HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

Civil Reference No. 1/2022

Priyanka Shrimali

----Petitioner

Versus

1. State of Rajasthan, Secretary, Department of Personnel, Secretariat, Jaipur
2. The Director, Secondary Education, Bikaner
3. District Education Officer (Head Quarter), Secondary, Rajsamand
4. Chief Block Education Officer Cum Edication, Khamnore, Rajsamand

----Respondents

Connected With

D.B. Civil Writ Petition No. 7343/2019

1. Kavita Gurjar
2. Kamlesh Gurjer

----Petitioners

Versus

1. State of Rajasthan through the Principal Secretary, Department of Transport, Govt. of Rajasthan, Secretariat, Jaipur.
2. Rajasthan Road Transport Corporation through its Managing Director, Head Office, Chamu House, Parivahan Marg, Jaipur.
3. Chief Manager, Rajasthan State Road Transport Corporation, Chittorgarh Depot, Chittorgarh.

----Respondents

D.B. Civil Writ Petition No. 13697/2021

Savita Khatik

----Petitioner

Versus

1. State of Rajasthan through the Chief Secretary, Government Of Rajasthan, Jaipur.

2. The Secretary, Department of Secretary Education, Government Of Rajasthan, Jaipur.
3. The Director, Department of Elementary Education, Rajasthan, Bikaner (Rajasthan).
4. The District Education Officer (Elementary), Rajsamand (Raj.).
5. The Block Education Officer (Elementary), Panchayat Samiti Devgarh, District Rajsamand (Rajasthan).
6. Principal/peeo, Government Higher Secondary School, Lasani, District Rajsamand.

----Respondents

D.B. Civil Writ Petition No. 15488/2021

Smt. Heena Sheikh

----Petitioner

Versus

1. State of Rajasthan through the Chief Secretary, Secondary Education Department, Govt. of Rajasthan, Secretariat, Jaipur (Rajasthan).
2. The Director, Secondary Education Department, Bikaner (Rajasthan)
3. The District Education Officer, Head Quarter, (Secondary Education) Chittorgarh (Rajasthan)
4. The Chief Block Education Officer, Panchayat Samiti Bhupalsagar, District Chittorgarh (Rajasthan)

----Respondents

Members of the Bar : Mr. Vinay Jain.
Dr. Nupur Bhati.
Mr. Harish Purohit.
Mr. M.S. Purohit.
Mr. Rakesh Kalla.
Mr. Manish Pitaliya.
Mr. Subhankar Johari.
Mr. Vikas Bijarnia.
Mr. Vivek Mathur.
Mr. Hanuman Singh Choudhary.
Mr. Amit Kumar Purohit.
Mr. D.D. Purohit.
Mr. Narayan Yadav.
Mr. Lalit Parihar.
Mr. Rishabh Tayal.
Mr. Jitendar Choudhary.
Mr. Kuldeep Vaishnav.
Mr. V.D. Vaishnav.
Mr. Vikram Singh.
Mr. Arpit Samariya.
Mr. Virendra Agarwal.

Mr. G.S. Rathore.
Mr. Hari Singh Rajpurohit.
Mr. Bharat Devasi.
Ms. Paru Malik.
Mr. Narendra Malik.
Mr. Rishabh Purohit.
Mr. Pawan Bharti.
Mr. M.P. Singh.
Mr. Arpit Gupta.
Mr. K.D. Dayal.
Ms. Adeeti.
Ms. Kingal Purohit.
Ms. Radhika Vyas.
Mr. Manoj Purohit.
Mr. RDSS Kharlia.
Mr. Naman Bhansali.
Mr. S.S. Choudhary.
Mr. Vishal Singhal.
Mr. K.S. Sisodia through V.C.
Mr. Kshma Purohit through V.C.

Mr. Manish Vyas, AAG with
Mr. Kailash Choudhary.
Mr. Sunil Beniwal, AAG.
Mr. Sudhir Tak, AAG with
Mr. Saransh Vij.
Mr. Vikram Choudhary.
Mr. R.R. Ankiya.
Mr. Avin Chhangani.
Ms. Dimple Chhangani through V.C.
Mr. Parmeshwar Pilania through V.C.
Mr. Surya Kant through V.C.
Mr. Sayar Gurjar, through V.C.

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE ARUN BHANSALI

ORDER

Reportable

13/09/2022

By the Court (Per Hon'ble Mr. Justice Arun Bhansali) :

The present reference has come-up before this Larger Bench on account of issue referred by the Division Bench on 12.01.2022, inter alia, observing and referring the question as under:-

> "In our opinion, the view of the Rajasthan High Court requires consideration by a larger Bench. The reference is therefore made to three members Bench on the following:

> "Whether the view taken by the three Division Benches of this Court in the cases of Smt. Sumer Kanwar (supra), Smt. Vandana Sharma (supra) and Kshama Devi (supra) upholding the vires of Rule 2(c) of the Rules, which excludes the married daughter from the definition of term 'dependent' is correct?"

