Gulab Hussain and Ors. Vs State of U.P.& Ors.

Court: Allahabad High Court

Date of Decision: Nov. 9, 1998

Acts Referred: Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness) Rules, 1974 â€" Rule 5

Hon'ble Judges: D.K.Seth, J

Final Decision: Dismissed

Judgement

D.K. Seth, J.
The petitioner was appointed on daily wage basis on 1st of March, 1987. He was regularized in service by virtue of a

resolution dated 25th December, 1990, contained in Annexure 3. Persuant to this resolution, an appointment letter was issued to the petitioner on

26th December, 1990 contained in Annexure4. The said resolution was subsequently cancelled persuant to a resolution dated 29th March, 1991.

In terms of the resolution dated 29th March, 1991, the appointment of the petitioner was cancelled by a communication dated 13th April, 1991

contained in Annexure5. This resolution dated 29th March, 1991 is Annexure C.A. 1 to the counteraffidavit filed by the respondents. This

resolution dated 29th March, 1991 and the order dated 13th April, 1991 has since been challenged in this writ petition.

2. Mr. K.C. Shukla, holding the brief of Mr. Ashok Khare, counsel for the petitioner contends that this resolution and the order of termination was

issued without giving any opportunity to the petitioner in violation of the principles of natural justice and equity. He further contends relying on the

Government Order dated 24th October, 1989 contained in Annexure2 to the writ petition, that he having completed 3 years service having 240

days work in each completed year of service, is eligible to regularisation persuant to the said Government Order and therefore, his service could

not have been dispensed with in the guise of cancellation of resolution or cancellation of his appointment. He further contends that the case made

out in the counteraffidavit is that the petitioner was appointed under the Dying in Harness Rules cannot be sustained since it is apparent from the

application made by the petitioner that he had never applied for appointment under the said Rules. He points out from Annexure1 that he had

applied for appointment on daily wage basis. He also relies on a few decisions in support of his contention which will be dealt with at an

appropriate stage.

3. Mr. Rakesh Pandey, learned counsel for the respondents on the other hand contends that it is apparent from the resolution contained in

Annexure3 that the petitioner was sought to be appointed under Dying in Harness Rules. But the said Rules which were framed in 1974 cannot be

attracted in the facts of the case since admittedly, the petitioner''s father died in I960. Inasmuch the 1974 Rules is prespective in nature as provided

in Rule 5 thereof. He further contends that the period of three years in terms of Government Order dated 29th October, 1989 contained in

Annexure2, is to be counted on the basis of cut off date provided in the said Order as on 2th October, 1989. In order to be eligible under the said

Government Order, the petitioner ought to have in his credit 3 years'' service having 240 days of work on each completed year of service as on llth

October, 1989. The petitioner having been appointed on 1st March, 1987, had completed only 2 years 7 months of service. Therefore, he has not

fulfilled the criteria laid down in the said Govt. Order and as such, he cannot claim any benefit there from. He further contends that even in

Annexure1 which is a recommendation, the fact that the petitioner was the son of the deceased employee, has been mentioned and due to which

he was so recommended though no reference was made to the 1974 Rules.

4. According to him, be that as it may, if the appointment is illegal and invalid and cannot be made under the 1974 Rules which the resolution was

purported to have taken, in that event, it was a void appointment since the same has been purported to be done dispensing with the effect of

Articles 14 and 16 of the Constitution persuant to the 1974 Rules, which is prospective in nature and not applicable in the case of the petitioner.

The same does not confer any legal right in the petitioner for which he could claim any right of hearing. Then again if the appointment itself is void,

in that event, it is open to the appointing authority to recallor cancel the appointment. Inasmuch the appointment being void, it has no existence in''

the eye of law and, therefore, the resolution cancelling the appointment or the resolution is only a recognition that the appointment is void and is not

dispensation of service requiring giving of hearing to the petitioner. He contends that the 1974 Rules cannot be given retrospective effect which is a

settled principle of law. He further contends that the petitioner has not disputed the fact that his father had died in 1967. He has also not been able

to make out a case that he has a legal right to regularisation. Therefore, he contends that this writ petition may be dismissed, He relies on a few

decisions, which will be referred to at an appropriate stage.

5. I have heard both the learned counsel at length. The fact remains that in order to obtain the benefit of the Government Order dated 24th

October, 1989, one has to fulfill the eligibility criteria laid down in the said Government Order. Unless the eligibility criteria laid down in the

Government Order is fulfilled, no right can be said to have accrued to a person. The said Government Order provides for a cut off date as on llth

October, 1989 laying down the eligibility criteria to the extent that a person who has completed three years'' of service as on llth October, 1989

having 240 days of work in each completed year of service may be considered for regularisation. The petitioner having been appointed on daily

wage basis on 1st March, 1987 did not complete three years'' of service as on llth October, 1989 having 240 days of work in each completed

year of service. This fact is not disputed as it appears from the pleadings. However, Mr. Shukla has sought to make out a case that by the time the

petitioner was sought to be regularized, he had completed three years'' of service and thus fulfilled the eligibility criteria. But this contention cannot

be accepted in view of the simple reason that the said order had provided a cut off date specifically which cannot be ignored. If any benefit is to be

obtained out of the said order, the benefit is to be obtained from the whole of the order providing the eligibility criteria. Since the cut off date has

been provided, the contention of Mr.: Shukla to the extent mentioned above does not find any support. Thus it appears that the petitioner has not

been able to make out legal right for regularisation on the basis of the said Government Order independent of the Dying in Harness Rules.

