
(2013) 01 SHI CK 0095
In the High Court Of Himachal Pradesh
Case No : CWP No. 3896 of 2012-J

Ranjna Kumari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2013) LabIC 999

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sunita Sharma, for the Appellant; Y.P.S. Dhaulta, Central Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner lost her father, who was working as Subedar in the Indian Army on 1.7.2003. She lost her brother in the year 2007, Petitioner's mother made a representation for the engagement of the petitioner on compassionate basis. Petitioner was offered appointment letter on 20.8.2010 as Sales Woman at Trishul Canteen Barsar. She discharged her duties up to 31.3.2012 on the basis of agreement entered into between the parties. However, fact of the matter is that petitioner has not been offered appointment after 31-3-2012 only on the ground that she has married on 7.7.2011 and her mother is no more dependent on her. Petitioner has also given instances of one Sh. B.D. Sharma and Sh. Rajesh, who have continued in the same and similar circumstances. Mr. Y.P.S. Dhaulta has vehemently argued that the post of Sales Man is required to be filled up by Ex-servicemen and since the petitioner has married, her appointment could not be continued.

2. According to para 33 of Annexure-R-1, widows and dependents of defence personnel can also be considered for employment on compassionate grounds, if otherwise qualified. Thus, the mode of recruitment is not restricted to ex-servicemen only. Petitioner is married, but she is still living with her mother as

per Annexure-P-6 issued by the Pradhan of the Gram Panchayat. There is no presumption that the married daughter cannot take care of her parents. In the instant case, petitioner's mother is widow and though she is getting pension, still the income of the family has augmented when the petitioner was appointed as Sales Woman at Trishul Canteen Barsar.

3. The Court is of the considered view that the appointment of the petitioner could not be discontinued only on the ground that the petitioner has married. Such action is discriminatory on the ground of sex as envisaged under Article 15 of the Constitution of India. In a similar situation, their Lordships of Hon'ble Supreme Court in *Savita Samvedi (Ms) and Another Vs. Union of India (UOI) and Others*, have held as under (paras 5 to 10):--

As is obvious from the plain reading of the Circular, the married daughter of a retiring official is eligible to obtain regularisation if her retiring father has no son. She thus has a foothold, not to be dubbed as an out caste outright. In case he has a son, she shall not be in a position to do so, unless he is unable to maintain the parents e.g. like a minor son, but then she should be the only person who is prepared to maintain her parents. It is thus plain that a married daughter is not altogether debarred from obtaining regularisation of a railway quarter, but her right is dependent on contingencies. The authorities concerned as also the Central Administrative Tribunal seemed to have overlooked the important and predominant factor that a married daughter would be entitled to regularisation only if she is a railway employee as otherwise, she by mere relationship with the retiring official, is not entitled to regularisation. Logically it would lead to the conclusion that the presence of a son or sons, able or unable to maintain the parents, would again have to be railway employees before they can oust the claim of the married daughter. We are not for the moment holding that they would be capable of doing so just because of being males in gender. Only on literal interpretation of the Circular, does such a result follow, undesirable though.

A common saying is worth pressing into service to blunt somewhat the Circular. It is--

A son is a son until he gets a wife. A daughter is a daughter throughout her life.

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, gender-biased 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.

The tribunal took the view that when the Circular dated 11-8-1992 had itself not specifically been impugned before it and ex facie the conditions contained in the said Circular had not been satisfied in the present case, no relief need be given to the appellants. The tribunal viewed that when there were two major sons of the second appellant, gainfully employed, the fact that they were not railway employees, not residing in Delhi, did not alter the situation that the terms of the Circular dated 11-8-1992 had not been satisfied, under which alone regularisation was permissible. As brought about before, the tribunal overlooked this aspect that the Circular was meant only to enlist the eligible, who could claim regularisation, but the important condition of one being a railway employee had to be satisfied before claim could be laid. In the instant case, the first appellant, on that basis, alone was eligible (subject to gender disqualification going). So the second appellant could exercise his choice/option in her favour to retain the accommodation, obligating the Railway authorities to regularise the quarter in her favour, subject of course to the fulfilment of other conditions prescribed. The error being manifest is hereby corrected, holding the first appellant in the facts and circumstances to be the sole eligible for regularisation of the quarter.

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 eligible, 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.

For the reasons stated above, this appeal is allowed and direction is issued to the respondents to grant regularization of the quarter in favour of the first appellant with effect from the date of retirement of the second appellant and regulate/readjust the charges on account of house rent accordingly. There shall be no order as to costs.

4. Their Lordships of Hon"ble Supreme Court in Miss C.B. Muthamma, I.F.S. Vs. Union of India (UOI) and Others, have held that sex-discrimination in service Rules would be unconstitutional unless justified by the peculiarities and nature of the employment. Their Lordships have held as under (paras 4 to 7):-- What is more manifest as misogynist in the Foreign Service is the persistence of two rules which have been extracted in the petition. Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, unblushingly reads:--

Rule 8(2): In cases where sub-rule (1) does not apply, a woman member of the service shall obtain the per-671 mission of the Government in writing before her marriage is solemnized. At any time after the marriage, a woman member of the Service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service,

Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of Government before she marries, the same risk is run by Government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, inter-continental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species. Rule 18 of the Indian Foreign Service (Recruitment Cadre, Seniority and Promotion) Rules, 1961, run in the same prejudicial strain:--

(1).....

(2).....

(3).....

(4) No married woman shall be entitled as of right to be appointed to the service.

At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and Law in Action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable.

We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the

peculiarities of societal sectors or the 672 handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our Governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules.

Accordingly, the writ petition is allowed. Respondents are directed to re-instate the petitioner forthwith as Sales Woman. Pending applications, if any, also stands disposed of. No costs.