



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 16830/2022

Meenakshi Trivedi D/o Shri Keshav Kant Trivedi W/o Shri Anish Paliwal, Aged About 35 Years, R/o 17-B Ratakheth Opposite Royal Garden Udaipur At Present 7-C, Vardhman Nagar, North Sundarvas, Opposite Vardhman School, Udaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Personnel, Government Of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Department Of Agriculture, Government Of Rajasthan, Secretariat, Jaipur.
3. The Commissioner, Department Of Agriculture Commissionerate, Pant Krishi Bhawan, Rajasthan, Jaipur.
4. The Additional Director, Agriculture (Admin.), Commissionerate Pant Krishi Bhawan, Rajasthan, Jaipur.
5. Superintending Engineer, Ex-Officio Project Manager, Water Shed Cell Cum Data Center, Pratapgarh, Udaipur.

-----Respondents

For Petitioner(s) : Mr. Prithvi Raj Singh Jodha.
For Respondent(s) : Mr. Mahesh Chandra Bishnoi

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Reserved on 16/01/2024

Pronounced 25/01/2024

1. This petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"It is, therefore, humbly and respectfully prayed that this writ petition may kindly be allowed and by an appropriate writ order or direction, the communication dated



31.03.2022 (Annexure-5) may kindly be quashed and set aside.

That the respondents may be held entitled for appointment on any suitable post in view of the Dependents of Deceased Government Servants Rules, 1996.

That the respondents may further be directed to accord appointment to the petitioner on any suitable post as per her qualification in view of the Dependents of Deceased Government Servants Rules, 1996.

Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

Writ petition filed by the petitioner may kindly be allowed with costs."

2. Brief facts of the case, as placed before this Court by learned counsel for the petitioner, are that the petitioner is the married daughter of Shri Keshav Kant Trivedi (deceased government servant). Shri Keshav Kant Trivedi died on 20.01.2021 due to Covid-19 while he was in service on the post of Executive Engineer in the Office of Water Shed Cell cum Data Center, Pratap Nagar, Udaipur (respondent department).

2.1. After the death of the petitioner's father, the petitioner submitted an application for compassionate appointment under Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (*hereinafter referred to as 'Rules of 1996'*) before the respondent no.5-Superintending Engineer, whereupon the respondent no.5 forwarded the said application vide communication dated 02.03.2021 to the respondent no.3-Commissioner with all relevant documents. Thereafter, the respondent no.5 again referred the matter to the





respondent no.3 but the respondent no.3 did not take any action in the matter.

2.2 Subsequently, the respondent no.4-The Additional Director communicated to the respondent no.5 vide impugned letter dated 31.03.2022, that in the present case, as per the definition of 'dependent' contained under Rule 2 of the Rules of 1996 as further amended in the 2021, the deceased government servant was having one son- Punit Trivedi, and therefore, on that count, the petitioner cannot be considered as dependent of the deceased government servant.

2.3 The petitioner submitted a representation dated 10.10.2022 and also served a notice dated 01.11.2022, but the respondents did nothing in that regard. Thus, being aggrieved of the impugned communication/letter dated 31.03.2022, the present petition has been preferred claiming the afore-quoted reliefs.

3. Learned counsel for the petitioner submitted that the exclusion of the married daughter from the definition of 'dependent' prior to amendment of the Rules of 1996 is discriminatory and violative of Articles 14, 15 and 16 of the Constitution of India. In support of such submissions, learned counsel relied upon the judgment rendered by a Larger Bench of this Hon'ble Court in the case of **Priyanka Shrimali Vs State of Rajasthan & Ors (Civil Reference No. 1/2022, & other connected matters decided on 13.09.2022)**.

