

(2015) 11 CHH CK 0007
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 296 of 2014

Sarojni Bhoi

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15, 16, 16(1)
Criminal Procedure Code, 1973 (CrPC) — Section 125(1), 125(1)(d)

Citation : (2015) 11 CHH CK 0007

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

Bench : Single Bench

Advocate : Ajay Shrivastava, Advocate, for the Appellant; Gary Mukhopadhyay, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.—The following pertinent observation made by Their Lordships of the Supreme Court in the matter of Miss C.B. Muthamma, I.F.S. Vs. Union of India (UOI) and Others, in the context of Indian Foreign Service (Conduct and Discipline), Rules, 1961 which prohibits appointment of married woman to such service, aptly and squarely applies to the facts of present case:--

"6.....Our women is a said reflection on the distance between Constitution in the book and Law in action. And if 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."

2. Similarly in the matter of Madhu Kishwar and others Vs. State of Bihar and others, the Supreme Court while taking note of discrimination being suffered in silence by Indian women observed as under:--

"28.....Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination."

3. Likewise, in the matter of Voluntary Health Association of Punjab Vs. Union of India (UOI) and Others, Their Lordships of the Supreme Court observed as under:--

"20. It would not be an exaggeration to say that a society that does not respect its women cannot be treated to be civilised. In the first part of the last century Swami Vivekanand had said:

"Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.""

4. The above-stated observations of Their Lordships of the Supreme Court applies to the following facts of the present case, which are as under:--

4.1. Mr. Jaldev Pradhan while working as Amin Patwari in the Department of Water Resources, Mahasamund died in harness on 06/01/2011 leaving behind his wife Smt. Hemkanti and two daughters, namely, Smt. Sarojni (petitioner herein) and Smt. Sanyukta. Smt. Sarojni made an application for compassionate appointment being daughter of deceased Shri Jaldev Pradhan pleading inter alia that after the death of her father, she is maintaining her family including her mother as she has no other source of income and therefore, as per existing policy dated 10/06/2003, she be granted compassionate appointment so that she can earn bread and butter for the whole family.

4.2. The Competent authority by its order dated 28/09/2011 rejected the application of petitioner holding that as per Clause 3(1)(c) of policy dated 10/06/2003, she is not entitled for compassionate appointment as she is married daughter of the deceased/Government Servant.

4.3. Thereafter, the petitioner has filed this writ petition challenging the legality and validity of Clause 3(1)(c) of the policy dated 10/06/2003 as well as Clause 5(c) of the new policy dated 14/06/2013 substituting policy dated 10/06/2003 and for quashing the order dated 28/09/2011 rejecting her candidature on the ground that the policy of the State Government making her ineligible being married daughter on the basis of gender is not only arbitrary but it is discriminatory and therefore, the policy in question be struck down and the respondent authorities be directed to consider her case for compassionate appointment in accordance with law.

4.4. The respondents/State filed its return stating inter alia that the compassionate appointment is not a vested right rather it is discretion of the competent authority taking into account the availability of vacancies. It has further been pleaded that as per Clause 3(1)(c) of policy dated 10/06/2003 only unmarried daughter is eligible for appointment on the compassionate ground and petitioner being married daughter is ineligible to be considered on compassionate ground contrary to the policy, therefore, writ petition deserves to be dismissed with cost.

5. Mr. Ajay Shrivastava, learned counsel appearing for the petitioner would

submit that in the welfare State merely because petitioner is married daughter she cannot be held ineligible to apply for compassionate appointment, as such, a clause holding that only unmarried daughter is entitled to be considered for compassionate appointment violates the mandate of Articles 14 , 15 & 16 of the Constitution of India and no discrimination can be made in public employment on gender basis, therefore, the relevant clause of policy and communication holding the petitioner to be ineligible for compassionate appointment deserves to be struck down and appropriate writ/writs be issued for consideration of petitioner's case for compassionate appointment in accordance with law.

6. Mr. Gary Mukhopadhyay, learned State counsel would vehemently oppose the submission made on behalf of the petitioner and would submit that compassionate appointment is discretionary in nature and it is not a vested right. Elaborating his submission, he would further submit that once the policy is formulated, dependents of the deceased/Government Servant would be entitled for compassionate appointment as per policy. He would further submit that daughter/girl on marriage becomes a member of her husband's family and she cannot be treated as belonging to her father's family, therefore, the policy has rightly been framed excluding the married daughter from fray of consideration and as such, relevant clause of policy is not arbitrary and discriminatory and the writ petition deserves to be dismissed with costs.

