Savita Samvedi (Ms) and Another

Vs

Union of India and Others

Civil Appeal No. 2441 of 1996

30.01.1996

JUDGMENT

PUNCHHI, J. –

1. Special leave granted.

2. This appeal voices a cry for gender justice.

3. The two appellants before us are a married daughter and father. The second appellant was in service of the India Railways. While in service, he was allotted quarter No. 30/3, Railway Colony, Kishan Ganj, Delhi. He was due to retire on 31-12-1993. It is a different matter that he was permitted to retain the railway quarter for the maximum permissible period of eight months thereafter up to 31-8-1994. Much prior to retirement, the second appellant on 18-3-1993 requested the Railway authorities concerned in permitting his married daughter, the first appellant to share the accommodation allotted to him on the basis that she was a railway employee at Delhi described as "Sr. S.O./T.A./D.K.Z.". He pointed out that he had two sons working out of Delhi, but neither of theme was a railway employee, whereas his married daughter was one, and he needed her to look after him and his ailing wife. His request was granted favourably inasmuch as on 31-5-1993 permission was granted to the first appellant to share railway quarter of her father with effect from 16-3-1993 with the rider that she would not be entitled for regularisation of the railway quarter after the retirement of the second appellant. All the same, a day short of the retirement of the second appellant, the first appellant laid claim to the regularisation of the quarter contending that her brothers were not in a position to look after her parents, whereas she was, and would in future also look after her parents. The prayer was declined on 31-1-1994 on the ground that a married daughter was not eligible for regularisation of a railway quarter. The second appellant also made a representation to the Divisional and Superintending Engineer (Estates), Northern Railway, quoting instances where regularisation of railway accommodation had been made in favour of married daughters. The request was forwarded by the Divisional and Superintending Engineer to the General Manager, Northern Railway on 4-7-1994 pointing out that the first appellant was in railway service w.e.f. 25-2-1973, sharing accommodation with her father with effect from 16-3-1993 and that she was not drawing House Rent Allowance on her part with effect from that date. Her request was declined because of the Railway Circular on the subject. Both the appellants then took the matter to the Central Administrative Tribunal, Principal Bench, New Delhi but without any success. They have thus knocked the doors of this Court for appropriate relief.

4. The respondents in defence rely upon the Railway Board Circular dated 11-8-1992, whereunder regularisation is permitted on terms. The operative part thereof reads as follows :

"Reference Railway Ministry's letters No. E(G) 82 R 1-23 dated 27-12-1982 and

> E(G) 85 R 1-9 dated 15-1-1990 as clarified vide their letters No. E(G) 90 R 1-11 dated 15-3-1991 and 1-7-1991, conveying instructions that when a railway servant who is an allottee of railway accommodation retires from service, his/her son, unmarried daughter, wife, husband or father as the case may be, may be allotted railway accommodation on out-of-turn basis subject to fulfilment of prescribed condition.
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> The Ministry of Railways have reviewed the matter and in supersession of the instructions vide their letter No. E(G) 82 R dated 27-12-1982 have decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not have any son or in case where the married daughter is the only person who is prepared to maintain the parent(s) and the sons are not in a position to do so (e.g. minor sons). This will be subject to the conditions already prescribed which are applicable to the other eligible wards seeking such concessions.
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> The decision communicated above will also be equally applicable in the case of death/medical unfitness."

5. As is obvious from the plain reading of the Circular, the married daughter of a retiring official is eligible to obtain regularisation if her retiring father has no son. She thus has a foothold, not to be dubbed as an outcaste outright. In case he has a son, she shall not be in a position to do so, unless he is unable to maintain the parents e.g. like a minor son, but then she should be the only person who is prepared to maintain her parents. It is thus plain that a married daughter is not altogether debarred from obtaining regularisation of a railway quarter, but her right is dependent on contingencies. The authorities concerned as also the Central Administrative Tribunal seemed to have overlooked the important and predominant factor that a married daughter would be entitled to regularisation only if she is a railway employee as otherwise, she by mere relationship with the retiring official, is not entitled to regularisation. Logically it would lead to the conclusion that the presence of a son or sons, able or unable to maintain the parents, would again have to be railway employees before they can oust the claim of the married daughter. We are not for the moment holding that they would be capable of doing so just because of being males in gender. Only on literal interpretation of the Circular, does such a result follow, undesirable though.

6. A common saying is worth pressing into service to blunt somewhat the Circular. It is -

> "A son is a son until he gets a wife. A daughter is a daughter throughout her life."

7. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the Railway authorities irrespective of the gender of the child. There is no occasion for the Railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The Railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender-biased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be

placed on a par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above-quoted.

8. The Tribunal took the view that when the Circular dated 11-8-1992 had itself not specifically been impugned before it and ex facie the conditions contained in the said Circular had not been satisfied in the present case, no relief need be given to the appellants. The Tribunal viewed that when there were two major sons of the second appellant, gainfully employed, the fact that they were not railway employees, not residing in Delhi, did not alter the situation that the terms of the Circular dated 11-8-1992 had not been satisfied, under which alone regularisation was permissible. As brought about before, the Tribunal overlooked this aspect that the Circular was meant only to enlist the eligibles, who could claim regularisation, but the important condition of one being a railway employee had to be satisfied before claim could be laid. In the instant case, the first appellant, on that basis, alone was eligible (subject to gender disqualification going). Son the second appellant could exercise his choice/option in her favour to retain the accommodation, obligating the Railway authorities to regularise the quarter in her favour, subject of course to the fulfilment of other conditions prescribed. The error being manifest is hereby corrected, holding the first appellant in the facts and circumstances to be the sole eligible for regularisation of the quarter.

9. It was also pointed out before us that the Central Administrative Tribunal, Bombay Bench in one of its decisions in OA No. 314 of 1990 decided on 12-2-1992 (Annexure P-8) relying upon its own decision in Ambika R. Nair v. Union of India [TA No. 467 of 1986] in which the earlier Circular of the Railway Board dated 27-12-1982 had been questioned, held the same to be unconstitutional per se as it suffered from the twin vices of gender discrimination inter se among women on account of marriage. We have also come to the same view that the instant case is of gender discrimination and therefore should be and is hereby brought in accord with Article 14 of the Constitution. The Circular shall be taken to have been read down and deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. It is so ordered.

10. For the reasons stated above, this appeal is allowed and direction is issued to the respondents to grant regularisation of the quarter in favour of the first appellant with effect from the date of retirement of the second appellant and regulate/readjust the charges on account of house rent accordingly. There shall be no order as to costs.