

THE DIRECTOR OF TREASURIES IN KARNATAKA & ANR. A

v.

V. SOMYASHREE

(Civil Appeal No. 5122 of 2021)

SEPTEMBER 13, 2021 B

[M. R. SHAH AND ANIRUDDHA BOSE, JJ.]

Service Law – Compassionate appointment – Plea of – Karnataka Civil Services (Appointment on Compassionate Grounds) Rules 1996 – rr. 2 and 3 – Mother of the original writ petitioner was employed with the Government of Karnataka as Second Division Assistant – She died on 25.03.2012 – After her death, her daughter-original writ petitioner initiated a divorce proceeding for divorce by mutual consent u/s.13B of the Hindu Marriage Act, 1955 – On 20.03.2013, she obtained a decree of divorce by mutual consent – On 21.03.2013, the original writ petitioner submitted an application for appointment on compassionate ground – Her application was rejected – Karnataka State Administrative Tribunal also dismissed her application – However, the High Court directed the appellants to consider the application of the original writ petitioner for grant of compassionate appointment – The High Court held that a divorced daughter would fall in the same class of an unmarried or widowed daughter – On appeal, held: From Rule 2 and Rule 3 of the Rules, 1996 it can be seen that only ‘unmarried daughter’ and ‘widowed daughter’ who were dependent upon the deceased female Government servant at the time of her death and living with her can be said to be ‘dependent’ of a deceased Government servant and are eligible for appointment on compassionate ground – Rule 2 and Rule 3 do not include ‘divorced daughter’ as eligible for appointment on compassionate ground and even as ‘dependent’ – The word ‘divorced daughter’ has been added subsequently by Amendment, 2021 – However, in the instant case, at the relevant time when the deceased employee died and when the original writ petitioner made an application for appointment on compassionate ground the ‘divorced daughter’ was not eligible for appointment on compassionate ground and the ‘divorced daughter’ was not within the definition of ‘dependent’ – Further, the chronology of dates and events i.e. on 20.03.2013 decree of divorce by mutual

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- A *consent was obtained and on 21.03.2013 an application was submitted for appointment, the same would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent was obtained – Also, at the time when the deceased employee died she was a married daughter and therefore, also cannot be said to be ‘dependent’ as defined under Rule 2 of the Rules 1996 – Therefore, considering the facts and circumstances of the case, the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as ‘divorced daughter’ – Thus, the impugned judgment and order passed by the High Court is hereby quashed and set aside.*

Allowing the appeal, the Court

- HELD:** 1. Applying the law laid down by this Court in *N.C. Santhosh* to the facts of the case on hand, this Court is of the opinion that as such the High Court has gone beyond Rule 2 and Rule 3 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 by directing the appellants to consider the application of the respondent herein for appointment on compassionate ground as ‘divorced daughter’.
[Para 8][656-G-H]
- 2. From Rule 2 and Rule 3 it can be seen that only ‘unmarried daughter’ and ‘widowed daughter’ who were dependent upon the deceased female Government servant at the time of her death and living with her can be said to be ‘dependent’ of a deceased Government servant and that ‘an unmarried daughter’ and ‘widowed daughter’ only can be said to be eligible for appointment on compassionate ground in the case of death of the female Government servant. Rule 2 and Rule 3 reproduced hereinabove do not include ‘divorced daughter’ as eligible for appointment on compassionate ground and even as ‘dependent’. As observed hereinabove and even as held by this Court in the case of *N.C. Santhosh*, the norms prevailing on the date of consideration of the application should be the basis of consideration of claim for compassionate appointment. The word ‘divorced daughter’ has been added subsequently by Amendment, 2021. Therefore, at the relevant time when the deceased employee died and when the original writ petitioner –

respondent herein made an application for appointment on compassionate ground the ‘divorced daughter’ were not eligible for appointment on compassionate ground and the ‘divorced daughter’ was not within the definition of ‘dependent.’ [Para 8.1][658-A-D]

3. Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25.03.2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25.03.2012. Immediately on the death of the deceased employee, the respondent initiated the divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 for decree of divorce by mutual consent. By Judgment dated 20.03.2013, the Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21.03.2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground. The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground. Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as ‘divorced daughter’. This is one additional ground to reject the application of the respondent for appointment on compassionate ground. [Para 8.2][658-E-H; 659-A-B]