6. Now the resolutation dated 25th December, 1990 clearly mentions that the appointment was being made under the Dying and Harness Rules,

1974. Similarly the order of appointment dated 26th December, 1990 as well mentions about the appointment under the said Rules persuant to the

said resolution. Therefore, the appointment on the face of the record, appears to have been made persuant to the 1974 Rules.

7. In the counteraffidavit, it has been specifically admitted that the father of the petitioner had died in 1967. This fact has not been disputed. Mr.

K.C. Shukla in his usual fairness admitting this position had proceeded to substantiate his submissions on legal points as mentioned hereinbefore.

8. Now Rule 5 of the U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 prescribes that after the enactment

of the said Rule, if a person dies in harness, in that event, one of his dependent would be eligible for appointment, on the conditions laid down in

the said Rules. Thus, it appears that the Rules itself prescribe prospective operation. By reason of Rule 5, there cannot be any scope for holding

that it is not prospective. There is no ambiguity in the Rule itself by which there could be any confusion stretching the rules to have retrospective

operation. The father of the petitioner having died in 1967 before the enactment of the Rules, therefore, it does not come within the purview of

Rules 5 of the said Rules and as such, there was no scope for giving appointment to the petitioner under the Dying in Harness Rules. Thus it

appears that the resolution dated 25th December, 1990 seeking to appoint the petitioner under the Dying in Harness Rules, is wholly misconceived

and misplaced and beyond the authority and jurisdiction of the respondents. The 1974 Rules cannot be attracted in the case of the petitioner in the

facts and circumstances of the case. Therefore, any appointment under the said Rules is wholly contradictory to and in contradiction of Rule 5 of

the said Rules and as such, is in violation of the equality clauses as contained in Articles 14 and 16 of the Constitution of India.

9. Admittedly, the petitioner has not come through the recruitment process. He having been appointed on daily wage basis seeks regularisation.

Regularisation could be made only if there are adequate Government Order or Rules made therefore. Now the regularisation having been provided

in the Government Order dated 24th October, 1989 and the petitioner having not fulfilled the criteria laid down therefore, cannot claim

regularisation otherwise than the said Government Order.

10. Now the appointment has been made under the Dying and Harness Rules, which as observed earlier has been held to be a void appointment

for regularisation de hors the Rules. The same is void as abinitio and as such nonest viz. has no existence in the eye of law. If the appointment is

void, it cannot be effective. By virtue of such appointing, the petitioner cannot acquire any right. Therefore, the resolution cancelling the earlier

resolution appointment the petitioner, cannot be said to be without jurisdiction. Since it is brought to the notice of the respondents that the

appointment has been made in violation of any Rules and is illegal, it is always open to the authorities to recall the said appointment or cancel the

same. In support of his contention, Mr. Rakesh Pandey has relied upon a decision in the case oiBiswa Ranjan Sahoo v. Sushanta Kumar Dinda &

others, JT 1996 (6) SC 515. In the said judgment, it was held that if the appointment is irregular, the same can be cancelled even without notice to

the incumbent. Mr. Pandey has also relied on the decision in the case of Umesh Kumar Nagpal v. State ofHaryana & others, 1994 (2)

U.P.L.B.E.C. 1307. In the said case the apex Court had held that the right to such appointment (under the Dying in Harness Rules) is based purely

on compassionate ground and as such, it cannot be claimed after lapse of the period of crises.

11. Herein this case, it cannot be said that the crises continued right from 1967 till 1987 for long 20 years. The said rule was framed to save the

family of the deceased from immediate destitution on the death of the employee. The expression, ''immediate'' has a nexus and relation with the

factum of time of the death. It does not contemplate continuation of such immediate destitution even for the period of 20 years after death as in this

case.

12. Mr. Pandey has also relied on a decision in the case of Haryana State Electricity Board v. Naresh Tanwar & another, JT 1976 (2) SC 542.

The'' said decision had relied on the decision of Umesh Kumar Nagpal (supra) and had held that the right to appointment on compassionate

ground is not a vested right which can be exercised at any time in future. Such right neither can be claimed nor can be offered after the crisis is

over.

13. Mr. Shukla had relied on the decisions in the case of Turram Singh v. District Inspector of Schools, Aligarh & others, 1997 (2) LBESR 482

(All); Vishwamitra Yadav v.U.P. State Public Service Tribunal, Lucknow & others 1998 (1) UPLBEC 23 ; 1998(2) LBESR 190 (All), Sridharv.

NagarPalika, Jaunpur, AIR 1990 SC 307 and Shrawan Kumar Jha v. State of Bihar, AIR 1991 SC 309 in support of his contention that an

opportunity before cancellation was mandatory and absence thereof is fatal. There is no doubt about the proposition advanced by Mr. Shukla

through the said decisions. These are well settled principles of law which does not conceive of any two opinions. But every proposition of law has

to be applied on the facts of each case. Abstract proposition cannot help unless the same fits in the facts on which the principle is proposed to be

attracted. As discussed hereinbefore, in the facts and circumstances of the case, this principle as sought to be advanced by Mr. Shukla, cannot be

attracted despite his erudite submission.

14. In this view of the matter, the writ petition fails and is accordingly, dismissed. There will, however, be no order as to costs. This order will not

prevent the respondents from considering petitioner''s case, if necessary by relaxing his age against any future vacancy, if it is so permissible.