

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 80 of 2020

- 1. The State of Tripura,**
represented by the Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Capital Complex, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura-799010.
- 2. The Director General of Police,**
Government of Tripura, Police Head Quarter, Fire Brigade Chowmuhani, Agartala, Tripura, Pin-799001.
- 3. The Superintendent of Police (Procurement),**
A.D. Nagar, Agartala, West Tripura, Agartala, PIN-799003.

----- Appellant(s)

Versus

Smt. Debashri Chakraborty,
Wife of Shri Sushanta Chakraborty, Resident of East Pratapgarrh, P.S. East Agartala, District-West Tripura.

-----Respondent(s)

WA No. 147 of 2020

- 1. The State of Tripura,**
to be represented by the Secretary, Department of Science, Technology & Environment, Government of Tripura, Agartala, New Secretariat Building, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN:799010.
- 2. The Director,**
Department of Science, Technology & Environment, Government of Tripura, PN Complex, Kunjaban, Agartala, West Tripura.
- 3. The Secretary,**
Department of Finance, Government of Tripura, New Secretariat Building, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN:799010.
- 4. The Sub Divisional Magistrate,**
Sadar, Govt. of Tripura, Agartala, West Tripura, PIN-799001.

----- Appellant(s)

Versus

Smt. Puja Datta,
Daughter of Late Bhulan Bhushan Datta, resident of Ram Nagar Road No.3, P.O-Ram Nagar, Agartala, District-West Tripura, PIN-799002.

-----Respondent(s)

WA No. 124 of 2020

- 1. The State of Tripura,**
represented by the Chief Secretary to the Govt. of Tripura, Civil Secretariat, P.S. New Capital Complex, Agartala, West Tripura, Pin-799010.
- 2. The Principal Secretary,**
Deptt. of Finance, Government of Tripura, Civil Secretariat, P.S. New Capital Complex, Agartala, West Tripura, Pin-799010.
- 3. The Secretary,**
Tribal Welfare Deptt., Government of Tripura, Lake Chowmuhani, Agartala, West Tripura, Agartala, Pin-799001.
- 4. The Director,**
Tribal Research and Cultural Institute, Govt. of Tripura, Lake Chowmuhani, Krishnanagar, P.S West Agartala, District-West Tripura, Pin-799001.

----- Appellant(s)

Versus

Smti. Hamswahti Reang,

Daughter of Late Bishnupada Reang, Village & P.O. East Bagafa, P.S. Santirbazar, District-South Tripura, Pin 799144.

-----Respondent(s)

WA No. 149 of 2020

- 1. The State of Tripura,**
represented by the Secretary, Finance Department, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura -799010.
- 2. The District Magistrate & Collector,**
West Tripura District, Office Lane, Agartala, Tripura, Pin-799001.
- 3. The Chief Electoral Officer,**
Election Department, Govt. of Tripura, O/o the DM & Collector, Office Lane, Agartala, West Tripura, Agartala, Pin-799001.
- 4. The Senior Deputy Magistrate,**
H.O & DDO, O/o the DM & Collector, Office Lane, Agartala, West Tripura, Agartala, Pin-799001.
- 5. The Electoral Registration Officer (SDM, Sadar),**
Election Department, O/o the SDM, Office Lane, Agartala, West Tripura, Agartala, Pin-799001.

----- Appellant(s)

Versus

Smt. Sharmistha Roy,

Daughter of Sri Nirmal Ray, resident of Village-A.D. Nagar, Road No.16, P.O. S.D. Mission, PS A.D. Nagar, District West Tripura.

-----Respondent(s)

WA No. 453 of 2020

1. The State of Tripura,

To be represented by the Secretary, Directorate of Elementary Education, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.

2. The Principal Secretary,

General Administration (P &T) Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.

3. The Director,

Directorate of Elementary Education, Government of Tripura, Office Lane, P.O. Agartala, P.S. West Agartala, District West Tripura.

4. The Joint Director,

Directorate of Elementary Education, Government of Tripura, Office Lane, P.O. Agartala, P.S. West Agartala, District-West Tripura.

5. The Inspector of Schools,

Sadar-A, Government of Tripura, Kunjaban, Agartala, West Tripura District.

6. The Secretary,

Finance Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.

7. The Sub-Divisional Magistrate,

Sadar, Agartala, West Tripura, P.O. Agartala, P.S. West Agartala, District-West Tripura.

----- Appellant(s)

Versus

Smt. Sanjukta Dey,

Daughter of Late Mamata Deb(Dey), resident of Colonel Chowmohani, Opposite Benerjee Para, C/O: Jeet Enterprise Shop, Agartala, P.O. Agartala, District-West Tripura, PIN-799001.

-----Respondent(s)

WA No. 461 of 2020

1. The State of Tripura,

to be represented by the Secretary, PWD(R&B), Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.