4. Even otherwise, it is required to be noted that at the time when the deceased employee died on 25.03.2012 the marriage between the respondent and her husband was subsisting. Therefore, at the time when the deceased employee died she was a married daughter and therefore, also cannot be said to be ‘dependent’ as defined under Rule 2 of the Rules 1996. Therefore, even if it is assumed that the ‘divorced daughter’ may fall in the

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- A same class of ‘unmarried daughter’ and ‘widowed daughter’ in that case also the date on which the deceased employee died she – respondent herein was not the ‘divorced daughter’ as she obtained the divorce by mutual consent subsequent to the death of the deceased employee. Therefore, also the respondent shall not be eligible for the appointment on compassionate ground on the death of her mother and deceased employee. [Para 8.3][659-B-D]
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N. C. Santhosh v. State of Karnataka and Ors. (2020) 7 SCC 617 : [2020] 3 SCR 1177 – relied on.

C	<u>Case Law Reference</u>		
	[2020] 3 SCR 1177	relied on	Para 5.7
	CIVIL APPELLATE JURISDICTION: Civil Appeal No.5122 of 2021.		
D	From the Judgment and Order dated 17.12.2018 of the High Court of Karnataka at Bengaluru in Writ Petition No.5609 of 2017 (S-KAT).		
	V. N. Raghupathy, Md. Apzal Ansari, Advs. for the Appellants.		
	Mohd. Irshad Hanif, Rizwan Ahmad, Mujahid Ahmad, Mohd. Aslam, Ahmad Parvez, Shishir Raj, Advs. for the Respondent.		
E	The Judgment of the Court was delivered by		
	M. R. SHAH, J.		
F	1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 17.12.2018 passed by the High Court of Karnataka at Bengaluru in Writ Petition No.5609/2017 by which the High Court has allowed the said Writ Petition preferred by the respondent herein and has quashed and set aside the order dated 09.12.2015 passed by the Karnataka State Administrative Tribunal, Bengaluru in Application No.6396 of 2015 and consequently has directed the appellants herein to consider the application of the respondent herein – original writ petitioner (hereinafter referred to as ‘original petitioner’) for grant of compassionate appointment, the original respondent has preferred the present appeal.		
G	2. The facts leading to the present appeal in nutshell are as under:		
H	That one Smt. P. Bhagyamma, the mother of the original writ petitioner was employed with the Government of Karnataka as Second Division Assistant at Mandya District Treasury. She died on 25.03.2012.		

That original writ petitioner, who at the relevant time was a married daughter at the time when the deceased (Smt. P. Bhagyamma) died, initiated a divorce proceedings for divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012. By its judgment and decree dated 20.03.2013 a decree of divorce by mutual consent was passed by the Learned Principal Senior Civil Judge, CJM, Mandy. On the very next day i.e. on 21.03.2013, the original writ petitioner submitted an application to appoint her on compassionate ground on the death of her mother. By order dated 03.05.2013, the application for appointment on compassionate appointment came to be rejected on the ground that there is no provision provided under Rule 3(2)(ii) of Karnataka Civil Services (Appointment on Compassionate Grounds) Rules 1996 (hereinafter referred to as ‘the Rules, 1996’) for divorced daughter. That the original writ petitioner made an application before the Karnataka State Administrative Tribunal being application No.6396 of 2015 on 20.07.2015 i.e. after a period of approximately 2 years from the date of rejection of her application for appointment on compassionate ground. The Learned Tribunal dismissed the said application by order dated 09.12.2015 on the ground that there is no provision for appointment on compassionate ground for divorced daughter. Thereafter, the original writ petitioner approached the High Court against the order dated 09.12.2015 passed by the Learned Administrative Tribunal, Bengaluru.

3. By impugned judgment and order dated 17.12.2018 the High Court has allowed the Writ Petition No.5609 of 2017 and has quashed and set aside the order dated 09.12.2015 passed by the Karnataka Administrative Tribunal, Bengaluru in application No.6393 of 2015 and has directed the appellants herein to consider the application of the original writ petitioner for grant of compassionate appointment based on the observations made in the impugned judgment and order. By the impugned judgment and order the High Court has interpreted Rule 3 of the Rules, 1996 and has observed that a divorced daughter would fall in the same class of an unmarried or widowed daughter and therefore, a divorced daughter has to be considered on par with ‘unmarried’ or ‘widowed daughter’.