3.1. Learned counsel further submitted that the petitioner is the married daughter of the deceased government servant and applied for the compassionate appointment within the prescribed time limit, but the respondents rejected the claim of the petitioner for





such appointment only for the reason that the son-Punit Trivedi of the deceased government servant is fully eligible for compassionate appointment, which is not justified, as the married daughter is completely eligible for appointment in question, as per the judgment rendered by the Hon'ble Larger Bench in the case of **Priyanka Shrimali (supra)**.

3.2. Learned counsel also submitted that petitioner possesses a good academic record with the certificate of Rajasthan State Certificate in Information Technology (RS-CIT) and she is completely qualified entitled for the appointment in question. It was further submitted that Punit Trivedi (brother of the petitioner), son of the deceased government servant is living in USA, in all probabilities, would not permanently reside in India, and would also not bear the responsibilities of the family, including that of mother (wife of the deceased government servant), and therefore, the petitioner is sole dependent member, in the facts and circumstances of the case, for the purpose of grant of compassionate appointment as per the Rules of 1996.

4. On the other hand, learned counsel appearing on behalf of the respondent, while opposing aforesaid submissions made on behalf of the petitioner, submitted that the amendment was incorporated under the Rules of 1996 by the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants (Amendment) Rules, 2021 vide notification dated 28.10.2021, whereby, the married daughter was added in the category of dependents, but the same is not applicable in the present case, as the petitioner's father (deceased government servant) expired on 20.01.2021 and the said amendment cannot





be applied retrospectively; it is to be applied only prospectively as the same was stated by the respondents in the communication dated 07.01.2022.

4.1. Learned counsel further submitted that even if the above amended Rules are made to apply, Smt. Leela Trivedi (wife of the deceased government servant) and son Punit Trivedi come under the first category of the dependents, and if the first category dependents, are not available, then the married daughter can be considered for grant of compassionate appointment, and therefore, the petitioner's application for compassionate appointment was rightly rejected by the respondents.

4.2. Learned counsel also submitted that the compassionate appointment can be granted only on fulfillment of the norms laid down in the State Government's Policy or fulfillment of the eligibility criteria as per the policy, and therefore as per the Rules, the petitioner does not fall under the first category of the dependents of the deceased government servant, thus, not eligible for grant of compassionate appointment in question.

5. Heard learned counsel of the parties as well as perused the record of the case alongwith judgment cited at the Bar.

6. This Court observes that the petitioner is married daughter of the Late Keshav Kant Trivedi (Government employee), who died on 20.01.2021 while he was service on the post of Executive Engineer in the respondent department. The petitioner submitted application for compassionate appointment under Rules of 1996 before the respondent no.5, the same was referred vide communication dated 02.03.2021 to the respondent no.3- with all relevant documents.





6.1. Thereafter, the respondent no.4 communicated to the respondent no.5 vide impugned letter dated 31.03.2022 stating that as per the definition of 'dependents' contained under Rule 2 of the Rules of 1996, as further amended in the year 2021, the deceased government servant, in the present case, has one son Punit Trivedi, and therefore, the petitioner (married daughter) cannot be considered as dependent of the deceased government servant, in such circumstances.

6.2. This Court further observes that Rule 2 (c) of the Act of 1996 was amended by the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants (Amendment) Rules, 2021) vide notification dated 28.10.2021; the amended Rule 2 (c) is reproduced as hereunder:-

"2(c) "Dependent" means -

- (i) Spouse, or
- (ii) son including son legally adopted by the deceased Government servant during his/her life time, or
- (iii) unmarried/widowed/divorced daughter including daughter legally adopted by the deceased Government servant during his/her life time, or
- (iv) married daughter, if no other dependent of the deceased Government servant mentioned in clause (ii) and (iii) above is available, or
- (v) mother, father, unmarried brother or unmarried sister in case of unmarried deceased Government servant, who was wholly dependent on the deceased Government servant at the time of his/her death."