7. I have heard learned counsel appearing for the parties and given thoughtful consideration to the submission raised therein and also gone through the record of the case with utmost circumspection.

8. The pivotal question that emanates for consideration is whether a married daughter of the deceased/Government Servant is entitled to be considered for appointment on compassionate ground?

9. Before proceeding further it would be appropriate to notice relevant policy dated 10/06/2003 of the Government holding only unmarried daughters entitled to be considered for appointment on compassionate ground, which states as under:--

10. New policy dated 14/06/2013, which has been issued in supersession of earlier policy dated 10/06/2003 states as under:--

11. The petitioner's case for appointment on compassionate ground was rejected by order dated 28/09/2011 relying upon the Clause 3(1)(c) of old policy dated 10/06/2003 which states as under:

12. The aforesaid narration of the facts would go to show that the petitioner's case for appointment on compassionate ground was not considered relying upon Clause 3(1)(c) of policy dated 10/06/2003 holding that the married daughter is not eligible to be appointed on compassionate ground as the aforesaid clause provides that only unmarried daughter is entitled to be considered for compassionate appointment.

13. Now the question would be whether exclusion of a daughter/woman on the ground of her marriage is permissible classification?

14. The marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical Union. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on, on this planet. (See Mr "X" Vs. Hospital "Z",).

15. In the matter of Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755 Their Lordships of the Supreme Court clearly held that marriage is one of the basic civil rights of man/women and observed pertinently in paras-24 & 25 as under:--

"24. Marriage is often described as one of the basic civil rights of man/women, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the Consortium Omnis Vitae which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage is an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

25. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a women, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in Dawood v. Minister of Home Affairs (2000) 3 SA 936 (CC) noted as follows:

"Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions

that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."

16. Thus, marriage is an institution/sacred union not only legally permissible but also basic civil right of the man and woman and one of the most important inevitable consequences of marriage is the reciprocal support and the marriage is an institution has great legal significance and right to marry is necessary concomitant of right to life guaranteed under Article 21 of the Constitution of India as right to life includes right to lead a healthy life.

17. In the matter of Dr (Mrs) Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai and Another, while repelling the argument, that married daughter has no obligation to maintain her parents, Their Lordships of the Supreme Court have held that a daughter after her marriage does not cease to be a daughter of her father or mother and observed as under:--

"12. We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that it is the moral obligation of the children to maintain their parents. In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, in that case, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.

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."

18. The Supreme Court in number of cases repeatedly emphasized the need of compassionate appointment to the dependent of the deceased/Government servant without any loss of time. The whole object of granting compassionate appointment to enable the dependent(s) of deceased's family to earn bread and

butter for the family and to come out from financial crisis, who suffers on account of unexpected and untimely death of deceased/Government servant therefore, the criteria to grant compassionate appointment should be dependency rather than marriage. In a given case, a married daughter might be deserted wife, might have been abandoned wife, fully dependent upon her father, she might have been married to an indigent husband so that both the married daughter and son-in-law could have been dependent of the bread winner whose death left them to extreme financial hardship. There might be many other probability in which married daughter might be fully dependent upon the income of her father so that the death of the father to leave her and rest of the family members in extreme financial hardship, therefore, the yardstick for extending the benefit of compassionate appointment should be dependency of the dependents on the deceased Government Servant and their marital status of dependent should not be impediment for his/her consideration on compassionate ground to wipe-out leaves from the eyes of the suffering family on account of loss of earning member in the family.

19. The policy of State Government that unmarried daughter(s) is/are entitled to be considered for compassionate appointment is based on the ground that on marriage she becomes a member of her husband's family and ceased to be member of her father's family. A daughter even after marriage remains the daughter of her father and she cannot be treated as not belonging to her father's family. Their Lordships of the Supreme Court while dealing with the welfare provision contained in 125(1)(d) Cr.P.C. have clearly held in *Dr.(Mrs.) Vijaya Manohar Arbat (supra)* that daughter after her marriage doesn't cease to be daughter of the father or mother and obliged to maintain their parents and daughter cannot be allowed to escape its responsibility on the ground that she is now married, therefore, such a policy of the State Government disqualifying, a married daughter and excluding her from consideration apart from being arbitrary and discriminating is retrograde step of State Government as welfare State, on which stamp of approval cannot be made by this Court.

