

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 1214 of 2021 (S/S)

Namrata Sharma

.....Petitioner

Versus

The Director General of Department of Medical Health and
others

.....Respondents

Present:

Mr. B.D. Upadhyaya, the learned Senior Advocate assisted by
Mr. Sharang Dhulia and Mr. Devang Dobhal, the learned counsel
for the petitioner.

Mr. C.S. Rawat, the learned Chief Standing Counsel and Mr.
Gajendra Tripathi, the learned Brief Holder for the respondents.

Judgment reserved on: 22.07.2022

Judgement delivered on: 17.10.2022

**Coram: Sri Sanjaya Kumar Mishra, J.
Sri Manoj Kumar Tiwari, J.
Sri Ramesh Chandra Khulbe, J.**

Per: Sri S.K.Mishra, J.

The matter has been referred to the Larger Bench
for determining the following questions: -

(i) Whether in those case, where the death has taken place much prior in time i.e. beyond period provided under Rules, and the claim is raised beyond the period prescribed within the Rule 5 of the Rule of 1974, by a married lady, who has not been brought within the definition of a family, as a consequence of the judgment of the Full Bench in Special Appeal No. 187 of 2017, could still be considered irrespective of the provisions contained under Rule 5 of the Rules of 1974?

(ii) Whether the implications of the judgment of the Full Bench, whereon the basis of the principles of gender discrimination, the married daughter was brought within the definition of the family for the purposes of consideration of the claim of

compassionate appointment under the Rules of 1974. Whether the implications of the judgment could be made applicable retrospectively in relation to even those cases, where death has chanced, much prior to the period prescribed under Rule 5 of the Rules of 1974, and the judgment would have procedural retrospective applicability?

2. The facts of the case may be stated succinctly as follows: -

The petitioner Smt. Namrata Sharma claim for rehabilitational assistance by filing writ petition no. 1214 of 2021 (S/S) and prayed for issuance of writ of mandamus commanding the respondents to provide job to her by resorting to Dying in Harness Rules, 1974, on compassionate ground by virtue of judgment passed by the Full Bench in SPA No. 187 of 2017 holding that exclusion of the term 'married daughter' from Rule 2(c) of the 1974 Rules is violative of Article 14, 15 and 16 of the Constitution of India. Such judgment was passed on 25.03.2019. It is also not disputed at this stage that it came out during course of arguments that this petitioner has earlier approached this Court before passing of the judgment of Full Bench. Reference of the order dated 26.03.2014 in WPSB No. 391 of 2013 has been deliberately suppressed by the petitioner. However, there is reference of the order of disposal of representation in the light of the Full Bench judgment in WPSS No. 891 of 2021 on 16.04.2019.

3. In SPA No. 187 of 2017, the Full Bench of this Court considered whether the definition of family excluding

married daughter, though dependant, on the government servant dying in harness should be included in the definition of family and whether Section 2(c) not including the married daughter is violative of the Article 14, 15, 16 in part III of the Constitution of India. After due deliberation and an exhaustive judgement the Full Bench of this Court held that Section 2(c) not including married daughter in family is violative of Article 14, 15 and 16 of the Constitution of India. The exact conclusion arrived at by the Full Bench of this Court in the order dated 25.03.2019 is as follows:

"(v) Conclusion:

66. We answer the reference holding that:-

i. Question No. 1 should be answered in the affirmative. It is only a dependant member of the family, of the Government servant who died in harness, who is entitled to be considered for appointment, on compassionate grounds, both under the 1974 Rules and the 1975 Regulation.

ii. Question No. 2 should also be answered in the affirmative. Non-inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.

iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a

“married daughter” shall also be held to fall within the inclusive definition of the “family” of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations.”