6.3. This Court also observes that before issuance of the notification dated 28.10.2021, the married daughter was not included under the definition of dependents under Section 2 (c) of



the Act of 1996 till the judgment passed by the Larger Bench in the case of **Priyanka Shrimali (Supra)**. The definition of dependent as contained in Rule 2 (c), prior to the amendment, is reproduced as hereunder:-



"2 (c) "Dependent" means a spouse, son, unmarried or widowed daughter, "adopted son / adopted unmarried daughter" legally adopted by the deceased Government servant during his/her life time and who were wholly dependent on the deceased Government servant at the time of his/her death;"

6.4. This Court further observes that the words 'married daughter' were not there in the definition of dependent under Rule 2 (c) of the Rules of 1996, prior to the amendment notification dated 28.10.2021. At this juncture, it is considered appropriate to reproduce the relevant portion of the judgment rendered in case of **Priyanka Shrimali (Supra)**, as hereunder:-

*"At the outset, it may be noticed that **it is now well settled that the object of according compassionate appointment to the dependent of a deceased government servant, is to help the family to tide over the crisis, which unfortunately they are faced with on account of death of the sole earner of the family. The intention is to ensure that the family is able to face the catastrophe and, therefore, emphasis has always been laid on according immediate appointment to the dependent.***

....

*In the present circumstances, though the provision i.e. **Rule 2(c) of the Rules of 1996 which defines dependent, stands amended w.e.f. 28.10.2021, wherein the married daughter has also been included in the definition, subject to certain conditions, however as the government servants/employees in all the present cases***



have died in harness prior to the date of amendment in the provision, the cases of the applicants-petitioners would be governed by the unamended provisions and as under the unamended provision, on account of the stipulation 'unmarried' daughter in the definition of dependent, they have been rendered ineligible, the challenge laid by the petitioners, cannot be negated merely on account of the fact that the provision stands amended w.e.f. 28.10.2021.

.....

From the above cited judgments, it would be seen that practically all the High Courts, after testing the validity of exclusion of a married daughter from the definition of dependent/family have unanimously come to the conclusion that the said exclusion was unconstitutional.

.....

Further, now under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, equal duty on both sons and daughters to take care and maintain the parents has been placed and, therefore, the purported assumption in seeking to distinguish a married son from a married daughter for the purpose of grant of compassionate appointment, cannot be sustained.

....

Yardstick, for extending the benefit of compassionate appointment in terms of the Rules is and should be dependency of the dependents on the deceased government servant and, therefore, their marital status only should not be an impediment for consideration on compassionate ground. In fact, the requirement of the definition quoted hereinbefore even for the spouse, son and unmarried daughters, requires them to be wholly dependent on the deceased government servant at the time of his/her death and, therefore, inclusion of the married daughter in the definition, would not dilute the said requirement of the Rule.

Further, the marriage by itself cannot be a disqualification and, therefore, the definition barring a married daughter from seeking compassionate appointment merely on the ground of her marriage is





apparently arbitrary and violative of Articles 14, 15 and 16(2) of the Constitution of India.

....

Further even after, quashing of the word 'unmarried' from the definition, the same would apply to the pending cases only as the likely applicants, qua whom the cause of action had arisen long back even otherwise would not be eligible, in view of repeated pronouncements of Hon'ble Supreme Court regarding the purpose of grant of compassionate appointments i.e. for the purpose of tiding over the immediate requirement, which arises on account of death of the government servant while in service. In cases where the government servant has died long back, the striking down of the word from the definition, by itself would not provide any fresh cause of action to any of the applicants and, therefore, the apprehension expressed, has no basis.

From the above discussion, it can be safely concluded that the use of word 'unmarried' in Rule 2(c) of the Rules of 1996 depriving a married daughter from right of consideration for compassionate appointment, violates the equality clause and cannot be countenanced.

