner."*

3. Learned counsel for the petitioner submits that the father of the petitioner, who was working as Lineman in the Jodhpur Vidhyut Vitran Nigam Limited, died while in service on 05.11.2016 leaving behind his wife Smt. Shanti Devi and daughter (the present petitioner). Learned counsel further submits that the wife of the deceased employee was suffering from serious medical ailments and thus, the present petitioner, who is a married daughter of the deceased employee, made efforts for the compassionate appointment by submitting an application seeking compassionate appointment, and though the same was being processed, but subsequently, the said application for compassionate appointment of the present petitioner (married daughter of the deceased employee) was rejected vide order dated 06.06.2017 by the concerned authority, holding that as per Jodhpur Vidhyut Vitran Nigam Limited Compassionate Appointment of Dependents of Deceased Nigam Servants Regulation, 2016 (hereinafter to referred as 'Regulation of 2016'), a married daughter of deceased employee would not fall within the category of the 'dependents'. Learned counsel also submits that against the said order, the petitioner immediately preferred this writ petition on 15.09.2017 and notices were issued and reply has been filed.



4. Learned counsel for the petitioner has drawn attention of this Court to the notification dated 28.10.2021 whereby the Government of Rajasthan, Department of Personnel, has amended the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules 1996; in the definition of 'Dependents' in Rule 2, a provision was inserted that 'dependent' will include a married daughter, if no other dependent of the deceased Government Service mentioned in Clauses (i), (ii) and (iii) is available. The said notification dated 28.10.2021 reads as follows:-



**2. Amendment of rule 2.-** *the existing clause (c) of rule 2 of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules 1966 shall be substituted by the following, namely :-*

(c) "Dependent" means,-

(i) Spouse, or

(ii) son including son legally adopted by the deceased Government servant during his/her life time, or

(iii) unmarried/widowed/divorced daughter including daughter legally adopted by the deceased Government servant during his/her life time, or

(iv) married daughter, if no other dependent of the deceased Government servant mentioned in clause (ii) and (iii) above is available, or

(v) mother, father, unmarried brother or unmarried sister in case of unmarried deceased Government servant,

*who was wholly dependent on the deceased Government servant at the time of his/her death. "*

5. Learned counsel for the petitioner further submits that the petitioner is a married daughter of the deceased employee and in



the present case, as per Clause (iv) of Rule 2(c) and as per the clear interpretation of the Rules of 1996, as notified and quoted above, the petitioner is entitled to be given the compassionate appointment.

6. Learned counsel for the petitioner has relied upon the judgment of **Bhuvaneshwari V Puranik Vs. State of Karnataka & Ors. in writ petition No.17788 of 2018 (S-RES)**; the relevant portion of the judgment of the Hon'ble Karnataka High Court reads as follows:-



**"Half the world; and not even half the chance"**

*is the cry of the petitioner in this petition on being denied consideration for appointment on compassionate ground on the death of her father on the score that she is "a married daughter"*

9. In furtherance of the aforesaid submissions, the point that arises for my consideration is:

**"Whether 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 are ultravires the Constitution for it offends Article 14 of the Constitution of India?"**

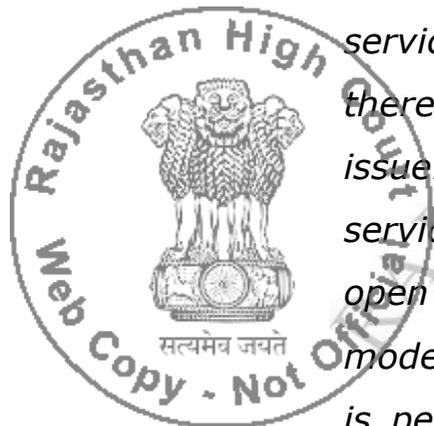
**10. OBJECT OF COMPASSIONATE APPOINTMENT:**

10.1. It is by now a well settled principle that object of compassionate appointment is to help the family tied over the crisis that befalls them on the death of the sole breadwinner of the family. It is given, in a given circumstance, so that the family will not be put to jeopardy by being driven to impecuniosities and condemned by penury. It is for this reason the emphasis on appointment on compassionate grounds is immediacy of appointment.



