HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.A. No.756/2019**
Parties Name	*Meenakshi Dubey* *vs.* *M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. and others.*
Date of Judgment	**02/03/2020**
Bench Constituted	**Larger Bench:** **Justice Sujoy Paul,** **Justice J.P. Gupta &** **Justice (Smt.) Nandita Dubey**
Judgment delivered by	**Justice Sujoy Paul**
Whether approved for reporting	Yes
Name of counsels for parties	Shri Anubhav Jain, Smt. Sudha Gautam, Shri Anand Sharma and Smt. Sonali Viswas, learned counsel for the appellant. Shri Shashank Shekhar, learned Advocate General. Shri Ankit Agrawal, learned counsel for respondent-Company.
Law laid down	**1. Clause 2.2 of policy of compassionate appointment of State Government dated 29.09.2014** - The clause to the extent it deprives a married daughter from consideration for compassionate appointment hits Art. 14, 16 and 39(a) of the Constitution. A woman citizen cannot be excluded for any appointment on compassionate basis on the ground of sex alone. **2.** The daughter even after marriage remains part of the

	family and she could not be treated as not belonging to her father's family. **3. Compassionate Appointment**- The criteria should be dependency rather than marriage. **4. Article 14** – Reasonable classification - The married daughter cannot be deprived from the right of consideration for compassionate appointment when married son is entitled under the scheme. Depriving married daughter when deceased government servant has a son also amounts to dividing a homogeneous class and creating a class within the class which violates Art. 14 of the Constitution. **5.** Compassionate appointment is not a right and the provision is made as an exception to general rule but having recognized such right of consideration of married daughter in clause 2.4, State cannot deprive the married daughter from consideration when she has a brother provided she undertakes to take care and maintain the living parent and other family members who were dependent on the deceased employee at the time of his/her death.
Significant paragraph numbers	**9, 13, 14 & 20**

JUDGMENT
02.03.2020

As per: Sujoy Paul, J.

This Larger Bench is called upon to decide the following

issue:

> *"Whether in the matter of compassionate appointment covered by Policy framed by the State Government wherein, certain class of dependent which includes unmarried daughter a widowed daughter and a divorced daughter and in case of a deceased Govt. servant who only has daughter, such married daughter who was wholly dependent on Govt. servant subject to she giving her undertaking of bearing responsibility of other dependents of the deceased Govt. servant, Clause 2.2 and 2.4 can be said to be violative of Article 14, 15, 25 and 51A (e) of the Constitution."*

2. It is profitable to note the background of the reference. W.P. No.9631/2017 (***Meenakshi Dubey vs. Madhya Pradesh Poorv Kshetra Vidyut Vitran Company Limited and others***) was filed by the appellant/petitioner, the married daughter of deceased employee claiming compassionate appointment. The writ court by order dated 08.01.2019 dismissed the petition by holding that married woman does not deserve consideration for compassionate appointment as per the policy of the Company. Aggrieved, she filed WA No.756/2019 which was decided on 08.01.2020 Pertinently, the petitioner therein did not challenge the constitutionality of any clause of the policy of compassionate appointment framed by the employer namely; Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Limited (*hereinafter called as* ***'Electricity Company'***). It appears that during the course of hearing of WA No.756/2019, a Division Bench judgment of Indore Bench in the case of ***Smt. Meenakshi vs. State of M.P. and others, W.P. No.3769/2017*** decided on 09.10.2018, was cited by the appellant. In this WP filed before Indore Bench, *vires* of Clause 2.2, 2.3 and 2.4 of the policy of the State Government were called in question. The Indore Bench opined that Clause 2.2 and 2.4 to the extent right of married daughter specially when the deceased government

servant was having male children also, has been curtailed, is certainly unconstitutional and violative of Article 14, 15, 25 and 51A (e) of the Constitution of India. Net result is that the policy to the extent it debars married woman from consideration for compassionate appointment is quashed and the respondent/State is directed to consider the case of the petitioner on merits.

