

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-462-2021 (O&M)
along with other connected cases
Reserved on : 09.12.2022
Pronounced on : 25.01.2023

State of Punjab & anotherAppellants

Versus

Amarjit KaurRespondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Arjun Sheoran, D.A.G., Punjab
for the appellants in LPA-462-2021
and for the respondents in CWP-13941 & 22915-2016,
CWP-10146-2021 and CWP-17958-2022.

Ms.Rashika Bansal, Advocate, for
Mr.Dheeraj Mahajan, Advocate
for the petitioner(s) in CWP-22915-2016.

Mr.Dinesh Kumar, Advocate
for the petitioner(s) in CWP-4251-2021.

Mr.Varinder Singh Rana, Advocate
for the petitioner(s) in CWP-10146-2021.

Mr.Jagdeep Jaswal, Advocate
for the petitioner(s) in CWP-17958-2022.

None for the petitioner(s) in CWP-13941-2016.

Mr.Vijay Pal, Advocate
for the respondent-Panjab University in CWP-4251-2021.

Mr.Brahmeet Singh, Advocate, for
Mr.L.S.Sidhu, Advocate,
for the respondent in LPA-462-2021.

G.S. Sandhawalia, J. :-

The present judgment shall dispose of 6 cases bearing LPA-462-2021, CWP-13941 & 22915-2016 CWP-4251 & 10146-2021 & CWP-17958-2022.

2. Consideration in the present set of cases is as to whether the State is justified in excluding consideration of a married daughter for appointment on compassionate grounds, as per instructions dated 21.11.2002.

3. In LPA-462-2021, the learned Single Judge has allowed CWP-2218-2017 titled *Amarjit Kaur Vs. State of Punjab & another* on 17.01.2020 and declared Clause (c) of Note-I of the policy/instructions dated 21.11.2002 as *ultra vires* of Articles 14 & 15 of the Constitution of India and struck off of the said policy and instructions. Directions have been issued that it would read as 'Daughter (including adopted Daughter)' whereas earlier it would read as 'Un-married Daughter (including adopted Daughter)' which was the definition of the dependent family members. Learned Single Judge has further also recorded a finding that the petitioner therein was residing in her mother's house at Village Baghel Singh Wala as per the verification report of the DSP, CID, Tarn Taran who remained dependent upon the pensionary benefits of the deceased husband, Head Constable Kashmir Singh. They had only 1 acre of land and no other source of income and therefore, the financial position of the mother and the petitioner was fulfilling the criteria of being dependent upon the deceased father and therefore, it was directed to issue appointment letter to the petitioner on consideration of her claim within a period of one month from the receipt of copy of the order, while quashing the order dated 15.04.2015 (Annexure P-14) and holding her eligible for appointment under the 2002 scheme.

4. The reasoning given by the learned Single Judge was that while examining the scheme for compassionate appointment under the

2002 scheme that it was a policy which was made by the Government after the judgment of the Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana & others, 1994 (4) SCC 138** and reconsideration of the earlier instructions issued from time to time. In the list of family members which had been defined in Note-I, the word 'un-married daughter' had been written but not a 'married daughter'. It was noticed that for the son, there was no such qualification with regard to his marital status. Resultantly, keeping in mind the purpose of the scheme and the intent was to provide helping hand to the family who had all of a sudden lost the sole breadwinner and the determinative factor with regard to the eligibility was the financial status of the family. The sole purpose being to tide over the sudden financial crisis, it was held that there can be no discrimination against a woman merely on the basis of sex which would include the marital status and if it had been the case of a son who was married, the claim would have been considered and thus, there was apparent discrimination. Resultantly, by holding that the classification has to be based on reasonableness and there has to be gender equality and a woman could not be deprived at the threshold because of the marital status, it was held that the man was thus being put at a higher pedestal and had preferential right of consideration over a woman because of marital status which could not be permitted as it has the effect of rendering the equal protection of law guaranteed under the Constitution otiose. It was accordingly held that a daughter upon her marriage could not be said to have ceased to be part of the family of her father whereas the son could remain throughout and thus, the married daughter could not be deprived the benefit of equal treatment as she would not lose her old relationship.

