

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.19722 OF 2021 (GM – RES)

R

BETWEEN:

PRIYANKA R. PATIL
D/O LATE SUBEDAR RAMESH
KHANDAPPA POLICE PATIL
AGED ABOUT 29 YEARS
RESIDING AT NO.23
LAKSHMI NARASIMHA NILAYA
T.K.LAYOUT
MYSURU – 570 026.

... PETITIONER

(BY SRI VIVEK R., ADVOCATE)

AND:

- 1 . KENDRIYA SAINIK BOARD
MINISTRY OF DEFENCE
KENDRIYA SAINIK BOARD
WEST BLOCK – IV, WING – VII
RK PURAM
NEW DELHI – 110 066.
- 2 . STATE OF KARNATAKA
BY DEPARTMENT OF SAINIK WELFARE
AND RESETTLEMENT
NO.58, FD MARSHAL KM CARIAPPA BHAVAN
FD MARSHAL KM KARIYAPPA ROAD

BENGALURU – 560 025.

- 3 . DIRECTOR
DEPARTMENT OF SAINIK WELFARE
AND RESETTLEMENT
NO.58, FD MARSHAL KM CARIYAPPA BHAVAN
FD MARSHAL KM CARIYAPPA ROAD
BENGALURU – 560 025.
- 4 . DEPUTY DIRECTOR
ZILLA SAINIK WELFARE BOARD
DEPARTMENT OF SAINIK WELFARE AND RESETTLEMENT
NEAR DC'S OFFICE, JLB ROAD
MYSURU – 570 005.
5. EXECUTIVE DIRECTOR
KARNATAKA EXAMINATION AUTHORITY (KEA)
SAMPIGE ROAD, 18TH CROSS
MALLESHWARAM
BENGALURU – 560 012.

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI FOR R1;
SRI B.V.KRISHNA, AGA FOR R2;
R-3 SERVED;
SMT.A.H.SUNITHA RAMESH, ADVOCATE FOR R4;
SRI N.K.RAMESH, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT BE PASSED AGAINST THE R-1, 2, 3, TO GRANT AND ISSUE THE IDENTITY CARD AS DEPENDANT OF EX-SERVICEMAN SUB RAMESH KANDAPPA POLICE PATIL AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.12.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

WHAT FALLS FOR CONSIDERATION IS, THE TENABILITY OF A POLICY IN THE FORM OF A GUIDELINE, THAT THWARTS GENDER EQUALITY.

2. Succinctly stated, the facts germane for consideration of the *lis* are as follows:

The petitioner is the second daughter of one Subedar Ramesh Khandappa Police Patil. Khandappa Police Patil joins the services of the Indian Army on 25.06.1979 and was inducted into the Madras Engineering Group. In the year 2001, the father of the petitioner was deployed in an operation named Parakram at Gaziwala, Punjab, while performing his assigned task of mine clearance and handling with the Madras Engineering Group, one H.P.O. – 2 Mine gets exploded. The father of the petitioner sustained grave injuries due to the blast and later succumbed to the injuries, by then he had put in 22 years of service. Later, the father of the petitioner was categorized as a servicemen "**killed in action**" and was therefore, considered as "WARD OF BATTLE CASUALTY". Father of the

petitioner was survived by the mother of the petitioner, the first daughter and petitioner, the second. At the time of death of the father of the petitioner in the year 2001, the petitioner was 10 years old and was studying in the 4th standard. The petitioner completes her graduation in the year 2015 and became eligible to be considered for appointment in the State Government in any recruitment process that would ensue.

