
(2017) 04 UK CK 0031
In the Uttarakhand High Court
Case No : 691 of 2016

Nisha Lohani

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Constitution of India, Article 14, Article 15, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Annulment or suspension of acts and resolutions of District and Regional Councils - Dissolution of a District or a Regional Council
Code of Criminal Procedure, 1973, Section 125(1)(d) -
Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-In-Harness) Rules, 1974, Rule 2(c)

Citation : (2017) 04 UK CK 0031

Hon'ble Judges : Rajiv Sharma

Bench : Single Bench

Advocate : Mamta Joshi, B.P.S. Mer

Final Decision : Allowed

Judgement

1. The father of the petitioner died in harness on 26.06.2013. He was working as peon in Girls Government Higher Secondary School, Tallital, Nainital. The mother of the petitioner submitted a representation on 28.07.2014 before the competent authority to consider the name of the petitioner for appointment on compassionate ground but no decision had been taken by the respondents. Petitioner approached this Court by way of filing of WPSS No.2331 of 2015 which was disposed of with a direction to the respondents to take a decision on the representation as expeditiously as possible. The representation was rejected vide order dated 15.01.2016 primarily on the ground that "married daughter" does not fall within the ambit of "Family" as per the Rule 2(c) of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "The Dying in Harness Rules,1974") adopted by State

of Uttarakhand.

2. Ms. Mamta Joshi, Advocate appearing on behalf of the petitioner has vehemently argued that the Rule 2(c) of the Dying and Harness Rules is arbitrary and unreasonable, since, it excludes the married daughter for getting compassionate appointment after the death of her father. The Dying and Harness Rules is also violative of Articles 14, 15 & 16 of the Constitution of India, since the married son is not excluded but only married daughter is excluded from getting the job on the compassionate ground.

3. Learned State counsel appearing for respondents has supported the Dying and Harness Rules.

4. I have heard learned counsel for the parties and perused the documents available on record carefully.

5. Petitioner lost her father on 26.03.2013. It is not in dispute that the case of the petitioner was rejected on 15.01.2016 on the ground that married daughter is not included in the definition of the "family" for the purpose of appointment on compassionate ground.

6. There is no intelligible differentia so as to distinguish the married daughter and married son for the purpose of appointment on compassionate ground under Rule 2(c) of the Dying in Harness Rules, 1974 which provides for the appointment of a person after death of the bread earner.

7. Their Lordships of Hon"ble Supreme Court in 1987 (2) SCC 278, in the case of "Dr. (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai and another" have held that the parents will be entitled to claim maintenance against their daughter, whether married or unmarried under Section 125 Cr.P.C. Their Lordships of Hon"ble Supreme Court have held as under:-

"5. Sub-section (1) of Section 125 confers power on the Magistrate of the First Class to order a person to make a monthly allowance for the maintenance of some of his close relations like wife, children, father and mother under certain circumstances. It has been observed by this Court in Bhagwan Dutt v. Kamla Devi that the object of Section 125 Cr.P.C. is to provide a summary remedy to save dependants from destitution and vagrancy and thus to serve a social purpose.

6. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.

8. We are unable to accept this contention. It is true that clause (d) has used the expression "his father or mother" but, in our opinion, the use of the word "his"

does not exclude the parents claiming maintenance from their daughter. Section 2(y) Cr.P.C. provides that words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Indian Penal Code lays down that the pronoun "he" and its derivatives are used for any person whether male or female. Thus, in view of Section 8 I.P.C. read with Section 2(y) Cr.P.C., the pronoun "his" in clause (d) of Section 125(1) Cr.P.C. also indicates a female. Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun "his" as used in clause (d) of Section 125(1) Cr.P.C. includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself. 10. The learned Judge of the Punjab & Haryana High Court did not refer in his judgment to the sentence which has been underlined. It is true that in the first part of the report the word "son" has been used, but in the latter part which has been underlined the recommendation is that if there are two or more children the parents may seek the remedy against any one or more of them. If the recommendation of the Joint Committee was that the liability to maintain the parents, unable to maintain themselves, would be on the son only, in that case, in the latter portion of the report the Joint Committee would not have used the word "children" which admittedly includes sons and daughters. In our opinion, as we read the report of the Joint Committee, it did not place the burden of maintaining the parents only on the son, but recommended that the liability to maintain the parents should be of the sons and the daughters as well. We have referred to the report of the Joint Committee inasmuch as the same has been relied upon in Raj Kumari case² by the Punjab & Haryana High Court and also on behalf of the appellant in the instant case. When the statute provides that the pronoun "his" not only denotes a male but also a female, we do not think it necessary to refer to the report of the Joint Committee for the interpretation of clause (d) of Section 125(1) Cr.P.C. The father or mother, unable to maintain himself or herself, can claim maintenance from their son or daughter. The expression "his father or mother" is not confined only to the father or mother of the son but also to the father or mother of the daughter. In other words, the expression "his father or mother" should also be construed as "her father or mother."