5. Reliance was placed upon the judgment of the Division Bench of this Court in **Jai Narain Jakhar Vs. State of Haryana & others, 2012 (1) RSJ 430** wherein a married daughter of an Ex-serviceman had been denied her dependency certificate as per the policy of the State dated 11.10.2001. Reliance was also placed upon the Full Bench judgment of the Uttarakhand High Court in **Udham Singh Nagar District Cooperative Bank Ltd. & another Vs. Anjala Singh & others, 2019 (3) SCT 570** to reach to the said conclusion. The communication dated 15.04.2015 issued by the Director General of Policy rejecting the case of the writ petitioner for service under priority basis to the post of Clerk was, thus, quashed on account of being married.

6. Since the judgment was one of considerable importance that would have far reaching effect and similarly situated persons had filed separate cases, vide order dated 10.11.2021, State was directed to give the list of cases which might be pending regarding the issue in question. Resultantly directions were issued that all the said cases be tagged along with the present appeal.

7. In CWP-10146-2021 titled *Pooja Vs. State of Punjab & others*, similar relief is sought and challenge has been raised to the order dated 15.01.2021 where the application filed by the sister of the deceased, the writ petitioner, Pooja had been rejected on the ground that she was married. The employee in the said case had only been survived by his mother and under Note-I of the definition of the dependent family members included the definition of 'un-married brother' or 'un-married sister' and the State had accordingly contested that the sister was not dependent upon her brother but was dependent upon her husband and was

residing at Hoshiarpur in her matrimonial home whereas the mother was residing at Pathankot.

8. In CWP-22915-2016 titled *Jyoti Devi Vs. State of Punjab & others*, challenge is to the order dated 30.05.2016 (Annexure P-2) wherein the case for consideration for appointment was rejected on the ground that she was the married daughter of late Smt.Kanta Devi. Release of retiral benefits was also sought for.

9. In the reply filed, it was mentioned that the mother was working as Baildar on regular basis who expired on 22.12.2015 and all the retiral benefits in the form of family pension, death gratuity, leave encashment, GIS, final payment of GPF stood paid sanctioned to the tune of Rs.7,41,542/- and only part payment of Rs.15,000/- of GIS amount pertaining to bill No.108 dated 21.06.2017 had to be disbursed.

10. In CWP-17958-2022 titled *Pooja Devi Vs. State of Punjab & others*, challenge was raised to the order dated 29.04.2022 (Annexure P-9) wherein the petitioner's case for compassionate appointment being daughter of Om Parkash, Mali-cum-Chokidar had been rejected on the ground that there was no rule to grant compassionate appointment to the married daughter of the deceased employee.

11. Similarly, in CWP-13941-2016 titled *Sumita Rani Vs. State of Punjab & another*, challenge is raised to the policy dated 21.11.2002 (Annexure P-11) and the letter dated 18.03.2016 (Annexure P-12) wherein the case of the petitioner for appointment on compassionate ground on the post of Clerk due to the death of father had been rejected on the ground that she was the married daughter while noting that earlier she had given

an affidavit that appointment be given to her brother, Shri Gagandeep Bansal and therefore, she had relinquished her right.

12. The defence of the State was that the death had taken place on 13.06.2009 and Gagandeep Bansal had applied for the post of Clerk but was not having the required qualifications and then he had submitted his request that he should be given the post of a Peon. Resolution was passed that there was no vacant post and that the Director be written for approval for a new appointment to the post of Peon as per rules but he had never turned up for attending to the said post. Thereafter, at that point of time, the petitioner had submitted a no objection by way of her affidavit and therefore was estopped now to claim appointment since the claim had been made after 6 ½ years.

13. In CWP-4251-2021 titled *Sunishtha Vs. Panjab University & others*, challenge has been raised to the order passed on 03.11.2020 (Annexure P-6) whereby the respondent-Panjab University rejected the claim of the writ petitioner, Sunishtha vide a non-speaking order that the competent authority had not acceded to the request being devoid of merits. The reasoning was supplemented on 04.12.2020 (Annexure P-8) which is also subject matter of challenge that the case was not covered under Rule 5(d) of the Panjab University Calendar Vol.III 2016 and resultantly the same is under challenge that the exclusion of the dependent married daughter could be violative of Articles 14, 15, 16 & 25 of the Constitution of India.