3. On 22.02.2019 the Directorate of Department of Sainik Welfare and Resettlement, Government of Karnataka issues a compendium of all welfare schemes pertaining to veterans, widows and disabled soldiers and their wards. As per several such welfare schemes, their wards were entitled to 10% of reservation in any recruitment process in all the departments of the Government. A notification comes to be issued by the Government of Karnataka on 26.08.2021 seeking to fill up the vacant posts of Assistant Professors in the Government First Grade colleges across the State. The recruitment notification is issued in terms of the Rules namely, the Karnataka Education Department Services (Collegiate Education Department) (Recruitment of Assistant Professor) (Special) Rules,

2020. The notification did provide for reservation to the ex-servicemen or the ward of the ex-servicemen.

4. The petitioner intending to apply for the post of Assistant Professor, as she was the ward of an ex-serviceman and finding herself eligible in all other criteria, approaches the 4th respondent/The Deputy Director of Zilla Sainik Welfare Board for issuance of a dependant identity card to demonstrate that the petitioner is the ward of an ex-serviceman. The 4th respondent declines to issue an identity card to the petitioner quoting guidelines for issuance of dependant identity cards which depicts that identity cards cannot be issued to married daughters. Therefore, loses hope of an opportunity of participation in the selection process and immediately knocks at the doors of this Court, calling in question the offending guideline and a consequential mandamus to consider her case under the ex-servicemen quota. This Court, entertaining the petition, directed the application of the petitioner to be processed in terms of its order dated 08.11.2022.

5. Heard Sri.Vivek.R., learned counsel appearing for petitioner, Sri.H.Shanthi Bhusan, learned Deputy Solicitor General of India appearing for respondent No.1, Sri.B.V.Krishna, learned Additional Government Advocate appearing for respondent No.2, Smt.A.H.Sunitha Ramesh, learned counsel appearing for respondent No.4 and Sri.N.K.Ramesh, learned counsel appearing for respondent No.5.

6. The learned counsel appearing for the petitioner would contend with vehemence that the guideline permits issuance of a card both to the daughter or a son of an ex-servicemen, the rider is, that it is issued only till the daughter gets married. This the learned counsel would submit is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. It is, therefore, the said guideline is called in question. He would submit that the petitioner, but for the fact that she is married, would have been entitled to issuance of a card which would depict her to be the ward of an ex-serviceman and entitle consideration of her case on her own merit.

7. On the other hand, the learned Deputy Solicitor General of India Sri.H.Shanthi Bhushan, refuting the submissions would contend that the moment the daughter gets married, she loses the status of being dependant of the ex-servicemen. The guidelines bring about a cap of 25 years of age, both to the daughter and the son, beyond 25 years, no person is given the card for any benefits or even participation in any recruitment process. He would contend that there is no discrimination between sons or daughters once they reach the age of 25, therefore, would seek to sustain the action of the 4th respondent, in declining to issue a card in favour of the petitioner. He would further submit that the family is the beneficiary of ex-gratia of Rs.2 lakhs, free site as the ex-service man was martyred, daughters grant of Rs.40,000/- each and allotment of a petrol bunk at Mysore. With all these benefits, the learned DSGI would submit that it is not correct on the part of the petitioner to claim that she should be entitled to consideration of recruitment as well, under the quota. He would seek dismissal of the petition.

8. Learned Additional Government Advocate Sri.B.V.Krishna appearing for 2nd respondent and the learned counsel appearing for 4th respondent would toe the lines of the learned DSGI.

9. I have given my anxious consideration to the submissions made by the learned counsel appearing for the respective parties and have perused the material on record. In furtherance whereof, what falls for consideration is,

"Whether the guidelines which portray gender inequality is tenable in law?"

10. To consider the said issue, it is necessary to notice the skeletal facts.

FACTUAL EXPOSE':

10.1. The petitioner is the daughter of one late Subedar Ramesh Khandappa Police Patil (hereinafter referred to as "the soldier" for short). The soldier joins the Indian Army on 25.06.1979 and succumbs to an explosion of a land mine on 31.12.2001 after rendering about 22 years of service. Since he died while performing his assigned task due to a explosion of

H.P.O-2 mine, he was categorized as a soldier "***killed in action***" and was to be considered as a "***WARD OF BATTLE CASUALTY***". The petitioner is the second daughter of the said ward who was killed in battle casualty. The ex-serviceman had thus only two children, both of whom are daughters.

