

Mansi Shukla vs State Of U.P. Thru. Prin. Secy. ... on 31 January, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:7007

Court No. - 6

Case :- WRIT - A No. - 5608 of 2024

Petitioner :- Mansi Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayati Raj Deptt. Lko. And Another

Counsel for Petitioner :- Sanjay Kumar Srivastava, Akshat Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Shri Sanjay Kumar Srivastava, learned counsel for the petitioner and learned Standing Counsel appearing for the State.

2. The present petitioner has been filed for the following relief:

"i. Issue a writ, order or direction, in the nature of certiorari quashing the impugned order dated 22/05/2024 passed by the opposite party No.2 contained as Annexure No.1 to the writ petition.

ii. Issue a writ, order or direction in the nature of mandamus commanding the opposite party No.2 to give compassionate appointment to the petitioner on a suitable post in the department/office of District Panchayat Raj, Unnao, forthwith.

iii. Issue such other appropriate writ, direction or order which this Hon'ble Court may deem just and proper in the circumstances of the case.

iv. Allow the writ petition with costs."

3. Learned Counsel for the petitioner has submitted that the father of the petitioner, late Shri Bhalesh Kumar was appointed on the post of Safai Karmachaari on 29.09.2008 after regular selection, and subsequently, his services were regularized vide order dated 15.12.2015 with effect from 21.05.2014. He has further submitted that father of the petitioner unfortunately died on 28.08.2023 during his service leaving behind his wife, namely, Smt. Mamta and three daughters, namely Smt. Shruti, Smt. Mansi (petitioner) and Smt. Tanish Shukla. Petitioner, being a married daughter, had applied for being granted compassionate appointment under the Uttar Pradesh Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as the "Rules, 1974") considering the fact that despite being married, the petitioner was dependent upon her father as her husband is a physically challenged person, and accordingly, she was duly qualified and eligible for being appointed under the Rules, 1974. He has next submitted that though the definition of family, as provided under rules, 1974, did not include married daughter, but after consideration by this Court in this regard in the case of Smt. Vimla Srivastava and Ors. Vs. State of UP and Ors., Writ-C No.60881 of 2015, the State of UP has amended the definition of family and now it would also include 'married daughter' in the definition. He has vehemently submitted that as the respondents were not considering the claim of the petitioner for appointment under the Rules, 1974, the petitioner approached this Court on the previous occasion by filing a petition bearing Writ Petition No.3067 of 2024; Mansi Shukla Vs. State of UP and Anr. which was disposed of by this Court by means of order 22.04.2024, directing the respondents to decide the representation of the petitioner by reasoned and speaking order in accordance with law. It is in compliance of the direction of this Court, the respondents have considered the representation of the petitioner which has been assailed by the petitioner in the present case, whereby they have rejected the representation of the petitioner.

4. Learned counsel for the petitioner has submitted that one of the main grounds canvassed by the petitioner is that the respondents have not considered the claim of the petitioner that a married daughter is included in a definition of family, and consequently, she would be entitled to the benefited under the Rules, 1974. While rejecting the representation of the petitioner, they have held that the petitioner being a married daughter is not entitled to get compassionate appointment under the Rules, 1974, and consequently rejected the representation.

5. Learned counsel for the petitioner, while assailing the impugned order dated 22.05.2024, has submitted that the aforesaid judgment is illegal, arbitrary and contrary to the judgment given by Division Bench of this Court in the case of Smt. Vimla Srivastava (supra), wherein this Court has clearly held that a married daughter would be included in the definition of family and consequently would be liable to be considered for compassionate appointment. He has further submitted that the entire basis and reasoning of the aforesaid order is erroneous, illegal and arbitrary. Accordingly, same is liable to be set aside and further prayed for a direction to the respondents to appoint the petitioner on the suitable post under the Rules, 1974.

6. Learned Standing Counsel has opposed to prayer of the petitioner but he could not dispute the submissions made by learned counsel for the petitioner.

7. Considering the submissions of the counsel for the petitioner and having perused the record, it is noticed that petitioner is a married daughter of the deceased Government servant who was working on the post of Safai Karmchari in the Panchayati Raj Department and had died on 28.08.2023 while being in service. Though, there were other family members who could have claimed compassionate appointment under the Rules, 1974 but it seems that it is the petitioner who moved an appropriate application for being appointed under the Rules, 1974. It is on the interference of this Court that the respondents proceeded to consider the case of the petitioner for compassionate appointment and have rejected the representation solely on the ground that the petitioner being a married daughter cannot be included in the definition of family and consequently cannot be appointed under the Rules, 1974. The question therefore with regard to the entitlement of the petitioner being a married daughter is no longer *res integra*, inasmuch as, the said issue stands concluded by the Division Bench of this Court in the case of Smt. Vimla Srivastava (*supra*).

8. This Court has observed the following while allowing the aforesaid writ petition :

"During the course of submissions, our attention was also drawn to the judgment rendered by a learned Single Judge of this Court in *Mudita vs. State of U.P.* 3. The learned Single Judge while proceeding to deal with an identical issue of the right of a married daughter to be considered under the Dying-in-Harness Rules observed that a married daughter is a part of the family of her husband and could not therefore be expected to continue to provide for the family of the deceased government servant. The judgment proceeds on the premise that marriage severs all relationships that the daughter may have had with her parents: In any case it shuts out the consideration of the claim of the married daughter without any enquiry on the issue of dependency. In the view that we have taken we are unable to accept or affirm the reasoning of the learned Single Judge and are constrained to hold that *Mudita* does not lay down the

correct position of the law.

In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule 2 (c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

We, accordingly, strike down the word 'unmarried' in Rule 2 (c) (iii) of the Dying-in-Harness Rules. • In consequence, we direct that the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would be at liberty to consider the claim for compassionate appointment on the basis of all the relevant facts and circumstances and the petitioners shall not be excluded from consideration only on the ground of their marital status.

The writ petitions shall, accordingly, stand allowed: There shall be no order as to costs."

9. Accordingly, there is no diversion in the view that the petitioner being a married daughter would be entitled to be considered for appointment under the Rules, 1974 and the very basis of the order dated 22.05.2024 is erroneous, illegal and deserves to be set aside.

10. In light of the above, the present writ petition is allowed and impugned order dated 22.05.2024 is hereby quashed. Respondents are directed to reconsider the application of the petitioner for appointment on compassionate ground under the Rules, 1974 and pass necessary order within a period of four weeks and no more from the date of production of certified copy of this order.

11. The petitioner also undertakes to cooperate in the proceedings.

(Alok Mathur,J.) Order Date :- 31.1.2025 V. Sinha