

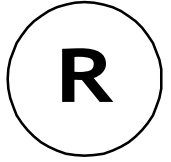
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17788/2018 (S – RES)



BETWEEN

SMT. BHUVANESHWARI V.PURANIK
W/O VINAYAK PURANIK
D/O LATE ASHOK ADIVEPPA MADIVALARA,
AGED 31 YEARS,
NO. 43/1, CCB-1, THANAJI GALLI,
BELAGAVI – 590 001
PRESENTLY R/AT NO.302,
4TH FLOOR, S.R.RESIDENCY,
CKB LAYOUT, MUNNEKOLAL,
MARATHAHALLI,
BENGALURU – 560 091 PETITIONER

(BY SRI MANMOHAN.P.N., ADVOCATE (VIDEO
CONFERENCING)

AND

1. THE STATE OF KARNATAKA
DEPARTMENT OF PERSONNEL
AND ADMINISTRATIVE REFORMS
M.S.BUILDING, BENGALURU – 560 001
REPRESENTED BY ITS SECRETARY.
2. AGRICULTURAL PRODUCE
MARKETING COMMITTEE,
KUDUCHI BELAGAVI – 591311
THE SECRETARY.

3. THE JOINT DIRECTOR (ADMINISTRATION)
DEPARTMENT OF AGRICULTURE MARKETING
NO.16, 1ST FLOOR, II RAJ BHAVAN ROAD,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI R.SUBRAMANYA, AAG ALONG WITH
SRI R.SRINIVASA GOWDA, AGA FOR R1 AND R3
(PHYSICAL HEARING);
R2 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO QUASH THE ORDER DATED 31.08.2017 ISSUED BY THE
RESPONDENT NO.3 PRODUCED AS ANNEXURE – D;
QUASH THE ORDER DATED 12.09.2017 PASSED BY THE
RESPONENT NO.2 PRODUCED AS ANNEXURE-E AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 30.11.2020, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING :-

ORDER

"Half the world; and not even half the chance"

is the cry of the petitioner in this petition on being denied
consideration for appointment on compassionate ground
on the death of her father on the score that she is "**a
married daughter**".

2. Filtering out unnecessary details, the facts that
are germane for consideration of the lis are:

Petitioner is the daughter of late Ashok Adivappa Madivalar who was working as Secretary in the office of the Agriculture Produce Marketing Committee (hereinafter referred to as the 'APMC' for short) Kuduchi village, Belgaum District and died in harness.

3. On the death of the sole breadwinner of the family, petitioner, the daughter of the deceased employee, submitted a representation on 08.11.2016 for grant of appointment on compassionate grounds. In response to the said application of the petitioner, the respondents directed her to rectify the defects in the application and submit the same in a proper format. In terms of the direction, petitioner submitted her representation on 22.05.2017 along with necessary documents.

4. In reply to the request of the petitioner seeking appointment on compassionate grounds, the third respondent Joint Director (Administration), Department of Agriculture Marketing issued an endorsement rejecting the request on the ground that the Rules obtaining does not

entitle the petitioner to seek an appointment on compassionate grounds on the score that she is the daughter of the deceased employee who is married. This rejection order dated 31.08.2017 was communicated to the petitioner on 12.09.2017 by the second respondent. It is the aforesaid orders dated 31.08.2017 and 12.09.2017 that are challenged in this writ petition by seeking to quash them by issuance of a writ in the nature of certiorari.

5. Heard Sri.Manmohan.P.N., learned counsel appearing for petitioner and Sri.Subramanya, learned Additional Advocate General and Sri.R.Srinivasa Gowda, learned Additional Government Advocate for respondent Nos.1 and 3. Respondent No.2 though served has remained unrepresented.

6. Sri.Manmohan.P.N., learned counsel appearing for petitioner would submit that the Rule which empowers the Government to reject an application of a married daughter falls foul of Article 14 of the Constitution of India as it is on

the face of it discriminatory which seeks to make a division of entitlement on the basis of gender. He would further contend that it is in that light that he has sought for a declaration at the hands of this Court to declare 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 (hereinafter referred to as the 'said Rules' for short) as unconstitutional.