20. Article 14 of the Constitution mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Clauses (1) and (2) of Article 15 of the Constitution prohibit the State from discriminating any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 of the Constitution which contains the fundamental right of equality of opportunity in matters of public employment, by sub-clauses (1) and (2) thereof guarantees that:

"16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

16. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

21. Article 16(2) of the Constitution prohibits discrimination only on sex but clause (3) of Article 15 enables the State to make "any special provision for women and children". Articles 15 and 16 of the Constitution read together prohibit direct discrimination between members of different sexes if they would have received the same treatment as comparable to members of the opposite gender. The constitutional mandate is infringed only where the females would have received same treatment with males but for their sex.

22. In the matter of Air India Cabin Crew Association Vs. Yeshawinee Merchant and Others, , Their Lordships of the Supreme Court have held that the discrimination only on the basis of sex is not permissible subject to one exception and observed as under:--

"41. In English law "but-for-sex" test has been developed to mean that no less favourable treatment is to be given to women on gender-based criterion which would favour the opposite sex and women will not be deliberately selected for less favourable treatment because of their sex. It is on this "but-for-sex" test, it appears in Nergesh Meerza case the three-Judge Bench of this Court did not find the lower retirement age from flying duties of air hostesses as discrimination only based on sex. It found that the male and female members of crew are distinct cadres with different conditions of service. The service regulation based on the agreements and settlement fixing lower retirement age of air hostesses was not struck down.

42. The constitutional prohibition to the State not to discriminate citizens only on sex, however, does not prohibit a special treatment to the women in employment on their own demand....."

23. In the matter of Shreejith L. Vs. Deputy Director (Education) Kerala and Others, , Their Lordships have held that marriage by itself does not disqualify the person concerned from seeking employment and held as under:--

"28.While it is true that marriage by itself does not in view of the language employed in the scheme, disqualify the person concerned from seeking a compassionate appointment....."

24. The Division Bench of this Court in the matter of Bailadila Berozgar Sangh v. National Mineral Development Corporation Limited, while dealing with question of discrimination held as under:--

"7. Coming now to the challenge to discrimination on the ground of sex, Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16(1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) of the Constitution further provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in

respect of any employment or office under the State. A reading of the aforesaid provisions of Articles 14 and 16 of the Constitution would show that in matters of recruitment to employment, the State will not discriminate between men and women and that a citizen will not be ineligible for employment or office under the State on the ground of sex only. It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation. Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so."

25. Very recently, in the matter of Charu Khurana Vs. Union of India (UOI), , Their Lordships of the Supreme Court while considering the question of gender justice observed as under:

"33.....On a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value. Clause (j) has to be understood in the backdrop that India is a welfare State and, therefore, it is the duty of the State to promote justice, to provide equal opportunity to all citizens and see that they are not deprived of by reasons of economic disparity. It is also the duty of the State to frame policies so that men and women have the right to adequate means of livelihood. It is also the duty of the citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

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."

26. At this stage, it would be appropriate to notice paragraphs-5 & 6 of the decision rendered by the Supreme Court in the matter of C.B. Muthamma (supra) which states as under:--

"5. 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, intercontinental 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) to (3)

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

"6. At the first blush this rule is in defiance of Art. 16 . If a married man has a right, a married women, other thing being equal stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against women's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Arts. 14 and 16 should have been tragically ignored vis-?-vis half of India's humanity viz..... "

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 Article 14 , 15 and 16(2) of the Constitution of India being unconstitutional.

29. As a fallout and consequence of aforesaid discussion, writ petition is allowed and consequently Clause 3(1)(c) of policy relating to compassionate appointment dated 10/06/2003 and Clause 5(c) of policy dated 14/06/2013 being violative and discriminatory to the extent of excluding married daughter for consideration from compassionate appointment are hereby declared void and inoperative and consequently the impugned order (Annexure-P/3) rejecting the petitioner's case for compassionate appointment is quashed. The respondents/State is directed to reconsider the claim of petitioner for being appointed on compassionate ground afresh in accordance with law keeping in view that her father died on 06/01/2011 and her application was rejected on 28/09/2011, preferably within a period of forty five days from the receipt of certified copy of order. No order as to cost(s).