

(2016) 01 CHH CK 0009
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 5051 of 2014

Duliya Bai Yadav

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 15, Article 226, Article 227
Hindu Adoptions and Maintenance Act, 1956 — Section 19, Section 21 (vii), Section 22 (1)

Citation : (2016) LIC 1101

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Rajesh Kumar Kesharwani, Advocate, for the Appellant; Dheeraj Kumar Wankhede, Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay K. Agrawal, J.—1. A-1 question that emanates for consideration is whether the State Government is justified in refusing compassionate appointment to widowed daughter-in-law (petitioner herein) of the deceased Government servant on the ground that the policy issued for such appointment impliedly excludes/does not provide for such an appointment to daughter-in-law.

2. The above-stated question arises in the following factual matrix of the case stated herein-after: -

3. Smt. Budhiyarini Bai deceased Government servant, who was Class-IV employee in the Public Works Department died in harness on 30/06/2011. The petitioner herein being widowed daughter-in-law of the deceased Government servant, made an application for compassionate appointment as per Government instructions/policy dated 10/06/2003 issued in this behalf by the State Government. She also stated that deceased's daughter-Jayanti Bai was already married and is staying with her husband. She also stated that the deceased had only son and her husband had already died on 30/09/2006, therefore, she be

considered for appointment on compassionate ground.

4. The competent authority by its order dated 31/07/2012 (Annexure-P/1) relying upon clause-3 of the Government instructions/policy dated 10/06/2003 rejected her application holding that applicable Government instructions/policy dated 10/06/2003 does not incorporate any provision for compassionate appointment to the widowed daughter-in-law.

5. Questioning the legality, validity and correctness of the order rejecting application to be considered for appointment on compassionate ground and also seeking declaration that she is eligible and entitled for appointment on compassionate ground, instant writ petition has been filed under Article 226/227 of the Constitution of India.

6. Return has been filed by the respondents/State of Chhattisgarh stating inter alia that the applicable Government instructions/policy dated 10/06/2003 especially clause-3 shows that the petitioner being daughter-in-law is not eligible for appointment on compassionate ground.

7. Mr. Rajesh Kumar Kesharwani, learned counsel appearing on behalf of the petitioner, would submit that the object and scheme for compassionate appointment is to mitigate hardship caused to the family of employee dying in harness and the criteria to consider the case for compassionate appointment should be based on dependency. Elaborating his submission, he would further submit that deceased Government servant already lost her son and the petitioner was wholly dependent upon the income of the deceased Government servant and after the death of deceased Government servant/mother-in-law, she is left with no income and exclusion of the present petitioner (daughter-in-law) for consideration of compassionate appointment on the basis of clause 3 of the applicable Government instructions/policy is bad and unsustainable in law, therefore, the impugned order rejecting application for compassionate appointment deserves to be set aside and the respondents/State be directed to consider the case of petitioner in accordance with law.

8. Mr. Dheeraj Kumar Wankhede, learned counsel appearing on behalf of the State/respondents, would submit that as per relevant instructions/policy of the Government, petitioner being widowed daughter-in-law is not entitled for compassionate appointment as the petitioner does not have any vested right to claim compassionate appointment in terms of policy framed by the Government. He would further submit that as per instructions/policy, the petitioner does not come under the definition of family/dependent, therefore, she is not entitled for appointment on compassionate ground.

9. I have heard learned counsel appearing on behalf of the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

10. It is not in dispute that the deceased Government servant Budhiyarin Bai had

already lost her son on 30/09/2006, her daughter was already married and she is not interested for such compassionate appointment. The petitioner herein being widowed daughter-in-law of the deceased having lost her husband has claimed for compassionate appointment upon the death of her mother-in-law/Government servant, as she is dependent upon the earning of her deceased mother-in-law/Government servant for her maintenance and livelihood.

11. In order to consider the plea raised at the Bar excluding daughter-in-law from consideration for compassionate appointment in the welfare measure adopted by the State Government, it would be appropriate to notice clause 3 of the applicable Government instructions/policy dealing with compassionate appointment issued on 10/06/2013 by the State Government which states as under: -

12. A careful perusal of aforesaid instructions would show that the policy of the State Government is to extend the benefit of compassionate appointment to the bereaved members of the family of the deceased Government servant as on account of sudden demise of the sole earning member, the family is devoid of means to meet both the ends. It has further been provided that those member of the family would be entitled for compassionate appointment who is wholly dependent upon the deceased Government servant in which widow has been given preference and thereafter, daughter, thereafter, son and thereafter, unmarried daughter including adopted son and adopted daughter. Thus, welfare policy of the State Government to consider the dependent member of the bereaved family for compassionate appointment is based on dependency and as such, the test in the matters of compassionate appointment should be the test of dependency, and criteria and yardstick for compassionate appointment should be dependency or lack of dependency.

