

**(2011) 02 CAL CK 0067**

**Calcutta High Court**

**Case No:** C.A.N. No. 10493 of 2011 in M.A.T. No. 1558 of 2010

Chitra Mali (Mondal)

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Feb. 10, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 15, 15(3)
- West Bengal Primary School Teachers Recruitment Rules, 2001 - Rule 14, 14(1)

**Citation:** (2011) 4 CHN 84

**Hon'ble Judges:** Prabhat Kumar Dey, J; Amit Talukdar, J

**Bench:** Division Bench

**Advocate:** Susanta Paul and Amar Kumar Sinha, for the Appellant; Sumita Sen, for the Respondent

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### **Judgement**

Amit Talukdar, J.

Even if we branch out from the magnificent splendour of Article 15(3) of the Constitution of India and look beyond the shadows of Gender Justice, we would be of the view the situation would remain as mellifluous as before.

2. Matrimony, which otherwise, is a bliss and contentment for a person, worked out to be much to her impairment in course of the sequence of events that we will be required to track in this appeal.

3. Once upon a time in the remote village of Kundira in the district of Birbhum there lived Shri Shyama Prasad Mali, who graduated from an Assistant Teacher of Muradgunj Primary School as its Headmaster when death claimed him.

4. His spouse (Krishna Mali) and their only offspring, the appellant Chitra Mali nee Mondal, not only left to mourn the loss but to fend for themselves in his absence, which cast a hollowness in their life, both in the literal sense of the term as well as in the mental form.

5. Late Headmaster, Shri Shyama Prasad Mali met with his end on 22.12.2004 while still he had some more tenure left. The situation in which the family (consisting of the appellant as well as her mother Krishna Mali) were pitch forked into, saw the appellant praying for absorption in the place of her later father in the compassionate category on 29.08.2005. Be it noted that the composition of the family was certified by the Panchayat (Annexure P-3) and the candidature in favour of the appellant was abandoned by her mother (Annexure-P4).

6. While, perhaps, the family was in a process of tiding over their sorrow while coping with their distress, they were further pushed into the misery of being told that the candidature of appellant cannot be considered as the same has to be made within a period of two years from the date of death of the breadwinner and the compassionate appointee must have covered 18 years and had a Madhyamik degree. A communique (Annexure-P5) from Respondent No. 5, Chairman of the District Primary School Council, birbhum dated 19.10.06 paved the way for the litigation, which we have hitherto seen.

7. Acting on the basis of the same, the appellant wrote to the respondent No. 5 on 27.10.2006 inter alia to the effect that her prayer may be kept in abeyance as she has already appeared for her Madhyamik examination (Annexure-P6).

8. In the meanwhile, as is evident, she cleared her Madhyamik examination (See Page 21 of the Stay Petition) in June 2008.

9. An approach was thereafter, made by her before the respondent No. 5 on 09.02.2009(Annexure-P8) requesting the latter for consideration of her candidature since she had already passed the Madhyamik examination. It would be pertinent to note that in paragraph 7 of her representation (Page 24 of the Stay Petition) she had spelt out the distraught situation marriage has brought to her, where she had become the object of indifference of her soul mate and exposed to the vagaries of life with her mother.

10. Marriages are said to be made in heaven. Some of which are pushed to hell. For her, it was a marriage of convenience, where her spouse has abandoned her realising she will not turn out to be a source of revenue having been unsuccessful in eking out a job in the place of her late father.

11. Nothing moved. It was all static for her except time.

12. Perhaps, out of exasperation of the situation, where she could bearing it no more, filed a Writ Petition No. W.P. 4558 (W) of 2009. On 20.09.2009 the Hon"ble Trial Court concluded ".....taking into consideration the relevant Rule governing the process of recruitment under compassionate ground, this Court is of the view that a woman whose marriage is subsisting cannot seek such appointment under compassionate ground" and accordingly dismissed the same.

13. This saw her in appeal.

14. We were addressed at the Bar by Shri Susanta Paul in support of the same and Shrimati Sumita Sen for the Council (respondent No. 5). Whilst Shri Paul would argue that as the appellant have, in possession of a Madhyamik degree, she having the necessary qualification--was entitled to compassionate appointment and he was quite categoric that simply marriage cannot debar a person from seeking appointment in this category, which according to him, would result in gender discrimination. In support of his submission Shri Paul has referred to the decision of this Court in Usha Singh vs. State of West Bengal & Ors., reported in 2003 (2) WBLR (Cal) 94 and submitted that Rule 14 of Rules for Appointment of Primary Teachers has been held as discriminatory and violative of the Constitutional provision.

