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Rule of Compassionate Appointment - Married Daughter's Right

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Dying in a harness in many states is also known as the Rule of Compassionate Appointment. It is a state-made law where the state appoints a dependent of the government servant to the job after the death of that government servant. Out of various principles, there is one whose object is to provide a source of earning and a good livelihood to the dependent or family member of the government servant whose life is now heavy after the death of the earning member. Though it is not a hereditary right of the family, it is just the right provided to only the dependents who are mentioned in the definition of the deceased person. State government guidelines gradually came to guide its citizens, despite the fact that many landmark Supreme Court and High Court judgments are also mentioned. With this article, I want to make a point that Compassionate Appointment only talks about daughters, unmarried daughters, married sons, unmarried sons, adopted sons, or adopted daughters, but not married daughter mention. In many cases, the court has provided the right of compassionate appointment to the married daughter.

Keywords: *right, daughter, compassionate.*

INTRODUCTION

The law is a tool that helps you get certain kinds of rights. Dying in Harness is one of those rights that can be a right of life or a right to survival or known by different names. It also helps the people by fulfilling and delivering it in a way that can be vital to those who are dependent on it under the Dying in Harness rule. Dying in a harness in many states is also known as the

Rule of Compensate Appointment. This rule lies under the seventh list of the Constitution of India. However, it is a state-made law, but the Union can also make or amend this law. In India, every state has this right and many common points in every definition of different states can be seen as the same. The reason behind this similarity is the approach. However, states must provide a decent life for the dependents. If we go to the layman's meaning of "dying in harness," then it means a person who dies on duty, but as we know, the law has a very wide ambit, so it's not easy to conclude the topic in a line or a paragraph. For the time being, let's take an example to understand it. 'A', a sub-inspector, dies at work. No one in his family makes a living in that case. The department under which A is working will appoint any of the dependents of A. However, if the government servant dies naturally or unnaturally his dependent will get the job.

OBJECT

Compassionate appointment object is to grant appointment to the next kin of the dependent or family member of a government servant who had died in duty, left his family in penury and they had no means of livelihood. The scheme is not generational and should not be considered a hereditary right if any person who meets the definition of a dependent is granted this right. **A legal spouse, elderly child son or daughter, married or unmarried if the son of a deceased government servant is unmarried and living within them in the same house), or brother is required.**

Out of various principles, there is one whose object is to provide a source of earning and a good livelihood to the dependent or family member of the government servant whose life is now heavy after the death of the earning member. If a person who is a dependent of a government employee has all the eligibility that is required for his appointment under this rule but has not gotten the appointment, in that case, the person should ask for clarification and reason for such non-appointment by the competent authority if he is not satisfied and thinks that he is eligible to be appointed. In that case, he can approach the High Court through a writ under Article 226[1] (Mandamus) in the High Court of the concerned state.

[1] Constitution of India, art 226

IN CONNECTION WITH THE CONSTITUTION

The Indian Constitution is the mother of all laws enacted in India or made prior to independence. Every law that was in India before independence and after independence must be checked to ensure that none of their sections or provisions shall contradict the Constitution of India in a case where it is found that the law will be removed from India. Hunger and death are the two harsh realities of life. A dead man does not always leave behind property; his family's life becomes a threat. In this tough situation, it is not easy for his dependents to survive. The object behind making this rule is to show humanity towards the dependents of a government servant. This is the reason why this rule is directly affecting Article 21[2] Protecting of life and Personal liberty. In the ***Maneka Gandhi case,*** the Supreme Court provided the Golden Triangle Rule which says if any law breaks any one of the following articles of The Constitution of India Article 21, Article 14,[3] Article 19[4] then immediately remaining two will also be affected.[5]

Article 16 of the Constitution of India,[6] provides equal opportunity in all matters to all of its citizens in matters of public employment. All citizens shall have an equal opportunity in matters relating to employment or appointment to any state office. An equal opportunity shall be provided to all citizens. An equal and fair opportunity shall be provided to all the citizens in matters related to employment in any of the state offices. (1)[7] The State must see that granting equal opportunity for employment to all citizens must be done fairly therefore all citizens shall have equal opportunity. ARTICLE 16(2)[8]: No discrimination on the ground of caste, sex, religion, place of birth, descent, residence, or any of them. This article clearly states the importance of this act

This rule is directly connected with Part III Fundamental Rights of the Constitution Of India.[9] Makes it an important reason for the state to make such a rule regarding it.