2. The Chief Engineer,

PWD (R&B), Government of Tripura, Kunjaban, Agartala, West Tripura.

3. The Executive Engineer,

Bishramganj Division, PWD (R&B), Bishramganj, Sepahijala, Tripura.

4. The Secretary,

Finance Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.

----- Appellant(s)

Versus

Smt. Gopa Debnath,

Daughter of Late Ranjit Debnath, wife of Sri Raj Kumar Debnath, Resident of Vill-Amarpur Town Rang Kang, P.S. Birganj, District-Gomati Tripura.

----- Respondent(s)

For Appellant(s)

: Mr. D. Bhattacharya, GA.
Mr. M. Debarma, Addl. GA.
Mr. Soumyadeep Saha, Adv.

For Respondent(s)

: Mr. P. Roy Barman, Sr. Adv.
Mr. Somik Deb, Sr. Adv.
Mr. H.K. Bhowmik, Adv.
Mr. Samarjit Bhattacharjee, Adv.
Mr. K. Nath, Adv.
Mrs. R. Chakraborty, Adv.

Date of Hearing

: **18th December, 2021.**

Date of Pronouncement

: **08th February, 2022.**

Whether fit for reporting

: YES

सत्यमेव जयते

B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

Though the facts differ from case to case, all these writ appeals involve similar question pertaining to exclusion of married daughters from the die-in-harness scheme of the State Government. Therefore, they have been heard together and would be disposed of by

this common judgment. For convenience, we shall refer to the facts arising from WA No. 80 of 2020 (The State of Tripura & Ors. vs. Smt. Debashri Chakraborty) which is treated as a lead matter.

[2] The facts are as under:

Smt. Anita Chakraborty, mother of respondent Debashri Chakraborty was a Group-D staff in the office of the Superintendent of Police (Procurement) under the Department of Home, Government of Tripura. She got the job on compassionate ground since her husband Shekhar Chakraborty died while in service. Said Anita Chakraborty expired on 07.11.2016 leaving behind two daughters namely Smt. Popi Chakraborty and respondent Debashri Chakraborty. Debashri Chakraborty applied to the State Government seeking appointment on compassionate ground as per the die-in-harness scheme of the State Government on 28.06.2017. Since her application was kept pending without any decision, she filed W.P(C) No.1136 of 2018 in this Court which was disposed of by the learned Single Judge of this court by order dated 07.12.2018 in which the following directions were issued:

"(1) Petitioner's representation shall be considered by the appropriate authority and decided expeditiously in accordance with law and positively within a period of 4(four) weeks from today.

(2) If so required and desired, it shall be open to the writ petitioner to place additional materials in support of earlier representation, if any.

(3) Additionally, if so desired, petitioner may also request for affording opportunity of hearing.

(4) The authority shall positively pass the order in the aforesaid terms, by assigning reasons and copy thereof shall also be supplied to the writ petitioner.

(5) Liberty is reserved to the writ petitioner to independently approach the Court for assailing the order, if so required and desired on the same and subsequent cause of action, in accordance with law.

(6) All issues are left open."

[3] Pursuant to the said order of the learned Single Judge, the State respondents who are appellants herein, considered the representation of Smt. Debashri Chakraborty and passed an order dated 11.02.2019, relevant portion of which reads as under:

"Whereas, the Home Department, Government of Tripura has examined the representations submitted by Smt. Debashri Chakraborty and also the Notification dated 19.05.2017 of the General Administration (P&T) Department which remained effective w.e.f. 26.12.2015 and wherein it appears from the aforesaid Notification dated 19.05.2017 that the married daughter(s) under any circumstances shall not come under the purview of the die-in-harness scheme.

AND

Now, therefore the State Government has decided not to consider the representations submitted by the petitioner Smt. Debashri Chakraborty w/o Shri Sushanta Chakraborty resident of East Pratapgarh, PS-East Agartala, PO-Pratapgarh, Agartala, West Tripura for providing her Government job under die-in-harness scheme as the aforesaid petitioner is a married woman and is not eligible for obtaining Government job under the die-in-harness scheme."

[4] It would appear from the said order of the State Government (appellant herein) that sole ground of rejection of respondent's application was that as a married daughter she was not eligible to compassionate appointment under die-in-harness scheme because notification dated 19.05.2017 clearly specified that under no

circumstances, a married daughter would come under the purview of die-in-harness scheme.

[5] Under these circumstances, Smt. Debashri Chakraborty as a second round of litigation filed W.P(C) No.562 of 2019 challenging the said order dated 11.02.2019 of the State Government and sought for the following directions:

"(a) Issue rule upon the Respondents to show cause as to why the Respondents should not be transmitted all relevant records of the case of the present Petitioner.

