

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

ON THE 22nd OF MARCH, 2022

WRIT APPEAL No.734 of 2019

Between:-

**SMT. KIRTI SHARMA D/O LATE SHRI ANIL
KUMAR SHARMA W/O SHRI RAJEEV
KUMAR AGED ABOUT 31 YEARS,
OCCUPATION- ASSISTANT GRADE-III, R/O
212-a, NEHRU NAGAR, BHOPAL DISTRICT
BHOPAL (M.P.).**

.....APPELLANT

(BY SHRI PRATYUSH TRIPATHI - ADVOCATE)

AND

- 1. JAWAHARLAL NEHRU KRISHI VISHVA
VIDYALAYA, JABALPUR THROUGH VICE
CHANCELLOR J.N.K.V.V. R/O
JAWAHARLAL NEHRU KRISHI VISHVA
VIDHYALAYA, JABALPUR DISTRICT
JABALPUR (M.P.).**
- 2. REGISTRAR, JAWAHARLAL NEHRU
KRISHI VISHVA VIDHYALAYA, JABALPUR
DISTRICT JABALPUR (M.P.).**
- 3. STATE OF MADHYA PRADESH, CHIEF
SECRETARY KISAN KALYAN AND
AGRICULTURE DEVELOPMENT
DEPARTMENT SECRETARIAT, VALLABH**

**BHAWAN, BHOPAL DISTRICT BHOPAL
(M.P.).**

...RESPONDENTS

(BY SHRI PRAVEEN DUBEY - ADVOCATE)

This appeal coming on for admission this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following:

ORDER

This *intra* Court appeal takes exception to order dated 29.03.2019, passed by the learned Single Judge in Writ Petition No. 9437 of 2018, whereby, petition preferred by appellant-petitioner has been dismissed.

2. The brief facts of the case are that the mother of the appellant Mrs. Nisha Sharma was working as Assistant Grade-III with the respondent-University. The mother of the appellant expired on 21.04.2015. The appellant applied for compassionate appointment on 09.06.2017. The appellant was appointed as Assistant Grade-III on compassionate basis vide order dated 30.10.2017. On 09.11.2017, the appellant submitted an application to Deputy Registrar requesting to consider her posting at Pawarkheda district Betul. Notwithstanding the fact that the application of the appellant for her posting at Pawarkheda was pending, the appellant submitted her joining on 27.11.2017 at Jabalpur. Because of illness of the daughter of the appellant, she had to submit an application for leave and in the meantime on 26.12.2017, she was served with the notice by the respondent-University to explain non disclosure of her marital status. In response to the notice for explanation, the appellant on 03.01.2018 submitted her reply. On 01.02.2018, another show cause notice was

given to the appellant to explain as to why her appointment on compassionate basis should not be cancelled. The appellant on 15.2.2018 submitted her response to the said notice. On 28.02.2018 (Annexure P-1), the order of appointment of the appellant on compassionate basis dated 30.10.2017, has been cancelled which was assailed before the learned Single Judge. The learned Single Judge did not find any fault with the said order and has dismissed the writ petition, therefore, the appellant has preferred the instant writ appeal.

3. The learned counsel appearing for the appellant submits that there was no concealment on the part of the appellant. She has not suppressed any material fact. The requested information as was required in the prescribed format was supplied by the appellant. There was no specific requirement to disclose the marital status and under such circumstances it cannot be said that the appellant concealed any material fact. Learned counsel appearing for the appellant further submits that even otherwise the Full Bench of this Court in the case of *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd and others*¹ has held that depriving a married daughter from consideration for compassionate appointment hits Article 14, 16 and 39(a) of the Constitution and, hence Clause 2.2 of the concerned policy has been declared to be *ultra vires*. The appointment on compassionate basis cannot be denied on the ground of sex alone. He, therefore, submits that the learned Single Judge has erred in dismissing the petition only on the ground that as per Clause 2.4 of the relevant policy, the married daughters are not entitled for compassionate appointment.

¹ W.A.No.756/2019 dated 02.03.2020.

