



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32107 of 2011

**AFR**

In the matter of an application under Articles 226 & 227 of the Constitution of India, 1950.

-----  
*Mani Machha* ..... *Petitioner*

-versus-

*State of Odisha & Others* ..... *Opp. Parties*

Advocates Appeared in this case

*For Petitioner* - M/s. Samarendra Pattanaik,  
B.R. Kar, P. Panda &  
J. Kar, Advocates

*For Opp. Parties* - Mrs. Suman Pattanayak, AGA

-----  
CORAM :

MR. JUSTICE KRISHNA SHRIPAD DIXIT  
MR. JUSTICE CHITTARANJAN DASH

-----  
Date of Hearing & Judgment : 03.02.2026  
-----

**PER KRISHNA S DIXIT, J.**

To set the tone of this judgment, we reproduce the words of **Ruth Bader Ginsberg** (1933-2020), Associate Justice of U.S Supreme Court in **Kahn v. Shevin**<sup>1</sup>:

\_\_\_\_\_  
<sup>1</sup> 416 U.S. 351.



"...overriding objective must be an end to role delineation by gender, and in its place, conduct at every school level, and later in the job market, signaling that in all fields of endeavor females are welcomed as enthusiastically as males are."

2. Petitioner, a poor daughter of a deceased-Mazdoor, is grieving before the Writ Court against Orissa Administrative Tribunal's order dated 08.11.2011 whereby her O.A. No.835 of 2011 has been negatived. In the said O.A., she had called in question the order dated 09.06.2011 by which her claim for compassionate appointment was turned down by the authorities on the ground that she has married during the pendency of her claim.
3. Learned counsel for the petitioner vehemently argues that the marriage as such should not disable a person from claiming compassionate appointment; the impugned order violates gender equality, inasmuch as married sons of deceased-employee can stake such claims. This aspect having not been properly considered by the Tribunal, its order is liable to be voided



coupled with a direction to OPs to accord rehabilitatory appointment to the petitioner, argues the counsel.

4. Learned AGA appearing for the answering Opposite Parties opposes the petition making submission in justification of the impugned orders contending that the compassionate appointment is governed by the provisions of Odisha Civil Service (Rehabilitation Assistance) Rules, 1990; in the definition clause of these Rules, the compassionate appointment avails to the bereaved family members on the death of bread winning employee; a married daughter is not within the said definition and therefore, the impugned order is inexplicable. So contending, she seeks dismissal of petition.

#### **5. FOUNDANTIONAL FACTS:**

5.1. One Mr. Hari Machha was working under Chief Construction Engineer, Pateru Irrigation Project during the period between 15.07.1969 & 19.12.1999 uninterruptedly and *sans* any complaint whatsoever. Arithmetically, this service is more



than thirty years, is not disputed. He died on 20.12.1999 leaving the widow & the sole daughter, i.e., petitioner. The widow having consented filing affidavit, petitioner had staked her claim for compassionate appointment by making an application dated 21.08.2000.

5.2. The Engineer-in-Chief, vide letters dated 26.08.2008 and 26.10.2009, had conveyed the approval for compassionate appointment of the Petitioner. The Additional Secretary to Government, vide letter dated 06.04.2010, conveyed the approval granted by the Secretary to the Government for such appointment subject to production & verification of filed documents enlisted therein. However, the appointment was denied on the ground that the Petitioner contracted marriage in 2006. Aggrieved thereby, Petitioner knocked at the doors of Orissa Administrative Tribunal in O.A. No.835 of 2011, which came to be negated by the impugned order that is put in challenge by way of judicial review, at our hands.



6. Having heard learned counsel for the Parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

6.1. Father of the petitioner died in harness having put in more than thirty years of continuous and spotless service. Petitioner's claim for compassionate appointment duly made in time came to be rejected only on the ground that she contracted marriage in 2006. This is absolutely obnoxious, to say the least, because: immediately after the death in harness, the application for compassionate appointment was made; the Apex Court in a catena of decisions has iterated & reiterated that claims of the kind should be treated on a war-footing so that bereaved of an employee dying in harness will have something to fall back upon vide *Sushma Gosain v. Union of India*<sup>2</sup>. When the bread winner dies, his family would be in distress both financially & emotionally. Therefore, as a socio-welfare measure, Rules of the kind do obtain. Secondly, a son or daughter of a deceased-

---

<sup>2</sup>. AIR 1989 SC 1976.



employee cannot endlessly wait for the authorities to take the decision on the claim for compassionate appointment, inasmuch as aging being an inevitable consequence of run of the time; cannot be halted merely because the authorities are sleepy & tardy. It is not that the authorities had told the petitioner to defer her marriage till after her claim for compassionate appointment is decided.