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[2] Constitution of India, art 21
[3] Constitution of India, art 14
[4] Constitution of India, art 19
[5] *Maneka Gandhi v Union of India* AIR 1978 SC 597
[6] Constitution of India, art 16
[7] Constitution of India, art 16(1)
[8] Constitution of India, art16(2)
[9] Constitution of India, part III

SUPREME COURT LANDMARK JUDGEMENTS

The Supreme Court made many points about this rule very clear in its many decisions; here are some of the cases discussed.

(a) In one of the cases, the Supreme Court of India held that, if an appointment is on the ground of descent, it will be clearly violated. But if in a case an appointment has been made to the son/ daughter, or widow of the government servant under harness rule and an instant need for assistance, in case of no earning person in the family who can't add the loss in income for the breadwinner who can economically help the deceased family, it is unexceptionable[10].

(b) The Supreme Court held some guidelines in the ***Umesh Kumar Nagpal v State of Haryana and others***[11]

(i) Only a dependent of a worker/ employee who dies in a harness, left his family in poverty, and has no source of income can be chosen on grounds of compensation. In a post of C and D Group of III and IV Class are the stubby posts in manual and non-manual categories and they alone can be offered on compassionate grounds but not for other posts, such as A and B Group categories, which were required and expected for giving for this purpose, though it is legally prohibited.

(ii) Providing a compassionate appointment is the main object of this scheme so that they can enable themselves to tide over the sudden crisis, also relieve their family from financial poverty crises that may arise in the future, and get them to help in an emergency.

(iii) Government servants' families are legally prohibited from offering a compassionate appointment of the financial situation which arose.

(iv) The post offering is not on the basis of status it is on the basis of hard times faced by the family. If the applicant does not find it suitable on the basis of the qualification he had he can simply reject the post

(v) Compassionate appointment is a vested right merely omission of reasonable/ unreasonable

[10] *Auditor General of India & Ors v G Ananta Rajeswara Rao* (1994) 1 SCC 192

[11] *Umesh Kumar Nagpal v the State of Haryana & Ors* JT 1994(3) SC 525

delay cannot be allowed

(vi) The appointment to the individual can be provided on an ad-hoc basis.

(c) In the case of ***Life Insurance Corporation of India v Mrs. Asha Ramchandra Ambekar and Ors,***[12] the Hon'ble Supreme Court issued a decision on February 28, 1995. The High Court and the Administrative tribunal cannot direct the appointment process of the accused, they can only direct such a claim to the competent authority. However, the appointment work does not come under High Court authority. They can only protect the right of appointment of the deceased, which has been infringed. An appointment can only be provided by the authority that has the power of appointment.[13]

(d) in the cases of ***Himachal Road Transport Corporation v Dinesh Kumar*** on May 7, 1996,[14] and ***Hindustan Aeronautics Limited v Smt A. Radhika Thirumalai*** on October 9, 1996[15]. The Supreme Court has ruled that an appointment on compassionate grounds can be made only if a vacancy is available for that purpose. This expends the power of the authorities so that in the case of no vacancy, the appointment cannot be provided and if the vacancy arises, the dependent will be provided weightage in the job.

(e) On July 15, 1996, the Supreme Court held in the case of ***State of Haryana and others v Rani Devi and Ors.***[16] The scheme has widened its scope by providing jobs of all types including ad-hoc and apprentices; such a case will not be justified on constitutional grounds. Every state has its own rules. It's a matter of states to make such an act, amend, and repeal it, so this rule varies from state to state. It is possible that some rights are granted in one state but not in another; this problem is generally viewed as the state's discretionary power to make such an act.

CHALLENGES IN THE CASE OF A MARRIED DAUGHTER

If we go through the definitions of a few states for a person who is considered dependent, we will get the following list:

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[12] *Life Insurance Corporation of India v Mrs Asha Ramchandra Ambekar & Ors* JT 1994(2) SC 183
[13] *Ibid*
[14] *Himachal Road Transport Corporation v Dinesh Kumar* JT 1996 (5) SC 319
[15] *Hindustan Aeronautics Limited v Smt A Radhika Thirumalai* JT 1996 (9) SC 197
[16] *State of Haryana & Ors v Rani Devi & Ors* JT 1996 (6) SC 646

Uttar Pradesh: Section 2[c] (c) "family" includes spouse, son, or daughter, and the unmarried and widowed daughter of the government servant.[17] However, **Telangana and Andhra Pradesh** have the same act, including (a) spouse, (b) son or daughter, or any family member who is dependent and is living with them. In the definition of a government servant's family,[18] If the son is employed and separated from the family and has no earning family member, the remaining family's spouse, son, or daughter may be considered for compassionate appointment.