A N D

(b) As to why the order/ orders should not be passed directing the Respondent No.2 i.e. the Director of General of Police, Government of Tripura to issue offer of appointment on compassionate ground under the claim of die-in-harness scheme as per prayer submitted by the Petitioner with copy to Respondent No.4 which was forwarded to the Respondent No.3;

A N D

(c) As to why such other order/ orders, direction/ directions to the Respondent No.1 to implement the recommendation/ proposal which was made by the Respondent No.3 (Annexure-6 of the Writ Petition) for appointment to the present Petitioner to the post of Group-D on compassionate ground under die-in-harness scheme.

A N D

(d) As to why such other order/ orders, / direction/ directions should not be passed so as to give full relief to the present Petitioner and upon cause shown to make rule absolute.

A N D

(e) As to why such other order/ orders, direction/ directions should not be passed by setting aside the impugned order dated 11-02-2019 (Annexure-6 to the Writ Petition) passed on behalf of the Respondent No.1 and to pass appropriate order with a direction to the Respondent No.1 to appoint a government job to the

present Petitioner on compassionate ground under die-in-harness scheme as she is also within the meaning of family as per law;

(ea) Quash/cancel the Notification dated 19-05-2017 (Annexure-Y) issued by the Additional Secretary, Government of Tripura, G.A. (P & T) Department for exclusion of the married daughters from the purview of the die-in-harness scheme and the retrospective effect of the Notification, dated 19-05-2017 are concern.

A N D

(f) As to why the Notification dated 19-05-2017 vide No. F.1(2)-GA (P & T)/15 issued by the Respondent No.4 i.e. Additional Secretary to the Government of Tripura, General Administration (Personnel & Training) Department should not be quashed or to pass appropriate order by this Hon'ble High Court as your Lordship may seem fit and proper."

[6] In their counter affidavit in the writ petition, the State respondents (appellants herein) pleaded that after careful consideration of the representation of Smt. Debashri Chakraborty and after providing personal hearing to her, her representation for compassionate appointment under die-in-harness scheme was rejected by the State Government since married daughters were excluded from such scheme under notification dated 19.05.2017. It was argued by the State counsel before the learned Single Judge that even the scheme of 26.12.2015 did not cover the case of married daughters and the provision made in notification dated 19.05.2017 was merely clarificatory in nature and such scheme did not offend the constitution in any manner.

[7] After a combined reading of the said two notifications dated 26.12.2015 and 19.05.2017, the learned Single Judge observed as under:

"11. A combined reading of the said two notifications dated 26.12.2015 and 19.05.2017 would show that under the original notification the term "dependent family member" would cover besides others, legitimate children. This did not distinguish between married or unmarried son or daughter. The proviso to the said paragraph-2, however, provided that a married son or a daughter-in-law or widowed daughter if lives separately from other members of the family on or before the death of the Government servant, such person would not be considered as a family member. However, he shall also not be treated as an earning member of the family for the purpose of providing benefits under the scheme. In other words, by virtue of this proviso married son, daughter-in-law or a widowed daughter who lives separately from the deceased Government employee would not come within the purview of the term "dependent family member". At the same time, his earnings would not be taken into consideration for the purpose of granting benefit under the said scheme. Consequently, such a member would be completely delinked from the family of the deceased Government employee for the purpose of the scheme. This proviso would by implication provide that a married son, daughter-in-law or a widowed daughter who lives with the Government servant at the time of his death, would not be excluded from the purview of the term "dependent family member". By necessary implication, therefore, an intention in this scheme can be read on part of the policy framers not to cover a married daughter within the fold of dependent family member, particularly if she did not live with the Government servant at the time of his death.

12. In the subsequent notification dated 19.05.2017 this term "dependent family member" has been further expanded and explained. Paragraph-2 of this notification clarifies that a divorced daughter of the deceased Government employee would also be considered as a family member in addition to the existing categories. The proviso to paragraph-2 of the scheme dated 26.12.2015 was modified by adding the following sentence:

"Married daughter(s) under any circumstances shall not come under the purview of Die-in-harness Scheme."

13. These modifications in the notification dated 19.05.2017 can at best be seen as clarificatory in nature. What was implied in the previous scheme has been made explicit. Irrespective of the date of death of the Government servant or the application for grant of compassionate appointment by the heir of the deceased Government servant, the position in my opinion, would not materially change. Since I find that the notification dated 19.05.2017 merely made certain clarifications in the existing scheme it is not necessary to decide whether any substantive change in such a scheme can operate with any retrospective effect.

14. This, however, does not bring an aid to the controversy since as noted, the petitioner has challenged the very root of the rejection of her application for appointment on compassionate grounds namely, being a married daughter she would not come within the purview of the scheme. In this context, various High Courts have under similar circumstances held that any such distinction by the rule making body would be unconstitutional and violative of equality clause."

