

(2005) 05 AHC CK 0198

Allahabad High Court

Case No: Writ Petition No. 21622 of 2004

Kumari Suman Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 6, 2005

Acts Referred:

- Constitution of India, 1950 - Article 16, 16(1), 309
- Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness) Rules, 1974 - Rule 5

Citation: (2005) 4 AWC 3257 : (2005) 106 FLR 639

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: L.P. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.

The petitioner's father was a permanent employee in the office of the Executive Engineer, Betwa Canal Division Orail in Jalaun, He died in harness on 25.2.1989. Upon his death, the petitioner's mother, Smt Kewal, was given an appointment as a Class IV employee under the Dying in Harness Rules. She also died in harness on 25.11.1999. The petitioner was a minor at the time of the death of her mother and upon reaching the age of majority submitted an application before the Executive Engineer on 5.7.2003, which was also within the stipulated period of 8 years, for an appointment on compassionate ground under the Dying in Harness Rules. The petitioner was informed that; the appointing authority, in cases of appointments under the Dying in Harness Rules, was the Superintending Engineer and accordingly the petitioner filed an application dated 28.9.2003, represented the Superintending Engineer for an appointment on compassionate ground. The Executive Engineer by an order dated 2.9.2003 intimated the petitioner that it was not possible for the Department to appoint the petitioner on compassionate

ground. Aggrieved, the petitioner filed Writ Petition No.7945 of 2004 which was allowed and the order dated 2.9.2003 was quashed. The High Court, directed the authority concerned, to decide the matter with regard to the appointment of the petitioner in "accordance with law by a "reasoned and speaking, order. Based on the direction of the High Court in its judgment dated 26.2.2004 the Executive Engineer by an order dated 28.4.2004 has again" rejected the application of the petitioner on the ground that the petitioner cannot be given an employment under the dying in harness rules in as much as the petitioner's mother was given an appointment upon the death of the petitioner's father and therefore, upon the death of the petitioner's mother no second appointment could be given to the petitioner. The petitioner has assailed this order by filing the present writ petition and has prayed for the quashing of the said order and for a direction commanding the respondents to issue a letter of appointment to the petitioner under the Dying in Harness Rules.

2. Heard Sri L.P. Singh, the learned counsel for the petitioner and the Standing Counsel appearing for the respondent

3. The learned counsel for the petitioner submitted that once the petitioner's mother became a govt. employee, she became entitled to all rights and benefits which pertained to that office or post and the conditions of service applicable upon the petitioner's mother also included the benefits that could be availed by her heirs under the Dying in Harness Rules.

4. The learned standing counsel submitted, that the Dying in Harness Rules nowhere provides that family members of a deceased employee could be given successive appointments. The learned counsel submitted that upon the death of the father, his widow was given an appointment on compassionate ground and, therefore, the provisions of Dying in Harness Rules came to an end and the said Rules could not be utilized again upon the death of the mother of the petitioner. In view of the aforesaid, the petitioner was not eligible to be given an Appointment under the Dying in Harness Rules.

5. In the present case, the U.P. Recruitment Dependents of Government Servants Dying in Harness Rules, 1974 are applicable which has been framed under the proviso to Article 309 of the Constitution of India Rule 5 of the aforesaid Rules, relates to the procedure for the recruitment of a member of family of the deceased which reads as under.

5. Recruitment of a member of the family of the deceased. In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State government or a Corporation owned or controlled by the Central Government or a State Government or a Member of his family who is not already employed under the Central Government or a State Government or a

Corporation owned or controlled by take Central Government or a State Government shall, or making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the, normal recruitment rules If, such person-

(I) fulfils the educational qualifications prescribed for the post

(ii) is otherwise qualified for Government service, and,

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

6. From, the aforesaid, it is clear that where a Government Servant dies in harness, a member of the family of the deceased would be eligible for being given a suitable employment in a Government service in relaxation of the normal recruitment rules. A dependant, who is given an appointment under Rule 5 of the Rules; of 1974, is in fact, given an appointment in government service. Once a dependant becomes a government employee, the question, that is to be considered is whether the Rules of 1974 regarding Appointment on compassionate grounds would become applicable to his family or not? The words "employment in government service" under Rule 5 of the aforesaid rules is akin to the word used in Article 16 of the Constitution of India and would include all matters relating to the employment, both prior and subsequent, such as, the initial appointment, conditions of service pertaining to that post or office to which the appointment was made, namely salary increment, refund of pay, promotion, terms of leave, gratuity, pension, age of superannuation, etc.

7. In General Manager, [The General Manager, Southern Railway Vs. Rangachari](#), a Constitutional bench of the Supreme Court held.

"The other matters relating to employment would inevitably be the provision as to the salary and periodical increments thereof, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment they are, and must be, deemed to be included in the expression matters relating to employment; in Article 16(1).

8. In [Union of India \(UOI\) and Another Vs. R.G. Kashikar and Another](#), the Supreme Court explained the words "matters relating to employment" which expression includes; . "

" matters relating to salary, periodical increments, leave, gratuity, pension, age of superannuation etc." :

9. In [State of Madhya Pradesh and Others Vs. Shardul Singh](#) , the Supreme Court reiterated its earlier judgment in the case of Rangachari (supra) and held that "employment" should be interpreted in a broad and general manner.

10. In view of the aforesaid, the ratio: applied by the Supreme Court in interpreting the words " matters relating to employment "would include all; the conditions of service that would normally be applicable to a government servant. ;

11. In my view, by the same ratio, the, rules relating to Dying in Harness would equally apply and would be included in the words matter relating to employment.

12. Thus, I am of the view, that once the petitioner's mother is appointed under the Dying in Harness Rules, she becomes a government employee and all matters relating to the employment, which would include salary, increment, promotions, leave, gratuity, pension, including appointments to her heirs under the Dying in Harness Rules would become applicable,

13. Consequently, I hold, that upon the death of the petitioner's mother, the petitioner is entitled to be given an appointment under the Dying in" Harness Rules.
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14. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The matter is remitted back to the authority concerned to pass a fresh order in the light of the observation made above within three months of the production of a certified copy of this judgment.