15. In the written statement filed by the Panjab University, reliance was placed upon the said rule that the petitioner was not entitled being the married daughter and not eligible apart from taking the plea that

for the release of terminal benefits, succession certificate was required under Regulation 14.14 of the Panjab University Calendar Volume-I of 2007.

16. In the replication filed, the petitioner stated that she had filed Succession Case No.33 of 2021 which is pending adjudication before the Civil Judge (Sr.Division) Chandigarh and the result would be submitted to the University. It is her case that she is the only daughter of her parents and her mother, Manju is a housewife and there was no son in the family and the husband was a low paid employee and was getting a meager salary. After marriage, the husband of the petitioner was living in his father-in-law's house and dependent upon the income of late Shri Amar Nath.

17. The question for consideration thus arises is that whether a married daughter is liable to be excluded for consideration for appointment on compassionate grounds under the policies/relevant rules.

18. As per Clause 3 of the policy dated 21.11.2002 which is a scheme for compassionate appointment the object of which is to grant appointment on compassionate grounds to persons who fall under the categories mentioned below. As per Clause 4, the competent authority is to make compassionate appointment by the Head of the Department in relation to the posts under his control and the Secretary of the Department concerned. As per Clause 5, Group-C and Group-D posts against direct recruitment quota available at the time of appointment in the department of the deceased employee are the ones against which appointments could be made. If no post is available, the case is to be referred to the Redeployment Cell of the Department of Personnel for sponsoring the

candidate for appointment. The eligibility aspect and the indigent and financial conditions was also subject matter which was to be considered.

Relevant portions of the policy read as under:

“3. Henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:-

(1) A dependent member of the family of a person (bread-winner) killed or 100% physically disabled in terrorist action or by security forces acting in-aid of civil power, in the State;

(2) A dependent member of the family of the deceased Govt, employee, who dies in harness.

(3) Disabled Ex-Servicemen (fit for Civil Service).

(4) A dependent member of the family of the Defence Services' Personnel;

(i) Killed in service, while performing duties, or

(ii) Who are severely disabled and totally unfit for re-employment,

NOTE-I 'Dependent Family Member' means:

(a) Spouse;

(b) Son (including adopted son);

or

(c) Un-married Daughter (including adopted daughter); or

(d) Un-married Brother or Un-married Sister in the case of unmarried Govt Servant. - who was wholly dependent of the Govt. Servant/member of the Armed Forces at the time of death in harness.

NOTE-II 'Government Servant for the purpose of these instructions means a Govt. Servant - appointed on regular basis and not one working on daily wage or casual apprentice or adhoc or contract or re-employment or 89 days basis.

NOTE-III 'Confirmed Work-Charged Staff will-also be covered by the terms 'Government Servant! mentioned in Note II above.

NOTE-IV 'Service means a period prior to the date of superannuation. It does not include extension in 'service or re-employment after attaining the normal age of retirement in a civil post.

NOTE-V 'Re-employment' does not include employment of ex-servicemen before the normal age of retirement in a civil post.

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6. ELIGIBILITY

(a) The family is indigent and deserves immediate assistance for relief from financial destitution. The authority concerned must consider as to whether the family of deceased employees is unable to meet the financial crisis resulting from employee's death.

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment.”

19. Certain exemptions have also been granted under Clause 7 for the appointment that it is without the agency of the Punjab State Selection Board or the Employment Exchange and the clearance from the Surplus Cell of the Department of Administrative Reforms and the ban orders of filling up of posts issued by the State Government from time to time. The upper age limit was also to be relaxed under Clause 8 wherever found to be necessary in various cases but no relaxation was permissible in educational qualifications and for Group-D, minimum 5th standard was necessary. In the case of widow to be appointed under Clause 8 (c) for relaxation, she was required to be exempted from possessing required educational certificates prescribed provided the duties of the post can be satisfactorily performed by her without possession such educational qualifications. 5% of the vacancies on the direct recruitment quota could

be held back to be filled up by the State Government vacancies for appointment on compassionate grounds as per Clause 9(b). Clause 10 provides that widow on being appointed on compassionate grounds will be allowed to continue in service even after remarriage. Under Clause 11 (a) in deserving cases where there is already an earning member consideration may be done for compassionate appointment with prior approval of the Secretary of the Department concerned who will consult with the Department of Personnel that the appointment was justified having regard to number of dependents and assets left by the deceased Government employee and whether the earning member was residing with the family of the deceased Government servant.