10.2. The Government of Karnataka through the 3rd respondent has notified several welfare schemes pertaining to veterans, widows and disabled soldiers and their wards. In the said scheme 10% reservation for ex-servicemen in any recruitment of the State Government for employment for groups A, B, C and D and relaxation of age is one of the benefit that is conferred, apart from various benefits. The Government of Karnataka again through the 3rd respondent has notified a citizen's charter insofar as they concern the community of ex-servicemen for providing prompt, efficient and timely service to the ex-servicemen and their dependants. The mission of the charter reads as follows:

"....

2. Mission

(a) *The Department always assures the best service delivery system to the ex-servicemen/dependents of ex-*

servicemen with commitment and dedication. In extending the service, this departments has to follow as per the policy / instructions / guidelines of Central Government also due to its equal share. Changes in the policy matter from time to time will also be taken into consideration while execution of the procedural aqtivities.

(b) The ex-servicemen/dependents of ex-servicemen have every right to demand the services of the standards prescribed and commitments made in the Charter. The CITIZENS CHARTER deals with the following major services with largest public inter face.

(c) To give top priority will be given in extending resettlement benefits from the State Government in respect of the Next of Kin of Battle Casualty cases."

(Emphasis is mine)

The depiction in the charter is that the ex-servicemen/dependants of ex-servicemen have every right to demand the services of the standard prescribed and commitments made in the chapter. Top priority is to be given in extending the benefits in respect of the next of kin of battle casualty cases. The aforesaid are the benefits available and the mission is importance of delivery of such benefits.

10.3. The Government of Karnataka issues a notification for appointment to the post of Assistant Professors under the afore-quoted Rules. The notification reserves 10% of the vacancies for ex-servicemen. Under the quota of ex-servicemen, either the ex-

servicemen themselves can claim the quota or in their absence, the wards of ex-servicemen would become eligible to apply. The notification was issued by the State Government and the task of recruitment was entrusted to the Karnataka Examinations Authority. To register an application under the ex-servicemen quota, the petitioner or any applicant for that matter, will have to demonstrate that that applicant is himself or herself an ex-serviceman or ward of such ex-serviceman and for such demonstration particularly in cases of the ward claiming ex-servicemen quota, would require a dependant identity card (hereinafter referred to as "I-card" for short). Due to this requirement, the petitioner knocks at the doors of the 4th respondent for issuance of an I-card. The 4th respondent appears to have declined the request to issue the card owing to the embargo under the guidelines for issuance of the said card to the petitioner as she was a married daughter. It is therefore the petitioner failed to demonstrate that she was the ward of an ex-serviceman to claim the benefit of being one. The impugned guidelines forms the grievance of the petitioner. It is, therefore, germane to notice the guidelines that are relevant for a

consideration of the issue in the *lis* and the reason behind the grievance of the petitioner. The guidelines, relevant read as follows:

"....

Eligibility for Dependent Identity Cards

3. *It is to be clearly understood that the definition of dependents which is in vogue while being in service will continue to govern the criteria to establish the eligibility of dependents of ESM. The onus to verify and authenticate the details of dependents will lie on the Zila Sainik Board where the ESM is registered based on the entry in their discharge book. Following will be eligible for issue of Dependent I-card.*

(a) Spouse and dependant children of ESM.

(b) War Widows/Dependent parents of defence personnel killed in war/action. Widows of ESM and their dependent children including step and legally adopted children.

(c) Dependent parents whose monthly income from all sources does not exceed Rs. 9000/- plus the amount of dearness relief on basic pension of Rs. 9000/- as on the date of consideration (GOL MOH and Family Welfare letter 11012/1/2/2016-CGHS-P dated 08 Nov 2016).