3. The Division Bench in WA No.756/2019 recorded its disagreement with the decision of Indore Bench in **Smt. Meenakshi**(Supra) in holding Clause 2.2 and 2.4 of the policy as *ultra vires*. The Bench reproduced the relevant policy which was applicable to the Electricity Company. It was observed that the Indore Bench in **Smt. Meenakshi**(Supra) treated the appointment on compassionate ground as a right whereas such appointments are given solely on humanitarian grounds with the sole object to provide immediate relief to employee's family to tide over the sudden financial crises and such claim cannot be raised as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be given strictly on the basis of open invitation of applications and comparative merit, in consonance with Article 14 and 16 of the Constitution of India. No other mode of appointment is permissible. The concept of compassionate appointment is recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the Service Rules. In this backdrop, it was observed that the policy or scheme, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. While observing so, the

Division Bench thought it proper to refer the issue for determination before the Larger Bench.

4. The Division Bench did not keep WA No.756/2019 pending and disposed it of by holding that appellant being a married daughter not shown to be dependent on her father, there exists no illegality in the impugned order which calls for any interference.

5. The aforesaid factual backdrop makes it clear that no *vires* of any provision of the policy/scheme of State Government or Electricity Company was subject matter of challenge in WP No. 9631/2017 or in WA No.756/2019. The policy of compassionate appointment of State Government and Electricity Company are indisputably different. Be that as it may, we are called upon to answer the reference and; hence, we deem it proper to deal with the issue referred for adjudication.

6. During the course of hearing, learned counsel for the parties fairly submitted that at present, policy of State Government dated 29.09.2014 is applicable. Clause 2.2 to 2.4 read as under:

> "2.2 मृतक शासकीय सेवक के आश्रित पति/पत्नि द्वारा योग्यता न रखने अथवा स्वयं अनुकंपा नियुक्ति न लेना चाहे तो उसके द्व ारा नामांकित पुत्र या **अविवाहित पुत्री**।
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> 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 हा।
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> 2.4 दिवंगत शासकीय सेवक की संतान **सिर्फ पुत्री/पुत्रियां हो और वह** विवाहित हो तो दिवंगत शासकीय सेवक के **आश्रित पति/पत्नि 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 पत्रता होगी । (ऐसे अनुकंपा नियुक्ति पाने वाली पुत्री को शासकीय सेवक के **आश्रित पति/ पत्नी के पालन पोषण की जिम्मेदारी का शपथ पत्र देना हो)** ”
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> *(Emphasis supplied)*

The learned counsel for the parties urged that there is no illegality or unconstitutionality in Clause 2.4 of the policy. At best, the clarification/condition appended to Clause 2.4 which is confined to a married daughter should be made applicable to son as well. Confining the duty for the daughter alone to take care of living spouse of deceased employee is discriminatory and arbitrary. We will deal with this point at appropriate stage.

7. Shri Anubhav Jain, learned counsel for the appellant contended that clause 2.2 is arbitrary, unjust, unreasonable and discriminatory in nature inasmuch as it excludes the married daughter from right of consideration for compassionate appointment. Shri Jain has taken pains to rely on the judgments of various High Courts in support of his aforesaid contention.

8. Shri Shashank Shekhar, learned Advocate General assisted by Shri Amit Singh, Advocate and Shri Ankit Agrawal, learned counsel for Electricity Company, in all fairness, urged that in our constitutional scheme, any provision which hits equality clause needs to be interfered with. During the course of hearing, learned Advocate General prayed for deferring the hearing of this matter for a later date by contending that in the meantime, the Government will consider the validity of Clause 2.2 and 2.4 of the policy and will make necessary corrections. The validity of corrected policy can be examined by this Bench.

Although we appreciate the fair stand taken by learned Advocate General, we are not inclined to defer the hearing of this matter because (i) this is not a regular matter; indeed, it is a reference made to Larger Bench hence, we are under an obligation to answer the reference. (ii) if this Bench interferes with the clauses of the policy, it will still be open to State Government to redraft/ reframe the said Clauses or issue a fresh policy; (iii) the Indore Bench decided WP No.3769/2017 on 09.10.2018 and declared certain clauses of policy as unconstitutional. Sufficient time was available to rectify the said clauses or introduce a new policy.