4. Learned counsel appearing for the respondent-University submits that the impugned order passed by the learned Single Judge is strictly in accordance with law. He further submits that it is undisputed fact that on the date of submitting the application, the appellant was already married and Clause 2.4 of the Policy is applicable to the appellant and she was not entitled for appointment on compassionate basis. He further submits that the decision rendered by the Full Bench of this Court in the case of **Meenakshi Dubey¹** would be applicable only w.e.f the date of its pronouncement i.e. 02.03.2020 and the date of appointment of the appellant on compassionate basis is 30.10.2017, therefore, no interference is called for.

5. We have heard learned counsel for the parties at length and perused the record.

6. The only ground on which appointment of the appellant has been cancelled is Clause 2.4 of the Policy which reads as under:-

*" 2.4- दिवंगत शासकीय सेवक की संतान सिर्फ पुत्री/पुत्रियां हो और वह विवाहित हो तो दिवंगत शासकीय सेवक के आश्रित पति/पत्नी द्वारा नामांकित विवाहित पुत्री।
यह स्पष्ट किया जाता है कि मृतक शासकीय सेवक के आश्रित पति/पत्नी जीवित होने पर ही विवाहित पुत्री को अनुकंपा नियुक्ति की पात्रता होगी। (ऐसी अनुकंपा नियुक्ति पाने वाली पुत्री को शासकीय सेवक के आश्रित पति/पत्नी के पालन-पोषण की जिम्मेदारी का शपथ पत्र देना होगा।"*

7. The application form submitted by the appellant for compassionate appointment dated 09.06.2017, nowhere requires disclosure of marital status. The name of the appellant and the relationship with the deceased alongwith other particulars are required to be mentioned. The appellant

has mentioned her name as Kriti Sharma and relation with the deceased is mentioned as daughter of the deceased. Apart from the application form, there is no other communication by the University requiring the appellant to disclose her marital status. Under such circumstances when there is no requirement for disclosing the marital status in the form prescribed by the University itself, therefore, it cannot be said that there was any concealment on the part of the appellant while furnishing the required information, hence the allegations of concealment on the part of the appellant is not found established. The definition of the word “Concealment” as per Black’s Law Dictionary is “*withholding of something which one knows and which one, in duty, is bound to reveal*”. The same is not the situation in the present case.

8. So far as the applicability of Clause 2.4 of the Policy is concerned, such a policy has already been declared as unconstitutional by the Full Bench of this Court in the matter of *Meenakshi Dubey*¹ and, therefore, there is no reason to deny the same benefit to the appellant. The Hon’ble Supreme Court recently in SLP (C) No.20166 of 2021 by order dated 17.12.2021 affirmed the decision of the Karnataka High Court whereby a rule denying compassionate appointment to married daughters was quashed:

“We have heard learned counsel for the petitioner(s) and have analyzed the impugned judgment. We give our full imprimatur to the reasoning of the High Court, more so, as even the rule in question relied upon by the petitioner to deny a married daughter a job on compassionate grounds while permitting it to a married son, has been quashed in the judgment of the Karnataka High Court

in *Bhuvaneshwari V. Purani v. State of Karnataka - (2021) 1 AKR 444 [AIR Online 2020 Kar.2303]*.

The Special Leave Petition is dismissed.”

9. So far as the submission of learned counsel for the respondent-University that the decision of the Full Bench would be applicable from the date of its pronouncement is concerned, the same is not acceptable. Every decision of a court applies retrospectively from the date on which the provision came in the statute book unless the court directs that the judgment would apply prospectively. Infact, it is settled law that Court only declares and not make law. Consequently, declaration of law can never be prospective. The only exception is that Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution may prospectively either over rule its own judgment or give effect to its own judgment.

10. Hence, we find that the order dated 28.3.2018 cancelling the appointment of the appellant is not sustainable. The same is quashed. The order dated 29.3.2019 passed by the learned Single Judge in W.P.No.9437-2018 is set aside. The respondent-University is directed to reinstate the appellant with all consequential benefits including continuity of service etc. except payment of back wages to the extent of 50% for the period of her initial joining to the University till the date of passing of the order of her reinstatement. It is directed that appropriate consequential orders be passed by the University within a period of 45 days from the date of receipt of certified copy of this order. Accordingly, the writ appeal stands allowed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