13. After giving our best consideration to the question, we are of the view that Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself. Section 488 of the old Criminal Procedure Code did not contain a provision like

clause (d) Section 125(1). The legislature in enacting Criminal Procedure Code, 1973 thought it wise to provide for the maintenance of the parents of a person when such parents are unable to maintain themselves. The purpose of such enactment is to enforce social obligation and we do not think why the daughter should be excluded from such obligation to maintain their (sic her) parents."

8. Their Lordships of Hon"ble Supreme Court in (1996) 2 SCC 380, in the case of "Savita Samvedi (MS) and another v. Union of India and others" have held that provision in Railway Board Circular dated 27.12.1982 restricting the eligibility of married daughter, of retiring official, only to cases where such official has no son or the daughter is the only person prepared to maintain the parents and the sons are not in a position to do so held, suffers from gender discrimination. Their Lordships of Hon"ble Supreme Court have held as under:-

"7. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the Railway authorities irrespective of the gender of the child. There is no occasion for the Railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The Railway Ministry's Circular in that regard appears thus to us to be wholly unfair, genderbiased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be placed on a par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above-quoted.

9. It was also pointed out before us that the Central Administrative Tribunal, Bombay Bench in one of its decisions in OA No. 314 of 1990 decided on 12-2-1992 (Annexure P-8) relying upon its own decision in Ambika R. Nair v. Union of India in which the earlier Circular of the Railway Board dated 27-12-1982 had been questioned, held the same to be unconstitutional per se as it suffered from the twin vices of gender discrimination inter se among women on account of marriage. We have also come to the same view that the instant case is of gender discrimination and therefore should be and is hereby brought in accord with Article 14 of the Constitution. The Circular shall be taken to have been read down and deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. It is so

ordered. 9. Their Lordships of Hon"ble Supreme Court in (2015) 1 SCC 192, in the case of "Charu Khurana and others v. Union of India and others" have held that equal opportunity for women is essential to attainment of equality. Their Lordships of Hon"ble Supreme Court have held as under:-

"37. Having referred to the aforesaid provisions of the Constitution, and taking note of the submissions, we may presently refer to Articles 14, 19(1)(g) and 21 of the Constitution of India. Article 14 provides that the State shall not deny to any person equality before the law, or the equal protection of laws within the territory of India. Article 19(1)(g) provides that all citizens have the right to practise any profession or to carry on any occupation, trade or business. Needless to emphasise that the said right is subject to reasonable restrictions to be imposed, as permissible under Article 19(6) of the Constitution. Article 21 deals with the concept of life, which has been extended to a great extent by this Court.

41. The aforesaid pronouncement clearly spells out that there cannot be any discrimination solely on the ground of gender. It is apt to note here that reservation of seats for women in panchayats and municipalities have been provided under Articles 243(d) and 243(t) of the Constitution of India. The purpose of the constitutional amendment is that the women in India are required to participate more in a democratic set-up especially at the grass root level. This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the Constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision-making process in a democracy that is governed by the rule of law. Their active participation in the decision-making process has been accentuated upon and the secondary role which was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity".

10. The Division Bench of Hon"ble Allahabad High Court in Writ C No.60881 of 2015 and two connected petitions, decided on 04.12.2015 has held as under :- "In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rules 2(c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution. We, accordingly, strike down the word "unmarried" in Rule 2(c)(iii) of the Dying-in-Harness Rules.

In consequence, we direct the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would be at liberty to consider the claim for compassionate appointment on the basis of all the relevant facts and circumstances and the petitioners shall not be

excluded from consideration only on the ground of their marital status."

11. Learned Single Judge of Hon"ble High Court of Madras in 2014 Law Suit (Mad) 2421 in the case of "P.R. Renuka v. Director of Animal Husbandary", decided on 27.10.2014 has held as under :- "6. The impugned order dated 16.09.2002 is just representing the aforesaid content of the Government letter. The only reason for refusal of compassionate appointment to the petitioner is that she was not a divorcee at the time of when her father died. No other reason is given for denying compassionate appointment.

7. It is submitted by the learned Additional Government Pleader that once a daughter is married, she is ineligible for compassionate appointment and only unmarried daughter and a daughter, who is a divorcee at the time of application of compassionate appointment, is eligible for such appointment.