20. Clause 14 also further provides that an undertaking is to be obtained that the maintenance of the other family members who are dependent upon the deceased Government servant is done properly, failing which the appointment may be terminated forthwith. Same reads as under:

“14. UNDERTAKING

A person appointed on compassionate grounds under the Scheme should give an undertaking in writing (as in property Annexures) that he/she the other family will members maintain who were dependent on the Government servant/members of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, appointment may be terminated forthwith.”

21. Similarly, regarding the Panjab University offending rule which excludes the married daughter from consideration is Rule 5(i)(d) of the Panjab University Calendar Volume-III, 2016. Same reads as under:

“5(i) (d) A dependent member of the family of a person (bread-winner) who dies in harness can be considered for the appointment only on class B or Class C post, provided he is eligible in accordance with University rule with University rules/regulations. No relaxation in the academic/ professional/ technical qualifications prescribed for a job will be given Relaxation in age may be considered by the appointing Authority in such cases. For such appointment, only a widow or a dependent son or a dependent un-married daughter or an adopted son or an adopted un-married daughter or widow daughter-in-law whose husband was not working in a Government/ Semi-Government office, and who has not got re-married at the time of offering the appointment, may be considered.”

22. Counsels have accordingly relied upon the judgment in **State of West Bengal & others Vs. Purnima Das & others, 2018 (1) SCT 297, Court On Its Own Motion Vs. State of H.P. & others, 2018 (4) SCT 74, Central Coalfields Ltd. Vs. Hemanti Devi & others, 2018 (4) JLJR 478, State of U.P. through Principal Secretary, Basic Education Department & others Vs. Noopur Srivastava & others, 2019 (133) ALR 648, Udham Singh Nagar District Cooperative Bank Ltd. (supra), **Meenakshi Dubey Vs. M.P.Poorva Kshetra Vidyut Vitran Co.Ltd. & others, 2020 AIR (Madhya Pradesh) 60, and Mamta Devi Vs. State of Himachal Pradesh & others, 2021 (1) SimLC 202.****

23. Mr.Arjun Sheoran, DAG, Punjab and Mr.Vijay Pal, representing the respondent-University, on the other hand, relied upon the Division Bench judgment of this Court in **Gurpreet Kaur Vs. State of Punjab & others, 2019 (1) SCT 66** and **The State of Maharashtra & another Vs. Ms. Madhuri Maruti Vidhate (Since after marriage Smt. Madhuri Santosh Koli), 2022 (4) SCT 298,** to submit that there is

reasonable classification as after marriage, the daughter would be no longer be dependent upon the family of the deceased and therefore, have rightly been excluded from consideration. Reliance is also placed upon the Division Bench judgment of the Rajasthan High Court in **Smt. Sumer Kanwar Vs. State of Rajasthan & others, 2012 (2) SCT 331** in support of the said proposition that the rule cannot be said to be illegal and arbitrary in any manner wherein it had been held that a married daughter would not be included within the definition of a dependent and it would be reasonable ground to reject the application for compassionate appointment. It was also held that it was not unconstitutional and arbitrary in any manner as it is not for the Courts to enlarge such policies or rules. It was accordingly argued that it was a mere concession that the consideration was to be done on compassionate grounds and therefore, challenge raised was not justified and the zone of consideration could not be permitted to be widened in the facts and circumstances.

24. Mr. Sheoran, accordingly, argued that restricting the right of consideration to married brother and the married sister has also been done from the right of consideration and therefore, there can be no discrimination as the married sister could not be dependent upon the deceased employee in any manner as would be similarly the case of the married brothers. It is thus submitted that challenge to the said clause in CWP-10146-2021 is without any basis.