After hearing the learned counsel appearing before this Bench, on 20.07.2022, the question referred was re-framed with the following observations:-

> "After hearing the learned counsel appearing before us on previous dates and today, we are of the opinion that the question which has been referred to the Larger Bench requiring it to examine the correctness of the Division Bench judgments in the case of Smt. Sumer Kanwar, Smt. Vandana Sharma and Kshama Devi restricts the scope of consideration of the aspects which arise in the matter and rather puts this Larger Bench in an appellate position, which essentially is contrary to the jurisprudence in relation to reference of issues to a Larger Bench.
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> In view of the above, after hearing the learned counsel, the issue for consideration in the present reference is re-framed as under:
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> > "Whether the provisions of Rule 2(c) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996, which excludes the married daughter from the definition of 'dependent', prior to its amendment vide Notification dated 28/10/2021, is discriminatory and violative of Articles 14 & 16 of the Constitution of India? In case the provision is discriminatory etc., the consequences thereof."

The above question was referred by the Division Bench, while hearing the case of *Priyanka Shrimali v. State of Raj. & Ors.: DBCW No. 14345/2021*. Whereafter, in *Savita Khatik v. State of Raj. & Ors.: DBCW No. 13697/2021* and *Smt. Heena Sheikh v. State of Raj. & Ors.: DBCW No. 15488/2021* also directions were given for connecting the said petitions with the present reference.

Though in *Kavita Gurjar & Anr. v. State of Raj. & Ors.:DBCW No.7343/2019,* challenge has been laid to the validity of Clause 2(c) of the Rajasthan State Road Transport Corporation Compassionate Appointment of the Dependents of Deceased Employees Regulations, 2010, as the provisions are akin to the provisions of Rule 2(c) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 ('the Rules of 1996'), the same was also ordered to be connected to the present reference.

The petitioner-Priyanka Shrimali filed the petition praying that the provisions of Rule 2(c) of the Rules of 1996 be declared unconstitutional to the extent it envisage that besides spouse and son only 'unmarried daughter' is entitled for consideration for compassionate appointment as the petitioner, a married daughter of Smt. Hemlata Shrimali, a Government Servant, who died on 18.06.2021 sought compassionate appointment as the only child of the deceased, even after the marriage, she was living with her parents and now father only, however, on account of the provisions of the Rules of 1996, her candidature was rejected by order dated 01.09.2021, inter alia, indicating that married daughter is not eligible for compassionate appointment under the Rules of 1996.

Similarly, the petitioner-Savita Khatik, on account of death of her mother, a Government servant, who died on 18.04.2021 and being the only child claimed herself to be wholly dependent on her mother, sought appointment under the Rules of 1996, however,

as the definition of dependent excluded married daughter under the Rules of 1996, she has challenged the validity of the provision.

The petitioner-Heena Sheikh's mother Smt. Nuzhat Aara was a Government servant, who died on 04.03.2019 and the petitioner also being the only child, sought compassionate appointment claiming herself as dependent on the deceased, however, it was indicated to her that on account of the fact that the petitioner is a married daughter of the deceased, she is not entitled for compassionate appointment under the Rules of 1996.

Rule 2(c) of the Rules of 1996, a part whereof is under question reads as under:

> "2(c) "Dependent" means a spouse, son, unmarried or widowed daughter, adopted son/ adopted unmarried daughter legally adopted by the deceased Government servant during his/ her life time and who were wholly dependent on the deceased government servant at the time of his/her death."

As per the above Rule, the word 'dependent', which is the requirement for seeking compassionate appointment under the Rules of 1996, has been defined as spouse, son, unmarried or widowed daughter, adopted son/adopted unmarried daughter, legally adopted by the deceased Government servant during his/her life time and who were wholly dependent on the deceased Government servant at the time of his/her death.

The language of the provision makes it clear that married daughter/adopted married daughter, do not fall within the definition of the said provision and, consequently, the married daughters are not entitled to seek compassionate appointment.

It would be relevant to notice at this stage that the definition under Rule 2(c) of the Rules of 1996, has undergone change on account of amendment in the Rules of 1996 w.e.f. 28.10.2021, wherein the existing definition has been substituted as under:-

> "(c) "Dependent" means,:
> (i) spouse, or
> (ii) son including son legally adopted by the deceased Government servant during his/her life time, or
> (iii) unmarried/widowed/divorced daughter including daughter legally adopted by the deceased Government servant during his/her life time, or
> (iv) married daughter, if no other dependent of the deceased Government servant mentioned in clause (ii) and (iii) above is available, or
> (v) mother, father, unmarried brother or unmarried sister in case of unmarried deceased Government servant,
> who was wholly dependent on the deceased Government servant at the time of his/her death."

It would be seen that now a married daughter also has been included in the definition of 'dependent', subject to certain conditions.

