

To Compare or not to Compare: Testing Compassionate Appointment on the Anvil of Equality through the Lens of Union of India V. V.R. Tripathi

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Abstract

The equality jurisprudence has been evolving under the rule of law; the Courts have been faced with a tumultuous task of protecting the core principles of reasonableness, fairness, equity, through the years. As the cases have been pronounced over the years, and with the passage of the landmark privacy judgment, the Courts have tried to standardize its parameters, and bring to a test of proportionality. Though, the endeavor has been to reduce the multifaceted interpretations, but issues have started arising in the applicability of the standardized tests in various areas of law, one such being in this case. Herein, I analyze the case, by giving a systemic background, then critically appraising the judgment by sharing that Courts could have considered the parameter of 'non-comparative unreasonableness' facet of equality jurisprudence, instead came to a conclusion by the narrow classification test. On assessing the parameter of non-comparative unreasonableness, the Court through this very case, could have set a firm precedence, and taken the discussion forward.

Keywords: equality; marriage; compassionate appointment; narrow classification test; substantive due process; non-comparative reasonableness; Wednesbury test; justice; equity; public policy; heritable right; bigamy

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BACKGROUND OF THE CASE

In the case of Union of India v. V.R. Tripathi, [1] the factual matrix entails around the respondent, Ramlakhan Tripathi who worked at the Railways, had passed away in harness on 28th November, 2009. The respondent is the son born from the second marriage of a deceased employee, who married during the subsistence of his first marriage. The second marriage was contracted in 1987. The respondent then applied for compassionate appointment on the death of his father. The application was rejected on 6th March, 2012. The matter first befell before the Learned Central Administrative Tribunal, which held in favour of the respondent. After which a review petition was filed before the Hon'ble Bombay High Court by the Union of India and the Railway Authorities. The High Court did not deviate from the Tribunal's view and observed

merit based considerations for compassionate appointment of the respondent. Hence, the petitioners brought the matter before the Hon'ble Supreme Court of India.

The main issue before the Hon'ble Supreme Court was whether the circular of Railway board disallowing compassionate appointment to the second widow and children was inconsistent with Article 14 of the Constitution?

Before delving into the issue, it is necessary to highlight the contentions of the parties involved.

Mr. Aman Lekhi, the learned Additional Solicitor General, representing on behalf of the Petitioners, humbly submitted that, compassionate appointment would not be a

justifiable ground for alternate source of employment. It is due to the fact that it is not a heritable right and is dependent on the schemes underlying its benefits or facilities. With respect to the Hindu Marriage Act, 1955, the counsel perused the provision of section 16(3), and stated that a child born from a marriage which is void under section 11 has a claim only with respect to the parents' property. He also clarified that the State through its machinery is legitimately allowed to design a policy to disallow compassionate appointment to spouse of a second marriage, as well as children, if any, born from that marriage, in order to discourage bigamy.

Mr. Arjun Singh Bhati and Mr. Apurv Parashar, the learned counsels representing the respondents, rebutting the side of the Petitioners, humbly submitted that, section 16 of the Hindu Marriage Act, 1955, provides that the children born from a marriage which is null and void are legitimate. Due to their legitimacy determined as a matter of law, would entitle compassionate appointment to the children from a second marriage, despite the second spouse not being entitled.

CRITICAL APPRAISAL OF THE JUDGMENT

The arena for judicious analysis of this case, however, arose before the Hon'ble Supreme Court, with the two judgments that have been used to come to its decision, which are, *Namita Goldar v. Union of India*, [2] and *Rameshwari Devi v. State of Bihar* [3]. In *Namitha Goldar*, [4] the Hon'ble Calcutta High Court, by relying on *Rameshwari Devi*, [5] decided not only the legitimacy of the child born out of second marriage, during the subsistence of first marriage, but also granted the second child entitlement to the estate of the father. The entitlement was construed in the form of pensionary benefits. In view of the same, the circular of the Railway Board dated 2nd January, 1992, was quashed by the Hon'ble Supreme Court to the extent that it was precluding the children of the second wife from being considered for compassionate appointment. Even the fresh circular dated 3rd April, 2013, that was reiterating the terms of the earlier circular dated 2nd January, 1992,

was quashed to affirm the finality of the *Namita Goldar* case [6]. The object of compassionate appointment have been discussed in a slew of cases, with all pointing towards situations of dire necessity, where the family is unable to make its ends meet, [7] through a scheme made by an employer for such exigency [8]. The overall framework for adopting a scheme of compassionate appointment, should not contravene the principles derived from Article 14 and Article 16 of the Constitution of India [9].

Clearly, the Court has maintained the stance of not treating a scheme of compassionate appointment as a matter of right under the ambit of law, and has disallowed the usage of parentage or descent as reason for approving such a scheme, even in public employment sphere. The scheme was intended to alleviate the overall financial hardships faced by families upon the premature death of employees while in service. However, the problem arose, particularly, when Article 14 came into the picture. To understand, whether the scheme of compassionate appointment was consistent with the principles of fairness, equity, and equal treatment, the advertence to Section 16 of the Hindu Marriage Act, 1955, becomes inevitable.

Legitimacy of a child born from a null and void marriage, is a matter of public policy, and hence the child born from such marriage is entitled to the right in the property only of the parents and none other than the parents. The Court while looking into the principles enshrined in Article 14 of the Constitution, at the outset, clarified that the purpose of compassionate appointment is to prevent destitution in the family of a deceased employee, and that the State would not exclude such a child from seeking benefit of compassionate appointment.