Procedure for Issue of Dependents Identity Card

4. *The following guidelines are to be adhered to by the Deptt of Sainik welfare/Zila Sainik Welfare while issuing the Dependents Identity Cards:-*

*(a) Identity cards to be issued to all dependents of ESM as brought out at para 3 above. The format of I card is placed at **Appendix 'A'***

(b) The card is to be issued (first time) on payment of Rs. 100/- per card. The money is to be taken on charge and

accounted for. The Amount realized towards making of Dependent Card should be forwarded to Kendriya Sainik Board in the form of a Demand Draft drawn in favour of "**ARMED FORCES FLAG DAY FUND**".

(c) Separate application for issue of Identity cards is to be submitted by ESM for each dependent. The format is placed at **Appendix 'B'**.

(d) The dependent card is to be linked to ESM I card to ensure only eligible dependents are issued with the dependent card.

(e) The dependent card is to be issued only to the dependents mentioned in the discharge book of ESM.

(f) The following documents are to be produced by an ESM for issue of dependents card:-

- (i) Application with photograph pasted, for issue of dependent card.
- (ii) Registration form.
- (iii) Copy of Discharge book
- (iv) Copy of PPO
- (v) NoC form previous ZSB, if applicable.
- (vi) Copy of Birth Certificate.
- (vii) Copy of Aadhar card

Validity of Dependent identity Card

5. (a) In case of War/Pensioner's Widow the Identity Card will be of permanent nature and remain valid till she gets remarried, to be renewed every five (05) years.

(b) The identity card in respect of spouse of ESM will also of permanent nature and would necessitate change only on change of status (if divorced etc), to be renewed every five years.

(c) Dependent identity card to the children of ESM will be issued initially for a period of five years and

will be renewed thereafter for another five years subject to the following:-

(i) Sons - Attaining the age of 25 years or on ceasing to be dependent whichever is earlier or unemployed due to disabled life time.

(ii) Daughters - Till married or unemployed due to disability life time.

(iii) Permanently Disabled children - Valid for life time.

(d) Renewed Identity Card to be treated as first issue and charged Rs.100/- only."

(Emphasis applied)

In terms of the afore-quoted guidelines, the criteria for issuance of I-card for dependants of ex-servicemen, is that they should be the dependants of parents of defence personnel killed in war/action which would include the widows and the dependant children including step and legally adopted children. Therefore, every child and the widow is entitled to the benefit of grant of an I-card. The rider is that the monthly income of all those dependants from all sources should not exceed Rs.9,000/-. The validity of the dependant card is for a period of 5 years and will remain in force till the widow gets remarried. Sub-clause (c) of clause (5) of the

guidelines depict issuance of I-card to the children of the ex-servicemen. It would be issued initially for a period of 5 years and renewed thereafter for a period of 5 years. It is here the sons and the daughters of ex-servicemen are divided.

10.4. The sons are issued the I-card subject to them not attaining the age of 25 years or on ceasing to be dependant whichever is earlier or remains unemployed due to lifetime disability. These are not the conditions for the daughter. Whatever is applicable to the son is applicable to the daughter as well, but till she gets married or is unemployed due to lifetime disability. What can be gathered from the aforesaid clauses of the guideline is, the son the moment he attains the age of 25 years or on ceasing to become a dependant as defined under the guideline, he would lose the benefit of getting an I-card. To the daughter, it is till she gets married. So, if the daughter is wanting to get the benefit of grant of an I-card, she has to remain unmarried or be unemployed due to lifetime disability. Marriage of the daughter takes away the benefit. The guidelines would thus depict gender bias *qua* the status of the daughter "married and unmarried". Whether this would stand the

test of tenets of Article 14 of the Constitution of India is what is necessary to be considered.

11. Before embarking upon the said consideration, I deem it appropriate to notice the legal exposition on identical Rules/Policy/Guidelines.