3.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the appellants have preferred the present appeal.

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- A 4. Shri V.N. Raghupathy, Learned Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in quashing and setting aside the order passed by the Learned Tribunal and has erred in directing the appellants to consider the application of the writ petitioner for grant of compassionate appointment.
- B 4.1 It is submitted that the directions issued by the High Court directing the appellants to consider the application of the original writ petitioner for grant of compassionate appointment is just contrary to Rule 3 of Rules, 1996. It is submitted that as per Rule 3 of the Rules 1996 only “unmarried and widowed daughter” shall be entitled to and/or eligible for the appointment on compassionate ground in the case of the deceased female Government servant. It is submitted that Rule 3 (2)(ii) of Rules, 1996 does not include the ‘divorced daughter’ for grant of compassionate appointment in the case of the deceased female Government servant.
- C 4.2 It is further submitted that even as per the definition of ‘dependent’ as defined in Rule 2 of the Rules, 1996, in case of deceased female Government servant her widower, son, (unmarried daughter or widowed daughter) who were dependent upon her and were living with her can be said to be ‘dependent’. It is submitted that the divorced daughter is not included within the definition of ‘dependent’.
- D 4.3 It is submitted that therefore the directions issued by the High Court directing the appellants to consider the application of the respondent herein for appointment on compassionate ground as a divorced daughter is beyond Rule 2 and Rule 3 of the Rules, 1996.
- E 4.4 It is submitted that even otherwise it has not been established and proved that the respondent herein was ‘dependent’ upon the deceased employee and was living with her at the time of her death.
- F 4.5 It is further submitted that even otherwise the High Court has committed a grave error in not appreciating the fact that the deceased employee died on 25.03.2012 and that thereafter immediately the respondent initiated a divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 and obtained a decree for divorce by mutual consent dated 20.03.2013 and immediately on the very next day submitted that application for appointment on compassionate ground on 21.03.2013. It is submitted that the aforesaid facts would

clearly demonstrate that only for the purpose of getting the appointment on compassionate ground she obtained the divorce by mutual consent. It is submitted that the High Court has not at all considered the aforesaid aspects. A

5.7 Reliance is placed on the decision of this Court in the case of *N.C. Santhosh vs. State of Karnataka and Ors.*, (2020) 7 SCC 617 in support of the submission that the appointment on compassionate ground only be as per the scheme and the policy. B

5.8 Making the above submissions it is prayed to allow the present appeal. C

6. Present appeal is vehemently opposed by Shri Mohd. Irshad Hanif, Learned Advocate for the respondent – original writ petitioner. C

6.1 It is submitted that in the facts and circumstances of the case the High Court has rightly interpreted Rule 3 and the object and purpose by which Rule 3 was amended in the year 2000 by which the words ‘unmarried daughter’ and ‘widowed daughter’ came to be included within the definition of ‘dependent’ in Rule 3. It is submitted that the High Court has rightly observed that the intention and the rule making authority in adding ‘unmarried’ or ‘widowed daughter’ to the definition of dependent is very clear. It is submitted that the High Court has rightly observed that ‘divorced daughter’ would fall in the same class of ‘unmarried’ or ‘widowed daughter’. It is submitted that while interpreting Rule 3 of the Rules, 1996 the High Court has adopted the purposive meaning. D E

6.2 It is submitted that even subsequently and as per the Karnataka Civil Services Appointment on Compassionate Grounds (Amendment Rules, 2021) the ‘divorced daughter’ also shall be eligible for appointment on compassionate ground in the case of the deceased Government servant. It is submitted that therefore the interpretation made by the High Court by the impugned judgment is absolutely in line with the amended Rules, 2021 by which now even ‘divorced daughter’ also shall be entitled the appointment on compassionate ground in the case of the deceased servant. F G