Interestingly, the Court, in this Case, Adopted the Narrow Classification Test to come to its Conclusion

Two categories between the classes of legitimate children were thus created. On one hand, the law declared legitimacy to a child born from second marriage, and on the other,

child born from the first marriage of the deceased employee, was alone granted entitlement to the benefit of compassionate appointment. The Court as having already clarified the purpose behind adopting the scheme of compassionate appointment to prevent destitution, borne the reasonable nexus to the object sought to be achieved. For which, the Court has chosen to allow the assessment of each individual case in isolation.

Drawing our attention to the prevalence of *Rajbala v. State of Haryana*, [10] while exploring the contours of equality, the Court affirmed the view of *E.P. Royappa v. State of Tamil Nadu*, [11] that a renewed tool was needed to be adopted, and do away with a narrow interpretation to the concept of equality. Thereby, a doubt was very much raised on the adoption of a so called **narrow classification test**. Nonetheless, the Court had raised a clarion call that the doctrine of “**substantive due process**” of American Supreme Court might be employed in examining the constitutionality of Indian legislation [12]. Hence, the Courts stressed on the need of a pragmatic, strong test, leading to the conceptualization of **reasonable classification test** that was used in a slew of cases [13]. On looking at the overall purpose behind Article 14, it is to strike at arbitrariness, as equality got negated [14]. The inherent elements to the purpose of equality and non-arbitrariness are the principles of reasonableness and rationality [15]. Thus, the doctrine of classification, as has been clarified, is not verbatim interpretation of Article 14, nor the objective and end of that Article, but a mere judicial formula for determining whether legislative or executive action in question is arbitrary [16]. In this similar vein, Court have gone ahead to further specify that Article 14 was not to be equated with the classification principle [17]. The principle was held to be a subsidiary rule for examining whether the particular state action was arbitrary or not, and not be considered a vital component on ensuring guarantee against arbitrariness in State action [18].

Despite, the existence of the two pronged conditions of intelligible differentia and

rational nexus, stemming out from the classification test in *Ajay Hasia*, [19] in my opinion, still inherent to the essence of Article 14, is **non-comparative unreasonableness** [20]. The *locus classicus* on this aspect is *A.L. Kalra v. Project and Equipment Corporation of India Ltd.*, [21] which held that comparative examination to test unreasonableness cannot be a sole ground to confine the principles of equality to [22]. As a legislative or executive action if it is per se arbitrary, would be denied equal protection by law [23]. This has been expounded further, to mean that the test of arbitrariness must be on the touchstone of individual assessment of facts and circumstances of a given case [24]. For which necessarily, a discernible principle is needed to be extracted from the impugned act to satisfy the test of reasonableness [25]. However, for applying the yardstick of ‘arbitrariness,’ in order to check whether a particular administrative action is reasonable, was founded on the principle test that was the *Wednesbury* test [26]. As per this test, Court has the right to intervene in the following situations [27]:

- The defendant took into account factors that ought not to have been taken into account;
- The defendant failed to take into account factors that ought to have been taken into account;
- The decision was so **unreasonable that no reasonable authority would ever consider imposing it**.

The third limb was famously called as **Wednesbury unreasonableness** [28]. This test had been acknowledged in its usage to check the parameters of reasonableness having been satisfied or not, especially on account of factors that either have been omitted or used irrelevantly [29].

The Court, in the present case, however, went ahead with the view that Article 14, would be violated if the exclusion of one class of legitimate children from seeking compassionate appointment is done on the ground that the mother of the applicant was a plural wife of the deceased employee. Substantiating on the ground of reasonable

nexus with the overall object of ensuring dignity of the family, the Court clarified that it would bring about an unjust discrimination within the class of legitimate beneficiaries, i.e., the legitimate children.

CONCLUSION

On analyzing the uncertainty revolving around the ambit of arbitrariness in reviewing the constitutionality of legislative or executive actions, it became reasonable to conclude that arbitrariness is the primary facet running anti-thesis to the principles of equality. But the looming question that was still revolving around this sphere was whether strict or liberal extant of interpretation should be used to test such actions on the anvil of principles of equality. For the time being, the Court should have relied on the *Wednesbury* Test. The Court, however, on applying the narrow classification test, set precedence on allowing the scheme of compassionate appointment to legitimate children satisfying Section 16 of the Hindu Marriage Act, 1955, having disregarded an entire arena of non-comparative unreasonableness. This, naturally, led to the passing over of the assessment of this scheme, through the lens of *Wednesbury* test. However, in India, the *Wednesbury* test, had also evolved and molded into the proportionality test, which became an essential facet in ensuring guarantee against arbitrary State action as was held in the landmark judgment of *K.S. Puttuswamy v. Union of India* [30]. Further, it was summarized in the judgment to a four-pronged test [31]:

- The action must be sanctioned by law;
- The proposed action must be necessary in a democratic society for a legitimate aim;
- The extent of such interference must be proportionate to the need for such interference;
- There must be procedural guarantees against abuse of such interference.

This test was also recently affirmed by the Hon'ble Supreme Court in the landmark judgment of *Anuradha Bhasin and Ors. v. Union of India and Ors.*, [32] that it would achieve judicial balance in India. Hence, the Courts need to relook into the equality

jurisprudence again, and decide which stance that it needs to take for upholding judicial propriety, and ensuring the core principles of reasonableness and fairness are protected.

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