7. On the other hand, Sri.Subramanya.R., learned Additional Advocate General would vehemently argue and contend that compassionate appointment is not a matter of right but a concession that is shown by the Government for a family which loses its breadwinner to tide over the immediate crisis that engulfs such families. It is with this object the Rules are framed and any request for appointment on compassionate grounds will have to be strictly construed in terms of the Rules and not dehors the same and would submit the Rule that has stood the test of time cannot be held to be unconstitutional or ultravires the

constitution merely because the petitioner is denied a concession and not a right.

8. I have given my anxious consideration to the submission made by the learned counsel for the parties and perused the material on record.

9. In furtherance of the aforesaid submissions, the point that arises for my consideration is:

"Whether 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 are ultravires the Constitution for it offends Article 14 of the Constitution of India?"

10. **OBJECT OF COMPASSIONATE APPOINTMENT:**

10.1. It is by now a well settled principle that object of compassionate appointment is to help the family tied over the crisis that befalls them on the death of the sole breadwinner of the family. It is given, in a given circumstance, so that the family will not be put to jeopardy

by being driven to impecuniosities and condemned by penury. It is for this reason the emphasis on appointment on compassionate grounds is immediacy of appointment. This is the principle that is laid down in plethora of judgments of the Apex Court interpreting the need, benefit and its limitations right from the judgment of the Apex Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana** reported in **(1994) 4 SCC 138** wherein the Apex Court has held as follows:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in

every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. **The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment,**

the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family

engendered by the erstwhile employment which are suddenly upturned.

The aforesaid enunciation of law with regard to compassionate appointment is reiterated by the Apex Court in line of judgments up to this date. Thus, the law with regard to compassionate appointment is by now too well settled that it is not a matter of right and not an alternate source of recruitment.

11. RULES GOVERNING COMPASSIONATE APPOINTMENT:

11.1. In the light of the question that has arisen for my consideration, the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 which governs the appointment on compassionate grounds to the Government servants in the State of Karnataka is required to be noticed and is extracted hereunder for the purpose of ready reference.

"2. Definitions :- (1) In these rules, unless the context otherwise requires,-

[(a) "Dependent of the deceased Government servant" means.-

(i) in the case of deceased male Government servant, his widow, son [unmarried daughter and widowed daughter] who were dependent upon him and were living with him; and

(ii) in the case of a deceased female Government servant, her widower, son [unmarried daughter and widowed daughter] who were dependent upon her and were living with her.]

(iii) in the case of deceased male unmarried Government Servant, his unmarried brother, unmarried or widowed sister who were dependent upon him and were living with him; and

(iv) in the case of deceased female unmarried Government Servant, her unmarried brother, unmarried or widowed sister who were dependent upon her and were living with her]

(b) "Family" in relation to a deceased Government servant means his or her spouse and their son [unmarried daughter and widowed daughter], [unmarried brother, unmarried or widowed sister] who were living with him.

(2) Words and expressions used but not defined shall have the same meaning assigned to them in the Karnataka Civil Services (General Recruitment) Rules, 1977.

3. Eligibility for appointment :- (1)
Appointment on compassionate grounds under these rules shall not be claimed as a matter of right and shall not be given as a matter of course.

(2) Appointment under these rules shall be restricted to the dependent of a deceased Government servant in the following order of preference, namely.-

[(i) in the case of the deceased male Government servant.-

(a) the widow;

(b) a son, if widow is not eligible or for any valid reason she is not willing to accept the appointment;

(c) an unmarried daughter, if the widow and son are not eligible or for any valid reason they are not willing to accept the appointment;

[(d) a widowed daughter, if the widow, son and unmarried daughter are not eligible or for any valid reason they are not willing to accept the appointment.]

[(i-a) in the case of the deceased male unmarried Government Servant.-

(a) unmarried brother;

(b) unmarried or widowed sister, who were dependent upon him and were living with him.]

(ii) in the case of the deceased female Government servant;

(a) a son;

(b) an unmarried daughter, if the son is not eligible or for any valid reason he is not willing to accept the appointment;

(c) the widower, if the son and daughter are not eligible or for any valid reason they are not willing to accept the appointment.]

(ii-a) in the case of the deceased female unmarried Government Servant.-

(a) unmarried brother;

(b) unmarried or widowed sister, who were dependent upon her and were living with her.]