On account of nature of reference and its implication, large number of lawyers appeared and made submissions.

Learned counsel appearing for the petitioners and all the counsel appearing in support of the proposition regarding the provision being discriminatory and violative of Articles 14 to 16 of the Constitution of India, made vehement submissions with reference to the facts of their cases that in all the three cases, the applicants are single daughters of the deceased Government servant and their father/mother, are not in a position to seek compassionate appointment and that as the petitioners were

dependent on the deceased Government servant, they sought compassionate appointment.

However, on sole consideration that the requirement of the Rule is 'unmarried daughter' and the petitioners are married, without considering the other relevant aspects under the Rules of 1996, their applications have been turned down.

Submissions have been made that the restrictive definition of 'dependent' in the Rules forbids compassionate appointment to an unmarried daughter, which is wholly discriminatory and violative of Articles 14 to 16 of the Constitution of India.

Submissions were made that only on account of the fact that the petitioners were married, they could not be debarred from consideration for grant of compassionate appointment as they otherwise fulfill all the requisite considerations.

It was emphasized that the prefix 'unmarried' before daughter in the provision, by itself is discriminatory be it qua the son, for whom, there is no such restriction or qua an unmarried daughter itself and, therefore, the provision restricting the definition of daughter to an unmarried daughter, deserves to be struck down.

It was submitted that the Division Bench, while considering the validity of the said provision in *Sumer Kanwar v. State of Raj. & Ors.: 2012(3) RLW 2546 (Raj.)*, upheld the validity thereof, on the said aspect, by observing that the definition of the dependent, cannot be expanded by the Court as it's a matter of policy of the State and that the aspects pertaining to the provision being

discriminatory and violative of Articles 14 to 16 of the Constitution of India, were not adverted to.

It is further submitted that in *Kshama Devi & Ors. v. State of Raj. & Ors.: DBCW No. 14393/2019*, decided on 27.08.2019 at Jaipur Bench, the Division Bench simply followed/agreed with the view taken in the case of Sumer Kanwar (supra) and in the case of *Vandana Sharma v. State of Raj. & Ors.: DBCW No. 13087/2017*, decided on 14.10.2017, the issue though specifically raised, was not dealt with by the Division Bench.

It was submitted that as the judgments in the case of Sumer Kanwar (supra), Kshama Devi (supra) and Vandana Sharma (supra), have not even dealt with the issue pertaining to the provision being discriminatory and violative of Articles 14 to 16 of the Constitution of India, the said judgments, require reconsideration in light of the submissions made.

Further submissions were made that the similar provisions, have been interpreted by several High Courts, who have all come to the unanimous conclusion that exclusion of married daughters from the purview of compassionate appointment is unreasonable, arbitrary and violative of equity clauses enshrined in Articles 14 to 16 of the Constitution of India.

Reference was made to judgments in *State of Tripura & Ors. v. Smt. Debashri Chakraborty* : WA No. 80 of 2020, decided on 08.02.2022 by the Division Bench of Tripura High Court; *Udham Singh Nagar District Cooperative Bank Ltd. & Anr. v. Anjula Singh & Ors.: Special Appeal No. 187 of 2017*, decided on 25.03.2019 by the Full Bench of Uttarakhand High Court; *Mamta Devi v. State of*

Himachal Pradesh & Ors.: CWP No. 3100/2020, decided on 28.10.2020 by the Division Bench of Himachal Pradesh High Court; *Manjul Srivastava v. State of UP & Ors.: Writ-A No.10928 of 2020*, decided on 15.12.2020 by Allahabad High Court; Meenakshi Dubey v. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. & Ors.: WA No. 756/2019, decided on 02.03.2020 by Full Bench of Madhya Pradesh High Court; *Smt. Sarojni Bhoi v. State of Chhattisgarh & Ors.: WP(S) No. 296 of 2014*, decided on 30.11.2015 by Chhattisgarh High Court; *State of West Bengal & Ors. v. Purnima Das & Ors.: CAN – 12495/2014 in FMA – 1277/2015*, decided on 13.09.2017 by Full Bench of Calcutta High Court; *Smt. Bhuvaneshwari V. Puranik v. State of Karnataka & Ors.: WP No. 17788/2018*, decided on 15.12.2020 by Karnataka High Court; *Smt. Vimla Srivastava v. State of UP & Anr.: Writ-C No. 60881 of 2015*, decided on 04.12.2015 by the Division Bench of Allahabad High Court; *Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni) v. The Superintending Engineer, Pune Irrigation Project Circle : 2013 SCC Online Bom 1549(DB)*.

Further submissions have been made that Hon'ble Supreme Court in *State of Karnataka & Ors. v. C.N. Apporva Shree & Anr.: Special Leave to Appeal (C) No.20166/2021*, decided on 17.12.2021 has approved the view of Karnataka High Court noticing the judgment in the case of Smt. Bhuvaneshwari V. Puranik (supra) by way of a reasoned order and, therefore, the provision restricting the definition to 'unmarried daughter' deserves to be struck down.