6.2. There is force in the submission of learned counsel for the petitioner that the claim for compassionate appointment being regulated by the 1990 Rules, has to be decided keeping in view the scenario that obtained when the claim was made, subject to all just exceptions. Admittedly, the claim was made on 21.08.2000, the bread winner having breathed his last on 20.12.1999. Petitioner was not married for more than six years after staking her claim. These Rules do not say that the claimant, who is otherwise eligible & qualified, would cease to be so if marriage is contracted subsequently. After all, right to marry, subject to



applicable conditions, is an important facet of fundamental right to life & liberty guaranteed under Article 21 of the Constitution of India vide *Lata Singh v. State of UP*<sup>3</sup>. Therefore, the 1990 Rules should be construed consistent with this. After all, a daughter does not cease to be daughter after the marriage and she has an obligation to look after her dependent natal family vide **Dr. (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai**<sup>4</sup>.

6.3. Compassionate Appointments are regulated by the 1990 Rules and therefore, to the extent of regulation, the right to claim such appointment becomes justiciable. State cannot argue that it is only a privilege that cannot be agitated in the Court of law. If all conditions prescribed by the Rules are duly complied with, authorities cannot deny compassionate appointment. Clause (b) of Rule 2 of 1990 Rules defines the term 'family members' and the same reads as under:

*“(b) Family Members” shall mean and include the following members in order of preference -*

---

<sup>3</sup>. AIR 2006 SC 2522.

<sup>4</sup>. (1987) 2 SCC 278.



- (i) *Wife/Husband;*
- (ii) *Sons or step sons or sons legally adopted through a registered deed;*
- (iii) *Unmarried daughters and unmarried step daughter;*
- (iv) *[Widowed daughter or daughter-in-law residing permanently with the affected family.]*
- (v) *Unmarried or widowed sister permanently residing with the affected family;*
- (vi) *Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death"*

Sub-clause (iii) of clause (b) of Rule 2 of 1990 Rules is relevant for our consideration. Very notably, the term 'unmarried daughters' is employed in contra distinction to the term 'daughters who do not continue to be unmarried'. In other words, if the Rule Maker intended that a candidate, who contracts marriage after staking claim and during its pendency, shall become disentitled to such appointment. Therefore, the authorities could not have rejected petitioner's claim. Even this aspect has not been discussed by the Tribunal. Be that as it may.



6.4. The world is accelerating towards gender equality. Through the UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948<sup>5</sup> injuncts the State parties to practice equality. Articles 1 & 2 of the same read as under:

*“Article 1: All human beings are born free and equal and dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

*Article 2 : Everyone is entitled to all the rights and freedoms... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status....”*

The Makers of our Constitution have enshrined *inter alia* gender neutrality vide Article 14 in general and Articles 15 & 16 in particular. Our Smrutikaaraas said *yatra naarayaastu pujiyante ramante tatra devatah; yatra itaastu na pujiyante sarvaastatra falaah kriyaah* nearly meaning that where women are honoured, divinity dwells there; where dishonoured, all actions, no matter how noble, remain unfruitful. For the purpose of compassionate appointment, women, i.e., daughters constitute one homogenous class and that excluding the married daughters would create an

---

<sup>5</sup>. General Assembly resolution 217 A.



artificial class within the class and therefore, would fall foul of doctrine of equality enshrined in Part III of the Constitution.

Articles 10 & 11 of Part III of CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979 (CEDAW)<sup>6</sup> to which India is a signatory, proscribes discriminatory treatment of women on the ground of marriage, *inter alia* in matters of profession & employment. The Article 11(1)(c) reads as under:

“...(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;”

6.5. The FOURTH WORLD CONFERENCE ON WOMEN, BEIJING DECLARATION, 1995 vide Entry 26 ushers in a new era of gender equality in the realm of public employment, amongst other aspect. The COMMISSION ON THE STATUS OF WOMEN<sup>7</sup>,

---

<sup>6</sup> UNGA Resolution 34/180.