13. Time and again and repeatedly, Their Lordships of the Supreme Court have highlighted the object and scope of compassionate appointment in its judgments.

14. In the matter of Umesh Kumar Nagpal v. State of Haryana and others , (1994) 4 SCC 138 Their Lordships of the Supreme Court have categorically held that the object of granting compassionate appointment is not to give a member of such family a post much less a post for post held by the deceased and mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority is required to examine the financial condition of the family of the deceased and only upon satisfaction that the family will not be able to meet the crisis, a job is to be offered to the eligible member of the family. Paragraph 2 of the report provides as under: -

"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 dependent 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."

15. Appointment on compassionate grounds in deviation from the normal rule of recruitment was conceived with the object of providing immediate financial relief to the dependents of a person who dies during his employment. It was intended to be a beneficial measure and not a means of obtaining employment as a matter of course by avoiding the rules of recruitment applicable to others. (See *Food Corporation of India and others v. Raja Ram* , (2010) 15 SCC 366).

16. Thus, it is quite vivid that criteria for extending the benefit of welfare measures by the model employer should be based on dependency as the object of granting compassionate appointment is to wipe-out the tears of the deceased family on account of death of Government servant and their inability to maintain

themselves and to mitigate the hardship and financial crisis occasioned on account of death of breadwinner of the family. Therefore, the rule providing for category of dependents must take care of all the categories of family members of the deceased Government servant who are and who can be considered dependents of the deceased and marital status should not be made an impediment for such a consideration. Clause 3 of the instructions simply provides that the person wholly dependent on the deceased Government servant would be only widow of the deceased son and unmarried daughter, it does not take care of all of the dependents and it also excludes the unmarried daughter from consideration which has been held to be void and inoperative by this Court in W.P. (S) No. 296/2014 (Smt. Sarojni Bhoi v. State of Chhattisgarh and others) decided on 30-11-2015, being violative of Articles 14 and 15 of the Constitution of India.

17. On marriage, wife becomes integral part of the husband's marital room entitled to equal status of husband as a member of the family and, therefore, a woman on marriage becomes a member of her matrimonial family and she has rights and obligations in the family. A daughter-in-law is considered, traditionally, as Grih Lakshmi of the family. The basic principles governing the roles of women in Hindu society were set-forth in the laws of Manu. This ancient code has specified that women must be honoured and adorned by their fathers, brothers, husbands and brothers-in-law who desired their own welfare. Manu Smriti states, "Where women are honoured, there the Gods are pleased. Where they are not honoured, no sacred rite yields rewards." The concept that daughter-in-law must come back and stay with her parents after death of husband is unknown to our civilized society. Section 19 of the Hindu Adoptions and Maintenance Act, 1956 also provides that daughter-in-law shall be entitled to be maintained after the death of her husband by her father-in-law. She is also held to be dependent under Section 21 (vii) of the said Act and Section 22 (1) of the said Act provides that subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased. Therefore, exclusion of daughter-in-law, that too widowed daughter-in-law from the fray of consideration based on compassion without taking into account the fact that whether she is dependent upon the deceased Government servant by the Government as a model employer and committed for the welfare of all the citizens of the State, in the considered opinion of this Court, is not only constitutionally impermissible in law, but is also a clearly retrograde consideration on the part of the State Government. The welfare policy of the State Government must extend to all the dependents of the deceased Government servant, it cannot be said that only son, daughter or unmarried daughter is dependent. In a given situation, like in the present case, the petitioner had already lost her husband before the death of her mother-in-law and was wholly dependent upon the earnings of her mother-in-law who also succumbed to death on 30-6-2011 and on account of exclusion from the policy, she is unable to get compassionate appointment by the State and its authorities.

18. Defining the role and responsibility of a welfare State, in a recent decision of *Lala Ram (Dead) by Legal Representative and others v. Union of India and another*, (2015) 5 SCC 813, Their Lordships of the Supreme Court have held that welfare State must serve larger public interest and further held as under: -

"9. A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of the economic and social well being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to "greatest good of greatest number and the benefit of all and the happiness of all". It is important that public weal be the commitment of the State, where the State is a welfare State. A welfare State is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a welfare State is social insurance...."