8. It is not disputed by the learned Additional Government Pleader that a married son is not disqualified for compassionate appointment but a married daughter is disqualified for compassionate appointment.

11. This Court in W.P. No.22171 of 2013 dated 13.08.2013, "Jayalakshmi v. Tamil Nadu Generation and Distribution Corporation Ltd.", 2013 (4) LLJ 116, held that Government order making discrimination in the matter of compassionate appointment to a daughter on the ground that she is married is bad. In this context, it is relevant to extract paragraph 5 of the aforesaid order:

"5. In similar circumstances, the matter was considered by me in M. Sudha v. District Collector, Thanjavur District W.P. (MD) No. 5183 of 2013 and I set aside the similar impugned order and issued direction to the respondent therein to consider the case of the petitioner therein for compassionate appointment. In fact, in the said judgment, I followed the earlier judgment of mine in W.P. (MD) No.8686 of 2011. The relevant paragraph 5 of the aforesaid judgment is extracted hereunder:-

"5. As rightly contended by the learned counsel for the petitioner, the matter is squarely covered by a decision dated 2.7.2012 rendered by me in W.P. (MD) No.8686 of 2011. Paragraph 9 of the judgment is extracted hereunder:-

9. As stated above, if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also. At this juncture, it is relevant to take note of the statute, namely the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which places equal duty on both the son and daughter to take care of the parents at the old age. Therefore, in the case of death of the parents, there cannot be any unequal treatment among the children based on sex. Further, as rightly contended by the learned counsel for the petitioner, the judgment of this Court reported in G. Girija v. Assistant Director (Panchayats) Kancheepuram, Kancheepuram District, 2008 5 CTC 685, applies to the facts of this case. In the said case, the Government servant died on 26.2.1991. The daughter got married on 10.09.2006. She gave an application for compassionate

appointment on 2.6.1997. This court quashed the order declining to give compassionate appointment holding that there cannot be any discrimination between sons and daughters in the case of giving compassionate appointment. The said judgment squarely applies to the facts of this case. Therefore, I have no hesitation to quash the impugned order. Accordingly, the impugned order is quashed and a direction is issued to the respondents to consider the claim of the petitioner for compassionate appointment without reference to the marriage of the petitioner and to pass appropriate orders in the light of this judgment within a period of eight weeks from the date of receipt of a copy of this order."

12. Learned Single Judge of Hon'ble High Court of Chhattisgarh, in Writ Petition (S) No.296 of 2014 in the case of "Smt. Sarojini Bhoi v. State of Chhattisgarh and others, decided on 30.11.2015 has held as under :- "27. In above-stated judgment with reference to Constitutional provisions. It has clearly been held by their Lordships of the Supreme Court that no discrimination can be made in public employment on gender basis as Article 16(2) of the Constitution of India clearly provides that no citizen shall on the ground of sex be ineligible or discriminated against in respect of any employment or office under the State. In the case in hand, the married son is entitled for compassionate appointment on account of death of his father or mother as the case may be but that is not so with the unmarried daughter as such disqualification is based on sex. Thus, it is a clear case of discrimination on the basis of sex which is in teeth of Constitutional mandate guaranteed under Article 16(2) of the Constitution of India.

28. Thus, from the aforesaid analysis, it emanates that institution of marriage is an important and basic civil right of man and woman and marriage by itself is not a disqualification and impugned policy of the State Government barring and prohibiting the consideration of the married daughter from seeking compassionate appointment merely on the ground of marriage is plainly arbitrary and violative of constitutional guarantee envisaged in Articles 14, 15 and 16(2) of the Constitution of India being unconstitutional."

13. The Rule 2(c) of the Dying in Harness Rules, 1974 is violative of Articles 14, 15 & 16 of the Constitution of India. It also creates artificial classification between married son and married daughter only on the basis of sex. Since married son is included in the definition of the "family", there is no reason why the married daughter should not be included in the definition of "family". It is a case of gender discrimination

14. Son and daughter are supposed to take care of the parents at the old age. The married son is to be treated at par with the unmarried daughter. Not considering the married daughter for compassionate appointment merely on the basis of marriage is patently arbitrary and unreasonable.

15. Accordingly, the writ petition is allowed. The exclusion of married daughter from the ambit of the expression "family" under Rule 2(c) of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 is declared

illegal and unconstitutional, being violative of Articles 14,15 & 16 of the Constitution of India and respondents are directed to consider the claim of the petitioner for compassionate appointment, within a period of eight weeks from today.