It was also emphasized that the subsequent amendment dated 28.10.2021 introduced by the State, clearly reflects that the State also has realized that the provision of debarring a married daughter from consideration for grant of compassionate appointment, is not valid and has amended the definition, which clearly is an admission on part of the State qua the provision being discriminatory.

Emphasize was also laid that as the cut-off date for consideration of application for compassionate appointment is the date of death of the Government servant, which in all these cases is before the amendment dated 28.10.2021, the cases of the petitioners would be governed by the unamended provision and, therefore, the validity needs to be examined by the Court as unless the Rule is struck down to the extent of 'unmarried' from the definition as it stood prior to the amendment, the petitioners would be deprived of consideration by the respondents.

Submissions were also made that in case, the provision to the extent of the word 'unmarried' is struck down, the apprehension expressed by few counsels regarding the same leading to reopening of the settled cases and/or opening the flood gates in relation to the applications, which can be now made by married daughters, who may have been denied the appointments at the relevant time, have no basis, inasmuch as, by the striking down the said word from the provision, the other related requirements pertaining to compassionate appointment as laid down by Hon'ble Supreme Court from time to time, would not be nullified due to

this event and, therefore, the provision to the above extent deserves to be quashed and set aside.

Learned counsel appearing for the respondent-State and few counsel opposing the proposition, made submissions that on account of amendment dated 28.10.2021, to Rule 2(c) of the Rules of 1996, the challenge to the Rule prior to amendment, does not survive, the amendment is prospective, the exercise is academic in nature, the non-inclusion of married daughter in the definition is a matter of reasonable restriction to ensure that the immediate family /dependent of the deceased Government servant, can avail the benefit of compassionate appointment and as such the same is not violative of Articles 14, 15 and 16 of the Constitution of India.

It was emphasized that as the validity of the provision has been repeatedly upheld by this Court in the cases of Smt. Sumer Kanwar (supra), Smt. Vandana Sharma (supra) and Kshama Devi (supra) and several other cases, there is now, no necessity to re-adjudicate the said aspect.

It was re-emphasized that the action taken/orders passed under the previous law, cannot be reopened and that the policy of compassionate appointment is to assuage the immediate financial hardship of the incumbent Government servant, who died in harness and, therefore, the cases already decided, cannot be permitted to be reopened and that there is no vested right of the legal representatives of the deceased in seeking compassionate appointment.

Learned counsel emphasized that the compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Article 14 to 16 of the Constitution of India.

Further submissions were made that as other provisions of the Rules of 1996, require the applicant to be wholly dependent on the deceased Government servant at the time of his/her death, a married daughter would not fulfill the said requirement.

Submissions have also been made that the State Government has taken a policy decision and has amended the Rule vide notification dated 28.10.2021 and, therefore, the validity of the decision made prior to promulgation of the notification, cannot be questioned at this belated stage. Further, as the aspect of inclusion/exclusion for grant of compassionate appointment is in the domain of policy making, the State Government has the power to completely exclude the married daughters from its ambit. The State can create classification on the basis of degree of dependency as an unmarried/widowed/divorced daughter has greater degree of dependency on her premarital family in contradistinction to degree of dependency of a married daughter.

It is further submitted that a law cannot be struck down merely because a better policy/course of action could be adopted. Apprehension has been expressed that reopening the validity of decisions made prior to 28.10.2021 would cause prejudice to the dependents/incumbents, who have been employed under the compassionate appointment, whose rights have already

crystallized. It was again re-emphasized that compassionate appointment is not regular source of recruitment.

Reliance was placed on the judgments in the case of Smt. Sumer Kanwar (supra), Smt. Vandana Sharma (supra) and Kshama Devi (supra), which are under consideration in the present matter.

One of the learned counsel made reference to the judgment in *Miss C.B. Muthamma v. UOI & Ors.: AIR 1979 SC 1868* to contend that equality of men and women, cannot be universalised.

For emphasizing the general propositions relating to compassionate appointment, reliance was placed on *Umesh Kumar Nagpal v. State of Haryana : (1994) 4 SCC 138; Indian Bank v. Promila (2020) 2 SCC 729; State of H.P. v. Parkash Chand : (2019) 4 SCC 285; State Bank of India v. Somvir Singh : (2007) 4 SCC 778; N.C. Santhosh v. State of Karnataka & Ors.: (2020) 7 SCC 617; The Director of Treasuries in Karnataka & Anr. v. V. Somyashree : AIR 2021 SC 5620 and State of Himachal Pradesh & Anr. v. Shashi Kumar : (2019) 3 SCC 653.*

