

Patna High Court

Malti Kumari vs State Of Bihar And Ors. on 16 April, 2001

Equivalent citations: 2001 (2) BLJR 1290

Bench: S Jha, I Singh

JUDGMENT

1. Whether a divorced daughter of a Government servant dying in harness is entitled to appointment on compassionate ground is the significant question which arises for consideration in this letters patent appeal. A learned Single Judge of this Court has dismissed the writ petition of the appellant whereby she had sought direction for her appointment on compassionate ground, observing that a married daughter is not one of the dependants of the deceased government servant in terms of the circular and the claim of the appellant that she is not on good terms with her husband is a pretext to get appointment. The appellant filed review petition being Civil Review No. 203 of 2000 pointing out, inter alia, that a competent Court has already granted decree of divorce. The learned Single Judge dismissed the review petition observing that the divorced daughter cannot be equated as unmarried daughter. He noted that no averment regarding any decree of divorce by the competent Court had been made in the writ petition.

2. It may be mentioned that a Division Bench of this Court in Usha Gaulam v. State of Bihar, 2001 (2) PLJR 201, approving the judgment of one of us has held that married daughter is not eligible for compassionate appointment. The question is whether divorced daughter is to be treated at par with unmarried daughter for the purpose of compassionate appointment?

3. The case of the appellant is as follows. Her father, late Ramoalak Singh, died in harness on 17-9-1993 leaving behind a widow and two daughters including the appellant, she being the younger one. The elder daughter was already married. The appellant was also married but there was estranged relationship with the husband. He abducted the appellant's mother giving rise to Ghoshi P.S. Case No. 197/93. In the circumstances, she filed application for her compassionate appointment as a dependant of her deceased father. Her claim was supported by the District Magistrate, Jehanabad and, later by the Law Department/Advocate-General, Bihar. Though the opinion of the Law Department/Advocate-General was generally accepted by the State Government, the Government took the view that it required amendment in the circular and the matter thus remained pending. Meanwhile, the appellant filed Divorce Case No. 9/94 which ended in decree of divorce on 31-7-1996. Finally, as no concrete action was being taken on the application, the appellant approached this Court, seeking appropriate direction in the connected case i.e. C.W.J.C. No. 1079/2000 which was dismissed on 11-7-2000. The case of the appellant is that her marriage with Ramashish Yadav which was solemnised in the lifetime of her father had run into rough weather from the very beginning. On account of estranged relationship she was not living with the husband and, in the circumstances, she should be treated as dependant of the father. In any view, the marriage having eventually culminated in divorce, she cannot be treated as married daughter and, therefore, ineligible for appointment on compassionate ground.

4. It is relevant to state at this stage that in terms of circular No. 13293 dated 5-10-1991 of the Personnel and Administrative Reforms Department, Government of Bihar, which holds the field on

the subject of compassionate appointment, one of the dependants of the Government servant dying in harness can be appointed on compassionate ground. Wife, son, unmarried daughter and widow of deceased son have been specified as dependants. In terms of the circular, it is they alone, in that order of preference, who are eligible for appointment. The circular clarifies that adopted son, son-in-law, nephew, etc. shall not be treated as dependants.

5. Counsel for the appellant submitted that the learned Single Judge committed error of record in observing that the case of the appellant that she was not on good terms with her husband was a pretext to get appointment on compassionate ground; the fact is that by the time the writ petition was filed the decree of divorce had already been granted by the competent Court. Secondly, a married daughter after divorce becomes dependant of the father. In any case, she cannot be said to be married daughter dependant on her husband after cessation of the marriage. Thirdly, having regard to the beneficial nature of compassionate appointment a liberal view of the matter should be taken. It was pointed out that though in terms of the circular an adopted son cannot be treated as dependant a Division Bench of this Court in *Kamal Ranjan v. State of Bihar and Ors.* 1994(2) PLJR 536, has held that adopted son stands on par with natural son and, therefore, eligible for appointment on compassionate ground. It was submitted, lastly, that the claim of the appellant has not been rejected by the State Government. As a matter of fact, the Government was favourably disposed to appoint the appellant as per the legal advice tendered by the Law Department/Advocate-General but for the contemplated amendment in the circular dated 5-10-1991. The claim of the appellant, in the circumstances, should not have been rejected.

6. Before expressing opinion on the contentions the scope and nature of compassionate appointment may briefly be stated. Starting with *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* , which is probably the first decision of the Supreme Court on the subject, till date the consistent view of the Supreme Court is that compassionate appointment is made to mitigate the hardship of the bereaved family so that the family is able to tide over the sudden crises caused on account of the premature death of the bread-earner in harness. Whereas in *Sushma Gosain's* case, the Supreme Court went to the extent of observing that to achieve the object a supernumerary post may even be created, in the latter decisions, it was held that appointment could be made only against sanctioned post and in accordance with the rules. Further, the Court has clarified, there is no vested right in any dependant of the deceased Government servant to seek appointment on compassionate ground. Such appointment should be made as early as possible. After a reasonable period, it would not be permissible. Compassionate appointment has no nexus with the qualification of the person, after offer is made for appointment on any post the right gets exhausted and there cannot be second appointment on compassionate ground. Most importantly, compassionate appointment is not to be made as a matter of course, it would depend on financial condition of the family or the dependants. Reference may be made to decisions in *Life Insurance Corporation of India v. Asha Ramchandra Ambekar and Anr.* , *State of Rajasthan v. Chandra Narain Verma* , *Umesh Kumar Nagpal v. State of Haryana and Ors.* , *State of Rajasthan v. Umrao Singh* , *State of U.P. and Ors. v. Ramesh Kumar Sharma*, 1994 Supp (3) SCC 661, *State of Bihar and Ors. v. Samsuz Zoha* , *State of U.P. and Ors. v. Paras Nath* , *Dhalla Ram v. Union of India and Ors.* AIR 1999 SC 564.

