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# **COMPASSIONATE APPOINTMENT OF A MARRIED DAUGHTER: ANALYSIS OF UP'S GOVT SERVANTS DYING IN HARNESS RULES, 1974**

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## **ABSTRACT**

The article studies the compassionate appointment and its validity in general and how it is necessary for the families whose sole bread earner dies in harness & constitutional validity of compassionate appointment by carrying out analytical study of various judicial pronouncement and specifically assessing the position of married daughter as member of family for appointment in govt jobs based on ground of compassion. Further this article carries out the perusal of implementation of dying-in-harness rules (compassionate appointment rules) of state of U.P. in context of married daughter & how the executive authorities has been lackadaisical in implementing the judicial pronouncement of *Vimla Srivastava v. State of U.P.*, where it has been held that a married daughter cannot be denied compassionate appointment on the ground of her marital status. Even after 5 years of verdict, resulting in violation of the fundamental rights of a married daughter as a member of the family.

## **INTRODUCTION**

The compassionate appointment of married daughter under the Uttar Pradesh employment of dependants of govt servants dying in harness rules, 1974. Compassionate appointment is a social security scheme launched by the govt of India to grant appointment to a dependant family member on a compassionate ground when a govt servant dies while in service or retires on medical ground.

The U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 states that In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Uttar Pradesh is pleased to make the special rules regulating the recruitment of the dependants of Government servants dying in harness.

Though the law was amended to provide married daughters with equal opportunities, i.e., a married daughter cannot be denied compassionate employment because of her marital status, and this legislation is a social welfare law following the constitutional mandate of a socialist welfare country, the ineffective implementation of the act on the part of the state's administrative machinery has rendered the act ineffective.

### **Constitutional validity of compassionate appointment & status of married daughter**

In *Balbir Kaur v. steel authority of India Ltd.*<sup>1</sup> it was held that appointment on the compassionate grounds of a son, daughter or a widow to assist the family to relieve economic distress due to sudden demise of the govt. servant in harness has been held to be valid under Art 16(1) and 16(2). The reasoning given in this case as to rationale behind the compassionate appointment was due to sudden and unexpected demise of sole bread winner has left the family in lurch & precarious position.

In *India Bank v. Usha*<sup>2</sup> it was held that appointment on the basis of compassionate appointment has been carved out as an exception to the rule of appointment in public service should be made strictly on the basis of open invitation of application and merit.

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<sup>1</sup> Appeal (civil) 11881 of 1996

<sup>2</sup> Civil Miscellaneous Appeal No. 8823/2007

However supreme court has also observed that appointment on basis of compassionate ground should only be done after carrying out strict scrutiny of the financial position of dependant applicant. Once the authority is satisfied then after offer for the compassionate appointment can be made or accepted if the application for the same has been given by the said dependant.

### **Status of Married daughter.**

The conflict in the compassionate appointment started when married daughters started asking for the compassionate appointment as being dependant on the deceased govt. servant. However, the executive machinery failed to recognised the right of married daughter to ask for appointment on the grounds of compassion. The reasoning behind this patriarchal bias was that daughters are not considered as part of the family post their marriage which led to the rejection made by applicant married daughter.

Although, it is interesting to note that a married son has the right to claim for the compassionate appointment hence it was contended that the act of distinguishing between a married son and a married daughter is a discriminatory act and violative of article 14 and Art 15 under the Indian constitution. The apex court through its various judgement has clarified that both son and daughter are on equal footing & part of the family irrespective of the fact whether daughter is married or not.

In *Air India Cabin Crew Assn. v. Yeshaswinee Merchant*<sup>3</sup>, The Supreme Court addressed the restriction on discrimination based only on sex enshrined in Article 15(2). The Supreme Court interpreted Articles 15 and 16 to hold that the constitutional mandate would be violated if a woman would have received the same treatment as a man but for her gender.

*N.L.S.A. v. Union of India*<sup>4</sup> Gender identity is an intrinsic component of gender within the meaning of Articles 15 and 16, according to the Supreme Court, and no person can be discriminated against because of their gender.

*Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*<sup>5</sup> In the context of Section 125 of the Code of Criminal Procedure 1973, the Supreme Court ruled that "a daughter after her marriage does not cease to be a daughter of the father or mother."

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<sup>3</sup> Appeal (civil) 4570

<sup>4</sup> AIR 2014 SC 1863

<sup>5</sup> 1987 AIR 1100, 1987 SCR (2) 331

Savita Samvedi v. Union of India<sup>6</sup> The Supreme Court reviewed the legality of a Railway Board circular that allowed a railway servant who was allotted service accommodation to designate a son or unmarried daughter, among other people, for out-of-turn assignment of the housing while retiring from service. The circular was found to be in violation of Article 14 insofar as it prohibited the nomination of a married daughter for allotment of housing.