9. The policy of compassionate appointment of different State Governments became subject matter of challenge before the High Courts and similar clauses which excludes the right of consideration of a married daughter were taken note of and interfered with by the High Courts on the anvil of Article 14 and 15 of the Constitution. It is profitable to refer to certain judgments. This Court in ***2019 (2) MPLJ 707 (Bhawna Chourasia vs. State of M.P.)*** held as under:

> *"15. This is a matter of common knowledge that in present days there are sizable number of families having single child. In many families, there are no male child. The daughter takes care of parents even after her marriage. The parents rely on their daughters heavily. Cases are not unknown where sons have failed to discharge their obligation of taking care of parents and it is taken care of and obligation is sincerely discharged by married daughters.* ***Thus, it will be travesty of justice if married daughters are deprived from right of consideration for compassionate appointment.****"*
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> *(Emphasis supplied)*

The Chattisgarh High Court in WP(S) No.296/2014 (***Sarojni Bhoi vs. State of Chattisgarh and others***) opined that criteria to

grant compassionate appointment should be dependency rather than marriage. A daughter even after marriage remains daughter of her father and she could not be treated as not belonging to her father's family. Institution of marriage was basic civil right of man and woman and marriage by itself was not a disqualification. Resultantly, the impugned policy of Government prohibiting consideration of married daughter from compassionate appointment was held to be violative of Article 14 of the Constitution. The Chattisgarh High Court considered its previous Division Bench judgment in the case of ***Bailadila Berozgar Sangh vs. National Mineral Corporation Ltd.*** wherein it was held that:

> *"....It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation.* ***Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so***."
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> *(Emphasis supplied)*

10. Similarly, the question "Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying-in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid ?" came up for consideration before a Larger Bench of High Court of Calcutta in ***State of W.B. and others vs. Purnima Das and others (2018 Lab IC 1522)***. The relevant Clause 2(2) of the policy which was subject matter of examination was :

> *"2(2) For the purpose of appointment on compassionate ground a dependent of a government employee shall mean wife/ husband/son/**unmarried daughter of the employee** who is/was solely dependent on the government employee."*

The ancillary question cropped up before the Larger Bench was whether the classification created by Government by depriving the married daughter from right of consideration for compassionate appointment is a valid classification. Deepankar Datta, J' speaking for the Bench opined as under:

> *".....We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to 'a class'. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, **but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme.** A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival. **It is, therefore, difficult for us to sustain the classification as reasonable**."*
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> *(Emphasis supplied)*

In no uncertain terms, it was held that it is the dependency factor that would merit consideration and not the marital status of the applicant. The Calcutta High Court considered its previous judgment in the case of ***Smt. Usha Singh vs. State of W.B., 2003 (2) WBLR (Cal) 94*** wherein it was opined as under:

> *"..... Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is eligible but an unemployed married daughter is ineligible irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the father. Take the case of a teacher who died-in-harness leaving him surviving his*

> *illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned Advocate, this family cannot be helped. Is this the intended result of the rule? Or does this interpretation advance the object of the rule? What is the basis for the qualification which debars the married daughter? and what is the nexus between the qualification and the object sought to be achieved? In my view,* ***there is none****. If any one suggests that a son married or unmarried would look after the parent and his brothers and sisters and that a married sister would not do as much, my answer will be that experience has been otherwise. Not only that the experience has been otherwise but also judicial notice has been taken thereof by a Court no less than the Apex Court in the case of Savita v. Union of India reported in (1996) 2 SCC 380 wherein Their Lordships quoted with approval a common saying: '****A son is a son until he gets a wife. A daughter is a daughter throughout her life'****.''*
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> *(Emphasis supplied)*

Consequently, the Larger Bench answered the question as under:

