

Neutral Citation No. - 2023:AHC-LKO:46313-DB

Court No. - 1

Case :- WRIT - A No. - 18566 of 2021

Petitioner :- Neelam Devi

Respondent :- State Of U.P.Thru Prin.Secy.Co-Operative Lko And Ors.

Counsel for Petitioner :- Ajay Madhavan

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Prashast Puri,Prashast Puri

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Om Prakash Shukla, J.

1. Facts of this case presented before us manifest as to how the State can still be apathetic towards the cause of gender justice despite a clear declaration of law by Hon'ble the Supreme Court in the matter of compassionate appointment.
2. Heard Shri Ajay Madhavan, learned counsel for the petitioner, learned State Counsel representing the State-respondents, Ms. Rani Singh holding brief of Shri Gaurav Mehrotra representing the U.P. Cooperative Rural Development Bank Ltd. and Shri Prashast Puri, learned counsel representing U.P. Cooperative Institutional Service Board.
3. The petitioner's father was employed as Assistant Branch Accountant with the respondent-Bank, who unfortunately died in harness and accordingly the petitioner being his daughter made an application seeking compassionate appointment. However, the compassionate appointment, as claimed by the

petitioner, has been denied solely on the ground that she is a married daughter of the deceased employee. In terms of the provisions contained in Regulation 104 of the U.P. Cooperative Societies Employees' Service Regulations, 1975 (hereinafter referred to as 'Regulations 1975'), it is only unmarried daughter who is eligible for being offered compassionate appointment and not the married daughter. The claim of the petitioner was, thus, rejected by means of an order dated 29.01.2021, which is under challenge before us in this writ petition. Apart from challenging the said order of rejection of claim of the petitioner for compassionate appointment, the petitioner has also prayed for issuance of an appropriate writ striking down the word 'unmarried' occurring in Regulation 104 of Regulations 1975.

4. It appears that during pendency of the writ petition a proposal was made by Institutional Service Board to amend Regulation 104 of Regulations 1975, however, the said proposal has been turned down by the State Government and information to the said effect has been sent to the office of learned Chief Standing Counsel by the State Government which is contained in the letter dated 27.03.2023. The said letter dated 27.03.2023 is taken on record.
5. For governing the conditions of service of the employees of Cooperative Societies in the State of Uttar Pradesh, regulations have been framed by U.P. Cooperative Institutional Service Board in terms of the provisions contained in Section 122 of

U.P. Cooperative Societies Act, 1965 (hereinafter referred to as '1965 Act') which empowers the Board to frame regulations regulating the conditions of service, however, such regulations are subject to approval of the State Government. It is in exercise of powers vested by Section 122 of the 1965 Act that 1975 Regulations have been made by the Board with the approval of the State Government and it is as per the requirement of Section 122 of 1965 Act that amendment in Regulation 104 of Regulations 1975 was proposed by the Board, however, the State Government has refused to accord its approval to the said proposal.

6. Regulation 104 of 1975 Regulations provides for recruitment of dependents of the deceased employees. A note is appended to said Regulation 104, according to which "family" includes the wife/husband, sons and unmarried or widowed daughters of the deceased employee. The amendment by the Board was proposed to include daughters irrespective of their marital status, however, the said amendment has not been acceded to by the State Government.
7. At this juncture, we may notice that so far as the State Government employees are concerned, compassionate appointments are governed by statutory prescriptions available in the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. The said Rules have been framed under Article 309 of the Constitution of India and