LEGAL EXPOSITION:

I. POSITION IN LAW:

11. Article 14 of the Constitution of India prohibits the State from denying any person equality before the law or equal protection of the laws. Article 16 is of application as a general Rule of equality as laid down in Article 14, with special reference to opportunity for appointment and employment under the State. Article 15(1) prohibits discrimination on the ground of religion, race, caste, sex or place of birth. It is an extension of Article 14, which expresses application of principle of equality. Therefore, no citizen shall be discriminated on the grounds of religion, race, caste, sex or place of birth. Article 16 takes its root from Article 14 and ensures equality of opportunity in the matters of employment under the

State. Therefore, the fundamental right to equality means that persons in like situations, under like circumstances, should be treated alike.

11.1. Article 14 of the Constitution of India ensures equality and its main object is to protect persons similarly placed against discriminatory treatment. The equality before law guaranteed under Articles 14, 15 and 16 of the Constitution of India is a constitutional admonition against both the legislative and executive organs of the State. Therefore, neither the legislature nor the Rule making Authority can make a law or a Rule, issue any guidelines/circulars/administrative instructions, which would be in violation article 14 and 15 of the Constitution of India.

II. JUDICIAL INTERPRETATION:

(i) C.B. Muthamma v. Union of India reported in **(1979) 4 SCC 260**

"6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thraldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of

India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules."

(Emphasis supplied)

The Apex Court was considering the challenge to an act of the respondent/Union of India denying promotion to the appellant therein to Grade-I of the Indian Foreign Service on the ground that she was married. The Apex Court strikes down the said action.

(ii) *Ranjana Murlidhar Anerao v. State of Maharashtra*
reported in **(2014) 5 Mah LJ 543**

The question that arose before the learned Division Bench of Bombay High Court is as follows:

"The question that arises for determination in this Writ Petition filed under Article 226 of the Constitution of India is whether the exclusion of a married daughter from the expression "family" for being entitled to be considered for grant of retail kerosene license under Government Resolution dated 20th February, 2004 can be said to be legal and valid."

In answer to the aforesaid question, the learned Division Bench held as follows:

"13. From the aforesaid discussion, we have no hesitation in coming to the conclusion that the Government Resolution dated 20-2-2004 to the extent it excludes a married daughter from being considered as a member of the "family" a deceased retail license holder is violative of the provisions of the Articles 14, 15 and 19(1)(g) of the Constitution of India. The Hon'ble Minister, Food and Civil Supplies and Consumer Protection while passing the impugned order dated 17-6-2009 has taken into consideration the position as obtained from Government Resolution dated 20-2-2004. Hence the claim of the petitioner for being treated as a legal representative of deceased Godavaribai J. Jadhav has not been considered as the petitioner was considered to be a married daughter. In view of our aforesaid findings, the revision application under clause-16 of the Licensing Order, 1979 will have to be remitted back for fresh decision in the light of our aforesaid findings. Hence, we pass the following order:

(a) The Government Resolutions/Circulars dated 22-12-1997, 16-8-2001, 10-12-2003 and 20-2-2004 to the extent

they exclude a married daughter from being considered as a member of the "family" of a deceased retail license holder are held to be violative of the provisions of Articles 14, 15 and 19(1)(g) of the Constitution of India;

(b) The respondent No. 1-State of Maharashtra is directed to issue appropriate Government Resolution in the light of the conclusion recorded in paragraph-13 of this judgment;

(c) The impugned order dated 17-6-2009 is quashed and set aside and the revision application No. 450 under Clause 16 of the Licensing Order of 1979 is remitted to the State Government for fresh decision in accordance with law. It is clarified that this Court has not gone into the merits of the findings recorded in the order dated 17-6-2009 and the said revision application shall be decided afresh in accordance with law;

(d) The petitioner and respondent No. 4(a) are directed to appear before the Ministry of Food, Civil Supplies and Consumer Protection on 16-9-2014. The revision application shall be decided within a period of three months from the date of appearance of the parties before the said authority;

