

**Neutral Citation No. - 2024:AHC-LKO:77237-DB**

**A.F.R.**

**High Court of Judicature at Allahabad  
Lucknow**

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**Reserved on : 18.09.2024**

**Delivered on : 22.11.2024**

**Court No. - 2**

**Case :-** WRIT - A No. - 7862 of 2023

**Petitioner :-** Punita Bhatt Alias Punita Dhawan

**Respondent :-** Bharat Sanchar Nigam Limited (Bsnl) New Delhi  
Thru. Its Chairman Cum Managing Director And 3 Others

**Counsel for Petitioner :-** Pankaj Kumar Tripathi, Bhavini Upadhyay,  
Sandhya Dubey.

**Counsel for Respondent :-** Pratul Kumar Srivastava, Gyanendra Singh  
Sikarwar.

**Hon'ble Rajan Roy, J.**

**Hon'ble Om Prakash Shukla, J.**

**(Per: Om Prakash Shukla, J.)**

- (1) Heard Sri Pankaj Kumar Tripathi, learned Counsel for the petitioner and Sri Pratul Kumar Srivastava, learned Counsel for the respondents.
- (2) By means of this petition, the petitioner has challenged the judgment and order dated 13.01.2023 passed by the Central Administrative Tribunal, Lucknow Bench (hereinafter referred to as '**the Tribunal**'), whereby Original Application No. 332/00/123/2017 filed by the petitioner claiming compassionate appointment on the basis of being widow daughter has been dismissed. In addition, the petitioner is also challenging the direction/instructions issued by the Assistant General Manager (Recruitment), Bharat Sanchar Nigam Limited, Telecom (East),

U.P. Circle, Lucknow (respondent No.2) to the effect that widow daughter of the deceased employee cannot claim compassionate appointment.

- (3) Brief facts of the case are that the petitioner is a widowed daughter. Her father, namely, Om Prakash Bhakta, while working on the post of T.O.A. (T.L.) in the office of General Manager (Telecom), died in harness on 12.11.2011, leaving behind wife (Smt. Saraswati Devi), four daughters including the petitioner and a son.
- (4) On 01.06.2016, the petitioner moved an application seeking appointment on compassionate ground. Along with the application, the petitioner had also submitted notary affidavits of her mother, brother and married sisters to the effect that if the petitioner is given appointment on compassionate ground, they will have no objection rather they have given their consent to give appointment to the petitioner. According to the petitioner, she has also given a notary affidavit to the effect that she was married with Late Manish Dhawan who died on 27.07.2009 and after death of her husband, she was living with her father along with her minor son and further if she is given appointment on a suitable post, she will look after the heirs of her deceased father as per the best of her capability and further that she is Graduate and also has a Library Science Certificate.

- (5) Apparently, vide letter dated 13.10.2016, the Assistant General Manager (HR), Office of General Manger (Telecom), Allahabad intimated to the petitioner that as widowed daughter is not listed in the eligibility criteria of the guidelines circulated by its Circle Office, therefore, no action on her application for compassionate appointment is required to be taken.
- (6) Feeling aggrieved, the petitioner preferred an Original Application No. 332/00/123/2017 before the Tribunal. The Tribunal, after appreciating the claim of the petitioner as also appraising the guidelines/schemes issued by the Bharat Sanchar Nigam Limited for compassionate appointment as well as judgment of this Court passed in Special Appeal No. 1026 of 2003 : *U.P. Power Corporation Ltd. Vs. Smt. Urmila Devi*, has returned a finding that as per the guidelines, widowed daughter is not enumerated in the list of eligible persons and the Tribunal cannot enter into the shoes of the Executive in framing of rules and guidelines. In this backdrop, the Tribunal has dismissed the original application vide judgment and order dated 13.01.2023, which has led to filing of the present writ petition.
- (7) The submission of the learned Counsel for the petitioner was two fold; firstly, as a widowed daughter she did not lose the status of being a 'daughter' of her father/parent and after death of her husband she was dependent upon her father for subsistence, as such, she would come under the definition of

family. In this regard, learned Counsel has placed reliance upon the judgment of the Apex Court rendered in the case of **Vineeta Sharma vs. Rakesh Sharma** : AIR 2020 SC 3717 and **Uttar Pradesh Power Corporation Ltd. vs. Smt. Urmila Devi** : (2011) SCC OnLine All 152. Secondly, petitioner's case was never placed before the Circle High Power Committee as mandated by guidelines of the respondents.