initially within the definition of the word "family", these rules also did not include 'unmarried daughters'. However, a Division Bench of this Court in a bunch of cases, leading writ petition being Writ -C No.60881 of 2015, ***Smt. Vimla Srivastva Vs. State of Uttar Pradesh and Another*** delivered a judgment on 04.12.2015 striking down the word "unmarried" in Rule 2 (c)(iii) of the Dying in Harness Rules applicable to the State Government employees. Parity of the judgment in the case of *Vimla Srivastava* was given to another individual, namely, Neha Srivastava by a judgment of this Court delivered by a Division Bench on 23.12.2015 in Special Appeal (Defective) No.863 of 2015 (*Neha Srivastava Vs. State of U.P. & Another*). The said judgment by the Division Bench in the case of Neha Srivastava was taken up by the State Government before Hon'ble the Supreme Court by instituting Special Leave Petition No.22646 of 2016 which was dismissed by Hon'ble Supreme Court by means of the order dated 23.07.2019. After the aforesaid order passed by Hon'ble the Supreme Court dismissing the special leave petition of the State Government in the case of *Neha Srivastava*, so far as the Rules governing the compassionate appointment in respect of State Government employees are concerned, an amendment has been brought in the said Rules vide notification dated 12.11.2021. According to the said amendment, "family" now includes daughters irrespective of their marital status. The amended rules notified on 12.11.2021

in respect of the State Government employees is quoted hereunder :-

**GOVERNMENT OF UTTAR PRADESH
PERSONNEL SECTION-2**

NOTIFICATION

Miscellaneous

No.6/XII-1973-Personnel-2-2021T.C.-IV

Dated Lucknow, 12 November, 2021

IN exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending. The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974:

**THE UTTAR PRADESH RECRUITMENT OF DEPENDANTS OF
GOVERNMENT SERVANTS
DYING IN HARNESS (TWELFTH AMENDMENT) RULES, 2021**

**Short title and
commencement**

1.(1) These rules may be called **The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Twelfth Amendment) Rules, 2019.**

(2) They shall come into force at once.

Amendment of rule-2

2. In the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, in rule-2, for existing clause (c) set out in column-1 below, the clause as set out in column-2 shall be substituted, namely:-

COLUMN-1

COLUMN-2

Existing clause

Clause as hereby substituted

(c) "family" shall include the following following relations of the relations of the deceased Government Servant:-

(c) "family" shall include the following relations of the deceased Government servant:-

(i) wife or husband;

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court:

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

(ii) sons/adopted sons;

(iii) daughters (including adopted daughters) and widowed daughters-in-law,

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court:

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

By order,

(Dr. Devesh Chaturvedi)
Additional Chief Secretary.

8. When we, thus, notice the facts of this case, we do not find any plausible reason why the proposal made by the Institutional Service Board for making amendment in the note appended to Regulation 104 of the 1975 Service Regulations could be turned down by the State Government. If compassionate appointment

has been made available to the daughters irrespective of their marital status, of the State Government employees, there does not appear to be any reason why such benefit should be refused to the daughters of the deceased employees who have served a Cooperative Society in the State of Uttar Pradesh. The conditions of services are governed by statutory prescriptions made in terms of provisions contained in Section 122 of 1965 Act. We are rather at dismay by noticing that the proposal sent by the Institutional Board has not been approved though in respect of State Government employees the provision has been amended where "family" now includes daughters irrespective of their marital status. It cannot be presumed that the State while rejecting the proposal sent by the Institutional Service Board for amending Regulation 104 was not aware of the Division Bench Judgment of this Court in the case of *Vimla Srivastava* and *Neha Srivastava (supra)*. It is also difficult to comprehend as to why the fact that the special leave petition filed by the State in the case of *Neha Srivastava* has been dismissed paving the way to give the benefit of compassionate appointment to all the daughters of the deceased employees irrespective of their marital status has gone unnoticed.

9. For the aforesaid reasons, this writ petition is **allowed** and the word "unmarried" occurring in the note appended to Regulation 104 of U.P. Cooperative Societies Employees' Service Regulations, 1975 is hereby struck down.

10. We, accordingly, also quash the impugned order dated 29.01.2021 passed by the General Manager (Administration) of the respondent-Bank as is contained in Annexure 2 to the writ petition.
11. Resultantly, we also direct that the claim of the petitioner shall be considered for compassionate appointment treating her to be eligible for such claim, within a period of two months from the date of production of a certified copy of this order.
12. We categorically direct the authority concerned of the respondent-Bank shall decide the claim of the petitioner within the period which is being stipulated in this order for the reason that already about four years time period has elapsed from the date of death of the deceased employee.

Order Date :- 17.07.2023

Anand Sri./-