25. We are of the considered opinion that the exclusion at the outset in the case of a married daughter is apparently arbitrary. As noticed above, the eligibility aspect and the fact that she may be dependent upon the deceased employee would be subject matter of consideration by the

competent authority as per the scheme of the Government. The rejection at the threshold only on the ground of gender would be violative of Articles 14 & 15 of the Constitution of India since in contrast similarly situated sibling like the son who may be married and living separately would come within the zone of consideration since in his case, under Clause (b) of Note-I, it is not that his consideration is excluded being the married son. The policy also further provides that under Clause 6, the eligibility is to be seen and therefore, being excluded by the definition of dependent family member, married daughters are kept out of the zone of consideration of eligibility. Same would thus mitigate against the factor that under Clause 14, an undertaking is also to be given that the family is to be maintained and the property is to be looked after of the deceased Government servant and the appointment can be terminated. Thus, a married daughter is shut out from even applying as she would not come within the zone of consideration whether she is dependent or not but exclusion is only on account of gender and it would be patently discriminatory. The deceased Government employee might have only been blessed with daughters and a widow who is not in a position to take up employment. Merely because the daughters are married would not exclude them from the zone of consideration as they would be in a position to help the widow if they are given employment keeping in view the undertaking which is also to be taken from the said applicant on account of favourable consideration.

26. It has been time and again observed that once a daughter always a daughter while a son might change on account of the fact that he is married and has a wife to look after who could have serious differences

with her in-laws. Therefore, in cases of such a situation also, the son would get a right of consideration though married and not on good terms with his parents whereas a married daughter having good relationship with the deceased Government employee and in a position to look after the widow would be excluded.

27. The Division Bench of the Kolkata High Court in Purnima Das (supra) noticed the example that there could be situation where a married daughter has withdrawn from the matrimonial home and returned to her parental home which is the first refuge and it would not be uncommon situation and therefore, being dependent upon the earning of her father, could not be precluded from applying if he suddenly passes away subsequently. The purpose of the scheme being to provide succor at the time when the earning hand is suddenly taken away would, thus, be not available to a man who is blessed with daughters and only on account of their marriage the right of consideration is being taken away. Therefore, we are in agreement with the observations made by the Division Bench in Purnima Das (supra) and find no reason to take a different view. It is not disputed that the State of West Bengal had unsuccessfully challenged the judgment of the Division Bench in SLP No.17638-17639 of 2010 which was dismissed on 23.07.2019 by the Apex Court.

28. In Court On Its Own Motion (supra) the Division Bench of the Himachal Pradesh High Court was considering the issue whether reservation for recruitment was confined only to unmarried daughters while for providing jobs to Wards of Freedom Fighters. Resultantly, it was found that the stand taken by the State was archaic and disappointing and predominant mindset of male chauvinism still prevailing. Reliance was

placed upon the judgment of the Apex Court in **Savita Samvedi (Ms) Vs. Union of India, (1996) 2 SCC 380** wherein out of turn allotment for Railway accommodation was held being unconstitutional by holding that married daughters were to be at par with a unmarried one. The Division Bench has rightly placed reliance upon the earlier view of the Apex Court in **Miss C.B.Muthamma, I.F.S. Vs. Union of India, (1979) 4 SCC 260**, wherein married women were excluded from being appointed to the Indian Foreign Service under the Conduct & Discipline Rules of 1961 and resultantly it had been observed that the stain of obsessed discrimination needs to be removed. The relevant portion from the later judgment reads as under:

“7. 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 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.