- (8) *Per contra*, learned Counsel for the respondents argued that the impugned order passed by the Bharat Sanchar Nigam Limited (hereinafter referred to as "**BSNL**") is based on Note '1' of Memorandum dated 09.10.1998, by virtue of which, the meaning of 'Dependent Family Member' as per the Scheme for Compassionate Appointment under The Central Government (hereinafter referred to as "**the Scheme**") issued by Department of Personnel Training (DoPT) is mentioned, wherein a 'widow daughter' of deceased employee is not included as 'Dependent Family Member' of the deceased employee. It is also submitted that this Court or the Tribunal cannot include a widow within the definition of 'Dependent Family Member' when the Policy decision on the subject does not include her. Thus, his submission was that learned Tribunal has passed a reasoned order which does not call for any interference.

- (9) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available

before this Court in the instant writ petition, what this Court finds is that the bone of contention between the parties is as to whether a "widow daughter" of a deceased employee is a 'Dependent Family Member' or not, so as to be eligible for appointment on compassionate ground. The point to be seen by this Court is as to whether a "widow daughter" falls under the definition of 'Dependent Family Members' or not as per the Scheme of the Compassionate Appointment.

- (10) Evidently, the Guidelines for Compassionate Appointment issued by the Government of India, Ministry of Personnel Public Grievance and Pension (DoPT) vide Office Memorandum dated 09.10.1998 states that the Scheme for Compassionate Appointment is applicable to a 'Dependent Family Member. Point No.2 of Note-1 of the Scheme For Compassionate Appointment, says that a 'Dependent Family Member' means :-

“(a) Spouse, or

(b) Son (including adopted son), or

(c) Daughter (including adopted daughter),  
or

(d) Brother or the sister in the case of an  
unmarried government servant.”

- (11) Apparently, the respondents-BSNL relying on the aforesaid Note-1 i.e. the meaning of 'Dependent Family Member' has denied compassionate appointment to the petitioner on the

ground that "widow daughter" is not mentioned at point No.(c), which merely contains the word "daughter (including adopted daughter)".

- (12) The prerequisites to be satisfied for being entitled for consideration for such appointment are that the applicant should be a family member and should be dependent upon the deceased employee. After these conditions are satisfied the economic or financial condition of the family, including the dependent, assumes significance, and is required to be assessed.
- (13) In the facts of this case, it is not in dispute that the petitioner is the daughter of the deceased employee, however, she was married and became a widow prior to the death of her father, the deceased employee. It is this fact which is coming in the way of her consideration for compassionate appointment as, according to respondents a widowed daughter is not included in the guidelines dated 09.10.1998.
- (14) As per the Office Memo dated 09.10.1998 of Department of Personnel and Training, Government of India and the scheme for compassionate appointment appended thereto which has been adopted and is applicable in the opposite party-corporation, the object of the scheme is to grant appointment on compassionate ground to a dependent family member of an employee dying-in-harness or who is retired on medical

grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of an employee from financial destitution and to help it to get over the emergency.

- (15) It is not in dispute that the scheme is applicable in the opposite party-corporation and was applicable to '*dependent family member*' of a deceased employee. The bone of contention is as to whether the petitioner who was the married daughter and unfortunately became a widow prior to the death of the deceased government servant, is covered by the scheme or not. As per Note-1 of the scheme, the words '*dependent family member*' has been defined. As per clause (c) thereof, definition of '*daughter*' is an inclusive one which includes '*adoptive daughter*'. The foremost question is as to whether the petitioner was daughter of the deceased employee on the date of his death or not in terms of this definition. The fact that she was born out of the wedlock of her parents one of whom was the deceased employee i.e. her father is not in dispute. Even after her marriage, she continued to be daughter of her father i.e. late Om Prakash Bhakta and there cannot be any dispute regarding her status as such. In the case of **Sunita vs. Union of India** reported in (1996) 2 SCC 380, Hon'ble the Supreme Court succinctly summarized the status of a daughter vis-a-vis other relatives in the following words :-

***'A son is a son until he gets a wife. A daughter is a daughter throughout his life'.***

- (16) The entitlement of a married daughter to be considered for compassionate appointment has been considered by this High Court as well as Hon'ble the Supreme Court and, the relevant rules pertaining to the Government of U.P. which are quite similar to the guidelines dated 09.10.1998, have been interpreted so as to include a 'married daughter' within the definition of 'daughter' contained therein. Subsequently, these Rules have even been amended in the light of these pronouncements.
- (17) We may in this regard refer to a decision of a Division Bench of this Court in **Smt. Vimla Srivastava vs. State of U.P. and Another : (2015) SCC OnLine All 6776**, which has considered the eligibility of "married daughters" for compassionate appointment under the "Uttar Pradesh Recruitment of Dependents of Government Servant (Dying in Harness) Rules, 1974 (hereinafter referred to as "Rules, 1974)". The learned Division Bench, while considering Rule 2(c) of the Rules, 1974, which relates to definition of 'family' and sub-rule 2(c) (iii), which relates to "daughter" and inter-alia contained a term "unmarried daughters", "married adopted daughter", "widow daughter" and "widowed daughter-in-law" within its fold but did not mention "married daughter", went on to hold that the exclusion of married daughters from the ambit of the expression