[8] Thereafter, relying on the decisions of Allahabad High Court in **Smt. Vimla Srivastava vs. State of U.P. & Anr.** reported in **2015 SCC OnLine All 6776**, the decision of the Chhattisgarh High Court in **Smt. Sarojni Bhoi vs. State of Chhattisgarh & Ors.** reported in **2015 SCC OnLine Chh 395**, the decision of the Calcutta High Court in **the State of West Bengal & Ors. vs. Purnima Das & Ors.** reported in **2017 SCC OnLine Cal 13121** and the decision dated 25.03.2019 of the Uttarakhand High Court in **Udham Singh Nagar District Cooperative Bank Ltd. & another vs. Anjula Singh and others** learned Single Judge held that portion of the notification dated 19.05.2017 making exclusion of married daughters from the purview of the die-in-harness scheme was unconstitutional and directed the State respondents (appellants herein) to consider the application of Smt.

Debashri Chakraborty afresh and dispose the same on merit. Following observation of the learned Single Judge may be quoted:

"22. Lastly, we may notice that learned Single Judge of Calcutta High Court in case of **Sulekha Gorain vs. The State of West Bengal & others** in the decision dated 01.08.2019 followed the decision of the Full Bench in case of **Purnima Das (supra)** and held that a married daughter cannot be kept out of the purview of the scheme for compassionate grant of awarding a license for fair price shop.

23. In view of such decisions of various High Courts across the country and almost unanimity of opinion on the issue, I have no hesitation in holding that the following portion of the notification dated 19.05.2017 is unconstitutional:

"Married daughter(s) under any circumstances shall not come under the purview of Die-in-harness Scheme."

24. Consequently, it is declared that the scheme of die-in harness formulated by the State under notification dated 26.12.2015 as modified and clarified under notification dated 19.05.2017 would not exclude a married daughter from the purview of the scheme. In other words, even a married daughter would be entitled to make an application for appointment on compassionate basis which would be decided on its own merits within the parameters of the scheme. Resultantly, impugned order dated 11.02.2019 is set aside. The respondents are directed to consider the application of the petitioner afresh and dispose it of on merits. This shall be done within a period of 4(four) months from today."

[9] The said judgment of the learned Single Judge has been challenged in appeal before us.

[10] Learned GA appearing for the appellant has argued that a married daughters were not entitled to compassionate appointment under die-in-harness scheme even under the notification dated 26.12.2015 which was further clarified and re-affirmed in the

notification dated 19.05.2017 by adding an exclusion clause to the said notification specifically excluding married daughters from the purview of die-in-harness scheme. It is contended by learned GA that the very object of the die-in-harness scheme is to extend financial benefits to the dependent family members of a deceased government servant either by providing employment to an eligible member of such family on compassionate ground or by providing financial assistance to the family. Learned GA contends that the State Government has for this purpose formulated the die-in-harness scheme which has been modified/amended from time to time specifying and cataloguing therein who shall be treated as eligible dependent family members of a deceased government servant for the purpose of compassionate appointment. The scheme does not include a married daughter because under no circumstances, a married daughter can be treated as a dependent family member of a deceased government employee. Counsel submits that as per law laid down by the Apex Court in various judicial pronouncements, no aspirant can claim a statutory right to compassionate appointment. Appointment on compassionate ground can only be made in terms of state's policy prevailing on the date of consideration of an application for job on compassionate ground and such appointment can be made only on fulfilling the eligibility criteria as per the policy. To buttress his contention, the State counsel has relied on the decision of the Apex Court in **N.C. Santhosh vs. State of Karnataka & Ors.** reported in **(2020) 7 SCC 617** and subsequent

decision in **Director of Treasuries in Karnataka & Anr. vs. V. Somyashree** reported in **2021 SCC OnLine SC 704**. Counsel contends that keeping in view the law laid down by the Apex Court in the judgments of **N.C. Santhosh (Supra)** and **Director of Treasuries in Karnataka & Anr. (Supra)**, the action of the State Government cannot be said to be illegal and unconstitutional and as such the judgment of the learned Single Judge should be set aside.

[11] Appearing for the respondent, Mr. P. Roy Barman, learned senior advocate contends that complete exclusion of the married daughters from the purview of compassionate appointment under die-in-harness scheme is an impermissible discrimination and violative of Article 14 and 15 of the Constitution. In support of his contention, counsel has relied on the decision of the Calcutta High Court in **Purnima Das & Ors.(Supra)** wherein the full bench of the Calcutta High Court examined similar issue in the light of various decisions of different High Courts and viewed that the die-in-harness scheme completely excluding married daughters was not Constitutionally valid. Counsel has referred to the following observation of the Calcutta High Court from the said judgment:

"116. We are in complete agreement with the aforesaid line of decisions and are, therefore, of the clear opinion that the relevant notifications issued under the 1999 Act or for that matter the SCHEME, in the manner it has been framed, do not appear to be reasonable. The restriction on married daughters being eligible to apply and to be considered for compassionate appointment is likely and has, in fact, given rise to a legitimate grievance in the minds of married daughters, who unfortunately are not looked after by their husbands, perforce have to take

shelter in their parental/maternal home, survive on the benevolence showered by their fathers/mothers (Government employees) and owing to untimely demise of the Government employees, are left high and dry along with other members of the deceased's family who have to depend on such married daughter to feed and provide the basics to cover their body.

117. Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid.

118. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective 'unmarried' before 'daughter' is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/ mother (Government employee) on the date of his/ her death and agree to look after the other family members of the deceased, if the claim is to be considered further."

[12] Counsel argues that the said decision of a full bench of Calcutta High Court in the case of **Purnima Das & Ors.(Supra)** was also followed by the Calcutta High Court in the case of **Sulekha Gorain Vs. The State of West Bengal & Ors.** vide decision dated 01.08.2019. Counsel contends that the State of West Bengal preferred SLP No.17638-17639 against the decision rendered in **Purnima Das & Ors.(Supra)** before the Apex Court. By order dated 23.07.2019, the Apex Court dismissed the said SLP as a result of which the judgment of **Purnima Das & Ors.(Supra)** attained finality.

[13] Mr. Roy Barman, learned senior advocate has also relied on the decision of the Karnataka High Court in ***Bhuvaneshwari V. Puranik vs. State of Karnataka Department of Personnel and Administrative Reforms Represented by its Secretary and Others*** reported in ***2020 SCC OnLine Kar 3397*** wherein the Karnataka High Court examined the question of Constitutional validity of Rule 2(1)(a)(i), Rule 2(1)(b) and Rule 3(2)(i)(c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 which excluded married daughters from the purview of compassionate appointment and came to the conclusion that complete exclusion of married daughters from the scheme created a discrimination on the basis of gender and consequently held it unconstitutional being violative of Article 14 and 15 of the Constitution. The following observation of the court may be quoted:

"29. The Rule that is called in question and has fallen for interpretation, without a shadow of doubt is discriminatory as the words "unmarried" permeates through the entire fabric of Rule 2 and 3 as extracted hereinabove to deny appointment to a married daughter. If the Rule is left as it is, in view of my preceding analysis, would create a discrimination on the basis of gender. If the marital status of a son does not make any difference in law to his entitlement for seeking appointment on compassionate grounds, the marital status of a daughter should make no difference, as the married daughter does not cease to be a part of the family and law cannot make an assumption that married sons alone continue to be the part of the family. Therefore, the Rule which becomes violative of Articles 14, 15 on its interpretation will have to be struck down as unconstitutional as excluding the daughters purely on the basis of marriage will constitute an impermissible discrimination which is invidious and be violative of Articles 14 and 15 of the Constitution of India.

It should be remembered that "nature bestows so much on women; the law cannot bestow too little".

[14] Counsel contends that decision of the Karnataka High Court in the case of ***Bhuvaneshwari V. Puranik (supra)*** was approved by the Apex Court in SLP. No.20166 of 2021 (***the State of Karnataka & Ors. Vs. C.N. Apporva Shree & Anr.***) vide order dated 17.12.2021 viewing as under:

".....We give our full imprimatur to the reasoning of the High Court, more so, as even the rule in question relied upon by the petitioner to deny a married daughter a job on compassionate grounds while permitting it to a married son, has been quashed in the judgment of the Karnataka High Court in Bhuvaneshwari V. Puranik v. State of Karnataka - (2021) 1 AKR 444 [AIR Online 2020 Kar 2303].

The Special Leave Petition is dismissed."

[15] Counsel of the respondent further contends that question of entitlement of married daughters to compassionate appointment under die-in-harness scheme also came up before the High Court of Madras in ***R. Govindammal vs. The Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Secretariat, St. George Fort, Chennai-600009 & Ors.*** reported in ***2015-3-L.W. 756*** and the High Court of Madras by order dated 13.04.2015 quashed the order of the State Government denying compassionate appointment to the married daughter of the deceased government servant and directed the State Government to provide compassionate appointment to the petitioner who was a married

daughter, if she was otherwise eligible without any reference to her marriage.

[16] Counsel has also relied on the decision of the Karnataka High Court in **R. Jayamma vs. Karnataka Electricity Board** reported in **I.L.R. 1992 KAR 3416** wherein the Karnataka High Court held that refusing compassionate appointment on the only ground that the woman is married is violative of the Constitutional guarantees of equality and non discrimination on the ground of sex. Counsel has also relied on the decision of High Court of Chhattisgarh in **Sarojni Bhoi (Supra)** in which High Court of Chhattisgarh considered similar issue and struck down clause 3(1)(c) of the scheme dated 10.06.2003 and clause 5(c) of the scheme dated 14.06.2013 of the State Government to the extent they excluded married daughters from consideration for compassionate appointment as discriminatory and violative of the Constitutional guarantees of equality.