We may at this stage also notice that besides the three judgments in the case of Smt. Sumer Kanwar (supra), Smt. Vandana Sharma (supra) and Kshama Devi (supra) referred to by the Division Bench by its order of reference dated 12.01.2022, orders in *Janita Kumari & Ors. V. State of Raj. & Ors.: DBCW No. 6776/2015*, decided on 03.05.2016 at Jaipur Bench; *Urmila Devi v. State of Raj. & Ors.: DBCW No. 1255/2018*, decided on 22.03.2018 at Jaipur Bench; *Lavina David v. State of Raj. & Ors.: DBCW No. 7355/2017*, decided on 11.07.2017 at Jaipur Bench;

Sapna v. University of Rajasthan : DBCW No. 9686/2020, decided on 04.12.2020 at Jaipur Bench and *Medha Tiwari v. State of Raj. & Ors.: DBCW No. 11193/2015,* decided on 05.05.2016 at Jaipur Bench, have also upheld the validity of provisions of Rule 2(c) of the Rules of 1996 to the extent the same has excluded the married daughter from the definition of 'dependent'.

We have considered the submissions made by learned counsel for the parties and have perused the material available on record and plethora of judgments cited by the learned appearing counsel.

At the outset, it may be noticed that it is now well settled that the object of according compassionate appointment to the dependent of a deceased government servant, is to help the family to tide over the crisis, which unfortunately they are faced with on account of death of the sole earner of the family. The intention is to ensure that the family is able to face the catastrophe and, therefore, emphasis has always been laid on according immediate appointment to the dependent.

The Hon'ble Supreme Court has time and again interpreted the above aspect including the limitations ever since the judgment in the case of Umesh Kumar Nagpal (supra), wherein it was, inter alia, laid down as under:-

> "2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public

> authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.
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> What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

The above principles laid down have been repeatedly reiterated by Hon'ble Supreme Court, in all its subsequent judgments. The recent being in the case of N.C. Santhosh (supra), wherein it was, inter alia, reiterated as under:-

> "14. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In Steel Authority of India Limited v. Madhusudan Das & Ors.: (2008) 15 SCC 560. It was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant."

In the case of V. Somyashree (supra), it was, inter alia, laid down as under:-

> "7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:
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> (i) that the compassionate appointment is an exception to the general rule;
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> (ii) that no aspirant has a right to compassionate appointment;
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> (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
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> (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by

the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."

In *The Secretary to Govt. Department of Education (Primary) & Ors. v. Bheemesh Alias Bheemappa : Civil Appeal No. 7752/2021,* decided on 16.12.2021, after noticing the conflict in few judgments in relation to the applicability of law i.e. whether the law as applicable on the date of death of government servant or the date of consideration of the application would apply and the fact that issue was pending consideration before the Larger Bench, it was laid down as under:-

> "17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.
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> 18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to

whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/ modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.”

Besides the above, in the case of Shashi Kumar (supra), it was, inter alia, laid down as under:-

> "But, where there is a policy, a dependant member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.
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> Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment."

From the above, the principles pertaining to the nature of claim made by the dependents, its consideration based on the parameters as laid down in the relevant Rules, that also with the emphasis that the applicant-dependent must strictly fall within the parameters as on the date of the death of government servant, are well established besides the fact that the appointment is neither a right nor an alternative source of recruitment.

In the present circumstances, though the provision i.e. Rule 2(c) of the Rules of 1996 which defines dependent, stands amended w.e.f. 28.10.2021, wherein the married daughter has

also been included in the definition, subject to certain conditions, however as the government servants/employees in all the present cases have died in harness prior to the date of amendment in the provision, the cases of the applicants-petitioners would be governed by the unamended provisions and as under the unamended provision, on account of the stipulation 'unmarried' daughter in the definition of dependent, they have been rendered ineligible, the challenge laid by the petitioners, cannot be negated merely on account of the fact that the provision stands amended w.e.f. 28.10.2021.

As noticed hereinbefore and has been repeatedly emphasized by learned counsel for the respondent-State the validity of the provision on account of the above aspect i.e. exclusion of married daughter has repeatedly been examined by the Division Benches of this Court and the said exclusion has been upheld.

A perusal of all the judgments, as noticed hereinbefore and cited, reveals that in each subsequent matter, the judgment in the case of Smt. Sumer Kanwar (supra) has been followed.

In the case of Smt. Sumer Kanwar (supra), the Division Bench, inter alia, came to the following conclusion:-

> "5. In our considered opinion, it is not for the Courts to expand the definition of the dependant. It is matter of policy. The dependants are defined to be spouse, son, unmarried or widowed daughter, adopted son/adopted unmarried daughter, legally adopted by the deceased Government servant. Married daughter cannot be said to be dependant on the deceased employee. The definition of dependant is with a view to give appointment to spouse, son, unmarried or widowed daughter, widow, etc. who are real dependants of the deceased. Such matters are within the purview of the policy of the State Government. It is for the State Government to define such matters and it is not for the Court to widen the

> scope of the Rules as compassionate appointment cannot be claimed as a matter of right. The definition in Rule 2(c) cannot be said to be unconstitutional and arbitrary in any manner. Exclusion of married daughter from the purview of dependants is appropriate. She is not dependant on premarital family. It is trite law that Courts cannot enlarge scope of such policy/rules. It is not for the Court to rewrite the policy/rules. The provision of Rule 2(c) cannot be said to be illegal or arbitrary in any manner."