This is the principle that is laid down in plethora of judgments of the Apex Court interpreting the need, benefit and its limitations right from the judgment of the Apex Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana** reported in **(1994) 4 SCC 138** wherein the Apex Court has held as follows:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. **The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a**





**post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.** The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

The aforesaid enunciation of law with regard to compassionate appointment is reiterated by the Apex





Court in line of judgments up to this date. Thus, the law with regard to compassionate appointment is by now too well settled that it is not a matter of right and not an alternate source of recruitment.

## **11. RULES GOVERNING COMPASSIONATE APPOINTMENT:**

11.1. In the light of the question that has arisen for my consideration, the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 which governs the appointment on compassionate grounds to the Government servants in the State of Karnataka is required to be noticed and is extracted hereunder for the purpose of ready reference.

### **"2. Definitions :- (1) In these rules, unless the context otherwise requires.-**

**[(a) "Dependent of the deceased Government servant" means.-**

**(i) in the case of deceased male Government servant, his widow, son [unmarried daughter and widowed daughter] who were dependent upon him and were living with him; and**

**(ii) in the case of a deceased female Government servant, her widower, son [unmarried daughter and widowed daughter] who were dependent upon her and were living with her.]**

**(iii) in the case of deceased male unmarried Government Servant, his unmarried brother, unmarried or widowed sister who were dependent upon him and were living with him; and**

**(iv) in the case of deceased female unmarried Government Servant, her unmarried brother, unmarried or widowed sister who were dependent upon her and were living with her]**



**(b) "Family" in relation to a deceased Government servant means his or her spouse and their son [unmarried daughter and widowed daughter], [unmarried brother, unmarried or widowed sister] who were living with him.**

(2) Words and expressions used but not defined shall have the same meaning assigned to them in the Karnataka Civil Services (General Recruitment) Rules, 1977.

**3. Eligibility for appointment :-** (1) Appointment on compassionate grounds under these rules shall not be claimed as a matter of right and shall not be given as a matter of course.

**(2) Appointment under these rules shall be restricted to the dependent of a deceased Government servant in the following order of preference, namely.-**

**[(i) in the case of the deceased male Government servant.-**

(a) the widow;

(b) a son, if widow is not eligible or for any valid reason she is not willing to accept the appointment;

**(c) an unmarried daughter, if the widow and son are not eligible or for any valid reason they are not willing to accept the appointment;**

[(d) a widowed daughter, if the widow, son and unmarried daughter are not eligible or for any valid reason they are not willing to accept the appointment.]

**[(i-a) in the case of the deceased male unmarried Government Servant.-**

(a) unmarried brother;



*(b) unmarried or widowed sister, who were dependent upon him and were living with him.]*

*(ii) in the case of the deceased female Government servant;*

*(a) a son;*

*(b) an unmarried daughter, if the son is not eligible or for any valid reason he is not willing to accept the appointment;*

*(c) the widower, if the son and daughter are not eligible or for any valid reason they are not willing to accept the appointment.]*

*(ii-a) in the case of the deceased female unmarried Government Servant.-*

*(a) unmarried brother;*

*(b) unmarried or widowed sister, who were dependent upon her and were living with her.]*

*(3) An adopted son or daughter of a deceased Government servant shall not be eligible for appointment under these rules.*

*[(4) A person against whom at the time of making application a criminal case is under investigation or trial, on the charge of having committed murder of the deceased Government servant or for abetting the commission of such offence shall not be eligible for appointment under these rules.]"*

*It is the said Rules which declines appointment on compassionate grounds to a daughter who is married and restricts the consideration of appointment to an unmarried daughter if the son is not eligible for any valid reason or he is not willing to accept the appointment, that*



is called in question for it being violative Articles 14, 15 and 16 of the Constitution of India.