[17] Counsel of the respondent has further placed reliance on the decision of the High Court of Himachal Pradesh in **Mamta Devi vs. State of Himachal Pradesh & Ors.** reported in **2020 SCC OnLine HP 2125** in which the petitioner challenged the Constitutionality of state's policy debarring married daughters from seeking employment assistance under die-in-harness scheme. The High Court viewed that if the marital status of a son does not make any difference in the eyes of law, then it is difficult to think how marital status of a daughter makes such difference in her eligibility. The High Court directed the State to

give compassionate appointment to the petitioner who was a married daughter, if she was otherwise eligible and fulfils the criteria prescribed in the policy viewing as under:

"21. The object of compassionate employment is not only social welfare, but also to support the family of the deceased government servant, who dies in harness, and by excluding married daughter(s) from the sweep of the family, the real purpose of social purpose cannot be achieved. If the marital status of a son does not make any difference in the eyes of law, then it is difficult to think, how marital status of a daughter makes such a huge difference in her eligibility. In fact, marriage does not have proximate nexus with identity and even after marriage, a daughter continues to be a daughter. Therefore, if a married son has right to compassionate appointment, then a married daughter also stands on the same footing and her exclusion does not have any plausible basis or logic, so her exclusion has no justifiable criteria.

22. Moreover, in the instant case there is no male member in the family, since the father of the petitioner, who died in harness, left behind his widow and two daughters only, the petitioner, being the elder daughter. The aim and object of the policy for compassionate appointment is to provide financial assistance to the family of the deceased employee. In the absence of any male child in the family, the State cannot shut its eyes and act arbitrarily towards the family, which may also be facing financial constraints after the death of their sole bread earner.

23. As held above, the object of compassionate appointment is not only social welfare, but also to support the family of the deceased government servant, so, the State, being a welfare State, should extend its hands to lift a family from penury and not to turn its back to married daughters, rather pushing them to penury. In case the State deprives compassionate appointment to a married daughter, who, after the death of the deceased employee, has to look after surviving family members, only for the reason that she is married, then the whole object of the policy is vitiating.

24. After incisive deliberations, it emerges that core purpose of compassionate appointment is to save a family from financial vacuum, created after the death of deceased employee. This financial vacuum could be filled up by providing compassionate appointment to the petitioner, who is to look after the survivors of her deceased father and she cannot be deprived compassionate appointment merely on the ground that she is a married daughter, more particularly when there is no male child in the family and the petitioner is having 'No Objection Certificates' from her mother and younger sister, the only members in the family.

25. In the instant case, in case the petitioner is not given compassionate appointment, who has to take care of her widowed mother and sister, if she is otherwise eligible and she fulfils the apt criteria, the whole family will be pushed to impoverishment, vitiating the real aim of the compassionate employment policy.

26. Therefore, this Court is of the considered view that in the instant case, the compassionate employment policy requires a generous application, keeping in view the peculiar facts and circumstances viz., the deceased employee has left behind his widow and two daughters; the petitioner being the elder daughter, has to look-after her widowed mother and sister, coupled with the fact that they have given their 'No Objection Certificates' in favour of the petitioner.

27. So, in view of the foregoing discussion, the object of the compassionate employment policy would only be met in case the petitioner is given compassionate appointment, if she otherwise fulfils other required eligibility criteria under the policy for compassionate appointment to the dependents of the deceased employee.

28. In view of foregoing discussion and considering the relevant law on the subject, the extant writ petition is allowed, directing the respondents to give compassionate employment to the petitioner, if she is otherwise eligible and fulfils the criteria prescribed in the apt compassionate employment policy."

[18] Mr. Roy Barman, learned senior advocate submits that in view of the law laid down in the judgments aforesaid, learned Single

Judge committed no error in striking down part of the notification dated 19.05.2017 in as much as it excluded married daughters from the purview of compassionate appointment under die-in-harness scheme. Counsel, therefore, urges the court for dismissing the appeal.

[19] Learned Single Judge also discussed and relied on the decision of the Allahabad High Court in the case of **Smt. Vimla Srivastava (Supra)**. In this case, Rule 2(c)(iii) of Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 which excluded married daughters from the purview of compassionate appointment was in challenge before the Allahabad High Court. A division bench of the High Court examined the issue and viewed that exclusion of married daughters from the scheme of compassionate appointment did not appear to be based on logic or justifiable criteria. Court held that exclusion of married daughters from the ambit of compassionate appointment was a discriminatory policy which offended Article 14 and 15 of the Constitution. The High Court struck down the said die-in-harness Rule observing as under:

