

(2003) 09 AHC CK 0252

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 18172 of 1994

Anju Misra (Smt.)

APPELLANT

Vs

General Manager, Kanpur Jal
Sansthan

RESPONDENT

Date of Decision: Sept. 26, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2004) 1 UPLBEC 201

Hon'ble Judges: R.B. Mishra, J

Bench: Single Bench

Advocate: Ajay Sharma and Durga Tiwari, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

R.B. Misra, J.

In the present writ petition the petitioner has sought to quash the order dated 30.3.1994 (Annexure-3 to the writ petition), whereby the General Manager, Kanpur Jal Sansthan, Kanpur, has rejected the application of petitioner for getting employment on compassionate ground under the "U.P. Recruitment of Dependent of Government Servant Dying-in-Harness Rules, 1974" (in short called as Dying-in-Harness Rules).

2. Heard Mrs. Duga Tiwari, holding brief of Sri Ajay Sharma, learned Counsel for the petitioner and non-appears for the respondent.

3. This writ petition is of the year 1994, therefore, a detailed order dated 16.5.2003 was passed, whereby the General Manager, Kanpur Jal Sansthan was issued a fresh notice in addition to dasti to give the response by next date of hearing. However, no response has been given by the respondent, therefore, the writ petition is decided on the available documents after hearing the learned Counsel for the petitioner.

4. According to the petitioner, Late Sri Chandra Shekhar Mishra, the husband of the petitioner, the only bread earner of his family, died on 5.9.1993, while working as a daily wager for about 11 years leaving behind him three daughters and one son aged about 17 years, 15 years, 5 years and 13 years, respectively and his old parents. Immediately, the petitioner had submitted an application dated 8.9.1993, which was forwarded for consideration and the same was rejected on 30.3.1994 (Annexure-3 to the writ petition) by the General Manager, Kanpur Jal Sansthan by saying that the dependants or family members of the person, who had died while working as a daily wager cannot be given employment. The petitioner has also referred in Para 6 of the writ petition that the husband of Smt. Gyanwati was deployed in the year 1985, as a daily wager in Jal Sansthan, Kanpur and had died after being deployed as a daily wager on 27.1.1990 and on the representation of Smt. Gyanwati, she was employed primarily on 4.9.1990 (Annexure-4 to the writ petition) initially for two months on daily wages after obtaining the reports from the office of General Manager and taking the reference of precedence of previous deployment given to the other dependants of the deceased employees against available vacancies. It was also noted in the Annexure-4 enclosed with the writ petition that on many previous occasions the General Manager of Kanpur Jal Sansthan has given employment under the Dying-in-Harness Rules to the dependants of the employees, who died-in-harness while serving as a daily wager, and service of Smt. Gyanwati was extended and she was kept in regular employment thereafter in place of her deceased husband. According to the petitioner her claim is more superior to Smt. Gyanwati and in view of Rule 2-A of Dying-in-Harness Rules, she has to be given employment on compassionate ground in place of her husband. According to the petitioner the rejection of the representation of the petitioner is in derogation to the provisions of Articles 14 and 16 of the Constitution and is discriminatory and is in derogation to the precedence and in derogation to the Rule 2 of the Dying-in-Harness Rules.

5. Learned Counsel for the petitioner has submitted that she is entitled to be given employment in reference to the decision of this Court 2001 (4) ESC Santosh Kumar Mishra v. State of U.P. and Ors. and in reference to (2000) 1 UPLBEC 15; Saroj Devi (Smt.) v. State of U.P. and Ors. and in reference to 1998 (79) FLR 608 Smt. Maya Devi v. State of U.P. and Ors..

6. According to the petitioner the vacancies are still available and the petitioner's grievance and poor financial condition is still persisting, therefore, petitioner's case is extremely genuine to be considered in the light of the above mentioned decisions of the Court.

7. In Santosh Kumar Mishra (supra), this Court referring the case of [Raj Narain Prasad and Others Vs. State of U.P. and Others](#), and in reference to 1991 (18) ALR 591 Smt. Pushpa Lata Dixit v. Madhyamik Shiksha Parishad and Ors. and 1998 (79) FLR 608 Smt. Maya Devi v. State of U.P. and Ors. and in reference to 1999 (3) ESC

2187 Smt. Saroj Devi v. State of U.P. and Ors., has observed that the writ petitioner Santosh Kumar Mishra when claimed the appointment on compassionate ground under the Dying-in-Harness Rules on the death of his father, while working initially as daily wager/muster roll employee w.e.f. 15.6.1986 and subsequently deployed as work-charge employee on 13.8.1997 and was continuously in deployment and working till 31.3.1999 and died-in-harness on 1.4.1999, however, was denied the benefit of regularisation, whereas juniors to the father of writ petitioner and other similarly situated persons were regularised ignoring the claim of his father but the denial of appointment to Santosh Kumar Mishra on compassionate ground under Dying-in-Harness Rules on the ground that his father while in service before death was not regular employee, however, such denial of appointment was held to be illegal and this Court has further observed that the petitioner Santosh Kumar Mishra to be entitled for appointment on the compassionate ground in reference to Rule 2 of Dying-in-Harness Rules.