7. Now adverting to the contention, it may be kept in mind that the argument of the Counsel so far as it falls within the realm of inheritance is well founded. No distinction as an heir can be made between a married daughter and unmarried daughter. But so far as it relates to compassionate appointment, they do not stand at par. We have stated above that object of the compassionate appointment is to mitigate the financial hardships of the family. The question is does the divorce result in financial destitution of the daughter? In the eye of law it does not. Because the law gives certain protection to a divorced wife or ex-wife. Section 24 of the Hindu Marriage Act, 1955 provides for maintenance pendente lite to spouse during the pendency of any proceeding under the Act, while Section 25 provides for permanent alimony and maintenance. It lays down that any Court exercising jurisdiction under the Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purposes by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own, income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, but a charge on the immovable property of the respondent. Apart from the Hindu Marriage Act which is applicable to persons governed by that Act, Section 125 of the Criminal Procedure Code provisions whereof are applicable to persons of all religions and faith, also provides for maintenance of the divorced wife. Explanation (b) appended thereto the Section clarifies that for the purpose of Section 125. and the related sections the term 'wife' includes "a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

8. No explanation has been furnished as to why any such relief/order regarding maintenance was not sought from the Family Court which granted the appellant the decree of divorce or as to why no such application was filed under Section 125, Criminal Procedure Code. In our opinion, where the person is possessed of means of avenues of livelihood he or she cannot be called financially destitute and, therefore, eligible for appointment on compassionate ground.

9. The Hindu Adoptions and Maintenance Act, 1956 also gives some indication as to why a married daughter-whether divorced or not-cannot be treated as dependant of the father. In the definition of 'dependants' in Section 21 of that Act, amongst; others, unmarried daughter and widowed daughter have been included, but not married I daughter or divorced daughter. Even in the case of widowed daughter, it is hedged in by the clause "provided and to the extent that she is unable to obtain maintenance". The distinction between married and unmarried daughter in circular No. 13293 dated 5-10-1991, therefore, appears to be based on sound principles of law.

10. Amongst the decisions of the Supreme Court, referred to above, we would like to particularly mention the case of Auditor-General of India and Ors.v. G. Ananta Rajeshwara Rao . In that case, the office memorandum envisaged appointment of "son/daughter or near relative" of the deceased Government servant. Commenting on the memorandum the Supreme Court observed that where the circular/ memorandum creates a mechanism to avoid regular appointment it would be violative of Article 16(2) of the Constitution which prohibits public employment under the State on ground, inter alia, only of descent. However, appointment of son, daughter or widow on compassionate

ground was held to be valid as not being based on descent, but as a means to provide assistance to the bereaved employee dying in harness. But, the Court clarified that the facility could not be extended to others. To quote, "But in other cases, it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion". It may be useful to quote the entire passage in order to bring home the point as under:

A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the breadwinner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Articles 16(2) of the Constitution. But however, it is made clear that if the appointments are confined to the son/ daughter or widow of the deceased Government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases, it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstances for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects, Article 16(2) is clearly attracted.

It would, thus, appear that only son, daughter or widow were held eligible for compassionate appointment. It is to be kept in mind that though the widow was not mentioned in the Memorandum, the Court upheld her eligibility as being "near relative" of the deceased employee, but such extended meaning was not given to other relatives.

11. The submission that the Law Department/Advocate-General gave a favourable opinion in respect of the claim of the appellant has no relevance. In an appropriate case, the opinion of the high dignitaries may be entitled to respect but it is not binding on Courts. The Courts are bound by the authorities and the precedents set by the superior Courts and not by holders of offices however high they may be.

12. As regards the submission that the claim of adopted son has been upheld by this Court and he has been treated at par with the natural son, it may be observed that by virtue of extended meaning which flows from the relevant provisions of the Hindu Adoptions and Maintenance Act, an adopted

son is as goods dependant as a natural son so far as the financial destitution resulting from the death of the father-whether natural or adoptive- is concerned. The daughter ceases to be a dependant of the father after marriage in the eye of law and she becomes dependant on her husband. In the case of divorce, the dependency does not come to an end inasmuch as the husband is bound to provide for maintenance of the wife even after divorce. Thus, so far as financial destitution, mitigation whereof is the object of compassionate appointment, is concerned, by reason of the protection available to divorced daughter she cannot be called a destitute and, therefore, she cannot be treated at par with adopted son and hence eligible for appointment on compassionate ground. In the present case, it may be noted that the decree of divorce was passed at the instance of the appellant herself.

13. Before we conclude, we may mention that when ineligibility of the appellant was pointed out to the Counsel, it was submitted that the only other dependant who is widow of the deceased being elderly woman of 55 years age could not have sought appointment on compassionate ground. It is not clear as to whether she was 55 years old at the time of her husband's death or that is her present age. Without going into question as to whether the mother could apply for compassionate appointment and she could be appointed after relaxing the age-bar, it may be observed that in every case of death of the government servant in harness, it may not be possible to appoint one of the dependants. After all, there is no vested right to compassionate appointment.

14. In the above premises, we do not find any merit in the claim of the appellant for her compassionate appointment. This letters patent appeal is accordingly dismissed.