*"23. Specifically in the context of compassionate appointments various High Courts have taken the view that a woman who is married cannot be denied entry into service on compassionate appointment merely on the ground of marriage. This view was taken by a learned Single Judge of the Karnataka High Court in **Manjula vs. State of Karnataka, 2005 (104) FLR 271**. The same view has been adopted by a Division Bench of the Bombay High Court in **Smt. Ranjana Murlidhar Anerao vs. The State of Maharashtra** where it was held that the exclusion of a married daughter for the grant of a retail kerosene license on the death of the license holder was*

not justifiable. The Division Bench of the Bombay High Court held as follows:

"This exclusion of a married daughter does not appear to be based on any logic or other justifiable criteria. Marriage of a daughter who is otherwise a legal representative of a license holder cannot be held to her disadvantage in the matter of seeking transfer of license in her name on the death of the license holder. Under Article 19(1)(g) of the Constitution of India the right of a citizen to carry on any trade or business is preserved. Under Article 19(6) reasonable restrictions with regard to professional or technical qualifications necessary for carrying on any trade or business could be imposed. Similarly, gender discrimination is prohibited by Article 15 of the Constitution. The exclusion of a married daughter from the purview of expression "family" in the Licensing Order of 1979 is not only violative of Article 15 but the same also infringes the right guaranteed by Article 19(1)(g) of the Constitution".

24. The same view has been adopted by a learned Single Judge of the Madras High Court in **S Kavitha vs. The District Collector**. A learned Single Judge of the Kolkata High Court in **Purnima Das vs. The State of West Bengal** has held that while appointment on compassionate ground cannot be claimed as a matter of right, at the same time, it was not open to the State to adopt a discriminatory policy by excluding a married daughter from the ambit of compassionate appointment.

25. We are in respectful agreement with the view which has been expressed on the subject by diverse judgments of the High Courts to which we have made reference above.

26. During the course of submissions, our attention was also drawn to the judgment rendered by a learned Single Judge of this Court in **Mudita vs. State of U.P.** The learned Single Judge while proceeding to deal with an identical issue of the right of a married daughter to be considered under the Dying-in-Harness Rules observed that a married daughter is a part of the family of her husband and could not therefore be expected to continue to provide for the family of the deceased government servant. The judgment proceeds on the premise that

marriage severs all relationships that the daughter may have had with her parents. In any case it shuts out the consideration of the claim of the married daughter without any enquiry on the issue of dependency. In the view that we have taken we are unable to accept or affirm the reasoning of the learned Single Judge and are constrained to hold that **Mudita** does not lay down the correct position of the law.

27. In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule 2 (c) of the Dying-in Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

28. We, accordingly, strike down the word 'unmarried' in Rule 2 (c) (iii) of the Dying-in-Harness Rules."

[20] Learned Single Judge also discussed and relied on the full bench decision of Uttarakhand High Court in **Udham Singh Nagar District Cooperative Bank Ltd. (Supra)** which was decided by the High Court on 25.03.2019. One of the questions which came up before the High Court for consideration was whether non inclusion of married daughter in the die-in-harness Rules of the State Government was discriminatory and violative of Article 14, 15 and 16 of the Constitution. The High Court held that non inclusion of married daughters in the scheme for compassionate appointment only on the ground of marriage was in violation of Article 14, 15 and 16 of the Constitution. It was directed by the High Court that married daughters shall also be held to fall within the inclusive definition of "family" of the Government servant for the purpose of compassionate appointment under die-in-harness scheme. Following observation of the High Court may be quoted:

"65.....

(v) Conclusion

66.....

i.....

ii. Question No.2 should also be answered in the affirmative. Non- inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.

iii....."

[21] Reverting to the arguments of the State counsel, we find that learned Government Advocate having relied on the decision of the Apex Court in **N.C. Santhosh (Supra)** tried to impress that compassionate appointment being an exception to general Rule, the dependent of the deceased employee must fulfil the norms laid down in the State's policy for compassionate appointment to be eligible for such appointment. Counsel has argued that the Apex Court in the said decision held that norms prevailing on the date of consideration of application should be the basis for consideration of a claim for compassionate appointment. According to learned GA, in the present case, the respondent being a married daughter did not fulfil the criteria laid down in the State's policy. Therefore, she is not entitled to be considered for compassionate appointment. As such, the learned Single Judge committed error in striking down the policy and directing the State Government to consider her application.

[22] Question is whether the law laid down by the Apex Court in the case of **N.C. Santhosh (Supra)** applies to the question in issue before us. The context in the case of **N.C. Santhosh (Supra)** is entirely different. In that case, the services of the appellants who were given compassionate appointments under die-in-harness scheme came to cancelled on the ground that such appointments were made de hors the provisions of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 as amended w.e.f. 01.04.1999. Under the unamended Rules, a minor dependent of a deceased Government employee was entitled to apply for compassionate appointment within a period of 1(one) year after attaining majority. Under such Rule, the appellants who were minor at the time of death of the Government servant made application for compassionate appointment after they attained majority. But before they applied for compassionate appointment, the Rule was amended and as per the amended provision, even the minor dependent was required to make application within 1(one) year from the date of death of Government servant. However, a second proviso was made to the said Rule laying down that application pending for consideration on the date of commencement of such amendment shall not be barred by the said amendment. No application of the appellants was pending on the date of commencement of the amended provision. Their applications came to be filed only after such amendment came into force and those applications did not conform to the amended provision. On the basis of

such application, they were given compassionate appointments which were later terminated by the State Government on the ground that those were made dehors the amended Rules which were in force on the date of application.