## 12. POSITION IN LAW:

12.1. [Article 14](#) of the Constitution of India prohibits the State from denying any person equality before the law or equal protection of the laws. [Article 16](#) is of application of general Rule of equality as laid down in [Article 14](#) with special reference to opportunity for appointment and employment under the State. [Article 15\(1\)](#) prohibits discrimination on the ground of religion, race, caste, sex or place of birth. It is an extension of [Article 14](#), which expresses application of principle of equality. Therefore, no citizen shall be discriminated on the grounds of race, caste, sex or place of birth religion. [Article 16](#) takes its root from [Article 14](#) and ensures equality of opportunity in matters of employment under the State. Therefore, the fundamental right to equality means that persons in like situations under like circumstances should be treated alike.

12.2. [Article 14](#) of the Constitution of India ensures equality among equals and its main object is to protect persons similarly placed against discriminatory treatment.

The equality before law guaranteed under Articles 14, 15 and 16 is a constitutional admonition against both the legislative and executive organs of the State, neither the legislature nor the Rule making authority can make a law or a Rule which is violative of these articles.

12.3. The case of the petitioner and the issue raising a challenge to the constitutional validity of the provision relating to appointment on compassionate grounds will have to be tested on the bedrock of the purport of the aforesaid articles.

## 15.3. AUTHORITIES RELIED ON BY THE RESPONDENT - STATE:



**(i) Indian Bank v. Promila reported in (2020) 2 SCC**

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

20. We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of the judgment of this Court in [Canara Bank \[Canara Bank v. M. Mahesh Kumar, \(2015\) 7 SCC 412 : \(2015\) 2 SCC \(L&S\) 539\]](#) . It is not for the courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasised by this Court in [State of H.P. v. Parkash Chand \[State of H.P. v. Parkash Chand, \(2019\) 4 SCC 285 : \(2019\) 1 SCC \(L&S\) 621\]](#) .

21. We may have sympathy with the respondents about the predicament they faced on the demise of Shri Jagdish Raj, but then sympathy alone cannot give remedy to the respondents, more so when the relevant benefits available to the respondents have been granted



by the appellant Bank and when Respondent 1, herself, was in employment having monthly income above the benchmark.

**(ii) State of H.P. v. Parkash Chand** reported in **(2019) 4 SCC 285**

10. In the exercise of judicial review under [Article 226](#) of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee.

[[Umesh Kumar Nagpal v. State of Haryana](#) [[Umesh Kumar Nagpal v. State of Haryana](#), (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , [SBI v. Kunti Tiwary](#) [[SBI v. Kunti Tiwary](#), (2004) 7 SCC 271 : 2004 SCC (L&S) 943] , [Punjab National Bank v. Ashwini Kumar Taneja](#) [[Punjab National Bank v. Ashwini Kumar Taneja](#), (2004) 7 SCC 265 : 2004 SCC (L&S) 938] , [SBI v. Somvir Singh](#) [[SBI v. Somvir Singh](#), (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] , [Mumtaz Yunus Mulani v. State of Maharashtra](#) [[Mumtaz Yunus Mulani v. State of Maharashtra](#), (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] , [Union of India v. Shashank Goswami](#) [[Union of India v. Shashank Goswami](#), (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , [SBI v. Surya Narain Tripathi](#) [[SBI v. Surya Narain Tripathi](#), (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] and [Canara Bank v. M. Mahesh Kumar](#) [[Canara Bank v. M. Mahesh Kumar](#), (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] .]

**(iii) State Bank of India v. Somvir Singh** reported in **(2007) 4 SCC 778**

7. [Article 16\(1\)](#) of the Constitution of India guarantees to all its citizens equality of opportunity in matters



relating to employment or appointment to any office under the State. [Article 16\(2\)](#) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

8. [In Umesh Kumar Nagpal v. State of Haryana](#) [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] this Court held: (SCC pp. 139-40, para 2) "As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful



employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased."

(emphasis added)

9. *In Union Bank of India v. M.T. Latheesh* [(2006) 7 SCC 350 : 2006 SCC (L&S) 1646] this Court while dealing with the similar question observed that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth.