(3) An adopted son or daughter of a deceased Government servant shall not be eligible for appointment under these rules.

[(4) A person against whom at the time of making application a criminal case is under investigation or trial, on the charge of having committed murder of the deceased Government servant or for abetting the commission of such offence shall not be eligible for appointment under these rules.]”

It is the said Rules which declines appointment on compassionate grounds to a daughter who is married and

restricts the consideration of appointment to an unmarried daughter if the son is not eligible for any valid reason or he is not willing to accept the appointment, that is called in question for it being violative Articles 14, 15 and 16 of the Constitution of India.

12. POSITION IN LAW:

12.1. Article 14 of the Constitution of India prohibits the State from denying any person equality before the law or equal protection of the laws. Article 16 is of application of general Rule of equality as laid down in Article 14 with special reference to opportunity for appointment and employment under the State. Article 15(1) prohibits discrimination on the ground of religion, race, caste, sex or place of birth. It is an extension of Article 14, which expresses application of principle of equality. Therefore, no citizen shall be discriminated on the grounds of race, caste, sex or place of birth religion. Article 16 takes its root from Article 14 and ensures equality of opportunity in matters of employment under the State. Therefore, the

fundamental right to equality means that persons in like situations under like circumstances should be treated alike.

12.2. Article 14 of the Constitution of India ensures equality among equals and its main object is to protect persons similarly placed against discriminatory treatment. The equality before law guaranteed under Articles 14, 15 and 16 is a constitutional admonition against both the legislative and executive organs of the State, neither the legislature nor the Rule making authority can make a law or a Rule which is violative of these articles.

12.3. The case of the petitioner and the issue raising a challenge to the constitutional validity of the provision relating to appointment on compassionate grounds will have to be tested on the bedrock of the purport of the aforesaid articles.

13. FACTUAL EXPOSE:

13.1. One Ashok Adivappa Madivalar who was working as Secretary at the office of the APMC, Kuduchi

village, Belagavi District died in harness on 31.05.2016 leaving behind his wife, the petitioner and a son. Son of the deceased employee who was already employed in a private firm did not choose to apply for appointment on compassionate grounds as he was not interested in the job. Wife of the deceased employee also in the deteriorating health condition did not want to apply. The only surviving member of the family of the deceased employee was the daughter-petitioner. The petitioner is married and is living separately with her husband. It is stated in the petition that mother of the petitioner after the death of her father is living with her and she is taking care of her.

13.2. Petitioner submitted her representation on 08.11.2016 seeking appointment on compassionate grounds in terms of the statutory rules quoted hereinabove pursuant to which, the respondents issued a communicated dated 16.01.2017 calling upon the petitioner to rectify the defects found in the application

and also sought for certain documents. In compliance with the direction the petitioner submitted all the requisite documents that were demanded by the respondents.

13.3. On 31.08.2017, the third respondent communicates to the second respondent that the petitioner would not be eligible for appointment on compassionate grounds in terms of the rules and thereafter, the second respondent by order dated 12.09.2017 rejected the request of the petitioner for appointment on compassionate grounds on the ground that the petitioner is married and in terms of the rules a married daughter is not eligible to be appointed on compassionate grounds. It is this action that is challenged on the ground that the reason for which the appointment of the petitioner is rejected amounts to a gender bias and is arbitrary and violative of Article 14 of the Constitution of India.

14. It is germane to consider certain illustrations of the consequence of the aforesaid provision to be violative of Articles 14 and 15 of the Constitution of India.

14.1. **Illustration – (i):**

In a case where the deceased Government servant having two sons, both of whom are married and one son declines the appointment on the ground that he is not interested in the job, the appointment is offered to the second son in terms of the Rules, married or unmarried hardly makes any difference in interpretation and offer of appointment when it comes to appointment to a son.

14.2. **Illustration – (ii):**

In a case where the deceased Government servant has two daughters, both of whom are married in terms of the Rules, there can be no appointment given to such a family who has only daughters and all of whom are married thereby, defeating the very object of compassionate appointment.

14.3. **Illustration – (iii):**

The facts of the case at hand where the deceased Government servant has a son and a daughter, the son declines the appointment on the ground that he is not

willing and the daughter is denied on the ground she is married. The factor of dependency which is the key to grant or deny compassionate appointment is not even considered in the case at hand since the definition of 'dependants' and 'family' exclude the daughter who is married.

