

Court No. - 21

Case :- WRIT - C No. - 649 of 2022

Petitioner :- Smt. Sharma Devi

Respondent :- State Of U.P. Through Its Additional Chief Secretary, Food And Civil Supply Lko And Ors.

Counsel for Petitioner :- Shiv Pal Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed assailing order dated 12th January, 2022 whereby petitioner's application for allotment of fair price shop on compassionate ground has been rejected on the ground that she does not come within definition of 'family' as drescribed in paragraph IV(10) of the Government Order dated 5th August, 2019 since petitioner is the daughter in law of the earlier fair price shop agreement holder.
3. Learned counsel for petitioner submits that initially petitioner's father in law namely late Shyam Lal was the fair price shop agreement holder of the fair price shop in question, who passed away on 27th November, 2021 and petitioner being his daughter in law filed the application for compassionate appointment. It is submitted that the petitioner otherwise is fully eligible to be appointed a fair price shop dealer of the shop in question. It has been further submitted that the aspect that daughter in law does not come within the preview of 'family' has already been dealt with by this Court in the judgment and order dated 22nd November, 2021 passed in Writ-C No. 18519 of 2021, Pushpa Devi versus State of U.P. and others in which the petition for compassionate appointment by daughter in law was allowed placing reliance on the Full Bench judgment of this Court in the case of U.P. Power Corporation Limited versus Smt. Urmila Devi reported in 2011(3) ADJ 432. As such it is submitted that the impugned order is clearly against the dictum of this Court.
4. Learned State Counsel refuting submissions advanced by

learned counsel for petitioner submits that petitioner's application for compassionate appointment could have been decided only in terms of the government order applicable in the matter and since a daughter in law has not been defined as a part of family in paragraph IV(10) of the government order dated 5th August, 2019 petitioner's application was rightly rejected.

5. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is apparent that petitioner's case is fully covered by the judgment of this Court in the case of Pushpa Devi (surpa) and the Full Bench decision in the case of U.P. Power Corporation Limited (supra).

6. While it is correct that a daughter in law is not covered within the definition of 'family' in the government order dated 5th August, 2019 but such an exclusion has already been held the ultra vires the constitution of India in the judgment rendered by Full Bench of this Court in the case of U.P. Power Corporation Limited (supra). Relevant portion of the judgment is as follows:-

"We must, however, note one feature of the definition of the word 'family' as generally contained in most Rules. The definition of 'family' includes wife or husband; sons; unmarried and widowed daughters; and if the deceased was an unmarried government servant, the brother, unmarried sister and widowed mother dependant on the deceased government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of 'family'. It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to our

civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by including the daughter-in-law in the definition of 'family'. Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter, is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied.

Learned Chief Standing Counsel to forward a copy of this order to the Secretary of the concerned Department in the State Government for appropriate consideration."

7. Although the aforesaid Full Bench judgment pertains to right of a widowed daughter in law and in the present case the petitioner is not a widowed daughter in law but in the considered opinion of this Court, the same would not have any difference whatsoever and the rigor of the Full Bench would be applicable in the present case as well. The reason for the said opinion of this Court is self evident from the reasoning indicated in the Full Bench decision itself in which it has been stated that the daughter in law upon death of her husband does not cease to be part of family. Applying the same logic in the case of daughter in law which has not been widowed, it can be seen that the later would have a better claim than a widowed daughter in law since she continues to be a part of family as much as a widowed daughter in law. As such no distinction can be carved out between a daughter in law whose husband is alive and a widowed daughter in law.

8. Upon applicability of aforesaid judgment, it is apparent that petitioner's application for compassionate appointment of the fair price shop in question has been rejected only on the ground that she does not come within the definition of 'family' as per paragraph IV(X) of the government order dated 5th August, 2019 this aspect of the matter having already been covered by the judgments of this Court indicated herein above, the ground for rejection of petitioner's application for compassionate appointment is clearly unsustainable.

9. In view of aforesaid, the impugned order dated 12th January, 2022 is quashed by issuance a writ in the nature of Certiorari at the admission stage itself. The opposite party No.4 i.e. Up Ziladhikari, Tehsil Bhinga, District Shrawasti is directed to reconsider the petitioner's application for appointment as fair price shop dealer on compassionate basis expeditiously, within the period of six weeks from the date a copy of this order is produced before him. The application shall be considered by reasoned and speaking order taking into account the judgments rendered by this Court as indicated herein above.

10. With the aforesaid directions, the petition succeeds and is allowed.

Order Date :- 2.3.2022

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