6.3 Making the above submissions it is prayed to dismiss the present appeal. G

7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of *N.C. Santhosh* H

- A (*Supra*) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:
 - (i) that the compassionate appointment is an exception to the general rule;
 - (ii) that no aspirant has a right to compassionate appointment;
 - (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
 - (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
 - (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.
- G 8. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that as such the High Court has gone beyond Rule 2 and Rule 3 of the Rules, 1996 by directing the appellants to consider the application of the respondent herein for appointment on compassionate ground as 'divorced daughter'.
- H Rule 2 and Rule 3 of the Rules, 1996 read as under:

“2. Definitions:- (1) In these rules, unless the context A
otherwise requires:-

- (a) “Dependent of a deceased Government servant” means-
(i) in the case of deceased male Government servant, his widow, son, (unmarried daughter and widowed daughter) who were dependent upon him; and were living with him; and B
(ii) in the case of a deceased female Government servant, her widower, son, (unmarried daughter and widowed daughter) who were dependent upon her and were living with her;
(iii) ‘family’ in relation to a deceased Government servant means his or her spouse and their son, (unmarried daughter and widowed daughter) who were living with him. C

(2) Words and expressions used but not defined shall have the same meaning assigned to them in the Karnataka Civil Services (General Recruitment) Rules, 1977.” D

6. The eligibility on the death of a female employee is in terms of Rule 3(2)(ii) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, which reads as follows:

Rule 3(2)(ii):- E

‘(ii) in the case of the deceased female Government servant;

- (a) a son;
(b) an unmarried daughter, if the son is not eligible or for any valid reason he is not willing to accept the appointment; F
(c) the widower, if the son and daughter are not eligible or for any valid reason they are not willing to accept the appointment.
(d) a widowed daughter, if the widower, son and unmarried daughter are not eligible or for any valid reason they are not willing to accept the appointment. G

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- A 8.1 From the aforesaid rules it can be seen that only ‘unmarried daughter’ and ‘widowed daughter’ who were dependent upon the deceased female Government servant at the time of her death and living with her can be said to be ‘dependent’ of a deceased Government servant and that ‘an unmarried daughter’ and ‘widowed daughter’ only can be said to be eligible for appointment on compassionate ground in the case of death of the female Government servant. Rule 2 and Rule 3 reproduced hereinabove do not include ‘divorced daughter’ as eligible for appointment on compassionate ground and even as ‘dependent’. As observed hereinabove and even as held by this Court in the case of *N.C. Santhosh (Supra)*, the norms prevailing on the date of consideration of the application should be the basis of consideration of claim for compassionate appointment. The word ‘divorced daughter’ has been added subsequently by Amendment, 2021. Therefore, at the relevant time when the deceased employee died and when the original writ petitioner – respondent herein made an application for appointment on compassionate ground the ‘divorced daughter’ were not eligible for appointment on compassionate ground and the ‘divorced daughter’ was not within the definition of ‘dependent.’
- B 8.2 Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25.03.2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25.03.2012. Immediately on the death of the deceased employee, the respondent initiated the divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 for decree of divorce by mutual consent. By Judgment dated 20.03.2013, the Learned Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21.03.2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground. The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground. Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider
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the application of the respondent herein for appointment on compassionate ground as 'divorced daughter'. This is one additional ground to reject the application of the respondent for appointment on compassionate ground.

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8.3 Even otherwise, it is required to be noted that at the time when the deceased employee died on 25.03.2012 the marriage between the respondent and her husband was subsisting. Therefore, at the time when the deceased employee died she was a married daughter and therefore, also cannot be said to be 'dependent' as defined under Rule 2 of the Rules 1996. Therefore, even if it is assumed that the 'divorced daughter' may fall in the same class of 'unmarried daughter' and 'widowed daughter' in that case also the date on which the deceased employee died she – respondent herein was not the 'divorced daughter' as she obtained the divorce by mutual consent subsequent to the death of the deceased employee. Therefore, also the respondent shall not be eligible for the appointment on compassionate ground on the death of her mother and deceased employee.

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9. In view of the above and for the reasons stated above, the appeal succeeds. The impugned common judgment and order passed by the High Court in Writ Petition No.5609/2017 is hereby quashed and set aside. The Writ Petition before the High Court is dismissed accordingly. However, there shall be no order as to costs.

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Ankit Gyan

Appeal allowed.