8. The petitioner has, after the institution of this proceeding, been promoted. Is it a case of post hoc ergo propter hoc ? Where justice has been done, further probe is otiose. The Central Government states that although the petitioner was ,not found meritorious enough for promotion some months ago, she has been found to be good now, has been upgraded and appointed as Ambassador of

India to the Hague, for what it is worth. Her surviving grievance is only one. During the interval of some months between her first evaluation and the second, some officers junior to her have gone above her. In the rat race of Indian official life, seniority appears to be acquiring a religious reverence. Since the career ahead of the petitioner may well be affected by the factum of prior birth into Grade I of the Service, her grievance turning on seniority cannot be brushed aside. Her case, with particular focus on seniority, deserves review vis-a-vis those junior to her who have been promoted in the interval of some months. The sense of injustice rankles and should be obliterated so that every servant in strategic position gives of his or her best to the country. We have had the advantage of the presence of the learned Solicitor-General, appearing for the Union of India. With characteristic fair-ness he has persuaded his client to agree to what we regard as a just gesture, viz., that the Respondent-Union of India will shortly review the seniority of the petitioner, her merit having been discovered and her seniority to Grade II being recognised. We direct accordingly.”

29. In Central Coalfields Ltd. (supra) the Division Bench of the Jharkhand High Court read down the expression ‘unmarried daughter’ whereby employment was to be provided to the dependents of workers who were disabled permanently and also who died in service under the National Coal Wages Agreement-VI. It was accordingly held that it was not based on any reasonable or rational criteria and the authorities were directed to consider the case after giving opportunity of hearing that she was dependent on her mother’s income at the time of her mother’s death irrespective of the fact that she was married or unmarried.

30. In Noopur Srivastava (supra) the Division Bench of the Allahabad High Court (Lucknow Bench) modified the judgment of the learned Single Judge wherein directions were issued to grant appointment

to the petitioner who was dependent divorced daughter of the deceased Headmaster and was barred for consideration. The rule of the State namely the U.P. Recruitment of Dependent of Government Servants Dying in Harness Rules, 1974 provided that under Rule 2(c) the inclusion in the family was to a unmarried daughter and was similarly worded and it was held that it is a case of beneficial legislation. Thus the appeal was dismissed but the modification was done that the consideration of the claim of the petitioner was to be done by the respondents to grant appointment was not permissible as has also been done by the learned Single Judge herein also.

31. In Udham Singh Nagar District Cooperative Bank Ltd. (supra) the Full Bench of the Uttarakhand High Court was deciding the following referred questions:

“(i) Whether any of the members, referred to in the definition of a "family" in Rule 2(c) of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short "the 1974 Rules") and in the note below Regulation 104 of the U.P. Co- operative Committee Employees Service Regulations, 1975 (for short "the 1975 Regulations") would be entitled for compassionate appointment even if they were not dependent on the Government servant at the time of his death?

(ii) Whether non-inclusion of a "married daughter" in the definition of "family", under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India?”

32. Resultantly, it was held regarding issue No. (i) that if a family member is not financially dependent he would not have a right to be

considered which is also the issue of consideration under the present Policy of 2002 of the State that the consideration is to be also done by the competent authority as per Clause 6. Regarding issue No. (ii) it was held while noticing that Section 6 of the Hindu Succession Act had also created coparcenary rights upon the daughters and they were also supposed to maintain their parents under the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 wherein equal duty had been placed upon them. The classification of the family, thus, to exclude the married daughters from the right of consideration was held to be without any justifiable reasons. Resultantly, it was held that restricting the benefits to the widowed and unmarried daughter would fall foul of Articles 14 & 16 of the Constitution of India and all sons and daughters irrespective of their marriage are eligible to be considered provided they fulfill the other conditions stipulated in the rules and regulations. The rule was thus read down by answering the reference as under:

“66. We answer the reference by holding that :-

- i. Question No.1 should be answered in the affirmative. It is only a dependent member of the family, of the Government servant who died in harness, who is entitled to be considered for appointment, on compassionate grounds, both under the 1974 Rules and the 1975 Regulations.
- 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. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations."

33. We do not find any reasonable ground to take a different view though State Counsel has also relied upon judgment in support of which we will refer to accordingly.

34. In Meenakshi Dubey (supra) the Full Bench of the Madhya Pradesh High Court held that Clause 2.2 of the policy dated 29.09.2014 which took out the married daughter from the right of consideration for compassionate appointment was unconstitutional. Reliance was placed upon judgment of the Apex Court in **Dr. (Mrs.) Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai, (1987) 2 SCC 278** wherein the Apex Court had rejected the contention of married daughter that she was under no obligation to maintain her parents under Section 125(1)(d) Cr.P.C. The relevant part reads 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) of [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 parents.”