"family" in Rule 2(c) of the Rules, 1974, is illegal and unconstitutional, being violative of Article 14 and 15 of the Constitution of India and accordingly, the word 'unmarried' in sub-rule 2(c)(iii) of the Rules, 1974 was struck down by the learned Division Bench after recording various precedents.

(18) The decision of the learned Division Bench of this Court in **Smt. Vimla Srivastava (supra)** was followed by another Bench of this Court in **Smt. Neha Srivastava vs. State of U.P. and Another** (Special Appeal Defective No.863 of 2015, decided on 23.12.2015). The special leave petition filed against the said order has been dismissed vide order dated 23.07.2019 passed in Special Leave to Petition (Civil) No.22646 of 2016.

(19) Thus, it is seen from the aforesaid judgment of this Court that although "unmarried daughters", "married adopted daughters", "widowed daughters", and "widowed daughter-in-law" were mentioned to mean a dependent of a family, however, the learned Division Bench of this Court giving an expansive and inclusive interpretation of the meaning of 'family' also included "married daughter" within its fold as dependent.

(20) A Full Bench of the Madhya Pradesh High Court in the case of **Meenakshi Dubey vs. Madhya Pradesh Poorv Chhetra Vidut Vitran Company Ltd.** : (2020) SCC OnLine MP 383, also upheld the right of the "married daughter" to claim

appointment on compassionate grounds. The Full Bench, after tracing the development of history on the said proposition of law, has held that Clause 2.2 of the State Policy, which deprives ‘married daughter’ of the deceased employee from right to consideration to claim compassionate appointment is violative of Article 14, 16 and 39 (a) of Constitution of India. The Full Bench has further held that a women citizen cannot be excluded for any appointment on compassionate appointment basis on the grounds of sex alone and a daughter even after marriage remains part of the family of deceased employee and she could not be treated as not belonging to her father’s family and criteria for compassionate appointment should be dependency rather than marriage.

- (21) Similar question came up for consideration before a Larger Bench of High Court of Calcutta in **State of West Bengal and Others Vs. Purnima Das and Others** : 2018 Lav I.C. 1522, wherein the relevant Clause 2(2) of the policy, which was subject matter of examination, was:-

*“2(2). For the purpose of appointment on compassionate ground, a dependent of a government employee shall mean wife/ husband/ son/ unmarried daughter of the employee who is/was solely dependent on the government employee.*

*The substantial question to be decided by the Larger Bench was whether the classification created by Government by depriving the married daughter from right of consideration for compassionate appointment is a valid classification. Dipankar Dutta Justice speaking for the Bench opined as under:-*

*“...We are inclined to hold that the purpose of scheme for compassionate appointment every such member of a family of the government employee who is dependent of the earning of such employee for his or her survival must be considered to belong to a up ‘class’. Exclusion of any member of a family on the ground that he/she is not so dependent could be justified, but certainly not on the grounds of gender or marital status. If so permitted, a married daughter who stand deprived of the benefit that a married son would be entitled under the scheme. A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earning of their deceased father/mother (government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable.”*

- (22) Consequently, the Larger Bench has held that the adjective ‘unmarried’ before daughter, is struck down as violative of the Constitution. The judgment of **Purnima Das (supra)** etc., was unsuccessfully challenged by the State of West Bengal before the Hon’ble Supreme Court in SLP (Civil) No.17638-17639 of 2018 which were also dismissed on 23.07.2019.
- (23) Similar question came up for consideration before a Larger Bench of High Court of Uttarakhand in the case of **Uddham Singh Nagar District Cooperative Bench Ltd. and Others Vs. Anjula Singh and Others** :AIR 2019 UTR 69, wherein the question posed before the Larger Bench was to whether non-inclusion of a “married daughter” in the definition of “family”,

under Rule 2 (c) of the Rules, 1974, and in the note below the Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Article 14, 15 and 16 in part-III of the Constitution of India. The Larger Bench, after recording various precedents, governing the field went on to hold that non-inclusion of a “married daughter” in the definition of a "family", Rule 2 (c) of the Rules, 1974, and the note below of the 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 Article 14, 15 and 16 in Part -III of the Constitution of India.