(Emphasis supplied)

(iii) Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni) v. The Superintending Engineer, Pune Irrigation Project Circle and Another reported in **2013 SCC online BOM 1549 (DB)**. The issue before the Division Bench is as follows:

"2. The petitioner claims that her name has been deleted only because she is married. A married daughter could not have laid a claim for compassionate employment, because in the perception of the respondent nos. 1 and 2, she is no longer a part of the family of the deceased. It is this stand, which is questioned before us, in this writ petition. Mr. Kulkarni, appearing on behalf of the petitioner submitted that the facts in this case are peculiar. The deceased only had daughters.

Both daughters are married. The second daughter is not interested in the job. The petitioner is interested in the job because she is supporting her widowed mother. The mother has nobody to look forward to except the petitioner - daughter. The petitioner has asserted that even after her marriage she is looking after her mother in her old age. In such circumstances, the deletion of her name from the list is violative of the constitutional mandate of Article 14 and 16 of the Constitution of India.

3. It is on this point that we have heard the Counsel and after perusing the writ petition and all the annexures thereto, so also the affidavit placed on record, we are of the opinion that the petitioner's name could not have been deleted from the list. The compassionate employment is to enable the family to get or tide over a financial crisis. As the petitioner is the only member who can earn and support the mother in her old age, so also the emoluments including the pension of the deceased are inadequate that she was interested in pursuing her claim. The name of the petitioner was therefore duly reflected in a list initially and thereafter a recruitment or appointment exercise was undertaken. The petitioner therefore was wait listed at Serial No. 10. Thus, initially her number was 1070 and which advanced to Serial No. 10. We find that the respondents insisted on the petitioner submitting a certificate that she is unmarried, that is by a communication dated 21st May, 2011. The petitioner pointed out that such an insistence is impermissible in law. A letter dated 27th February, 2009 was issued communicating to her that her name has been deleted from the wait list owing to her marriage. If the petitioner's name is to be deleted from the list because of her marriage then insistence on production of a certificate about her marital status in the year 2011 was clearly an exercise visited by non-application of mind. The deletion by letter dated 27th February, 2009 itself is violative of constitutional mandate. We cannot expect a Welfare State to take a stand that a married daughter is in-eligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. In this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody

else to look to for support, financially and otherwise in her old age. **In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis.** If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is dis-entitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged to bear in mind the constitutional mandate and also directive principles of the State Policy. The point raised in this case is covered by the Judgment of a Division Bench in Writ Petition No. 1284 of 2011 decided on 1.8.2011 and a Judgment of a learned Single Judge in W.P. No. 6056 of 2010 decided on 26th October, 2010, all of this Court.

4. In such circumstances, the communication dated 27th February, 2009, copy of which is annexed at page 30 of the paper book cannot be sustained. The writ petition is allowed. This communication is quashed and set aside and equally the further communications in pursuance thereof. The petitioner's name shall stand restored to the wait list maintained by respondent nos. 1 and 2 for appointment on compassionate basis. However, we clarify that we have not issued any direction to appoint the petitioner. Let her case be considered in terms of the applicable policy of Compassionate Appointment or Employment together with others. Her name should not be deleted or omitted only because she is married and that is why

we have restored her name in the wait list. Beyond that we have not issued any direction."

(Emphasis supplied)

(iv) In ***Union of India v. V.R. Tripathi*** reported in **(2019) 14 SCC 646**, what fell for consideration is:

