

**IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT
BENGALURU**

DATED : THIS THE 27TH DAY OF OCTOBER, 2017

BEFORE

HON'BLE Mr. JUSTICE A.V. CHANDRASHEKARA, JUDICIAL MEMBER

APPLICATION NUMBER : 9763 OF 2015

BETWEEN :

Correction is effected as per the Court Order Dt.17.11.2017.
Mrs. Nethra, S.
D/o. Sri. Rangamurthy,
W/o. Muniraju,
Kambadkallu,
Ennigiri Post,
Salur Hobli,
Magadi Taluk,
Ramanagar District-562 127.
S.O. 24/11/17
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.. APPLICANT

**(By Sri. M.N. Vijaya Shekar, Advocate for
Sri. C. Shankar Reddy, Advocate).**

AND :

- 1. The State of Karnataka,
Represented by its Secretary,
Education Department,
Vidhana Soudha,
Bengaluru-560 001.**
- 2. The Commissioner,
Government of Karnataka,
Department of Education.**

3. The Block Education Officer,
Nelamangala Taluka,
Nelamangala ,
Bangalore.

.. RESPONDENTS

(By Sri. S.T. Naik, Government Pleader).

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This Application is filed under Section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash the endorsement dated 13.07.2015 (Annexure-A4) issued by the Block Education Officer, Nelamangala Taluk, Bangalore Rural District, and, etc.,

This Application is coming on for Preliminary Hearing, this day, the Hon'ble JUSTICE Shri. A.V. CHANDRASHEKARA, JUDICIAL MEMBER, made the following :

ORDER

Heard the learned counsel for the applicant and the learned Government Pleader for the respondents.

2. The applicant is the daughter of one by name Sri. Rangamurthy who was working as First Division Assistant in the Department of Education, Government of Karnataka, Nelamangala, Bangalore. He died on harness on 01.12.2014. The applicant is the only daughter and legal heir. By the time her father died, she was married. She had filed an application before the 2nd respondent on 25.06.2015 seeking appointment on compassionate grounds in terms of the

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****Deleted as per the Court Order Dt.17.11.2017.** Government order dated 04.08.2014! ****~~She belongs to Schedule Caste~~** and she is a Graduate in Commerce. Her application is rejected

mainly on the ground that she is not entitled for employment as she was married by the time the application was filed.

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3. Being aggrieved by the same, she has approached this Tribunal seeking the following reliefs:

"i) Issue a writ in the nature of certiorari quashing the impugned order Annexure-A4 dated 13/07/2015 issued by Block Education Officer, Nelamangala Taluk, Bangalore Rural District under his No.C1/A.AA.Ne/2015-16/178 Bangalore District.

ii) Pass such other order or direction deemed just and expedient in the circumstances of the case including the costs."

4. Learned Government Pleader has vehemently opposed the application essentially on the ground that Rule 3 (b) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 [for short "CGA Rules"] which has stood amended with effect from 24.11.2000 mandates that only an unmarried daughter can seek

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appointment on compassionate grounds. He has further vehemently argued that the married daughter does not found a place under Rule 3 of the CGA Rules for seeking appointment on compassionate grounds and that the authorities have rightly rejected the request of the applicant.

5. Learned counsel for the applicant has vehemently argued that even a married daughter is entitled to seek appointment on compassionate grounds in view of the decision of the Hon'ble High Court of Karnataka rendered in the case of *R. JAYAMMA -vs- THE KARNATAKA ELECTRICITY BOARD* reported in ILR 1992 KAR 3416.

6. He has further placed reliance upon the Full Bench decision of the Hon'ble High Court of Calcutta rendered in the case of *THE STATE OF WEST BENGAL & ORS., -vs- PURNIMA DAS & ORS.,* in C.A. No.12495/2014. This decision is relied upon by him to contend that 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 earning of her mother / father (government employee) on the date of death and agree to look after the other family members of deceased, if the claim is to be

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considered further. He has particularly placed reliance at para 113 of the said case.

7. He has further placed reliance on the decision rendered by the Hon'ble Uttaranchal High Court in the case of *NISHA LOHANI -vs- STATE OF UTTARAKHAND & ORS.* In Civil Writ Petition No.691/2016 disposed of on 24.04.2017. In the said case it is held at para 13 that the discrimination between married son and married daughter only on the basis of sex is violative of Articles 14 to 16 of Constitution of India.

8. Perused the records and the pleadings.

9. The fact that the applicant is the only daughter of the deceased Government servant Sri. Rangamurthy is not in dispute. She has no brother/s. The said Sri. Rangamurthy died on 01.12.2014. The applicant had filed an application seeking appointment on compassionate ground 25.06.2015, within one year from the date of death of his father and by the time, she was already married. She is

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as per the ~~a member belonging to Schedule Caste~~ and graduate in Commerce. Court Order

Dt.17.11.2017.