19. This Court in the matter of *Anil Ambwani v. Smt. Vimla Bai (deceased)* through L.Rs. , 2012 (1) C.G.L.J. 471, while considering the question as to whether widowed daughter-in-law would be covered under Section 23-A(b) of the Chhattisgarh Accommodation Control Act, 1961 held that widowed daughter-in-law would be covered by above-stated provision and observed as under:-

"22. When the principles concerning interpretation of word thus stood elaborated and defined by the High Courts and the English Courts as quoted (supra), this Court would pose a question as to whether by applying the process of interpretation, a widowed daughter-in-law can be held to be included within the term "major son" without doing any violence to the provision or the context in which the provision has been engrafted in the legislation. The question creeps in as to whether there is an independent existence of a widowed daughter-in-law. To put it differently, whether during life time of the major son, his wife would have any independent existence so as to be conferred a benefit of Section 23-A(b) of the Act. Obviously when the need of a major son is projected, his family would include daughter-in-law and when the said major son leaves for heavenly abode, this vacuum is filled by widow daughter-in-law in the family. Thus, to conclude, in the absence of major son and after his death, the widow i.e. widowed daughter-in-law in the present case, would be covered under Section 23-A(b) of the Act, as she fills in the vacuum and takes the position of a major son in the family in his absence."

20. The Allahabad High Court in the matter of *U.P. Power Corporation Ltd. v. Smt. Urmila Devi* in Special Appeal No. 1026/2003 decided on 27/01/2011 has clearly held that daughter-in-law has rightly to be considered for appointment on compassionate ground and observed as under:-

"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 dependent 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."

21. The Rajasthan High Court in the matter of Smt. Pinki v. State of Rajasthan and Others 2012 (1) WLC (Raj.) 431 has held that widowed daughter-in-law of the deceased Government servant is entitled for compassionate appointment and observed as under:-

"16. The question now arise that if the law making authority was aware about the position of "widowed daughter-in-law" then why in the category of dependents under Rule 2(c) of the Rules of 1996, she has not been placed in explicit? To resolve this knot, a look on the relations expressly referred in the definition of dependents is desirable. The relations of spouse, son, adopted son, unmarried or adopted unmarried daughter in no way can include the relation of "widowed daughter-in-law", however, the term "widowed daughter" appears to be quote wide and that may included "widowed daughter-in-law" for the purpose of these rules.

17. If the rule makers were intending to exclude "widowed daughter-in-law" from the category of dependents, then they would have include "widowed daughter" in the category of dependents, employment of whom makes appointment on compassionate grounds inadmissible under the Rules of 1996, but it has not been done. Meaning thereby, a "widowed daughter" is also a "widowed daughter-in-law", who is supposed to serve her in-laws and children. Thus, it appears that the term "widowed daughter-in-law" is part of "widowed daughter".

22. An apprehension may be there that "widowed daughter-in-law" may not support her in-laws family or dependents of the deceased government servant,

but such apprehension is totally ill-founded. The Rules of 1996 clearly mentions that while making appointment on compassionate grounds concurrence of all other dependents of a deceased government servant is must. The Rule 5(b) of the Rules of 1996 also takes all necessary care of such eventualities.

23. The upshot of the consideration is that "widowed daughter-in-law" is a dependent of a government servant as defined under Rule 2(c) of the Rules of 1996. As such, this petition for writ deserves acceptance. Hence, the same is allowed. The decision of the respondents for not giving appointment to the petitioner on compassionate grounds as per the Rules of 1996 is declared illegal. The respondents are directed to appoint the petitioner as a Class-IV employee in accordance with the provisions of the Rules of 1996, on or before 14th October, 2011."

22. Thus, from the aforesaid discussion, it is quite vivid that the implied exclusion of daughter-in-law from the fray of consideration by the State Government without considering the fact as to whether the daughter-in-law is dependent or not is constitutionally impermissible. The Government must provide for consideration of all those persons who are dependents of the deceased Government servant.

23. As a fallout and consequence of aforesaid discussion, the writ petition is allowed and consequentially, clause 3 (1) of the policy relating to compassionate appointment being constitutionally impermissible to the extent of exclusion of daughter-in-law (widowed), is hereby declared void and inoperative. Clause 3 (1) of the policy be read as to include the daughter-in-law. Subsequently, the order dated 31-7-2012 (Annexure-P/1) rejecting the petitioner's case for compassionate appointment is hereby quashed. The respondent/State authorities are directed to consider the case of the petitioner afresh in accordance in law keeping in mind the law laid down in this behalf and the observations made herein-above, particularly to decide the application expeditiously preferably within a period of 45 days from the date of receipt and/or production of certified copy of this order, as the petitioner's mother-in-law i.e. the deceased Government servant, died on 30-6-2011 and the application was rejected on 31-7-2012.