- (24) It is noteworthy that similar view has been taken by Hon’ble Karnataka High Court in **R Jayammo Vs. Karnataka Electricity Board and Another** : ILR 1992 KAR 3416. In the said case, it has been held :-

*“10. This discrimination in refusing compassionate appointment on the only ground that the woman is married is violative of constitutional guarantees. It is out of keeping with the trend of times when men and women compete on equal terms in all areas. The electricity Board would do well to revive its guidelines and remove such anachronism.”*

(25) The Madras High Court in **R Govindmmal Vs. Principal Secretary, Social Welfare and Nutritious Meal Program**

**Department :** (2015) 3 LW 756 opined thus :-

*“Therefore, I am of the view that G.O.M.S No.560 dated 03.08.1977, depriving compassionate appointment to married daughters while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15 (3) of the Constitution of India. But the State cannot discriminate women in the matter of compassionate appointment, on the ground of marriage.”*

(26) The Hon’ble Bombay High Court in **Sou. Swara Sachin Kulkarni Vs. Superintending Engineer Pune Irrigation**

**Project Circle and Others :** 2013 SCC Online BOM 1549

opined that 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 the case, the daughter was dependent on the deceased and his income till her marriage. Thus, the Court did not find any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment was sought under the State.

- (27) To the same extent, the judgment by High Court of Tripura in **Devarshi Chakroerty Vs. State of Tripura and Others** : 2020 1GLT 198, wherein the Court took note of the various judgments of High Courts including the judgment of Allahabad High Court in Vimla Srivastava (supra) and judgment of Karnataka High Court in *Manjula Vs. State of Karnataka* reported in (2005) 104 FLR 271 and has held that non-inclusion of a “married daughter” in the definition of a “family”, Rule 2 (c) of the Rules, 1974, and in the note below the 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 Article 14, 15 and 16 in Part III of the Constitution of India and as such read down the said definition of “family” in Rule 2 (c) of the Rules, 1974, and in the note below the regulation 104 of the 1975 Regulations, to save it from being held unconstitutional.
- (28) Further, Full Bench of Rajasthan High Court in the case of *Priyanka Shrimali vs. State of Rajasthan* : 2022 SCC Online RAJ 1479 was tasked upon to interpret Rule 2(c) of Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (hereinafter referred to as the “**Rules, 1996**”) which describes the meaning of “dependent” to

be a spouse/son/unmarried or widowed daughter/adopted son/adopted unmarried daughter legally adopted by the deceased government servant during his/her lifetime and who were wholly dependent on the deceased government servant at the time of his/her death. The said definition was amended w.e.f. 28.10.2021, wherein it included married daughter in the said definition but with certain conditions. The Rajasthan High Court after examining various judgments passed by different High Court held that the use of word “unmarried” and Rule 2 (c) after of the Rules, 1996, deprived a married daughter from right of consideration for compassionate appointment, violates the equality clause and cannot be countenanced.

- (29) The common string running through the aforesaid judgments of various High Courts is that they have given purposive and expansive interpretation to the meaning of the term 'family member'. The High Courts have risen to the occasion to include even married daughters within the meaning of family of dependent.
- (30) Now, whether there is anything in the scheme dated 09.10.1998 which excludes a married or widowed daughter. No doubt, after the said scheme dated 09.10.1998 had been adopted by BSNL, in order to bring uniformity and transparency in the matter of compassionate appointment a weightage system has been introduced vide Corporate Office Order dated 27.06.2007. In

the documents annexed with the said office order under the headings such as 'items with positive points' etc. and 'checklist with reference to weightage point system', no doubt, whenever there is reference to daughter it is referred as unmarried daughter, however, the said Office Memo dated 27.06.2007 only lays down the procedure to be followed while considering compassionate appointment. It does not lay down the eligibility for such consideration. The eligibility, in fact, is laid down in the Office Memo dated 09.10.1998 of the Government of India which has been adopted and applied by BSNL as is also mentioned in Office Memo dated 27.06.2007. Thus, the weightage point system introduced vide Office Memo dated 27.06.2007 by BSNL is only an action consequential to the main guidelines which are dated 09.10.1998 and is procedural in nature. It is the main guidelines dated 09.10.1998 which contain the substantive provision for entitlement to compassionate appointment, and not the Office Memorandum dated 27.06.2007, therefore, the Office Memorandum dated 27.06.2007 of BSNL cannot be understood and given a meaning contrary to or beyond the substantive provisions as contained in the O.M. dated 09.10.1998. We are to read and understand the Office Memorandum dated 27.06.2007 in the light of guidelines dated 09.10.1998 and not vice versa.