Reliance was also placed upon the recent judgment of the Apex Court in **Secretary, Ministry of Defence Vs. Babita Puniya, (2020) SCC Online SC 200** wherein recognition of the right of women officers to equality of opportunity in the Army had been granted by the Apex Court. Resultantly, the divergence in opinion by the Two Division Benches was approved in favour of the Bench which had taken the view that the debarment of the married women from consideration was wrong.

35. In Mamta Devi (supra) the Division Bench of the Himachal Pradesh High Court allowed the writ petition whereby challenge was raised to the provisions in the policy for compassionate appointment restricting the right to the unmarried daughter. It was noticed that daughters have all the rights which are available to sons in succession of property and their right do not cease with marriage and it was only a social circumstance and would not effect the dependency. Resultantly, it was held that there can be no artificial classification between a married son and a married daughter and the State was acting in a misogynistic way by

permitting consideration of a married son for compassionate appointments.

It was further noticed that Government employee had left behind widow and 2 daughters and in the absence of any male in the family, the State cannot shut its eyes and push them to penury once the no objection certificate had come from a younger daughter.

36. Similarly, if the rule of Panjab University is also examined, it also provides that there has to be a consideration for appointment only to Class B or Class C posts as per the University Rules and Regulations. Claim for relaxation in academic, educational qualifications is not to be given whereas relaxation in age can be considered by the competent authority. Thus, apparently again, consideration is to be done and therefore, by the said rule, exclusion is done at the outset of the married daughter whereas it is silent regarding a married son. The dependency factor is also to be noticed and thus, apparently the said rule suffers from same infirmity as per the policy of the Punjab Government.

37. Mr. Sheoran's reliance upon the judgment in Gurpreet Kaur (supra) would be of not much help since it was a case wherein the Letters Patent Appeal had been dismissed upholding the order of the learned Single Judge who had noticed that she had kept quiet for more than 12 years since the employee had died on 17.08.2001 and she had only applied for the second time in January, 2012 since the earlier application was not traceable. Her claim had been rejected on the ground that she was married and resultantly it was held that strict construction of the rules for compassionate appointment is to be applied and the policy did not include the married daughter to be eligible and at the time of death of her father she was a minor and later she had acquired higher qualifications, got

married and then applied. Resultantly, it was held that there was no crisis in the family and she was not living in penury and there was a presumption that the married daughter must have settled down with her husband comprising of a separate family unless established to the contrary. Resultantly, the issue of challenge to the policy had not been raised before the learned Single Judge wherein in the present Letters Patent Appeal, which has been allowed in favour of the writ petitioner, a specific challenge had been raised to the instructions being invalid and arbitrary and further violative of Article 14 of the Constitution of India which were rightly struck down and therefore the judgment would not be helpful to the State Counsel.

38. Similarly in Ms. Madhuri Maruti Vidhate (supra) the Apex Court was dealing with the issue of right of compassionate appointments which had been allowed by the Maharashtra Administrative Tribunal and upheld by the Apex Court that after a period of 7 years from the date of death of the mother, the younger daughter had made an application for appointment after denial had been made by the elder married sister in the year 2011. Accordingly the order passed in favour of the applicant was set aside by taking into consideration that the appointments were an exception to the general rule under the said policy and there is no right to compassionate appointments which again operated in peculiar facts. Firstly, the Government employee had died and after that the mother had been appointed on compassionate grounds in that case. Unfortunately, she also died while in service and the elder daughter's request had been rejected on 18.08.2011 on the ground that she is a married daughter. The second application was filed in the year 2013 and the Original Application

was filed in the year 2015, 2 years after the rejection order was passed in the year 2013. Accordingly, question was framed whether the respondent was entitled for appointment on compassionate grounds. Thus, it was on merits regarding the fact that there was delay in approaching the authorities by another sibling and thus, it would operate in peculiar facts and circumstances and not on the principle that consideration is to be denied to the married daughters in toto.