The application of the applicant is rejected essentially on the ground

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that she is married and not entitled to seek appointment on compassionate ground as there is no mention about the eligibility of a married daughter under Rule 3 of the CGA Rules.

10. Today, an affidavit is filed which is sworn to by the applicant on 27.10.2017. In the said affidavit she has sworn to that she has the burden of taking care of her family and that her mother has undergone brain tumour surgery and that she should taken her to hospital often and has to bear all her expenses. She has further sworn to that as a result of the death of his father, she is struggling to maintain herself and her mother and that she has undertaken to look after her old and ailing mother. This aspect cannot be easily brushed aside since this is the harsh reality of her life. Relevant paras 5 and 6 of the said affidavit are extracted below:

"5. I submit that subsequent to the death of my father, it has become great difficulty for me to maintain my family and also to take care of my age old mother and due to the stoppage of financial support I am struggling to lead life of myself and my family members and though application has been filed by me before the



Respondents for job the same has been rejected on the ground that I am married.

6. I submit that I have clearly stated in my requisition dated 13.07.2015, that my husband is coolie and I was dependent on the income of my father and I further submit that subsequent to the death of my father the burden of taking care of my mother as also fallen on my shoulders and further my mother has already been undergone brain tumor surgery and periodically she has to visit doctor and all these expenses has to be taken care and also in order to lead my family and to take care of my mother, I am in need of job on compassionate grounds. I submit that by oversight the said fact have not been stated in my application and the same was noticed recently when my new counsel was preparing the case for arguments. Hence in order to insert the same and in order to show my dependency on my father income, I am filing the present application."

11. The Hon'ble High Court of Karnataka In the case of R. JAYAMMA cited above has held that denial of appointment to a married daughter on compassionate grounds is violative of Constitutional guarantees and the said discrimination must be removed. In the



case of *RADHA -vs- STATE OF ORISSA* reported in AIR 1969 Orissa 237 which is referred to in R. Jayamma's case, it is held that marriage does not operate as a disqualification for appointment as a District Judge in the case of men; whereas in the case of married women, by Rule 6 (2) they are being excluded from appointment. It is further held that such a disqualification being done based on sex is unconstitutional. The relevant para in the said *R. JAYMMA'S* case are 8 to 10 and the same are extracted below:

"8. Article 14 of our Constitution assures to all citizens equality before the law and legal protection of the law. Article 15 expressly prohibits discrimination on the ground of sex. Article 16 guarantees equality of opportunity in matters of public employment.

9. Though women have equal rights in law, tradition and social customs hinder Indian women in enjoying equal rights with men. With the change in family structure and life styles and the social norms, nothing is so detrimental to society as a blind adherence to outworn forms and obsolete social customs which survive because of inertia.

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10. This discrimination, in refusing compassionate appointment on the only ground that 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."

12. In the said case, R. Jayamma was a married lady and she had applied for appointment on compassionate grounds after the death of her father. Her application was rejected as she was married and that she was not entitled for appointment on compassionate grounds. Considering the scope of Articles 14 to 16 of the Constitution of India, the Hon'ble High Court of Karnataka has specifically held that the said discrimination is violative of Articles 14 to 16 of the Constitution of India. Ultimately the said case filed in Writ Petition No.20872/1991 was allowed on 29.07.1992, directing the authorities to consider the case of Smt. R. Jayamma for appointment on compassionate grounds ignoring the fact that she is a married woman within three months from 29.07.1992.



13. This decision being a decision of our own High Court is squarely applicable to the facts of the present case and this Tribunal is bound to follow the same as a precedent.

14. The Full Bench of Hon'ble High Court of Calcutta in the case of *the State of West Bengal* mentioned above disposed of on 13.07.2017, has specifically held that the denial of appointment on compassionate grounds to a married daughter is violative of Articles 14 to 16 of the Constitution of India and that if a married daughter undertakes to look after the family of her parents, the said request should be considered. Para 113 of the said decision is extracted below:

"113. 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

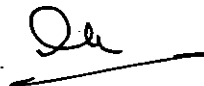
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Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father / mother (Government employee) on the date of his / her death and agree to look after the other family members of the deceased, if the claim is to be considered further."

15. Similarly, the Hon'ble High Court of Uttaranchal in the case of **NISHA LOHANI** mentioned above disposed of on 24.04.2017, has held in para 14 as follows:

"14. Son and daughter are supposed to take care of the parents at the old age. The married son is to be treated at par with the unmarried daughter. Not considering the married daughter for compassionate appointment merely on the basis of marriage is patently arbitrary and unreasonable."