15. Accordingly, he has prayed for allowing this appeal.

16. On the other hand, Shrimati Sumita Sen for the Council (respondent No. 5) was of the view that since the Rules did not permit, very rightly the Hon"ble Trial Court refused the prayer for compassionate appointment, as have been held earlier by the respondent No. 5 itself.

17. According to Shrimati Sen, as the appellant did not cover the requisite criteria for appointment in this category, she cannot be considered and the Appeal deserves no merit.

18. Furthermore, she distinguished the decision of Usha Singh vs. State of West Bengali Ors. (supra) on the score that in the said case the petitioner was married much later when the recruitment process had already began but in the instant case the situation was otherwise.

19. She prayed for dismissal of the appeal.

20. There is a old adage that if you have a son, he is your son until he marries; but if you have a daughter, she is your daughter till you die. Late Headmaster Shyama Prasad Mali did not have the misfortune of experiencing the former part of the adage but was blessed with the latter part. Appellant remained his daughter and remains his daughter, both for the departed soul and as also for the weeping widow. In her concern for providing a square meal for her distraught mother and herself--she has relentlessly pursued her remedy, 21. But while for others, marriage is a boon; for her it was a complete bane. Even divorce from a conjugal life and becoming the object of apathy and indifference, she has to carry the tag of a married woman. This obviously, adds insult to her injury. What rubs salt to such gaping wounds is, her being foreclosed from the claim of compassionate appointment. Such scheme was contemplated by the Legislature in their wisdom so as to protect the families of the former employees on account of whose death, they are not exposed to the miseries of life being deprived of the regular source of income of the breadwinner.

22. Looking back to the prologue of our order, although the appellant falls under the majestic sweep of sub-clause (3) of Article 15 and is covered by a concept of Gender Justice, we feel we need not proceed to such distant meadows.

23. Being in a sudden quirk, we have a foray in the West Bengal Primary School Teachers Recruitment Rules, 2001 as amended in January 2008 and we will find our E1 Dorado and say thus far and no further. Rule 14(1) of the Recruitment Rules, as unamended stipulated the category of persons who are entitled to compassionate appointment in;

14(1)(a) \*\*\*\*\*

(b) \*\*\*\*\*

(c) \*\*\*\*\*

(d) unmarried daughter, or

(e) \*\*\*\*\*

24. With the advent of the amendment in January 2008, Rule 14 "(1) reads thus:-

(i) spouse

(ii) son

(iii) daughter

25. In the event if we find the latent difference between the two situation? in unamended Rule 14(1) and the later Rule of 2008, we see that there was a stipulation that a teacher who dies-in-harness, the category of persons as members of the deceased teacher's family would be entitled; in specific an unmarried daughter among other defendants whereas in the amended provision of Rule 14(1) of 2008 it reads;

(i) spouse

(ii) son and

(iii) daughter

26. In view of the changed situation in the amended Rule 14(1) of 2008, the insertion of the word "daughter" simply in clause (iii), in our opinion, cannot otherwise disentitle the appellant for seeking her claim for compassionate appointment in the place of her late father..

27. At once, we fell, we have been able to prick the bubble which floated large throughout the specter of the decision making process of the respondent No. 4, respondent No. 5 as well as the Hon"ble Trial Court.

28. Fortune put her in a fortuitous circumstances hitherto. Will she be left, to cry How long O Lord, how long ! or else, will it be extinguished in the manner Fazlunbi's agony was contained by [Fuzlunbi Vs. K. Khader Vali and Another](#), .

29. We feel she need to be reused from such situation once she has been successful in being able to establish her legal right in respect, of the claim for compassionate appointment. She has been pursuing for few crumbs of bread and some yards of yarn, both for herself and for her Mother to replenish the void created by the breadwinner of the family. It should be thus far and no further for her.

30. Accordingly, we are of the opinion that the appellant as daughter of Late Shyama Prasad Mali, is entitled for compassionate appointment in the place of his deceased father. Even if we wipe out from our consideration the jinxed matrimony (see Annexure-P8), she being a qualified in the Madhyamik examination and covering the age criteria-----all hurdles remain covered.

31. While taking leave, we uphold the ratio of the decision in Usha Singh vs. State of West Bengal & Ors. (supra) based on the decisions of the Supreme Court, as correct law. However, for the reasons recorded by us hereinabove, we have not applied the ratio of the same in the instant case.

32. Appeal accordingly allowed.

33. Respondent No. 5 would take steps to complete the process within a period of four weeks from the date of communication of this order.

34. Parties to bear their own costs.

35. In view of the disposal of this appeal, nothing remains in the application being C.A.N. No. 10493 of 2010 and the same is accordingly disposed of.