"13. The policy of compassionate appointment is premised on the death of an employee while in harness. The death of an employee is liable to render the family in a position of financial hardship and need. Compassionate appointment is intended to alleviate the hardship that the family of a deceased employee may face upon premature death while in service. Compassionate appointment, in other words, is not founded merely on parentage or descent, for public employment must be consistent with equality of opportunity which Article 16 of the Constitution guarantees. Hence, before a claim for compassionate appointment is asserted by the family of a deceased employee or is granted by the State, the employer must have rules or a scheme which envisage such appointment. It is in that sense that it is a trite principle of law that there is no right to compassionate appointment. Even where there is a scheme of compassionate appointment, an application for engagement can only be considered in accordance with and subject to fulfilling the conditions of the rules or the scheme. The submission which has been urged on behalf of the Union of India by the learned Additional Solicitor General is premised on the basis that there is no right to compassionate appointment. There can be no doubt about the principle that there is no right as such to compassionate appointment but only an entitlement, where a scheme or rules envisaging it exist, to be considered in accordance with the provisions.

20. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1)

treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High Court in M. Muthuraj v. State [M. Muthuraj v. State, 2016 SCC OnLine Mad 2387 : (2016) 5 CTC 50] adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in Namita Goldar [Namita Goldar v. Union of India, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] in Union of India v. M. Karumbayee [Union of India v. M. Karumbayee, 2017 SCC OnLine Mad 13030] . A special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18-9-2017 [Union of India v. M. Karumbayee, 2017 SCC OnLine SC 1797] .

(Emphasis supplied)

The Constitutional Courts, in the aforesaid judgments, were considering the cases where discrimination was meted out on the ground that one is a married daughter, for grant of compassionate appointment, kerosene licence and other benefits for being the kith and the kin of a deceased Government servant and have held that a Rule that would result in discrimination on the basis of gender would be violative of Article 14 of the Constitution of India.

12. The issue in the case at hand does not concern a statute, but a guideline in the form of a policy; a policy in the form of a guideline, it is therefore, on a lower pedestal than that of a statute. If statutes are held to be violative of the tenets of Article 14 of the Constitution of India by the Constitutional Courts for the reason that it depicts discrimination resulting in gender bias, a guideline in the form of policy would pale into insignificance, if it portrays such discrimination, even to its remotest sense.

13. The submission of the learned DSGI that there is a cap, up to 25 years of age, where the son and the daughter become equal, as beyond 25 years, subject to dependency, they would not be given the I-card and therefore, the guideline does not offend Article 14 of the Constitution of India, deserves to be rejected, as it is fundamentally flawed. The son, whether married or unmarried, up to the age of 25, gets the benefit of grant of an I-card, *inter alia* and grant of an I-card gets the benefit of consideration for recruitment under the ex-servicemen quota being the ward of ex-serviceman. The daughter gets the same benefit up to the age of 25 years, provided she does not get married. The son gets the

benefit whether he is married or unmarried; the daughter gets the benefit only if she remains unmarried. Here lies the discriminatory choke, as the guideline portrays bias on the basis of gender; inequality on the basis of gender, as marriage of the daughter takes away her right to get an I-card and marriage of a son does not take away his right to get an I-card.

14. To iterate, the guideline after the age of 25 years to both son and daughter is uniform. Therefore, up to the age of 25 years, is what is analysed hereinabove. The daughter being less than 25 years, gets married, loses the benefit of being a ward of an ex-serviceman for the purposes of issuance of an I-card. Therefore, she has to remain unmarried, if she has to get the benefit of issuance of an I-card in her favour, which by itself would generate certain benefits to the wards of the ex-servicemen. In the considered view of this Court, **if the son remains a son, married or unmarried; a daughter shall remain a daughter, married or unmarried. If the act of marriage does not change the status of the son; the act of marriage cannot and shall not change the status of a daughter.**

15. In the case at hand, the ex-serviceman did not have any sons, he had two daughters. The first daughter has secured employment elsewhere on her own, second daughter is the petitioner. She gets married before 25, thus, she has lost the opportunity of securing an I-card and her consideration for appointment in a recruitment by the State Government under the ex-servicemen quota. Therefore, the very object with which the welfare schemes are created for the benefit of the kith and kin of a deceased ex-servicemen is taken away, because the petitioner is the daughter and the daughter is married. If the ex-servicemen had sons, marriage would not have made any difference. It is for this reason, the guideline falls foul of the tenets of Article 14 of the Constitution of India. The guideline is a depiction of gender stereotypes which were existent decades ago, and if permitted to remain would be an anachronistic obstacle in the march towards women's equality.