8. For convenience the extract of relevant Rules of "Dying-in-Harness Rules" provides as below :--

"2. Definitions.--In these Rules, unless the context otherwise requires--

(a) "Government Servant" means a Government Servant employed in connection with the affairs of Uttar Pradesh who--

(i) was permanent in such employment; or

(ii) though, temporary had been regularly appointed in such employment; or

(iii) though not regularly appointed, had put in three years" continuous service in regular vacancy in such employment.

Explanation.--""Regularly appointed" means appointed in accordance with the procedure laid down for recruitment to the post or service, as the case may be;

(b) "deceased Government Servant" means a Government Servant who dies while in service;

(c) "family" shall include the following relations of the deceased Government Servant:

(i) Wife or husband;

(ii) Sons;

(iii) Unmarried and widowed daughters;

(iv) If the deceased was unmarried Government Servant, brother, unmarried sister and widowed mother dependant on the deceased Government Servant;

(d) "Head of Office" means Head of Office in which the deceased Government Servant was serving prior to his death."

"5. Recruitment of a member of the family of the deceased.--(1) 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, one member of his family who 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 shall, on 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.

(3) Each appointment under Sub-rule (1) should be under the condition that the person appointed under Sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government Servant immediately before his death."

9. The observation which was made by High Court in Santosh Kumar Mishra (supra), in Paras 9, 12 and 17 as below :--

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within the definition of Rule 2 of the aforesaid Rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of Sub-clause (iii) of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years. 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement on attaining the age of superannuation. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-charge employees as a regular employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

"17. In the instant case, one more redeeming feature in favour of the petitioner is that persons junior to the petitioner's father who were similarly appointed and were taken on the work charge establishment were regularised against regular vacancies by means of order dated 2.11.1998, but the case of the petitioner's father was not considered and thus, he was deprived the benefit of regularisation. In case, the petitioner's father had been considered at that time, he would have been regularised before he died on 1.4.1999. Since, the petitioner's father was entitled for regularisation after putting in such a long service and his case, has not been considered for regularisation, the petitioner cannot be deprived of giving the appointment on compassionate ground because the opposite parties themselves did not consider the case of the petitioner's father for regularisation."

10. In the case of Saroj Devi (supra), this Court has directed the entitlement of writ petitioner to be given employment on the compassionate ground under Dying-in-Harness Rules, acknowledging the claim of the petitioner in view of the fact that the husband on the writ petitioner, had died in while working on temporary basis against the substantive vacancy.

11. A woman cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of [Meena Devi Chaudhary \(Smt.\) Vs. Chief Engineer, U.P. Public Works Department and Others](#), .

12. Delay in appointment--What amounts to.--When a dependent attained the age for appointment on compassionate ground, it will count not as delay for moving an application for consideration of appointment.

13. In Smt. Maya Devi (supra), where the writ petitioner's husband had worked satisfactorily under the Director, Government Press, Allahabad for about 10 years as a daily wager until his death, on her claim the writ petitioner was directed to be accommodated on compassionate ground under the Dying-in-Harness. Rules

relying on the judgment of Smt. Pushpalat Dixit (supra), where it was held as under :

"The main contention of the petitioner's Counsel is that in pursuance of the Government Order she is entitled for the appointment in the said department. On behalf of the State a counter-affidavit has been filed and it is stated that the husband of the petitioner was not regular employee. On behalf of the petitioner, Government Order No. 6/12-1973 Niyukti-4 Lucknow, dated 7th October, 1974 has been produced showing that rule of Dying-in-Harness is fully applicable on the person who is not regularly appointed and died-in-harness. The main object of the rule is to provide an employment to the family of the person who died-in-harness. The employment is given on the compassionate ground and therefore, in my opinion, it would not be proper to say that the husband of the petitioner has not been regularly appointed but, he has worked 17 years in the department and died-in-harness. Therefore, the heir of the deceased is entitled to get benefit of Dying-in-Harness Rules, 1974."

14. I have heard learned Counsel for the parties, I find that the petitioner's husband had been working for about 11 years as a daily wager and in the same department Sri Ram Kishun, who had worked only for five years as daily wager, when died his dependant Smt. Gyanwati was given employment on the compassionate ground under Dying-in-Harness Rules, however, the genuine claim of the petitioner is being ignored by the respondent. Keeping in view the long service rendered by the petitioner's husband satisfactorily and not providing to the petitioner, the employment on compassionate ground is discriminatory and against the provisions of Article 14 of the Constitution and in view of the above observations the petitioner is entitled to be considered for giving employment on the existing vacancy under Dying-in-Harness Rules.

15. In view of the above observations the writ petition is allowed, with a direction to consider the case of the petitioner in respect of giving employment to the suitable post of Class-IV category by the respondents expeditiously, within three months from the date of production of the certified copy of this order before the General Manager, Kanpur Jal Sansthan, Kanpur.