In Gita Hariharan v. Reserve Bank of India<sup>7</sup> while defining the ambit of the expression "the father, and after him, the mother" in S.6 (a) of the Hindu Succession Act, 1956. The Supreme Court reasoned that interpreting the term "after" to indicate that a mother would be barred from acting as a guardian of a youngster during the father's lifetime would violate the constitutional mandate of gender equality and result in an unjustified distinction between males and females. The Supreme Court ruled that the term "after" does not always imply "after the father's death," but rather "in the absence of," whether temporary or permanent, or "in a scenario of the father's indifference or incapacity to maintain the kid."

C.B. Muthama v. Union of India<sup>8</sup> The Supreme Court considered the legality of a rule in the Indian Foreign Service (Conduct and Discipline) Rules that required a woman member of the service to obtain the Government's permission before marrying and could be required to resign from service after her marriage if the Government was satisfied that her family and domestic commitments are likely to coexist. "If a married man has a right, a married woman, other things being equal, stands on no weaker footing," the Supreme Court observed.

### **ISSUE WITH THE UP GOVT ENACTMENT AND IMPLEMENTATION OF EMPLOYMENT OF DEPENDANTS OF GOVT SERVANTS DYING IN HARNESS RULES,1974**

The objective of the act is to provide relief to the family in the time of distress which has occurred due to sudden demise of the sole earning member of the house. This act fares well in providing employment to the members of family who have relation with the deceased servant such as son, unmarried or widowed daughter, wife or husband. However, this act is silent on the status of married daughter whether she will be entitled to the compassionate appointment

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<sup>6</sup> 1996 SCC (2) 380, JT 1996 (1) 680

<sup>7</sup> AIR 1999, 2 SCC 228

<sup>8</sup> 1979 AIR 1868, 1980 SCR (1) 668

because the definition of the family under S.2 (c) excludes the married daughter as a part of the family.

Issue of whether marriage is a social circumstance which is relevant in defining the ambit of the expression "family" and whether the fact that a daughter is married can constitutionally be a permissible ground to deny her the benefit of compassionate appointment. was challenged before the Allahabad high court in the case of *Vimla Srivastava v. State of U.P.*<sup>9</sup> the court in this case held that exclusion of term of married daughter from the expression of family under Rule 2(C) of Dying-in- Harness Rules is illegal and Unconstitutional and it violates Article 15 & 14 of the constitution. It further directed the Respondent to consider the claim of petitioner for compassionate Appointment.

Court in the above case further clarified that law laid down in *Mudita v. State of U.P.*<sup>10</sup>. does not lay down the correct position of law.

Various High Courts have opined the same view specifically in context of compassionate appointment that a woman cannot be denied appointment in service just because of the gender it was observed by learned Single Judge Bench of Karnataka High Court in *Manjula v. State of Karnataka*<sup>11</sup>.

However a ordinary prudent mind would believe that court has delivered the justice to a married daughter but the real question lies whether the court has ensured that justice is being given to a married daughter? The answer is no specifically in the case of state like Uttar Pradesh. Even after 4 years of delivery of the verdict in *Vimla Srivastava v. State of U.P.*<sup>12</sup> The State officials in their blatant abuse of power and process of law has denied compassionate appointment to the married daughters of the deceased govt. servant owing to the fact that state of U.P. has not released the G.O.<sup>13</sup> in that regard and their hands are tied down by the law.

Although, the courts have come to rescue of these married daughters of deceased servant, the only recourse which has been left with them is to approach the court and court can issue the direction (if eligible for compassionate appointment) to state to consider the claim of married

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<sup>9</sup> WRIT - A No. - 10928 of 2020

<sup>10</sup> Civil Misc. Writ Petition No. 49766 of 2015

<sup>11</sup> WRIT PETITION NO.49143/2014 (SC - ST)

<sup>12</sup> WRIT - A No. - 10928 of 2020

<sup>13</sup> Also Known as Government Order it means any applicable order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction or other similar determination or finding by, before or under the supervision of any Governmental Authority.

daughter. However, it has also been rendered futile due to absence of G.O. as if it feels like they are stuck in infinite loop of misery & exploitation.

## **CONCLUSION**

The Supreme Court has made it quite clear that compassionate appointment is a gift, not a right, granted to a family member or dependent of a deceased government employee who died in the line of duty to help the family in their time of need. This rule is an exception to the normal rule of inviting applications based on merit for employment in the government service in order to achieve the welfare state's goal. However, the government's initiative has turned into a weapon to abuse the defenceless relatives of deceased government employees. Compassionate appointment has become a backdoor way into coveted government jobs. The lack of follow-up by the judiciary in the status of compassionate appointment of a married daughter makes an ordinary citizen question whether justice is truly being delivered. States like Uttar Pradesh have also shown their lack of sympathy towards the married daughter by not issuing the G.O. in regard to their employment on the basis of compassion, and lack of follow-up by the judiciary in the status of compassionate appointment of a married daughter and denying a job to the daughter of a deceased government employee only on compassionate ground because she is married would be a violation of Article 14, 15 and also article 21 because at this stage, it would also be appropriate to notice that earlier it was held by the Apex Court that right to earn livelihood is part and parcel of- right to life under Article 21 of the Constitution and this was equated with the right to employment.