- (31) The word 'daughter' used in the scheme is not preceded by the word 'unmarried' just as the word 'son' used in the scheme is not



preceded by the word 'unmarried'. The absence of such prefix gives a reasonable basis to conclude that this definition does not exclude a 'married daughter', especially as the definition is an inclusive one, therefore, it has to be given an expansive meaning keeping in mind the object sought to be achieved. Although the word 'unmarried daughter' has been used in the proforma documents annexed with O.M. dated 27.06.2007 by which weightage point system was introduced but we have already stated that this O.M. cannot supplant the substantive provision contained in the O.M. dated 09.10.1998 as the weightage point system merely provides a procedure and is not the substantive provision. Even otherwise, in view of what has been discussed hereinabove, the word unmarried daughter used in the documents annexed with the aforesaid O.M. would not be sustainable in view of the decisions referred hereinabove. Moreover, if a married son is eligible for compassionate appointment if he was dependent upon his father at the time of his death unless he had his own means of livelihood, then, there is no reason as to why a married daughter who is similarly placed, that is, if she was dependent upon her father, should not be eligible for compassionate appointment under the aforesaid scheme. Any distinction in this regard would be without any reasonable basis and without any link to the object sought to be achieved, therefore, it would be discriminatory and hit by Article 14 of the Constitution. Article 15(1) of the Constitution

of India prohibits discrimination by the State against any citizen on grounds, inter alia, of sex. Likewise, Section 16(2) prohibits such discrimination on the grounds of sex in respect of any employment or office under the State. Thus, this Court finds that it is clear as a cloudless sky that any action/clauses of the policy which deprives a widowed daughter from a right of consideration for compassionate appointment if she was dependent upon her father, the deceased employee would run contrary to Article 14, 15, 16 read with 39A of the Constitution of India.

- (32) In the light of decisions discussed hereinabove and the reasons given as aforesaid, we have no hesitation to hold that the words 'daughter (including adopted daughter)' occurring in Note-I of the Guidelines dated 09.10.1998 includes a married daughter, the only caveat is that such married daughter should be dependent upon her father/mother on the date of his/her death.
- (33) Now the next question to be considered is whether a 'widowed daughter' would be included in the said definition. We are of the opinion that a 'widowed daughter' stands on a better footing than a married daughter as, prima facie with the loss of her husband, she also loses her source of livelihood unless of course in the facts of a given case it is found that she is herself employed or has other means of sustenance which are adequate to sustain her in which case she may not have been dependent

upon her father, but, unless this is proved, it would be reasonable to draw an inference that she was dependent upon her father unless of course there is evidence to the contrary.

- (34) Even after marriage as also after her widowhood, she continues to be his daughter and her status as such continues even at the time of death of her father. Her widowhood occurred prior to the death of her father, therefore, she was for all legal and practical purposes daughter of late Om Prakash Bhakta although a widowed daughter, on the date of his death.
- (35) Consequently, this Court holds that a 'widowed daughter' would be covered in the definition of 'daughter' contained in Note-I of the Guidelines dated 09.10.1998 if she was dependent upon her deceased father or mother on the date of his/her death. The question of dependency is one of fact which is to be determined by the authorities. If such widowed daughter was not dependent upon her father then she would not be entitled to compassionate appointment under the guidelines.
- (36) For all the above said reasons, the respondent-BSNL could not have declined to consider the application of the petitioner for compassionate appointment merely because the petitioner was a widowed daughter on the date of death of her father.

(37) We have also gone through the judgment of Central Administrative Tribunal dated 13.01.2023 which is impugned herein and in view of the discussion already made, we find ourselves unable to agree with the decision given by it. In view of the reasons already given, the said judgment is not sustainable. It is, accordingly, quashed.

(38) The original application as also this petition is *allowed*. The competent authority is directed to consider the claim of the petitioner for compassionate appointment in accordance with weightage point system prevalent and in doing so she shall be assigned points accordingly and her claim shall not be rejected on the ground that she was married or widowed daughter. The observations made hereinabove shall be adhered while taking a decision in this regard. A decision in this regard shall be taken within two months from the date of communication of a copy of this order.

(Om Prakash Shukla, J.)

(Rajan Roy, J.)

**Order Date :-** 22.11.2024

(Piyush/-) / (Shanu)