16. The afore-analyzed *factual expose* and the *legal exposition* would lead to an unmistakable conclusion that the guideline portrays discrimination on the basis of gender and cannot

be permitted to remain as a guideline. Therefore, the guidelines will fly on the face of the tenets of Articles 14, 15 and 16 of the Constitution of India. If any Rule/Policy/Guideline, which would be in violation of the Rule of equality, such Rule/Policy/Guideline cannot but be obliterated, as being unconstitutional. The issue in the *lis* is not the Rule, it is a Policy or a Guideline for grant of I-card to the dependants of the ex-servicemen and is therefore necessarily to be annihilated.

17. A parting observation in the facts and circumstances of the case may not be inapt. The guideline/the quota/the policy are nomenclatured as "**Guidelines for issuance of I-cards to dependants of ex-servicemen**". A perusal at the relevant guidelines would indicate that its recitals refer to the beneficiaries of guidelines to be persons who have served the Forces or their kith and kin. It is the nomenclature of the guidelines that seeks to portray discrimination. The word used in the nomenclature is ex-servicemen. The word "**men**" in the title portrays such discrimination as it seeks to demonstrate that the Forces are still a bastion of the male, while it is not. The word 'Ex-servicemen' is

referred to the defence personnel, be it from the Army, Navy or Air force who have retired or relieved or discharged except on account of a misconduct. A person after having rendered service and retires either from a combatant or non-combatant Force are considered as ex-servicemen.

18. There was a time when women had no combatant role in any Force. There is a paradigm shift from the past. Women have reached combatant services in supervisory roles as officers and on other responsibilities, be it in the Indian Army; in the Indian Air Force and in the Indian Navy. This is in the public domain. Therefore, women have a role to play in the Forces, be it the Army, the Navy or the Air force. These are not the times where women have no role to play at all. Therefore, the word '**men**' in the title, a part of word **ex-servicemen**, would seek to demonstrate a misogynous posture of an age old masculine culture. Therefore, the title wherever reads as ex-servicemen in the annals of policy making of the Government, be it the Union or the State concerned, should be made "**Gender neutral**". There has to be a change in the mindset of the rule making authority or the policy makers, it is

only then there could be recognition of commitment of the values of the Constitution, as equality should not remain a mere idle incantation, but has to be a vibrant living reality. It must be remembered that extension of women's right is the basic principle of all social progress.

19. Since it is in the realm of rule making or a policy making which is the domain of the Union Government or the State Government as the case would be, it is for the Union Government or the State Government to address this imperative need of change of nomenclature wherever it depicts to be '**ex-servicemen**' to that of '**ex-service personnel**' which would be in tune with ever evolving, dynamic tenets, of Article 14 of the Constitution of India.

20. For the *prefaetus* reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) I hold that exclusion of married daughter for grant of an I-card in terms of guideline 5(c) of the guidelines

for issuance of I-cards to dependants of ex-servicemen to be violative of Articles 14 and 15 of the Constitution of India and accordingly, I strike down and annihilate the words "till married" in the aforesaid guideline.

- (iii) Ex-consequenti, I direct respondents 3 and 4 issuance of an I-card to the petitioner, if all other parameters are satisfactory, within two weeks from the date of receipt of the copy of this order.

- (iv) The 5th respondent/Karnataka Examination Authority shall consider the case of the petitioner under the ex-servicemen quota for the post of Assistant Professor in terms of the notification issued on 26.08.2021. Till such time, a post in the cadre of Assistant Professor in terms of the vacancies notified on 26.08.2021 shall be kept reserved for the petitioner.

**Sd/-
JUDGE**

bkp
CT:MJ