15.4. An analysis of the judgments relied on by the petitioner and the respondent-State as extracted hereinabove would lead to two conclusions. One, dependency is the key determinative factor for grant of compassionate appointment and the other being a Rule that brooks discrimination on the basis of gender is not to remain in the statute book as it would violate Articles 14, 15 and 16 of the Constitution of India, [Article 15](#) in particular, which prohibits discrimination on the basis of religion, race, sex, gender. Even the remotest impression a Rule gives that its consequence is resulting in any of the ingredients of Articles 14 and 15 being violated, such a Rule will have to be held to be ultravires the Constitution.

15.5. The Rule that is called in question and has fallen for interpretation, without a shadow of a doubt is discriminatory as the words "unmarried" permeates through the entire fabric of Rule 2 and 3 as extracted hereinabove to deny appointment to a married daughter. If the Rule is left as it is, in view of my preceding analysis, would create a discrimination on the basis of gender. 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. Therefore, the Rule which becomes violative of Articles 14, 15 on its interpretation will have to be struck down as unconstitutional as excluding the daughters purely on the basis of marriage will constitute an impermissible discrimination which is invidious and be violative of Articles 14 and 15 of the Constitution of India.

**It should be remembered that "nature bestows so much on women; the law cannot bestow too little".**

16. For the praefatus reasons, I pass the following:

#### **ORDER**

(i) I allow the writ petition and **hold that the exclusion of married daughters from the ambit of expression 'family' in 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 is illegal and unconstitutional being violative of Articles 14 and 15 of the Constitution.**

(ii) I accordingly, **strike down the word "unmarried" in 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."**

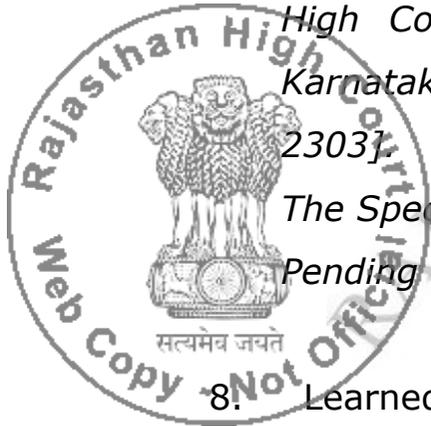
7. Learned counsel for the petitioner further relied upon the order passed by Hon'ble Apex Court in **State of Karnataka & Ors. Vs. C.N. Apporva Shree & Anr. (Special Leave to Appeal (C) No.20166/2021)** on 17.12.2021, which reads as follows:-



"We have heard learned counsel for the petitioner(s) and have analyzed the impugned judgment. We give our full imprimatur to the reasoning of the High Court, more so, as even the rule in question relied upon by the petitioner to deny a married daughter a job on compassionate grounds while permitting it to a married son, has been quashed in the judgment of the Karnataka High Court in *Bhuvaneshwari V. Purani v. State of Karnataka* - (2021) 1 AKR 444 [AIR Online 2020 Kar 2303]

The Special Leave Petition is dismissed.

Pending application stands disposed of "



8. Learned counsel for the petitioner also submits that the statutory rule prevailing in the State of Rajasthan shall bind the respondent-Nigam, as it normally regulated by prevailing State statute. Learned counsel further submits that the Regulations of 2016 are also bad in the eye of law in light of the judgment passed by the Hon'ble Apex Court and Hon'ble Karnataka High Court.

9. Learned counsel for the petitioner further submits that once the Hon'ble Apex Court has arrived at an analyzed position, while giving their full imprimatur to the reasoning of the Hon'ble Karnataka High Court and has sustained the quashing of the rule denying a married daughter a job on the compassionate ground, the mandate of the precedent law is binding on all parties.