Consequently, the reference is disposed of. The re-framed question in the reference, is answered as under:-

The provision of Rule 2(c) of the Rules of 1996, which excludes the married daughter from definition of dependent prior to its amendment vide notification dated 28.10.2021, is discriminatory and violative of Articles 14 to 16 of the Constitution of India and as such, the word 'unmarried' from the definition of 'dependent', is struck down. Further, in Rule 5 of the Rules of 1996 also the word unmarried daughters/adopted unmarried daughter, shall be read as daughters/adopted daughter.

As a consequence, it is directed that on account of striking down of the word 'unmarried' from the definition – (i) the same shall not effect any case, wherein compassionate appointment has already been granted under the provisions as they stood before this order; (ii) the same by itself would not provide a cause of action to any applicant and would apply to cases which are either pending before the competent authority





and/or to the cases where litigation is pending on the date of this order only; (iii) the provisions and other requirements of the definition regarding the applicant being wholly dependent on the deceased government servant at the time of his/her death would be scrupulously applied; (iv) all the parameters as laid down by Hon'ble Supreme Court for grant of compassionate appointment, shall also be scrupulously followed and that (v) all other provisions of the Rules except the inclusion of the 'married daughter' in the definition of 'dependent', shall have full application."



7. This Court also observes that the petitioner's father (deceased government servant) expired on 20.01.2021 and the same was reflected in Annexure-1, whereafter, the petitioner immediately submitted an application for compassionate appointment before the respondent no.5; the same was referred vide communication dated 02.03.2021 to the respondent no.3 with all relevant documents.

7.1. This Court further observes that the State Government amended the definition of the dependent under Rule 2(c) of the Rules of 1996 on 28.10.2021 and the applicability of the said amendment was prospective in nature, and not retrospective, and the same was stated by the respondents document (Annexure R/1 of the reply). Therefore, it is clear that the petitioner's case does not fall under the amended definition of 'dependent' as introduced by way of notification dated 28.10.2021.

8. This Court also observes that the petitioner's case is governed as per the old definition of the 'dependent' under Rule 2(c) of the Rules of 1996, and in the said old definition, the married daughter was included by the Larger Bench in case of **Priyanka Shrimali (Supra)**. This Court further observes that



only in the present definition under Rule 2(c) as introduced on 28.10.2021 the words "married daughter" find place, if no other dependent of the deceased Government servant mentioned in clause (ii) and (iii) above is available; but the said condition is not mentioned in the old definition of the 'dependent' as contained in the Rules of 1996.

9. This Court further observes that in the old definition of the 'dependent', there is no such condition regarding the first category as to the eligibility for compassionate appointment, and the married daughter was also included by the Larger Bench in the aforementioned precedent law of **Priyanka Shrimali (Supra)**. In the present case, the petitioner is the daughter of deceased government servant and deceased government servant was also having a son-Punit Trivedi, and as per the present definition of 'dependent' under Rule 2(c) of the Rules of 1996, as notified on 28.10.2021, the son comes under the first category of dependents eligible for compassionate appointment; but the present case is not governed under the present definition of the 'dependent', rather the same is governed by the old definition, because the matter and cause of action as well as most of exercise in question pertain to the period prior to the amendment notification dated 28.10.2021.

10. This Court also observes that the sole bread winner of the family died, and thereafter, the entire family faced not only emotional hardship but also the financial hardship, because the whole family was dependent on him, and therefore the compassionate appointment is meant to provide immediate financial relief to the bereaved family. This Court further observes





that the petitioner, a married daughter, in the facts and circumstances of the case, is completely eligible for the compassionate appointment in question, even as per the settled proposition of law.

11. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as afore-quoted precedent law, the present petition **allowed**. Accordingly, while quashing and setting aside the impugned communication dated 31.03.2022 (Annexure-5), the respondents are directed to grant compassionate appointment to the petitioner within a period of three months from the date of receipt of a certified copy of this judgment. All the benefits of such compassionate appointment to the petitioner shall operate prospectively. All pending applications stand disposed of.

(DR. PUSHPENDRA SINGH BHATI), J.

Skant/-