4. The question now arises whether such declaration of law shall be prospective in operation or retrospective in operation. In this connection, we take into consideration the following rulings of the Hon'ble Supreme Court.-

In the case of *M.A. Murthy vs. State of Karnataka and others, (2003) 7 SCC 517*, the Hon'ble Supreme Court while deciding the effect of overruling a previous law or declaring any law to be retrospective in effect, the Supreme Court held that the decision of this Court enunciating a principle of law is applicable to all cases irrespective of stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law. Prospective overruling is a part of the principle of constitutional cannon of interpretation and can be resorted to by this Court while superseding the law declared by its earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings and to avoid uncertainty and avoidable litigation. In other words, the Supreme Court further held that actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. The Supreme Court further held that it is for it to indicate whether the decision in question

will operate prospective. In other words there shall be no prospective overruling, unless it is so indicated in the particular judgment. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law providing assurance to the individual as to the consequences of transactions forming part of the daily affairs.

5. In the case of *P.V. George and others vs. State of Kerala and others*, (2007) 3 SCC 557, the Supreme Court was considering the prospective and retrospective effect of law declared by it. The Supreme Court, thereafter examining the law holding the field the Supreme Court held that law declared by the Court will have retrospective effect if not otherwise stated to be so, specifically the Full Bench have not said so. Subsequent, the Division Bench did not have jurisdiction in that behalf. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term.

6. The latest view of the Hon'ble Supreme Court appears in Special Leave Petition (C) No. 11039 of 2022, decided on 27.06.2022, in the case of *Manoj Parihar & others vs. State of Jammu and Kashmir & others*. In the aforesaid case, the Supreme Court held that when the Supreme Court declares a law the same will have

retrospective effect .Taking note of the case of *P.V. George (supra)* the Court further reiterated the law declared by the Court will have retrospective effect if not otherwise stated to be so specifically.

7. Thus, in answering the questions, set forth by the learned Single Judge, this Court is of the opinion that since there is no mention in the conclusion given by the Full Bench of this Court that such law declared by this Court will be applicable only prospectively not retrospectively it has to be taken a declaration of law applicable to all cases retrospectively. However, in this case we take note of the fact that the petitioner has already approached this Court twice. Once, before the pronouncement of the Full Bench judgment in WPSB No. 391 of 2013, Which has already been decided against her. Thus, the judgment declaring the law of the Full Bench will not reopen settled cases. It can be applied to only case which are pending before this Court or which will be filed in the future date. By virtue of the judgment passed by the Full Bench of this Court referred to above, a right which has already been denied and the court has not interfered with the same, then the same cannot be re-agitated in view of the fact that the law has been restated by the Full Bench in the later judgment.

8. As far as applicability of time limit provided in Rule 5, Sub-rule (1) clause (iii) of Rules 1974 that the application for employment is within five years from the death of the Government servant, we are of the opinion that such five years shall be counted in the case of a

married daughter, who has applied for rehabilitation assistance under the Dying in Harness Rules 1974, as applicable to the State of Uttarakhand after amendments in the Rules 2004, 2010 and 2017, shall be calculated from the date of judgment of Full Bench. We take this view because of the fact that before the judgment pronounced by the Full Bench of this Court on 25.03.2019 in SPA No. 187 of 2017, a married daughter had no opportunity of filing an application for rehabilitation assistance. Hence, the matter is answered in the following terms: -

(i) The judgment passed by the Full Bench of this Court will have a retrospective effect in the sense that it may be applicable to any case where death took place after passing of the Rule but before judgment is pronounced.

(ii) The time period will be calculated from the date of such judgment as far as dependent married daughter of an employee dying in harness applies. In other words, if any person whose father has died prior to the judgment, she can make an application for rehabilitation assistance within five years from the date of passing of the judgment in SPA No. 187 of 2017.

9. It is seen that though on two occasions prior to filing of the present writ petition, the petitioner has approached this Court. There is no averment in paragraph 1 of the writ petition about the earlier writ petitions and the results thereof. This is a serious mistake, perhaps an attempt to mislead the Court. Hence, it is reiterated that

in every writ petition, in paragraph 1 the petitioner should state whether she or he has approached this Court on earlier occasion and if so, the number of case, the date of filing and date of disposal with a clear mention of the order passed by this Court should be given. In case earlier cases are pending it should be reflected the case is still pending before this Court.

10. Thus, questions are answered accordingly.

11. Matter be listed before the assigned Bench.

(Sanjaya Kumar Mishra, J)

(Manoj Kumar Tiwari, J.)

(Ramesh Chandra Khulbe, J.)