It was also observed that appointment cannot be ordered dehors the scheme, the same is not a source of recruitment and the following conclusion was drawn:-

> "12. Since married daughter is not included in the definition of dependant as contained in Rule 2(c) of the Rules of 1996, the Collector, Jaipur has rightly rejected her application for compassionate appointment.
>
> 13. In view of the aforesaid, we find no ground to entertain the petition. The definition of dependant under Rule 2(c) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 cannot be said to be unconstitutional or ultra vires in any manner.
>
> Consequently, the writ petition is dismissed."

It would be noticed from the above discussion by the Division Bench that the Court, while considering the matter and coming to the conclusion that the definition of the dependent was a matter of policy, the married daughter, cannot be said to be dependent on the deceased employee and it is not for the Courts to widen the scope of the Rules on account of the nature of claim i.e. compassionate appointment, negated the challenge to the validity of the Rule.

However, apparently, the issue of exclusion of married daughter, only on account of her marital status in contradistinction to that of a married son and/or unmarried daughter, was not

examined on the touchstone of Articles 14 to 16 of the Constitution of India.

The exclusion of married daughter from the definition of dependent/family, appears to have been of universal application i.e. across the country as in almost all the States/Government Regulations providing for compassionate appointment, the married daughters were excluded from consideration.

The issue with regard to validity of said exclusion, came to be considered by Allahabad High Court in the case of Smt. Vimla Srivastava (supra). The Division Bench, inter alia, observed and came to the following conclusion:-

> "The issue before the Court is whether marriage is a social circumstance which is relevant in defining the ambit of the expression "family" and whether the fact that a daughter is married can constitutionally be a permissible ground to deny her the benefit of compassionate appointment. The matter can be looked at from a variety of perspectives. Implicit in the definition which has been adopted by the state in Rule 2(c) is an assumption that while a son continues to be a member of the family and that upon marriage, he does not cease to be a part of the family of his father, a daughter upon marriage ceases to be a part of the family of her father. It is discriminatory and constitutionally impermissible for the State to make that assumption and to use marriage as a rationale for practicing an act of hostile discrimination by denying benefits to a daughter when equivalent benefits are granted to a son in terms of compassionate appointment. Marriage does not determine the continuance of the relationship of a child, whether a son or a daughter, with the parents. A son continues to be a son both before and after marriage. A daughter continues to be a daughter. This relationship is not effaced either in fact or in law upon marriage. Marriage does not bring about a severance of the relationship between a father and mother and their son or between parents and their daughter. These relationships are not governed or defined by marital status. The State has based its defence in its reply and the foundation of the exclusion on a paternalistic notion of the role and status of a woman. These patriarchal notions must answer the test of the guarantee of equality under Article 14 and must be

held answerable to the recognition of gender identity under Article 15.

The stand which has been taken by the state in the counter affidavit proceeds on a paternalistic notion of the position of a woman in our society and particularly of the position of a daughter after marriage. The affidavit postulates that after marriage, a daughter becomes a member of the family of her husband and the responsibility for her maintenance solely lies upon her husband. The second basis which has been indicated in the affidavit is that in Hindu Law, a married daughter cannot be considered as dependent of her father or a dependent of a joint Hindu family. The assumption that after marriage, a daughter cannot be said to be a member of the family of her father or that she ceases to be dependent on her father irrespective of social circumstances cannot be countenanced. Our society is governed by constitutional principles. Marriage cannot be regarded as a justifiable ground to define and exclude from who constitutes a member of the family when the state has adopted a social welfare policy which is grounded on dependency. The test in matters of compassionate appointment is a test of dependency within defined relationships. There are situations where a son of the deceased government servant may not be in need of compassionate appointment because the economic and financial position of the family of the deceased are not such as to require the grant of compassionate appointment on a preferential basis. But the dependency or a lack of dependency is a matter which is not determined a priori on the basis of whether or not the son is married. Similarly, whether or not a daughter of a deceased should be granted compassionate appointment has to be defined with reference to whether, on a consideration of all relevant facts and circumstances, she was dependent on the deceased government servant. Excluding daughters purely on the ground of marriage would constitute an impermissible discrimination and be violative of Articles 14 and 15 of the Constitution."

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"In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule 2(c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

We, accordingly, strike down the word 'unmarried' in Rule 2(c)(iii) of the Dying-in-Harness Rules.

In consequence, we direct that the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would be at liberty to consider the claim for compassionate appointment on the basis of all the

> relevant facts and circumstances and the petitioners shall not be excluded from consideration only on the ground of their marital status."