14.4. In all the illustrations the offer of appointment or its denial is on the basis of gender as the sons of a deceased Government servant may well be married but are not denied appointment on the ground of marriage. If the daughters of a Government servant are married as marriage is a social commitment of a parent and in furtherance of such social commitment the daughter is given in marriage becomes ineligible to seek appointment in terms of the Rules. Therefore, the Rules insofar as it creates division of the same object of appointment on the basis of gender by granting appointment to a son without any qualification and denying the same to a daughter with the qualification of "marriage" cannot but be held to be

discriminatory. Marriage does not determine the continuance of the relationship of a child with the parent, whether son or a daughter. Son continues to be a son both before and after marriage and a daughter also should continue to be a daughter both before and after marriage. This relationship does not get effaced by the fact of marriage, as marriage does not sever the relationship of the daughter with the parent. These relationships are neither governed nor defined by marital status. This notion on which the Rule is framed cannot answer the tests of Articles 14 and 15 of the Constitution of India.

14.5. It is trite that Constitution and its interpretation grows according to the living needs of the citizens. It is dynamic and not static. The interpretation of law has always undergone a change with changing times. If the offending provision is left as it is, it would be putting the clock back from where the law has progressed over the years.

14.6. The case at hand is a classic example of law being anachronistic as in terms of the Rules, petitioner applies for compassionate appointment when the son declines the same on the ground that he is not interested. The Rule gives such a liberty to the son to even deny the benefit on the ground that he is not interested. The son of the deceased employee in the case at hand declines to accept appointment on the ground that he is not interested. The daughter is denied on the score that she is married. Therefore, the Rule which declines such a benefit to a daughter merely on the ground that she is married is *per se* discriminatory.

15. JUDICIAL INTERPRETATION:

15.1. The legal exposition of the Apex Court and other High Courts with regard to identical provisions in several Rules including that of Rules of compassionate appointment are required to be noticed and are as follows:

15.2. AUTHORITIES RELIED ON BY THE PETITIONER:

(i) *C.B. Muthamma v. Union of India* reported in (1979) 4 SCC 260

6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

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.

(ii) *Ranjana Murlidhar Anerao v. State of Maharashtra* reported in (2014) 5 Mah LJ 543

The question that arose before the learned Division Bench of Bombay High Court is as follows:

The question that arises for determination in this Writ Petition filed under Article 226 of the Constitution of India is whether the exclusion of a married daughter from the expression “family” for being entitled to be considered for grant of retail kerosene license under Government Resolution dated 20th February, 2004 can be said to be legal and valid.

In answer to the aforesaid question, the learned Division Bench held as follows:

13. From the aforesaid discussion, we have no hesitation in coming to the conclusion that the Government Resolution dated 20-2-2004 to the extent it excludes a married daughter from being considered as a member of the "family" a deceased retail license holder is violative of the provisions of the Articles 14, 15 and 19(1)(g) of the Constitution of India. The Hon'ble Minister, Food and Civil Supplies and Consumer Protection while passing the impugned order dated 17-6-2009 has taken into consideration the position as obtained from Government Resolution dated 20-2-2004. Hence the claim of the petitioner for being treated as a legal representative of deceased Godavaribai J. Jadhav has not been considered as the petitioner was considered to be a married daughter. In view of our aforesaid findings, the revision application under clause-16 of the Licensing Order, 1979 will have to be remitted back for fresh decision in the light of our aforesaid findings. Hence, we pass the following order:

(a) The Government Resolutions/Circulars dated 22-12-1997, 16-8-2001, 10-12-2003 and 20-2-2004 to the extent they exclude a married daughter from being considered as a member of the "family" of a deceased retail license holder are held to be violative of the

provisions of Articles 14, 15 and 19(1)(g) of the Constitution of India;

(b) The respondent No. 1-State of Maharashtra is directed to issue appropriate Government Resolution in the light of the conclusion recorded in paragraph-13 of this judgment;

(c) The impugned order dated 17-6-2009 is quashed and set aside and the revision application No. 450 under Clause 16 of the Licensing Order of 1979 is remitted to the State Government for fresh decision in accordance with law. It is clarified that this Court has not gone into the merits of the findings recorded in the order dated 17-6-2009 and the said revision application shall be decided afresh in accordance with law;