<sup>7</sup> Commission on the Status of Women, CSW 70 (2026).



while addressing the gaps in implementation of the Beijing Declaration, has prescribed the upcoming theme as under:

*“Ensuring and strengthening access to justice for all women and girls, including by promoting inclusive and equitable legal systems, eliminating discriminatory laws, policies, and practices, and addressing structural barriers.”*

In *Kesavananda Bharati*<sup>8</sup> case, the Apex Court observed that the International Conventions of the kind, not inconsistent with our domestic system would become a part of our law by virtue of Article 51 of the Constitution. Not only deference need be shown to them, but adherence in letter & spirit is expected. Sub-section 1 of Section 20 of the India Succession Act, 1925 broadly enacts that marriage *per se* cannot be a disability or entitlement *qua* property rights. It has the following text:

*“20(1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried...”*

If marriage is not a disability for sons of a deceased-employee to stake claim for compassionate appointment, it cannot be a

---

<sup>8</sup> AIR 1973 SC 1461.



disability for daughters too. An idea otherwise would offend the institutions of society such as family, marriage, etc. as obtaining in the civilized world.

6.6. It is relevant to mention what M. Nagaprasanna, J, in

*Bhuvaneshwari V Puranik v. State of Karnataka*<sup>9</sup> observed:

*“Marriage does not determine the continuance of the relationship of a child with the parent, whether the son or a daughter...”*

14.4. *In all the illustrations the offer of appointment or its denial is on the basis of gender as the sons of a deceased Government servant may well be married but are not denied appointment on the ground of marriage. If the daughters of a Government servant are married as marriage is a social commitment of a parent and in furtherance of such social commitment the daughter is given in marriage becomes ineligible to seek appointment in terms of the Rules. Therefore, the Rules insofar as it creates division of the same object of appointment on the basis of gender by granting appointment to a son without any qualification and denying the same to a daughter with the qualification of “marriage” cannot but be held to be discriminatory. Marriage does not determine the continuance of the relationship of a child with the parent, whether son or a daughter. Son continues to be a son both before and after marriage and a daughter also should continue to be a daughter both before and after marriage. This relationship does not get effaced by the fact of marriage, as marriage does not sever the relationship of the daughter with the parent. These relationships are neither governed nor defined by marital status. This notion*

---

<sup>9</sup> AIR Online 2020 Kar. 2303.



*on which the Rule is framed cannot answer the tests of Articles 14 and 15 of the Constitution of India.”*

The above view received acceptance of the Apex Court in *The State of Karnataka v. C.N. Apporva Shree*<sup>10</sup> wherein it is observed as under:

*“...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...”*

6.7. What irks us more also needs to be stated: The Engineer-in-Chief had sent the proposal for compassionate appointment of the petitioner seeking approval of the Government, vide letters dated 26.08.2008 & 26.10.2009. The Additional Secretary to the Government granted approval to the said proposal, and that was conveyed to the Engineer-in-Chief by the Additional Secretary to the Government vide letter dated 06.04.2010. It is not that, the authorities did not have the knowledge of petitioner’s marriage,

---

<sup>10</sup> SLP(C) No.20166/2021, disposed off on 17.12.2021.



when all this happened. If that be so, how she was denied compassionate appointment remains shrouded in mystery. What an enormity of mindlessness, the Government and its functionaries conduct the public affairs with, would bewilder any sensible mind. What difficulty the bereaved family of deceased-employee underwent all these twenty-five years can only be imagined. In our view, this is a fit case for awarding exemplary costs. However, being swayed away by the submissions of learned AGA, we reluctantly restrain ourselves from awarding any. But, if further delay is brooked in issuing appointment order, costs need to become payable.

In the above circumstances, this Petition succeeds; a writ of certiorari issues quashing the impugned order dated 08.11.2011 (Annexure-10) and the Office Order dated 09.06.2011 (Annexure-8) coupled with a writ of mandamus to OPs.1 & 2 to grant compassionate appointment to the petitioner within eight weeks. Delay would attract additional levy of Rs.500/- per day shall be payable to her. That amount



be recovered personally from the erring officials of the department, in accordance with law.

The compliance report to be filed before the Registrar General of this Court within two weeks following the compliance.

We place on record our deep appreciation for the able research & assistance rendered by Law Clerk-cum-Research Assistant Mr. Mohammed Nihad Sharief.

Web copy of judgment to be acted upon by all concerned.

*(Krishna Shripad Dixit)*  
*Judge*

*(Chittaranjan Dash)*  
*Judge*