[23] In this factual background, the Apex Court **N.C. Santhosh (Supra)** endorsed the view of the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provision of the Rules would not apply to them. Since the Facts and issue are clearly distinguishable, the appellants cannot derive any benefit from the said decision of the Hon'ble Apex Court.

[24] Similarly, in the case of **the Director of Treasuries in Karnataka & Anr. (Supra)** which has been relied on by the Government Advocate, the Apex Court considered the question, whether a divorced daughter was eligible for appointment on compassionate ground under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules. Having reiterated the principles culled out in the case of **N.C. Santhosh (Supra)**, the Apex Court held that on the date of consideration of her petition for compassionate appointment, a divorced daughter was not included in the relevant Rules for compassionate appointment. The Rules were amended to include divorced daughters subsequently. Even otherwise, at the time of death of the Government employee, marriage of the petitioner was subsisting and as such she was a married daughter and married

daughter was also kept beyond the purview of compassionate appointment. The Apex Court, therefore, quashed and set aside the impugned judgment passed by the Karnataka High Court whereby the High Court directed the State appellants to consider the application of the divorced daughter for grant of compassionate appointment to her. In that case, the issue of Constitutionality of the State's die-in-harness policy was not raised before the Apex Court. Thus the facts and issues being different, the case in hand is not covered by the said decision.

[25] From the decisions rendered on this issue by various High Courts across the country in the judgments cited to Supra, it would appear that the different High Courts have unanimously viewed that complete exclusion of married daughters from the purview of the scheme of compassionate appointment is unreasonable, arbitrary and violative of the equality clauses of the Constitution enshrined in Articles 14 to 16. As discussed, in the Full bench decision in the case of **Purnima Das (Supra)** followed by **Sulekha Gorain (Supra)**, Calcutta High Court disapproved such exclusion. The SLP against the decision rendered by the Calcutta High Court in the case of **Purnima Das(Supra)**, was also dismissed by the Apex Court. Similarly, the decision of the High Court of Karnataka in the case of **Bhuvaneshwari V. Puranik (Supra)** striking down the Rule denying compassionate appointment to a married daughter only on the ground of her marital status also received approval of the Hon'ble Apex Court in **the State of**

Karnataka & Ors. Vs. C.N. Apporva Shree & Anr. vide decision dated 17.12.2021.

[26] The very object of die-in-harness scheme is to provide urgent relief to mitigate the hardships arising out of the death of the earning member of the family. Numerous situations can be contemplated where there may be none other than the married daughter to support the family of the deceased Government servant. Such a situation having arisen, object of the die-in-harness scheme to relieve the family of the deceased Government servant of emergent financial crisis by providing compassionate appointment to an eligible member would be frustrated if the married daughter, who is otherwise eligible for such appointment, is kept beyond the purview of the scheme only on the basis of her marital status. Marriage does not break the bond between a daughter and her parents as it does not do between a son and his parents. A crisis in the family of her parents equally worries a married daughter. As such, there is no rationale behind exclusion of a married daughter from the scheme. Therefore, a die-in-harness policy inasmuch as it operates as a disqualification in the case of a married woman, as against a married man must be held to be discriminatory and such policy, tested on the touchstone of Articles 14 to 16 of the Constitution, cannot be held to be valid. As a result, we find no merit in the appeals. Resultantly, the appeals stand dismissed.

[27] Appellants are directed to consider the applications for compassionate appointment received from the respondents afresh and

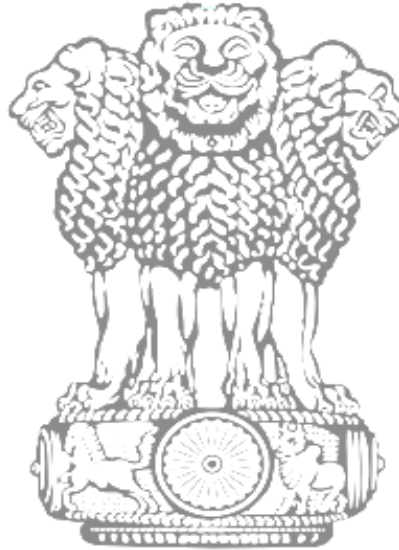
dispose the same on merit within a period of 3(three) months from today.

[28] With these observations, the appeals are disposed of. Pending application(s), if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

HIGH COURT OF TRIPURA



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