The said judgment, in the case of Smt. Vimla Srivastava (supra) was noticed by Full Bench of Calcutta High Court, which inter alia, in the case of Purnima Das (supra), came to the following conclusion:-

> "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 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."

The Full Bench of Uttrakhand High Court in the case of Anjula Singh (supra), on coming to the conclusion that exclusion of a dependent married daughter while including a dependent married son in definition of a family in the Regulations relating to compassionate appointment, amounts to gender discrimination and is in violation of Article 15 of the Constitution of India instead of striking down the word 'unmarried', directed that married daughter shall also be held to fall within the inclusive definition of the family of the deceased government servant.

The High Court Tripura in the case of Smt. Debashri Chakraborty (supra), inter alia, referring to the judgment in the case of Smt. Vimla Srivastava (supra) and Purnima Das (supra), came to the conclusion that exclusion of married daughters from

die-in-harness scheme was unconstitutional and that even a married daughter would be entitled to make an application for appointment on compassionate basis, which would be decided on its own merit within the parameters of the scheme.

The Larger Bench of Madhya Pradesh High Court in the case of Meenakshi Dubey (supra) came to the conclusion that the clause in the policy to the extent, the same debars the married daughter from right of consideration for compassionate appointment, was violative of Articles 14, 15, 16 and 39(a) of the Constitution of India.

A Single Judge of Karnataka High Court in the case of Smt. Bhuvaneshwari V. Puranik (supra), after referring to various judgments on the said aspect, came to the conclusion that without a shadow of doubt the words unmarried were discriminatory and struck down the word unmarried in the Rule.

The said judgment of the learned Single Judge was noticed by another Single Judge in *the State of Karnataka & Ors. v. C.N. Apporva Shree & Anr.: WP No. 5409/2021 (S-KSAT)*, decided on 22.03.2021, who dismissed the petition filed by the State of Karnataka.

Against the said judgment, when the State of Karnataka approached Hon'ble Supreme Court by filing Special Leave to Appeal, in *State of Karnataka & Ors. v. C.N. Apporva Shree & Anr.: Special Leave to Appeal (C) No.20166/2021*, decided on 17.12.2021, Hon'ble Supreme Court ordered as under:-

> "We have heard learned counsel for the petitioner(s) and have analyzed the impugned

> judgment. We give our full imprimatur to the reasoning of the High Court, more so, as even the rule in question relied upon by the petitioner to deny a married daughter a job on compassionate grounds while permitting it to a married son, has been quashed in the judgment of the Karnataka High Court in Bhuvaneshwari V. Purani v. State of Karnataka - (2021) 1 AKR 444 [AIR Online 2020 Kar 2303].
>
> The Special Leave Petition is dismissed."

From the above, it would be seen that Hon'ble Supreme Court, while dismissing the Special Leave to Appeal made observations giving its full imprimatur to the reasoning of the High Court in the case of C.N. Apporva Shree (supra) and noticed that the denial of job on compassionate basis to a married daughter while giving such indulgence to a married son has been quashed in the case of Smt. Bhuvaneshwari V. Puranik (supra).

From the above cited judgments, it would be seen that practically all the High Courts, after testing the validity of exclusion of a married daughter from the definition of dependent/family have unanimously come to the conclusion that the said exclusion was unconstitutional.

Coming to the submissions made by learned counsel for the respondent-State seeking to emphasize that the Rule making authority has deliberately omitted a married daughter from the definition of dependent as after marriage, a married daughter would be dependent on her husband and/or her-in-laws. The said submissions and exclusion is based on an assumption that only as a consequence of marriage, the married daughter would cease to be dependent on the deceased government servant and, therefore, disentitled to be considered for compassionate appointment.

As the only reason indicated is purported lack of presumed dependence, the said basis, cannot be sustained, inasmuch as, there may be cases where despite marriage, the daughter for various reasons may continue to be dependent on the deceased government servant.

The very assumption that a married daughter, would invariably and in all cases, would not be dependent on the government servant is based on surmises, oblivious of the present day social realities and at the same time including a dependent married son, while leaving out a dependent married daughter from the definition, is clearly discriminative.

The Hon'ble Supreme Court in *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai & Anr.: (1987) 2 SCC 278*, opined that a daughter after marriage does not cease to be a daughter of a father and mother and did not accept the contention that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It was held that it is moral obligation of the children to maintain their parents and that Section 125 Cr.P.C. has imposed a liability on both the son and daughter to maintain their parents, who is unable to maintain himself or herself.

Further, now under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, equal duty on both sons and daughters to take care and maintain the parents has been placed and, therefore, the purported assumption in seeking to distinguish a married son from a married daughter for the purpose of grant of compassionate appointment, cannot be sustained.

Yardstick, for extending the benefit of compassionate appointment in terms of the Rules is and should be dependency of the dependents on the deceased government servant and, therefore, their marital status only should not be an impediment for consideration on compassionate ground. In fact, the requirement of the definition quoted hereinbefore even for the spouse, son and unmarried daughters, requires them to be wholly dependent on the deceased government servant at the time of his/her death and, therefore, inclusion of the married daughter in the definition, would not dilute the said requirement of the Rule.