> *"111. Our answer to the question formulated in paragraph 6 supra is that* ***complete exclusion of married daughters*** *like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they* ***are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid****.*
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> *112. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e.* ***the adjective 'unmarried' before 'daughter', is struck down as violative of the Constitution****. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death* ***and agree to look after the other family members of the deceased, if the claim is to be considered further.****"*
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> *(Emphasis supplied)*

The judgment of ***Purnima Das etc.***(Supra) was unsuccessfully challenged by the State of West Bengal before the Supreme

Court in SLP(C) No.17638-17639 of 2018 which were dismissed on 23.07.2019. The similar question came up for consideration before a Larger Bench of High Court of Uttarakhand in the case of ***Udham Singh Nagar District Cooperative Bank Ltd. And another vs. Anjula Singh and others, AIR 2019 Utr 69***. The relevant question posed before the Larger Bench reads as under:

> *"(ii)* ***Whether non-inclusion of a "married daughter"*** *in the definition of "family", under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in* ***violation of Articles 14, 15 and 16 in Part III of the Constitution of India ?****"*
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> *(Emphasis supplied)*

The answer reads thus:

> *"(ii) Question No.2 should also be answered in the affirmative. Non-inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India."*

11. It is noteworthy that similar view was taken by Karnataka High Court in ***ILR 1992 Kar 3416 (R. Jayamma V.Karnataka Electricity Board)***. In the said case, it was held as under:

> *"10. This discrimination, in refusing compassionate appointment on the only ground that the woman is married is violative of Constitutional Guarantees. It is out of keeping with the trend of times when men and women compete on equal terms in all areas. The Electricity Board would do well to revise its guidelines and remove such anachronisms."*

The Madras High Court in ***2015 (3) LW 756 (R. Govindammal V. The Principal Secretary, Social Welfare and Nutritious***

Meal Programme Department& others) opined thus:

> *"14. Therefore, I am of the view that G.O.Ms. No. 560 dated 3-8-1977 depriving compassionate appointment to married daughters, while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15(3) of the Constitution. But the State cannot discriminate women in the matter of compassionate appointment, on the ground of marriage."*

In ***R. Govindammal***(Supra), the Madras High Court took note of a judgment reported in ***2013 (8) MLJ 684 (Krishnaveni vs. Kadamparai Electricity Generation Block, Coimbator District)*** in which it was ruled that if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also.

12. The Bombay High Court in ***Sou. Swara Sachin Kulkrni v. Superintending Engineer, Pune Irrigation Project Circle, 2013 SCC OnLine Bom 1549*** opined as under:

> *"3….. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances,* ***the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage.****"*

It was further held as under:

> *"3….. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State."*

13. In a recent judgment by High Court of Tripura in ***Debashri Chakraborty vs. State of Tripura and others, 2020 (1) GLT 198,*** the court has taken note of various judgments of the High Courts including the judgment of Allahabad High Court in ***Vimla Shrivastava and others vs. State of UP and others*** reported in ***MANU/UP/2275/2015*** and judgment of Karnataka High Court in ***Manjula Vs. State of Karnataka, 2005 (104) FLR 271***. After taking note of series of judgments authored by different High Courts, the court answered the question as under:

> *"ii. Question No.2 should also be answered in the affirmative. Non- inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations,* ***thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India****.*
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> *iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations."*
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> *(Emphasis supplied)*

The common string in the aforesaid judgments of various High Courts is clear like a cloudless sky that the action/clauses of the policy which deprives married daughter from right of consideration for compassionate appointment runs contrary to Articles 14, 15, 16 and 39(a) of the Constitution. We concur with the above view taken by various High Courts.

14. The Constitution Bench of Supreme Court in ***Budhan Choudhry vs. State of Bihar, (1955) 1 SCR 1045*** made it clear that to pass a test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. In view of this decision, Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. As noticed, the various High Courts held that the classification made by impugned clause amounts to an artificial classification which divides a homogenous class and creates a class within the class.