39. As noticed, the learned Single Judge has also relied upon the order passed in Jai Narain Jakhar (supra) wherein the rejection for issuance of dependent certificate to the married daughter of an Ex-serviceman was done in view of the policy dated 11.10.2001 wherein married son who did not have any independent livelihood would be granted the dependent certificate. The married daughter of an Ex-serviceman thus would not be eligible for the dependent certificate. Relying upon the judgment in **State of West Bengal Vs. Anwar Ali Sarkar, AIR 1952 SC 75**, wherein it was held that class legislation was forbidden, provided there was reasonable classification and must be founded on intelligible differentia having rational relation to the object sought to be achieved the benefit was granted. Resultantly, it was held that common factor of being married would flow to both siblings and cannot be discriminatory to a married daughter who is without independent source of livelihood and needs the dependent certificate to secure a job. The emphasis was on the independent source of livelihood which could be present in the case of both the children. Reliance was also placed upon Section 6 of the Hindu Succession Act, 1956 that the daughter was now a coparcener and would

have same rights and liabilities as a coparcener and the clause was accordingly read down.

40. The judgment relied by Mr. Varinder Singh Rana, Advocate upon **Jon Mahanta Vs. The Oriental Insurance Company Ltd. & others, 2020 (5) GauLR 285** does not apply to the facts and circumstances of the present case and is distinguishable. As rightly argued by the State Counsel, both the unmarried brother or unmarried sister are eligible and by virtue of the marriage, both the brother and sister have been kept out of the zone of consideration. Thus, there is no discrimination inter se the two siblings on account of the fact that they are married and would be expected to be supporting their families and not be dependent upon the Government employee and it is not a gender based inequality. The classification is thus reasonable in the case of exclusion of both married brother or sister of the deceased Government employee. The judgment passed by the learned Single Judge of the Gauhati High Court wherein the benefit of consideration was directed to be given to the sister though she was married and the denial was on account of the fact that the clause read as the benefit is to go only to the dependent brother and sister of the unmarried Government employee. Resultantly it was held that by excluding the wholly dependent brother and sister of a married employee would be illegal. The learned Single Judge while enlarging the scope of consideration had granted the benefit also to a dependent brother or sister of a married employee and thus, there was no discrimination qua the dependency on account of gender between the brother and the sister and therefore, the said judgment would not be applicable in the facts and circumstances.

(i) We do not find any reason to take a different view from what the Coordinate Bench has taken. Resultantly, we are of the firm view that the order passed by the learned Single Judge in striking down the offending portion is justified. However, the only issue is that direction to appoint the writ petitioner is not justified as the consideration further is to be left to the authorities as per the policy. Accordingly, the judgment of the learned Single Judge dated 17.01.2020 in LPA-462-2021 is modified to that extent. The necessary exercise be carried out by the competent authority within 2 months of receipt of certified copy of this order.

(ii) The claim of sister of the deceased in CWP-10146-2021 is however without any basis being the married sister and learned State Counsel is well justified to submit that both the unmarried brothers and unmarried sisters are to be considered who were wholly dependent upon the Government servant. The classification thus is justified and there is no discrimination inter se the siblings and therefore, the claim in the writ petition is without any basis.

(iii) CWP-22915-2016 is disposed of with direction to consider the case, by quashing the order dated 30.05.2016 (Annexure P-2) whereby the case had only been rejected on the ground of marriage being the daughter.

(iv) In CWP-17958-2022, the consideration is to be done within 2 months and her case be considered as noticed above.

(v) CWP-13941-2016 is dismissed since apparently the death of the employee had taken place on 13.06.2009 and firstly, the

brother had applied for the post of Clerk and was not having the qualifications. He had given his consent for the post of Peon for which consideration was directed and the petitioner had already given an affidavit that she had no objection. Thereafter, she had put her claim after 6 ½ years and would thus be covered under the judgments of Gurpreet Kaur (supra) and Ms. Madhuri Maruti Vidhate (supra) and her case is liable to be rejected on the said grounds.

(vi) CWP-4251-2021 is allowed and the orders dated 03.11.2020 and 04.12.2020 are quashed and the case is to be considered irrespective of the fact that she is a married daughter.

(G.S. SANDHAWALIA)
JUDGE

25.01.2023

sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes