



1

WP-842-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 18th OF JULY, 2025WRIT PETITION No. 842 of 2023*NEETU CHATURVEDI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Shri Siddharth Gulatee Senior Advocate with Ms. Tulika Gulatee, Advocate for the petitioner .

Shri V.P. Tiwari -Government Advocate for the respondent-State.
.....

ORDER

The present petition has been filed challenging the order Annexure P/7 whereby the application for compassionate appointment of the petitioner has been rejected on the ground that she is married daughter of the deceased government servant and that deceased had two sons also and therefore, the petitioner is not entitled to compassionate appointment.

2. The basic facts for the purpose of disposal of this petition are that the deceased government servant who is father of the petitioner expired on 22.04.2021 and petitioner is married daughter. The deceased government servant has left behind him two sons apart from the petitioner who is married daughter. The case of the petitioner has been rejected in terms of clause 2.2, 2.3 and 2.4 of the policy of compassionate appointment dated 29.09.2014 which are under:-

2.2 मृतक शासकीय सेवक के आश्रित पति/पत्नी द्वारा योग्यता न रखने अथवा स्वयं अनुकंपा नियुक्ति न लेना चाहे तो उसके द्वारा नामांकित पुत्र या अविवाहित पुत्री।



2.3 ऐसी विधवा अथवा तलाकशुदा पुत्री, जो दिवंगत शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उसके साथ रह रही हो अथवा उपरोक्त पात्र सदस्य न होने की स्थिति में विधवा पुत्रवधु जो शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उनके साथ रह रही हो।

2.4 दिवंगत शासकीय सेवक की संतान सिर्फ पुत्री/पुत्रियां हों 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)

3. The petitioner not being a widowed or divorcee daughter, clause 2.3 would not apply to her. As the deceased government servant had left behind sons also, therefore, policy 2.4 will not apply to the present case. Therefore, only Policy clause 2.2 will apply in the case of the petitioner as per which the right is given only to unmarried daughter of the deceased government employee.

4. The aforesaid clause 2.2 of the policy had already been struck down by a Full Bench of this Court in the case of *Meenakshi Dubey Vs. Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd. and others, (2020) 1 MPLJ 657* by holding that it is violative of Articles 14,15, 16 and 39 (a) of the Constitution of India to the extent it deprives married daughter from right of consideration.

5. The respondents have defended the impugned order of rejection Annexure P/7 on the ground that the State Government has issued a circular dated 27.03.2023 as per which the petitioner would become entitled only from 27.03..2023 and not before that date.

6. The State in para of the reply has taken an absolutely illegal plea that since the father of petitioner had expired prior to issuance of



consequential circular by the State Government issued in compliance of the judgment of Full Bench of this Court in the case of *Meenakshi Dubey (supra)*, therefore, the petitioner cannot be considered as on death of her father, the consequential circular had not been issued by the State. The State has taken the plea totally contrary to settled law that the judgment of the Court interpreting a particular law is always having retrospective effect unless the Court declares it to be prospective in nature. The declaration of clause 2.2 as ultra-vires will, therefore, relate back to 29.9.2014, which is the date when the said clause was inserted. The State cannot keep a judgement of Constitutional Court hostage in its bureaucratic portals by issuing consequential order, and then say that it has accepted the judgement from date of issuance of circular. A judgement of the Court is always retrospective and this Court need not burden its judgement with authorities on this issue. Recently, the Hon'ble Supreme Court, in the case of *Kanishk Sinha Vs. State of West Bengal, reported in 2025 SCC Online SCC 443* has reiterated the law as under :-

Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to



avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

7 . In view of the aforesaid, it is clear that it was not open for the State Government to read or write something into the judgment of Full Bench of this Court. The judgment of the Full Bench of this Court is clear and unambiguous in saying that the clause 2.2 of the policy is struck down to the extent it discriminated between unmarried and married daughters. The said judgment would apply from the date of policy i.e. 29.09.2014 and not from the date State Government decides to comply the order and issues the consequential circular. The father of petitioner undisputedly expired on 22.4.2021, which is after 29.9.2014 and even after the judgement in case of *Meenakshi Dubey (supra)*.

8. Therefore, the petitioner is having a right of consideration under the policy and terms of the Judgment in the case of *Meenakshi Dubey (supra)*. The impugned rejection order Annexure P/7 is hereby set-aside.

9. Let consideration be made afresh in terms of the judgment of Full Bench of this Court in the case of *Meenakshi Dubey (supra)* by taking the fact that exclusion of married daughter in clause 2.2. of the policy has been declared unconstitutional by the Full Bench of this Court which declaration of law would apply with full force to case of the present petitioner also.

10. Let the necessary consideration be made within two months from



the date of production of copy of this order.

11. With the aforesaid observation, **petition is allowed.**

(VIVEK JAIN)
JUDGE

MISHRA