Further, the marriage by itself cannot be a disqualification and, therefore, the definition barring a married daughter from seeking compassionate appointment merely on the ground of her marriage is apparently arbitrary and violative of Articles 14, 15 and 16(2) of the Constitution of India.

The catena of judgments cited on behalf of the State essentially are based on the principles for grant of compassionate appointment, which have all been noticed hereinbefore and qua which, there is no dispute, which Principles/parameters have to be strictly followed, even when the married daughter is included in the definition.

Though the judgment in the case of Miss C.B. Muthamma (supra) was cited opposing the plea raised by the petitioners. The observations made in the said judgment, advances the cause of the petitioners, which read as under:-

> "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 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 die-hard 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."

From what has been laid down by various High Courts, dealing with the exclusion of married daughter from the purview of grant of compassionate appointment, the opinion essentially is unanimous that the same is violative of Articles 14 to 16 of the Constitution of India. Except for the judgments of this Court, which all have followed the initial judgment in the case of Smt. Sumer Kanwar (supra), none has cited any other judgment upholding the exclusion of married daughter from the definition.

Besides the above, the fact that Hon'ble Supreme Court in the case of C.N. Apporva Shree (supra) has given its full imprimatur to the reasoning of the High Court and has noticed

that the provision denying married daughter a job on compassionate grounds, has been quashed in the case of Bhuvaneshwari V. Purani (supra), the proposition holding the married daughter as eligible for compassionate appointment, has the sanction of Hon’ble Supreme Court as well.

Hon'ble Supreme Court in the case of *The Secretary, Ministry of Defence v. Babita Puniya & Ors.: (2020) 7 SCC 469,* wherein challenge was laid to the directions of the High Court ordering that the Short Service Commission Women Officers are entitled to Permanent Commission at par with Male Short Service Commission with all consequential benefits, observed as under:-

> “67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of non-discrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1).”

So far as apprehensions expressed by the learned counsel for the respondent-State and certain other counsel regarding the consequence of striking down of the word 'unmarried' are concerned, the same are apparently misplaced, inasmuch as, merely on account of quashing of the said word ‘unmarried’ from the definition, by itself cannot revive the concluded cases wherein the appointments have already been accorded in terms of the existing provisions.

Further even after, quashing of the word ‘unmarried’ from the definition, the same would apply to the pending cases only as the likely applicants, qua whom the cause of action had arisen

long back even otherwise would not be eligible, in view of repeated pronouncements of Hon'ble Supreme Court regarding the purpose of grant of compassionate appointments i.e. for the purpose of tiding over the immediate requirement, which arises on account of death of the government servant while in service. In cases where the government servant has died long back, the striking down of the word from the definition, by itself would not provide any fresh cause of action to any of the applicants and, therefore, the apprehension expressed, has no basis.

From the above discussion, it can be safely concluded that the use of word 'unmarried' in Rule 2(c) of the Rules of 1996 depriving a married daughter from right of consideration for compassionate appointment, violates the equality clause and cannot be countenanced.

Consequently, the reference is disposed of. The re-framed question in the reference, is answered as under:-

The provision of Rule 2(c) of the Rules of 1996, which excludes the married daughter from definition of dependent prior to its amendment vide notification dated 28.10.2021, is discriminatory and violative of Articles 14 to 16 of the Constitution of India and as such, the word 'unmarried' from the definition of ‘dependent’, is struck down. Further, in Rule 5 of the Rules of 1996 also the word unmarried daughters/adopted unmarried daughter, shall be read as daughters/adopted daughter.

The judgment in the case of Sumer Kanwar (supra) and all other judgments, which have followed the judgment in the case of

Sumer Kanwar (supra), upholding the denial of compassionate appointment to married daughter, are overruled.

As a consequence, it is directed that on account of striking down of the word 'unmarried' from the definition – (i) the same shall not effect any case, wherein compassionate appointment has already been granted under the provisions as they stood before this order; (ii) the same by itself would not provide a cause of action to any applicant and would apply to cases which are either pending before the competent authority and/or to the cases where litigation is pending on the date of this order only; (iii) the provisions and other requirements of the definition regarding the applicant being wholly dependent on the deceased government servant at the time of his/her death would be scrupulously applied; (iv) all the parameters as laid down by Hon'ble Supreme Court for grant of compassionate appointment, shall also be scrupulously followed and that (v) all other provisions of the Rules except the inclusion of the 'married daughter' in the definition of 'dependent', shall have full application.

The matters be now placed before the Division Bench for appropriate orders.

RAJASTHAN HIGH COURT
सत्यमेव जयते

(ARUN BHANSALI),J. (VIJAY BISHNOI),J. (SANDEEP MEHTA),J.

PKS/-