10. Learned counsel for the petitioner has also relied upon the judgment rendered by this Hon'ble Court in the matter of **Smt. Sonu Devi Vs. State of Rajasthan & Ors. (SBCWP**



**No.9022/2014)** decided on 10.02.2017, the relevant portion of which reads as follows:-

"9. Accordingly, it is held that the petitioner who had applied as an unmarried daughter would be entitled to be appointed under the Rules 1996. If the submission of the counsel for the respondent is to be accepted then it would be a case where a dependant unmarried daughter even after appointment may not be allowed to get married, as the situation of a woman and her status may change, she cannot be deprived of her rightful claim under the Rules of 1996. The judgment passed by the Division Bench in the case of Seema (supra) is distinguishable as the same only relates to the case where a claimant was a married daughter at the time of death of the deceased Government Servant and she challenged Rule 2 (c) of the Rules of 1996. The Court has not accepted the said petition and has refused to even examine the validity of the Rule 2 (c) of the Rules of 1996. The same would, therefore, not applied to the facts and circumstances of the present case. The judgment passed by the Apex Court in the case of Canara Bank (Supra) gives a guideline for finding as to what should be the date. This Court respectfully agrees to the view and taking into consideration all the aspects, allow the writ petition."

सत्यमेव जयते

11. Learned counsel for the respondent, however, submits that in para 5 of their reply, they have taken a stand regarding dismissal of claim of compassionate appointment of the petitioner and that remains the reasons for doing the same. The para 5 of the reply is reproduced hereunder:

"5. That the grant of compassionate appointment to the family member of the deceased Government Servant as per the rule is prevalent in the respondent Nigam.



However, according to Rule 2(c) of 'JDVVNL Compassionate Appointment Dependents of Deceased Nigam Servants, Regulations 2016' (hereinafter referred to as rules of 2016) the definition of 'Dependent' includes spouse, son, unmarried or widowed daughter, legally adopted son / unmarried daughter by the deceased Nigam servant during his / her lifetime and who was wholly dependent on the deceased Nigam's servant at the time his / her death. The definition of the Dependent nowhere mentions married daughter of the deceased Nigam servant for the purpose of giving compassionate appointment. Therefore, the petitioner being the married daughter of the deceased employee of the Nigam is not entitled to the benefits of compassionate appointment to the rules of 2016."

12. Learned counsel for the respondent has relied upon the order of this Hon'ble Court in case of **Nakul Vs. State of Rajasthan & Ors. in D.B. Civil Writ Petition No.15912/2021, decided on 26.11.2021** wherein the question before the Court was whether the dependent of a deceased person should include an unmarried brother or unmarried sister, the relevant portion of the said order reads as follows:-

"There is nothing discriminatory in the nature of Rule itself. If the rule making authority at the relevant time provided within the purview of the definition of dependent a smaller class of members of the family of the deceased Government servant and excluded his/her brothers or sisters, the same per se so cannot be said to be discriminatory.

It may be that subsequently the Government on its own, upon deliberations, thought of expanding the definition. That by itself does not mean that the definition in the original form was arbitrary or discriminatory. The case of



*the petitioner shall have to be governed by the provisions of the scheme for compassionate appointment contained in statutory Rules as they prevailed at the time of death of the Government servant. "*

13. Learned counsel for the respondent also tried to impress upon the Court by contending that the Scheme, Regulations and Statute prevailing at the time of filing of the application ought to be taken into consideration.

14. Heard learned counsel for the parties as well as perused the record of the case alongwith the precedent laws cited above.

15. The Hon'ble Single Bench of this Court in **Smt. Pinki Vs. State of Rajasthan & Ors. S.B. Civil Writ Petition No. 9177**

**of 2010** wherein the petitioner's father in law and husband had both passed away simultaneously, while in government service, applied the purposive rule of interpretation, while observing that, *"if any difficulty arises in getting the purpose of the Rule served then to meet such exigencies, the Courts are having authority to adopt "purposive construction", which as a matter of fact is an extension or to say a dimension to the doctrine of the literal construction of a statute."*

15.1 The Hon'ble Single Bench further observed that under Rule 5 of the Rules of 1996, the appointment of a dependent on the ground of compassionate appointment is conditional, and that the dependent shall properly maintain the other family members who were dependent on the deceased government servant, stated through the furnishing of an undertaking to the same effect.