(d) The petitioner and respondent No. 4(a) are directed to appear before the Ministry of Food, Civil Supplies and Consumer Protection on 16-9-2014. The revision application shall be decided within a period of three months from the date of appearance of the parties before the said authority;

(iii) 2013 SCC online BOM 1549 (DB) reported in Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni) v. The Superintending Engineer, Pune Irrigation Project Circle and Another

2. The petitioner claims that her name has been deleted only because she is married. A married daughter could not have laid a claim for compassionate employment, because in the perception of the respondent nos. 1 and 2, she is no longer a part of the family of the deceased. It is this stand, which is questioned before us, in this writ petition. Mr. Kulkarni, appearing on behalf of the petitioner submitted that the facts in this case are peculiar. The deceased only had daughters. Both daughters are married. The second daughter is not interested in the job. The petitioner is interested in the job because she is supporting her widowed mother. The mother has nobody to look forward to except the petitioner - daughter. The petitioner has asserted that even after her marriage she is looking after her mother in her old age. In such circumstances, the deletion of her name from the list is violative of the constitutional mandate of Article 14 and 16 of the Constitution of India.

3. It is on this point that we have heard the Counsel and after perusing the writ petition and all the annexures thereto, so also the affidavit placed on record, we are of the opinion that the petitioner's name could not have been deleted from the list. The compassionate employment is to enable the family to get or tide over a financial crisis. As the petitioner is the only member who can

earn and support the mother in her old age, so also the emoluments including the pension of the deceased are inadequate that she was interested in pursuing her claim. The name of the petitioner was therefore duly reflected in a list initially and thereafter a recruitment or appointment exercise was undertaken. The petitioner therefore was wait listed at Serial No. 10. Thus, initially her number was 1070 and which advanced to Serial No. 10. We find that the respondents insisted on the petitioner submitting a certificate that she is unmarried, that is by a communication dated 21st May, 2011. The petitioner pointed out that such an insistence is impermissible in law. A letter dated 27th February, 2009 was issued communicating to her that her name has been deleted from the wait list owing to her marriage. If the petitioner's name is to be deleted from the list because of her marriage then insistence on production of a certificate about her marital status in the year 2011 was clearly an exercise visited by non-application of mind. The deletion by letter dated 27th February, 2009 itself is violative of constitutional mandate. We cannot expect a Welfare State to take a stand that a married daughter is in-eligible 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 dis-entitled 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. The point raised in this case is covered by the Judgment of a Division Bench in Writ Petition No. 1284 of 2011 decided on 1.8.2011 and a Judgment of a learned Single Judge in W.P. No. 6056 of 2010 decided on 26th October, 2010, all of this Court.

4. In such circumstances, the communication dated 27th February, 2009, copy of which is annexed at page 30 of the paper book cannot be sustained. The writ petition is allowed. This communication is quashed and set aside and equally the further communications in pursuance thereof. The petitioner's name shall stand restored to the wait list maintained by respondent nos. 1 and 2 for appointment on compassionate basis. However, we clarify that we have not issued any direction to appoint the petitioner. Let her case be considered in terms of the applicable policy of Compassionate Appointment or Employment together with others. Her name should not be deleted or omitted only because she is married and that is why we have restored her name in the wait list. Beyond that we have not issued any direction.

(iv) *Union of India v. V.R. Tripathi* reported in (2019) 14 SCC 646

13. The policy of compassionate appointment is premised on the death of an employee while in harness. The death of an employee is liable to render the family in a position of financial hardship and need. Compassionate appointment is intended to alleviate the hardship that the family of a deceased employee may face upon premature death while in service. Compassionate appointment, in other words, is not founded merely on parentage or descent, for public employment must be consistent with equality of opportunity which Article 16 of the Constitution guarantees. Hence, before a claim for compassionate appointment is asserted by the family of a deceased employee or is granted by the State, the employer must have rules or a scheme which envisage such appointment. It is in that sense that it is a trite principle of law that there is no right to compassionate appointment. Even where there is a scheme of compassionate appointment, an application for engagement can only be considered in accordance with and subject to fulfilling the conditions of the rules or the scheme. The submission which has been urged on behalf of the Union of India by the learned Additional Solicitor General is premised on the basis that there is no right to compassionate appointment. There can be no

doubt about the principle that there is no right as such to compassionate appointment but only an entitlement, where a scheme or rules envisaging it exist, to be considered in accordance with the provisions.

20. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High Court in M. Muthuraj v. State [M. Muthuraj v. State, 2016 SCC OnLine Mad 2387 : (2016) 5 CTC 50] adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High

Court followed the view of the Calcutta High Court in Namita Goldar [Namita Goldar v. Union of India, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] in Union of India v. M. Karumbayee [Union of India v. M. Karumbayee, 2017 SCC OnLine Mad 13030] . A special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18-9-2017 [Union of India v. M. Karumbayee, 2017 SCC OnLine SC 1797] .

15.3. AUTHORITIES RELIED ON BY THE RESPONDENT - STATE:

(i) *Indian Bank v. Promila* reported in (2020) 2 SCC 729

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

20. We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being

provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of the judgment of this Court in Canara Bank [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] . It is not for the courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasised by this Court in State of H.P. v. Parkash Chand [State of H.P. v. Parkash Chand, (2019) 4 SCC 285 : (2019) 1 SCC (L&S) 621] .

21. We may have sympathy with the respondents about the predicament they faced on the demise of Shri Jagdish Raj, but then sympathy alone cannot give remedy to the respondents, more so when the relevant benefits available to the respondents have been granted by the appellant Bank and when

Respondent 1, herself, was in employment having monthly income above the benchmark.

(ii) State of H.P. v. Parkash Chand reported in **(2019) 4 SCC 285**

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [*Umesh Kumar Nagpal v. State of Haryana* [*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , *SBI v. Kunti Tiwary* [*SBI v. Kunti Tiwary*, (2004) 7 SCC 271 : 2004 SCC (L&S) 943] , *Punjab National Bank v. Ashwini Kumar Taneja* [*Punjab National Bank v. Ashwini Kumar Taneja*, (2004) 7 SCC 265 : 2004 SCC (L&S) 938] , *SBI v. Somvir Singh* [*SBI v. Somvir Singh*, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] , *Mumtaz Yunus Mulani v. State of Maharashtra* [*Mumtaz Yunus Mulani v. State of Maharashtra*, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] , *Union of India v. Shashank Goswami* [*Union of India v. Shashank Goswami*, (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , *SBI v. Surya Narain Tripathi* [*SBI v. Surya Narain Tripathi*, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] and *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] .]

(iii) *State Bank of India v. Somvir Singh* reported in (2007) 4 SCC 778

7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

8. In *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] this Court held: (SCC pp. 139-40, para 2)

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. *The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.*"

(emphasis added)

9. In *Union Bank of India v. M.T. Latheesh* [(2006) 7 SCC 350 : 2006 SCC (L&S) 1646] this Court while dealing with the similar question observed that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth.

15.4. An analysis of the judgments relied on by the petitioner and the respondent-State as extracted hereinabove would lead to two conclusions. One, dependency is the key determinative factor for grant of compassionate appointment and the other being a Rule that brooks discrimination on the basis of gender is not to remain in the statute book as it would violate Articles 14, 15 and 16 of the Constitution of India, Article 15 in particular, which prohibits discrimination on the basis of religion, race, sex, gender. Even the remotest impression a Rule gives that its consequence is resulting in any of the ingredients of Articles 14 and 15 being violated, such a Rule will have to be held to be *ultravires* the Constitution.

15.5. The Rule that is called in question and has fallen for interpretation, without a shadow of a 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".

16. For the praefatus reasons, I pass the following:

ORDER

(i) I allow the writ petition and hold that the exclusion of married daughters from the ambit of expression 'family' in 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 is illegal and unconstitutional being violative of Articles 14 and 15 of the Constitution.

(ii) I accordingly, strike down the word "unmarried" in 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.

(iii) In consequence whereof, I direct the respondents to reconsider the claim of the petitioner for appointment on compassionate grounds.

(iv) The State Government on such reconsideration shall pass appropriate orders, in accordance with law keeping in mind the observations made in the course of the order, as expeditiously as possible, at any rate within one month from the date of receipt of copy of the order.

**Sd/-
JUDGE**

bkp
CT:MJ