

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01115/2015

Date of order : 9.9.2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

MADHUMITA BHATTACHARJEE & ANR.

VS

UNION OF INDIA & ORS. (SAIL)

For the applicants : Mr.P.Raj, counsel

For the respondents : Mr.A.Roy, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved and with the consent of both sides.

2. The applicant No.1 had sought for employment assistance on compassionate ground in favour of applicant No. 2 who is the daughter of the deceased employee. By an order dated 18.10.14 the prayer for compassionate appointment of the applicant No. 2 was rejected. This order has been assailed in the present OA. It has been issued by DGM (Personnel) whereby and whereunder the claim of the applicant for compassionate appointment of her daughter was rejected as she is a married daughter and no more dependent on her husband (deceased employee) and hence as per clause 4 of Guidelines & Procedure for dealing with compassionate cases, she is not eligible for employment on compassionate ground.

3. It is noticed that a circular has been issued by Durgapur Steel Plant on 31.1.12 vide Sl. No. 2/12 in regard to guidelines and procedure for dealing with compassionate cases. The circular does not create any bar in regard to married daughters, for such consideration. The dependent family members in terms of the said circular would be (a) spouse or (b) son or (c) daughter - who was/were wholly dependent on the employee at the time of his/her death or separation,

due to permanent total disablement or separation on medical invalidation as the case may be.

4. It has been held in *Sreejith -vs- Directorate of Education [2012 (7) SCC 248]* that marriage by itself does not disqualify a person concerned from seeking compassionate appointment.

5. In *WP 6056/10, The State of Maharashtra & Ors. -vs- Medha Prashant Parekh*, the Hon'ble High Court at Bombay has held

"Rule 3(A) which discriminates against unmarried women is arbitrary and, therefore, it cannot be said that the termination of service of the respondent was legal. An unfair labour practice has been established. It is impossible to accept in this day and age that assuming a woman get married she will cut off her ties with the family she is born and will leave it to suffer the vagaries of life in penury. It was necessary for the petitioner in this case to establish on evidence that the respondent, after having secured the employment, was no longer connected with the family that she was born into and that the family was living without her financial support. The petitioner instead has chosen to dismiss the respondent, without holding an enquiry and has thereby committed an unfair labour practice. One of the eligibility criteria for applying for appointment on compassionate grounds is that the daughter must be unmarried. The respondent was unmarried when she applied for the post. She was selected as she fulfilled all the other criteria for appointment. Her name was included in the wait-list and she was issued an appointment order three years later. The petitioner cannot expect the life of the respondent to come to a grinding halt only because her name was included in the waitlist. The unreasonableness and arbitrariness of the petitioner is writ large. Does the respondent have to let life pass her by only because her name was included in the wait list? The answer must be emphatically in the negative. To suggest that because the respondent had not waited long enough to get married, she had committed a fraud, snacks of an unfair labour practice under item 1(b)."

6. In *Usha Singh -vs- State of West Bengal [(2003) 2 LLN, 554]* Hon'ble Calcutta High Court observed as under :

"7. No authority need be cited for the proposition that right to marry is a necessary concomitant of right to life guaranteed under Art. 21 of the Constitution. "Right to life includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition." (See in this regard *Sr. X v Hospital Z*, reported in (1998) 8 SCC 296.

10. The rationale of the rules quoted herein above is that the son or the daughter who applies for an appointment in the died in harness category should have been dependent upon the income of the deceased so that his untimely death left him/her/them in extreme economic hardship. The Award object of the rules is to provide relief to the family which is in extreme financial hardship and for this purpose an unemployed son can apply whether married or unmarried. Why then is the restriction upon a daughter that she should be unmarried in order to be eligible for appointment? An unmarried daughter can be a divorcee fully dependent upon the father. She may have been abandoned wife again fully dependent upon the father. She may have been married to an indigent husband so that both the married daughter and the son-in-law would have been dependent upon the income of the bread-winner whose

death led them to extreme financial hardship. The concept of a "Ghar Jamai" (one who lives at one's father-in-law's house) is well accepted in Indian society particularly in those families where there is no son. There may be many other probabilities in which a married daughter may be fully dependent upon the income of her father so that death of the father would leave her and the rest of the members of the family in extreme economic hardship. Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is ineligible irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the father. Take the case of a teacher who died-in-harness leaving him surviving his illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned advocate, this family cannot be helped. Is this the intended result of the rule? What is the basis for the qualification which debar the married daughter? And what is the nexus between the qualification and the object sought to be achieved? In my view, there is none. If anyone suggests that a son married or unmarried would look after the parent and his brothers and sisters, and that a married sister would not do as much, my answer will be that experience has been otherwise. Not only that the experience has been otherwise but also judicial notice has been taken thereof by a Court no less than the Apex court in the case of **Sabita -vs- Union of India reported in (1996) 2 SCC 80** wherein Their Lordships quoted with approval a common saying ;

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

In the case of ***Manjula -vs- State of Karnataka by its Secretary, Department of Co-operation, Bangalore & Anr [2005 (104) FLR 271]***

Learned Single Judge of the Karnataka High Court has held after considering the judgments of the Supreme Court that a woman cannot be denied entry into service on compassionate employment just because she is married. The Court has observed thus

"In these circumstances, this Court is of the view that no married women can be denied of any entry into service on compassionate employment just because she is married. In fact the State Government has accepted the theory of no employment for married women living with her husband. There may be cases where the married woman may be living with her parents notwithstanding her marriage for various reasons and their parents on account of death of her husband. Therefore, what this Court would do is to read down the Rule thereby providing employment to dependent married daughters subject of course to the satisfaction of the management of the dependency of the said married daughters in the given circumstances. This view in my view would support the cause of women in terms of Article 14 and 15 of the constitution of India. They cannot be denied employment merely on the ground of marriage. Therefore, the 'dependency' should be the yardstick and not the 'marriage' to wipe out the tears from the eyes of the suffering family on account of the loss of an earning member in the family".

(emphasis supplied)

7. In WP 11987/12, *Sou. Swara Sachin Kukarni (Kumari Depa Ashok Kuldarni) -vs- The Superintending Engineer, Pune, Irrigation Project Circle & Anr.* It has been held-

"We cannot expect a Welfare State to take a stand that a married daughter is ineligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. IN this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances, if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is disentitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged to bear in mind the constitutional mandate and also directive principles of the State Policy."

(emphasis supplied)


8. Applying in the same logic that emanates from the aforesaid decisions, if a married daughter, who was dependent can act as a bread winner, there is no logic in depriving a married daughter to act as a bread winner on the ground that she was not dependent. As such there is no rationale in depriving her to act as bread winner.

If the object sought to be achieved is to provide succour to the family in financial distress by giving employment to one of its dependents/near relatives, but the qualification debar married daughters who were not dependent upon the employee from becoming the bread winner, there is no reasonable nexus between the qualification and the object sought to be achieved.

9. In view of the fact that the widow needs a compassion and the circular does not operate as a bar for consideration of a married daughter either expressly or impliedly, the OA is disposed of with a direction upon the respondents to duly consider the claim of the applicants and pass appropriate

orders ignoring the fact that the applicant No.2 as a married daughter was not a dependant of the employee. Let orders be issued within two months from the date of receipt of the copy of this order.

10. The OA is accordingly disposed of. No order is passed as to costs.


(BIDISHA BANERJEE)
MEMBER (A)

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