15.2 The Hon'ble Single Bench also observed that under Rule 5 (1), the exclusion of "widowed daughter" *"in quite unambiguous*



*terms depicts that the author of the Rules were aware about the fact that a "daughter - in - law", who also happens to be a "widowed daughter" is supposed to serve her in - laws, her children and also her parental family."*

16. The Hon'ble Chattisgarh High Court, in **Sarojni Bhoi Vs. State of Chattisgarh and Ors Writ Petition (S) No. 296 of**

**2014** held that the exclusion of a daughter / woman on the ground of her marriage is not a permissible classification and that the argument that she does not have an obligation to maintain her parents, because she has joined the household of her husband is invalid; and stated "a daughter even after marriage remains the daughter of her father and she cannot be treated as not belonging to her father's family." The Court further observed that, "the institution of marriage is an important and basic civil right of man and woman and marriage by itself is not a disqualification".

17. A Division Bench of the Hon'ble Allahabad High Court, in **Vimla Srivastava and Ors. Vs. State of U.P. and Ors. Writ C - Nos. 60881, 14853 and 20204 of 2015**, observed that the purpose of appointment on the ground of compassionate appointment is "to provide ameliorative relief to the family of a government servant who has died in harness."

17.1 The Hon'ble Division Bench, in the said case, also observed that, "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 relationships are not governed by marital status ... 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 grounded on dependency”.

17.2 The Hon'ble Division Bench, also made succinct observations, while stating that, “The living tree – the Constitution – on which the law derives legitimacy is a liberal instrument for realising fundamental human freedoms. The law and the Constitution must account for multiple identities ... Marriage does not have and should not have a proximate nexus with identity”

18. The Hon'ble Supreme Court in **Charu Khurana Vs. Union of India (2015) 1 SCC 192** observed, “It is clear as the cloudless sky that all practices derogatory to the dignity of the women are to be renounced.”

19. The Hon'ble Single Bench of this Court, in **Ms. Indira Bishnoi Vs. The State of Rajasthan & Ors. S.B. Civil Writ Petition No. 14502 of 2015** answered the question as to whether a divorced daughter would be entitled for appointment on compassionate grounds in the affirmative, stating, “when equal status has been given to daughter with sons there is no rational in treating a daughter differently only because of the term “Divorced”. The term ‘unmarried’ ‘widow’ ‘divorced’ are only a nomenclature added to the term daughter”.

20. The Hon'ble Special Bench of the Hon'ble Calcutta High Court in **The State of West Bengal and Ors. Vs. Purnima Das and Ors. C.A.N. No. 12495 of 2014 in F.M.A. No. 1277 of 2015, WPST No. 447 of 2013 and WPST No. 78 of 2014** observed that there may be many probabilities in which a married daughter may be fully dependent upon the income of her father so that



death of the father would leave her and the rest of the members of the family in extreme economic hardship.

21. The Hon'ble Special Bench of the Hon'ble Uttarakhand High Court in **Udham Singh Nagar District Cooperative Bank Ltd. and Ors. Vs. Anjula Singh and Ors. Special Appeal Nos. 187, 290, 723, 741 and 887 of 2017** observed, "If the criteria, for providing compassionate appointment, is dependence on the deceased Government servant, it is difficult to accept the submission that "dependant married sons" are the norm and "dependent married daughters" are the exception. On the contrary married sons, not dependent on their parents, may be the norm, and married sons, dependent on their parents, the exception".

21.1 The Hon'ble Court further observed that daughters, whether married, have been included in the coparcenary, with rights akin to a son, and are being treated at par with respect to the responsibility to take care of their parents in old age under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007; then there exists no reason to discriminate between married daughter and married son with respect to appointment on the grounds of compassionate appointment.

22. This Court also observes that in **RBF Rig Corpn. v. Commr. of Customs (Imports) (2011) 3 SCC 573, State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522 and L. Chandra Kumar v. Union of India**), it was held that in an appropriate case the writ court retains the power as inherent in its constitution to do the right and undo a wrong in course of administration of justice on the principle of *quando lex aliquid alicui concedit*,



*concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist).

23. This Court observes that the perception of the daughter, after marriage no longer being a part of her father's household and becoming an exclusive part of her husband's household, is an outdated view and mindset.

24. Other Statutes, namely the right to be included in the coparcenary of her father and the equal responsibility of maintenance of parents in old age as that of a son, regardless of marital status; place responsibilities on married daughter and married son, equally and this Court, sees no reason as to why a distinction must be made on the same ground when it comes to compassionate appointment of married daughters.

25. This Court further observes, that if a daughter was unmarried or single, she would be eligible to seek appointment on the ground of compassionate appointment; and if she was widowed or divorced, then too she would be eligible for the same; and that she then, must not be devoid of the same right, to seek compassionate appointment, only when she is married. The pre-marriage status of a daughter, of being single/unmarried and post marriage status of a daughter either divorced, widowed or single again renders her capable of seeking compassionate appointment. Only the exclusion of a daughter, during the period of marriage, for seeking compassionate appointment is arbitrary and unjust.

26. Under Article 14 of the Constitution of India, the discrimination between a married son and a married daughter, with regard to appointment on the ground of compassionate



appointment is not a reasonable classification and amounts to a treatment of equal persons in the eyes of law as unequal, and this is a gross violation of the fundamental right of equality of persons before the law.

27. Article 15 of the Constitution of India explicitly prohibits discrimination on the ground of sex. Further, under sub clause (3), the Constitution empowers the State to make special provisions for women and children; and the distinction between a married son and a married daughter, with regard to appointment on ground of compassionate appointment is, prime facie, not only violative of Article 15 of the Constitution of India, but goes against the interest of women.

28. Article 16, specifically under sub clause (2), of the Constitution of India prohibits discrimination, on certain grounds; one being sex, among citizens in the matters of public employment, and provides that an equal opportunity be afforded to all citizens in matters relating to employment or appointment to any office under the State.

29. This Court is thus of the firm opinion that the discrimination on the basis of gender, of married daughter seeking compassionate appointment, would violate Articles 14, 15 & 16 of the Constitution of India, and thus, the discrimination against a married daughter vis-a-vis married son, and against a married daughter vis-a-vis unmarried, divorced, widowed or single daughter has been held to be unacceptable and the concerned statutes were quashed and set aside by Hon'ble Karnataka High Court and affirmed by Hon'ble Apex Court. The Hon'ble Apex Court while analyzing the judgment has given full imprimatur to the



reasoning of the Hon'ble Karnataka High Court and thus, it is clear that the rule within expression of family/dependent has to include unmarried daughter at par with married daughter and married daughter at par with married son.

30. The submissions made by learned counsel for the respondent and judgment cited by him of **Nakul (supra)** would not apply in the present case, as admittedly their case was one where a married brother was being sought to be inserted in the definition of "dependent"; and as per the Rules of 1996, a married brother and a married sister are treated at par, and therefore it cannot be said to be violative of Article 14 of the Constitution of India, as was rightly observed by the Hon'ble Division Bench of this Court.

31. The law laid down by the Hon'ble Apex Court, in the matter of **C.N. Apporva Shree (Supra)**, after fully analyzing the judgment of the Hon'ble Karnataka High Court in the matter of **Smt. Bhuvaneshwari V. Puranik (Supra)** granted its full imprimatur to the same. The position of law, therefore, stands settled, and the word 'unmarried' in the regulation does not withstand the judicial scrutiny made by the Hon'ble Karnataka High Court and the Hon'ble Apex Court.

32. The larger ramification of a law being struck down by the Hon'ble Courts is that it stands nullified in its stream of parallel legislation, and even if any analogous law or legislation having the same meaning is not directly mentioned, then also, if it is absolutely on the same terms, as that of the law having been struck down by the Hon'ble Apex Court, then such legislation will fall within the same purview.



32.1 It is not necessary that all legal parameters on the same wavelength need to be mentioned while striking down a legislation, and what is to be seen is that the words and the exact spirit, if same, the verdict of the Hon'ble Apex Court is bound to have an impact of completely governing the field in question.

32.2 In this case also, for the purpose of the compassionate appointment, the definition of 'dependent' was same as in **Smt. Bhuvaneshwari V. Puranik (Supra)**, and the legislation therein on the same pedestal, as that in the State of Rajasthan i.e. Rules of 1996, has been struck down, and thus, no separate striking down is required, and in the present case, the verdict of the Hon'ble Apex Court can be easily made applicable.

32.3 The Hon'ble Supreme Court of India in **Behram Khurshed Pesikaka Vs. Respondent: The State of Bombay MANU/SC/065/1954** held, "...In this country once a law has been struck down as unconstitutional law by a Court, no notice can be taken of that law by any Court, and in every case an accused person need not start proving that the law is unconstitutional. The Court is not empowered to look at that part of the law which has been declared as void, and therefore there is no onus resting on the accused person to prove that the law that has already been declared unconstitutional is unconstitutional in that particular case as well. The Court has to take notice only of what the law of the land is, and convict the accused only if he contravenes the law of the land..."

33. This Court, therefore, observes that the Hon'ble Supreme Court in **C.N. Apporva (supra)**, has declared the law, holding married daughter to be excluded from definition of 'dependent', as



a bad law, and under Article 141 of the Constitution of India, the law so declared by the Hon'ble Apex Court is the law of the land, and thus, the same is binding on all courts of the country.

33.1 An analogous rule existed in the Rules of 1996 before the amendment made by the Legislature of the State of Rajasthan on 28.10.2021. While this Court does not require to strike down the said provision of law, it sees no reason to deprive the petitioner of her right, especially in light of the Hon'ble Supreme Court's judgment and the subsequent amendment brought by the State Legislature.

34. This Court also derives strength from fact that the State Legislature, in its wisdom, has already brought the married daughter within the domain of the definition of dependent, and the respondents being a corporation of the State are bound to maintain the line and length of the State's Rules and Regulations.

35. The welfare legislation, in the considered opinion of the State Legislature of Rajasthan has, after recent amendment to the Rules of 1996, now includes "married daughter" in the definition of dependent in the Rules of 1996, and to give a full colour to the welfare legislation, it needs to be implemented on all pending issues, which have not attained finality. The present case comes within the perspective of pending issue because the order was passed on 06.06.2017 by the respondent authority and an immediate challenge to the same was given on 15.09.2017, and the matter is *sub judice* and alive since then.

36. This Court also takes a note of the fact that the Hon'ble Apex Court has already declared that any discrimination between unmarried and married daughter and married son and married



daughter would be in clear violation of Article 14 , Article 15 & Article 16 of the Constitution of India.

37. This Court taking into account that the Rules of 1996 are a welfare legislation, and the resounding mandate of the Hon'ble Apex Court declaring the law treating a married daughter, as a disqualified person, as a trite law, is not inclined to accept the proposition of the learned counsel for the respondent seeking rejection of the claim of compassionate appointment of the petitioner.

38. In light of the aforesaid observations, the present writ petition is allowed, the impugned order dated 06.06.2017 Annexure-10 is quashed and set aside and the respondents are directed to consider the petitioner being a married daughter to be within the purview of the definition of dependents, for compassionate appointment, as per the Regulations of 2016. The conclusion arrived at by this Court is in conformity with the verdict of the Hon'ble Apex Court as well as the current intention of the State Legislation.

39. Accordingly, the petitioner shall move fresh application and the respondent shall consider the same within a period of three months from today without cancelling the candidature of the petitioner on the ground of being the married daughter strictly in accordance with law. All pending applications stand disposed of accordingly.

**(DR.PUSHPENDRA SINGH BHATI),J.**

106-Sudheer/-