

(1992) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 12415 of 1991

V. Sunithakumari

APPELLANT

Vs

K.S.E.B. and Others

RESPONDENT

Date of Decision : 03-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 39(a)
Electricity (Supply) Act, 1948 — Section 15, 79

Citation : (1992) 2 KLJ 252

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : K. Balakrishnan and P.K. Ravikrishnan, for the Appellant; George C.P. Tharakan, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—The request of petitioner for employment assistance under the dying in-harness scheme was rejected by the Government as per Ext. P4 dated 5-8-1991. That order is under challenge in this original petition. Petitioner's father Sri. Vikrama Panicker while serving as Assistant Store Keeper in the Kerala State Electricity Board died in harness on 14-8-1984 leaving behind petitioner, her brother and their mother as the heirs, Petitioner was minor at the time of his death. Two years thereafter petitioner's brother died. After attaining majority petitioner submitted an application for employment assistance with necessary certificates. Some more particulars was called for and they were also furnished. Petitioner was called upon to submit a certificate to the effect that she was not married. She was betrothed to one Sasikumar on 1-2-1990 and the customary exchange of wedding ring also took place. The marriage was solemnized on 21-1-1991. A certificate was thereafter obtained from the Tahsildar to that effect. Petitioner was informed by Ext. P4 that her request cannot be considered since employment assistance can be given only to an unmarried daughter. Hence the original petition. Petitioner seeks a declaration that the regulation in so far as it makes a married daughter ineligible for

appointment on compassionate grounds as ultra vires and unconstitutional. A writ in the nature of mandamus is claimed directing respondents 1 and 2 not to enforce that regulation and to appoint petitioner in the service of the first respondent on compassionate grounds.

2. On behalf of first respondent a counter affidavit was filed stating that the application seeking appointment was presented with false particulars that in the application she had declared herself to be unmarried but she" later admitted that she was legally married on 1-2-1990. Having been married by the date of the application the request of petitioner could not have been considered. Petitioner was still informed that her mother is eligible for appointment and the Board is willing to consider her claim provided a proper application is presented by her. It is further contended that the classification made by the Board is having due nexus with the object of the scheme. Employment given to a married daughter will not be an assistance to the dependants of a deceased employee. The term "dependant" has got only a limited application, applicable for the purpose of employment assistance. Petitioner is therefore not eligible for appointment under the scheme.

3. Heard counsel on both sides.

4. The scheme for employment assistance formulated by the first respondent in exercise of the powers conferred by Section 79 read with Section 15 of the Electricity Supply Act 1948 envisages employment assistance on compassionate grounds to the dependants mentioned in clause 4 of the scheme Ext. P6. The persons eligible in the order of priority are : (i) Wife or husband (ii) son and (iii) unmarried daughter. There is thus a discrimination between a son and a daughter in the matter of eligibility. A son is eligible whether he is married or not whereas a married daughter is taken out of the category of dependants. This according to learned counsel for petitioner, amounts to a discrimination on the ground of sex and as such violative of Articles 14, 15 and 16 of the Constitution of India. The prohibition contained in Article 15 is against discrimination on the grounds only of religion, race, caste, sex and place of birth or any of them. Article 14 enjoins a duty on the State not to deny any person equality before the law or equal protection of the laws within the territories of India. Article 16 guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. Learned counsel draws attention to various decisions of Supreme Court and the Universal Declaration of Human Rights 1948. Attention is also drawn to Article 39(a) of the Constitution which stipulates securing equal rights to men and women to an adequate means of livelihood as a directive principle of State policy. Reference to the decisions relied on by the learned counsel and the Articles of Universal Declaration of Human Rights is not necessary since there is no discrimination only on the ground of sex in the matter of eligibility to employment under the dying-in-harness scheme formulated by first respondent. Sons and daughters of the deceased employees are eligible for appointment but only married daughters are

excluded. The only question that arises is whether this classification is arbitrary and whether it has any relation to object of the scheme.

5. Article 14 forbids only class legislation whereas it does not forbid reasonable classification for purpose of legislation. The Supreme Court has laid down two conditions to be fulfilled in order to pass the test of permissible classification. They are (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the State in question. The classification can be based according to the objects of the statute or occupations or the like. But what is important is that there must be a nexus between the basis of classification and the object of the statute under consideration.

6. The Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, held that the State cannot act arbitrarily but its action must conform to some standard or norm which is rational and non-discriminatory. It is observed that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The State must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. Law can therefore make and set apart clauses, according to the needs and exigencies of the society but the classification should never be arbitrary, artificial or evasive. As observed by the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, the classification must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out. Those qualities or characteristics must also have a reasonable relation to the object of the legislation. One has to look beyond the classification to the purpose of law in order to see whether the classification is based on an intelligent differentia. A reasonable classification can only be one which includes all persons who are similarly situated with respect to the purpose of the statute in the present case to benefit dependants of employees who died in harness. The object of the scheme is not to provide employment to the unemployed among the dependants relatives of the employee who died in harness but to enable one of the dependants to get some employment so as to eke out a livelihood for the members of the family of deceased. The Intention of the scheme can only be to provide immediate relief to the family of the deceased employee for their sustenance. In the scheme Ext. P6 formulated by the first respondent only widow, son and unmarried daughter are included in the category of eligible dependants. A married daughter is excluded from that category. The exclusion is not without any reason. Learned counsel first respondent attempted to justify the exclusion of married daughters for the reason that the married daughter goes out of the family and is dependant on her husband for her necessities. But that is not the position in the case of a son. So long as he is unemployed he has to depend on his father and he may even be a burden if he is not able to secure employment after coming of age. But not so in the case of a daughter who after marriage goes to the house of her husband.

Thereafter she is a dependant on her husband. The father could have or would have rendered financial assistance to his married daughter if he is in a position to give assistance. But that is no reason to hold that the married daughter still continues to be a dependant on her father. Law also enjoins a duty on the husband to maintain his wife and enables her to claim alimony in case he refuses to pay. The dependency on the father therefore ceases the moment the daughter is given in manage. That appears to be the reason why married daughter is excluded from the category of dependants and unmarried daughter alone is Included. It cannot be disputed that an unmarried daughter has always to depend on her parents and especially her father for her livelihood. The object of the scheme being to give employment assistance to the dependants of a deceased employee on compassionate grounds the classification has therefore a nexus with that object. The intention is not to give employment to one of the heirs of the deceased but only to one of the dependants. The dependency having come to an end consequent to her marriage petitioner cannot complain of discrimination or unreasonable classification. The intention of the framers of the scheme is further made clear from clauses 4 of Ext. P6 which enables an unmarried sister to seek employment in the case of the employee dying unmarried. The qualities or characteristics found in the persons included in the category of eligible employees are therefore different from the qualities or characteristics found in the persons who are left out. There has thus been a reasonable classification which cannot be said to be arbitrary or artificial. Moreover the classification has a nexus to the object of the scheme, viz. to give benefit to the dependants of a deceased employee. The regulation 4(1) contained in Ext. P6 is not therefore liable to be struck down as ultra vires and unconstitutional. The order Ext. P5 is therefore valid and is not liable to be set aside.

For the aforesaid reasons the original petition is dismissed but without costs.