15. The Apex Court in ***Dr. (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, (1987) 2 SCC 278*** opined that a daughter after her marriage does not cease to be a daughter of her father or mother and observed as under:

> *"12. We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that* ***it is the moral obligation of the children to maintain their parents****. In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.*
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> *13. After giving our best consideration to the question, we are of the view that Section 125(1)(d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself."*
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> *(Emphasis supplied)*

16. It is noteworthy that in the case of ***Vijaya Manohar***(Supra), the Apex Court was talking about 'moral obligation' of children to maintain their parents. The Parliament in its wisdom introduced The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This Act places equal duty on both, sons and daughters to take care and maintain the parents. In view of this Act, the obligation to take care of parents assumes more importance and it is not only a "moral duty", it became a "statutory duty" of children as well. This aspect was considered in ***Krishnaveni's*** case (supra) wherein it was held as under:

> *"28. The case on hand is a classic case, wherein, the deceased Government servant has no male issue. Nowadays, it is a common thing that a family have a single child; either male or female. Thus, if a Government servant has only daughter, as in this case, the widow of the Government servant cannot be stated that her married daughter could not be provided compassionate appointment, particularly, when she has to solely rely on her daughter.* ***As stated above, Maintenance and Welfare of Parents and Senior Citizens Act, also now places equal responsibility on both the son and daughter to take care of their parents****."*

17. We are not oblivious of the settled legal position that compassionate appointment is an exception to general rule. As per the policy of compassionate appointment, State has already decided to consider claims of the married daughters (Clause 2.4) for compassionate appointment but such consideration was confined to such daughters who have no brothers. After the death of government servant, it is open to the spouse to decide and opt whether his/her son or daughter is best suited for compassionate appointment and take responsibilities towards family which were being discharged by the deceased government servant earlier.

The offending clause which restricts such consideration only for such married daughter is subject matter of consideration and examination. The Constitution Bench of Supreme Court in ***Budhan Choudhry***(Supra) held that substantive law, procedural law or even an action can be interfered with if it does not pass the "litmus test" laid down in the said case. Hence, in a case of this nature, adjudication is not required regarding creation of right of married woman, indeed, judicial review is focused against curtailment of claim of such married woman when deceased government servant died leaving behind son/s.

18. The matter may be viewed from another angle. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (for short 'CEDAW') was ratified by the UNO on 18-12-1979. The Government of India who was an active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the

service of their countries and of humanity. Article 1 defines discrimination against women to mean - "**any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment** or exercise by women, **irrespective of their marital status**, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Article 2(b) makes it obligatory for the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women" to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take, in all fields, in particular, in the political, social, economicand cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that - "the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women". Parliament has enacted the Protection of Human

Rights Act, 1993. Section 2(d) defines human rights to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms. Article 5(a) of CEDAW on which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-à-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and need for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures modify law/policy and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

19. In a recent judgment reported in ***2020 SCC OnLine SC 200 (Secretary, Ministry of Defence vs. Babita Puniya and others)***, the Apex Court opined that -

> *"67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of nondiscrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1)."*

This recent judgment in ***Babita Puniya***(Supra) is a very important step to ensure "Gender Justice". In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2.2 to the extent it deprives married woman from right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature.

21. Looking from any angle, it is crystal clear that clause 2.2 which deprives the married daughter from right of consideration cannot sustain judicial scrutiny. Thus, for different reasons, we are inclined to hold that Indore Bench has rightly interfered with Clause 2.2 of the said policy in the case of ***Smt. Meenakshi***(Supra).

22. In nutshell, broadly, we are in agreement with the conclusion drawn by Indore Bench in ***Smt. Meenakshi***(Supra) and deem it proper to answer the reference as under:

"Clause 2.2 of the policy dated 29.09.2014 is violative of Articles 14, 15, 16 and 39(a) of the Constitution of India to the extent it deprives the married daughter from right of consideration for compassionate appointment. We find no reason to declare Clause 2.4 of the policy as *ultra vires*. To this extent, we overrule the judgment of Indore Bench in the case of ***Meenakshi***(Supra)"

23. The issue is answered accordingly.

(Sujoy Paul) Judge **(J.P. Gupta) Judge** **(Smt. Nandita Dubey) Judge**

YS/