16. Ultimately, **Nisha Lohani's** case filed in Civil Writ Petition No.691/2016 is allowed and the authorities are directed consider the case of the petitioner for giving appointment on compassionate grounds.



17. The Division Bench of this Tribunal the case of **SMT. T. DEEPA - vs- THE DIRECTOR OF HEALTH AND FAMILY WELFARE SERVICES [A.NO.1150/2006]** disposed of on 27.10.2016 has directed the Government to include the 'Divorced Daughter' living with parents also to be considered as eligible for seeking appointment on compassionate grounds. While dealing with the equality of daughter/s reliance is placed upon Section 6 of the Hindu Succession (Amendment) Act, 2005. As per Amended Section 6 of the Hindu Succession Act, 2005, which has come into effect from 09.09.2005, a daughter, whether married or not, is also entitled to equal share with her brother and thus the earlier discrimination has stood removed. The decision in T. Deepa's case has become final. Paras 15 to 17 are relevant and extracted below:

"15. By this amendment the widowed daughter is considered as eligible for appointment on compassionate basis at No.4 in the order of preference in the case of the deceased male Government servant, but such provision does not exist under sub-clause (ii) of Rule 3 (2). Here again there is discrimination against the widowed daughter of the deceased female Government servant as compared to the widowed daughter of

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the male Government servant. We do not see any logic or rationale in differentiating between a widowed daughter of the male Government servant and the female Government servant. This anomaly also needs to be corrected.

16. *At this juncture, we would like to refer to the amended provision of the Hindu Succession (Amendment) Act, 2005 which has given equal inheritance rights to the daughters on par with the sons in ancestral property. When such equal inheritance right has been given to the daughters irrespective of their marital status, denying the benefit of appointment under CGA Rules to married dependent daughters is a clear case of gender discrimination and violative of Articles 14, 15 and 16 of the Constitution of India. Therefore, we deem it necessary to give directions to the Government to make suitable provisions by amending Rules 2 and 3 of the CGA Rules, 1996, in the interest of justice and equity.*

17. *Accordingly, we pass the following order:*

(i) Application is allowed and the endorsement bearing No.ಸಿಬಿಎ (1) 105:2004-05 dated 29.06.2005 (Annexure A6) is set aside. The



respondent is directed to consider the case of the applicant for appointment on compassionate grounds and appoint her on compassionate grounds, if she is otherwise eligible, within three months from the date of receipt of a copy of this order.

(ii) We direct the Principal Secretary to Government, Department of Personnel and Administrative Reforms (Service Rules), (for short 'DPAR') to put a proposal to the Cabinet to consider inclusion of 'dependent married / divorced daughter' under Rules 2 and 3 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996. We also suggest that the Principal Secretary, Department of Women and Child Development may also make a recommendation to the DPAR in this regard.

(iii) A copy of this order may be sent to the Chief Secretary, Government of Karnataka to review the action taken by the DPAR in this regard.

(iv) The Principal Secretary, DPAR is also directed to submit a report to this Tribunal in this matter, within six months from the date of receipt of a copy of this order."

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18. In view of the authoritative pronouncement in R. Jayamma's case and the persuasive Full Bench decision of the Hon'ble High Court of Calcutta in the State of Bengal's case, Nisha Lohani's case of Uttaranchal High Court and T. Deepa's case of this Tribunal, this Tribunal is of the considered opinion that though the applicant is married, she is entitled to be considered for appointment on compassionate grounds. Of course, she should file undertaking before the authorities that she would look after her mother who has undergone brain tumour surgery and she would look after her till her death. Hence, the application needs to be allowed and impugned endorsement at Annexure-A3 needs to be set aside and necessary directions be given to suitably amend the Rule providing an opportunity for married daughters also to seek appointment subject to certain conditions in the light of the authoritative pronouncement in the case of R. Jayamma mentioned above.

19. In view of the above, the following order is passed:

ORDER

- (I) The Application is allowed and the impugned endorsement dated 13.07.2015 (Annexure-A4) in



which the applicant's request is rejected stands quashed.

- (ii) The respondents are directed to consider the case of the applicant for appointment on compassionate grounds, if, she is otherwise eligible.
- (iii) The 1st respondent to suitably amend Rule 3 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, providing an opportunity for the married daughter also to seek appointment on compassionate grounds, subject to certain conditions as indicated in the Full Bench decision of the Hon'ble High Court of Calcutta.
- (iv) This exercise shall be done within a period of three months from the date of receipt of a certified copy of this order.
- (v) Learned Government Pleader Sri. S.T. Naik, is directed to serve a copy of this order along with the decisions rendered in R. Jayamma's case, T. Deepa's case and other two decisions



referred in this order to the concerned for doing the
needful at the earliest.

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