Delhi includes the government servant's spouse, son (including adopted children), daughter (including adopted children), and brother or sister if unmarried.[19] The reason for mentioning the definition clause is that every state broadly covers the maximum possible dependent but none of them deals with "What if there is no son, daughter, unmarried brother/sister but the servant has a married daughter who comes up with the responsibility of taking care of her mother/father who is now alone?"

The Supreme Court ruled in ***Vineeta Sharma v Rakesh Sharma*** (2020)[20] that the daughters will be the coparceners and have the birthright to the coparcener property. The case of ***Arunachala Gounder (dead) v Ponnuswamy's case*** (2022)[21] makes it more clear that a daughter will be allowed in a property or property which has arisen in joint heritage or partition in the family. Though a daughter has both the right on his father's and ancestor's property even if she is married then why not in the case of a compassionate appointment this should be done?[22]

The High Court of Uttar Pradesh has come up with this question and answered it in many of its judgments, which has lightened this problem. Smt. ***Vimla Srivastava v State Of U.P. And Another*** on 4 December 2015[23], comprising the bench of Dhananjaya Yeshwant Chandrachud, Chief Justice, Yashwant Varma It is one of the landmark judgments pronounced by the High Court which states that marriage is not a close nexus and should not be considered with identity. The identity of a woman cannot be changed merely on the grounds that she is now married. The

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[17] Uttar Pradesh Dying in Harness Rule
[18] Telangana and Andhra Pradesh Dying in Harness Rule
[19] Delhi Dying in Harness Rule
[20] *Vineeta Sharma v Rakesh Sharma* Civil Appeal - Diary No 32601 of 2018
[21] *Arunachala Gounder (dead) v Ponnuswamy* Civil Appeal No 6659 of 2011
[22] *Ibid*
[23] *Vimla Srivastava v State of UP & Anr* WRIT C No 60881 of 2015

court clearly states that it is a state matter to do so, if they are not providing the job to the married daughter which is provided to the married then it confirms the principle of the fundamental provided under Article14 & 15.[24] The court concluded and said that the word unmarried clearly saw that it is violating the fundamental principle. Therefore the department must review the request of the petitioner and revoke the word 'unmarried' from Rule 2(c){iii}. However, the department must review all the facts and circumstances of the petitioner's request and marital status cannot be the sole ground for disqualification.

In the case of ***Manjul Srivastava v State of U.P***. and 2 others on December 15, 2020.[25]Bench: J.J. Munir, The mother of the applicant was an Assistant Teacher in the Basic Education Board and was appointed to the Primary School, Chaka, District Prayagraj. She was serving as the Headmistress of the School, and on November 9, 2016, she passed away from a heart attack. As a permanent employee and the sole breadwinner of the family, her husband, aged about 63 years, and three married daughters, aged 32, 30, and 28, the petitioner and their family have become financially crippled. They were completely dependent on the deceased because their father was unemployed. The plunge caused a sudden economic crisis. The petitioner is unemployed and applied for a compassionate appointment as an Assistant Teacher. She holds the necessary educational and other qualifications required for an Assistant Teacher.[26] The petitioner's claim for a compassionate appointment has been rejected on the sole ground that a married daughter of a slain government servant is not included under the definition of a family of the deceased under this rule. The High Court held that Section 2(c) (iii) is intra vires, explicit discrimination on the ground of sex alone. "The daughter has to be read unqualified by the marital status of the daughter, and it requires no further amendment to the Rules by the Government to make the right of a daughter of a deceased government servant effective under the Rules."

As per the twelfth amendment to the deceased government rule of 2021, the Uttar Pradesh

[24] Constitution of India, art 15
[25] *Manjul Srivastava v the State of UP* WRIT A No 10928 of 2020
[26] *Ibid*

government included the married daughter under the definition of family[27].

CONCLUSION

Death is a universal truth and it is the full stop of human life, but the problem is when this death is uncertain when there is only one person who earns and that only dies, it becomes hard for the dependent to survive for the middle-class family and the lower class especially. Looking only at the government's side of this rule, we must remember that this is not just a favour from the state, but rather the right of the dependent to receive it. At every festival, we have family members to celebrate a father or mother who is earning and fulfilling all our needs and wants.

But just think about that family who has lost an earning member. What is his fault that he cannot fulfill his wants or needs? He doesn't have anyone from whom he can demand anything. This rule can help monetarily but cannot fulfill the wants of a father or mother. More than a right, it is a matter of dignity and respect. As UP amended the definition and inserted a married daughter into the definition of the family, every state shall follow this.

[27] UP government gazette 2021