

(2017) 04 AHC CK 0142

ALLAHABAD HIGH COURT

Case No: 604 of 2016

OM PRAKASH SINGH

APPELLANT

Vs

STATE OF U P AND
OTHERS

RESPONDENT

Date of Decision: April 12, 2017

Acts Referred:

- Constitution of India, Article 309 -
- Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-In-Harness) Rules, 1974, Rule 5, Rule 2(c)

Citation: (2017) 04 AHC CK 0142

Hon'ble Judges: V K Shukla, M C Tripathi

Bench: Division Bench

Advocate: Dinesh Pathak, Rakesh Pathak

Final Decision: Allowed

Judgement

1. Om Prakash Singh is before this Court assailing the validity of the order dated 20.8.2016 passed by learned Single Judge in Writ A No.38408 of 2016 (Om Prakash Singh vs. State of UP and 2 ors) wherein learned Single Judge has proceeded to dismiss the writ petition in question by observing that the petitioner has no claim for being considered for appointment on compassionate ground.

2. The factual situation that is so emerging in the present case is that mother of the petitioner late Smt. Malti Devi was performing her duties as Auxiliary Nurse Midwife (A.N.M.) at Health Centre, Nadhira, District Mirzapur and she died in harness on 5.11.2015. The petitioner claims that he alongwith his elder brother and father was totally dependent on his late mother and in this situation after fulfilling each and every prerequisite formalities for consideration of his claim for compassionate appointment, an

application in question was moved for being considered and for being allowed.

3. Petitioner submits that the said application was supported by the affidavit of other surviving members of the family, who proceeded to indicate that they have no objection in case the compassionate appointment is offered to the petitioner. The petitioner is complaining that when no decision was taken on the aforesaid application in question, the petitioner had initially filed a Writ A No.33674 of 2016 (Om Prakash Singh vs. State of UP and 2 ors) with request to issue a writ, order or direction in the nature of mandamus commanding the respondents to decide his claim in accordance with law and learned Single Judge vide order dated 2.8.2016 had proceeded to dismiss the writ petition with liberty to file fresh writ petition.

4. The petitioner claims that thereafter the fresh writ petition was filed being Writ A No.38408 of 2016 (Om Prakash Singh vs. State of UP and 2 ors) and the said writ petition has been dismissed on 20.8.2016 with following observations:-

"Heard Sri Rakesh Pathak, learned counsel for the petitioner and Sri Amar Nath Singh, learned Standing Counsel for the respondents.

The petitioner is seeking appointment on compassionate ground. According to the averments of the writ petition, the mother of the petitioner late Smt. Malti Devi was working as Midwife (A.N.M.) at Health Centre, Nadhira, District-Mirzapur and died while in service on 5. 11.2015. The petitioner has one brother namely, Ashok Singh and the petitioner's father Sri Jagdeesh Prasad Singh, who is alive, are stated to be heirs of Malti Devi (deceased Government Servant).

Since the father of the petitioner is still alive, the petitioner cannot be said to be a dependent on his mother only. Though the petitioner being a son may fall within the definition of word "Family" under Rule 2 (c) of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 but that does not entitle him for appointment on compassionate ground as the father of the petitioner is still alive and the father is the first category of natural guardian, therefore the petitioner cannot be said to be a dependent only of her mother. The Supreme Court has held the mother to be a natural guardian only in the case of a divorced woman or single mother otherwise in all other cases, the father is the first natural guardian. It is immaterial that the father and the brother of the petitioner have given a no objection certificate in favour of the petitioner. Therefore, for reasons stated above, the petitioner has no claim for being considered for appointment on compassionate ground.

The writ petition lacks merit and is accordingly dismissed."

5. Shri Dinesh Pathak, learned counsel appearing for the petitioner-appellant contended before this Court that learned Single Judge has completely misread the provisions of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 and in view of this, total wrong question has been posed and accordingly wrong conclusion has been arrived and this Court should clarify the legal position and further ask to the Competent Authority to consider the claim of petitioner for compassionate appointment.

6. Learned Standing Counsel, on the other hand, has contended that the provision of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 has been introduced to help the dependent of Government servant so that penurious condition of the family in question is saved. In the present case, there are other surviving members and the rightful opinion has been formed by learned Single Judge and as such, no interference is required in the matter.

7. After respective arguments have been advanced, we have proceeded to examine the provisions that are contained under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 and at the very outset, the said Rules in question proceed to provide the definition of family and thereafter Rule 5 deals with recruitment of a member of the family of the deceased. Rule 2 (c) as well as Rule 5 are being quoted below:-

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

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was

unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent Court;

8. Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

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 purpose, 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;"

9. A bare perusal of the provisions quoted above would go to show that the definition of family has been provided therein which includes sons and others. As far as petitioner-appellant is concerned, there is no dispute on this aspect of the matter that the petitioner is son of the deceased employee, who had died in harness. The scheme of things provide that in case, a Government servant dies in harness after the commencement of the 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, in that eventuality one member of his/her 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 purpose, 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 rules of recruitment.

10. Once such are the parameters of the Rules that have been so provided then the opinion that has been formed by learned Single Judge merely because the father of the petitioner is still alive, the petitioner cannot be said to be a dependent on his deceased mother, cannot be accepted by us. The contingency, in which the claim cannot be considered, finds its answer in the scheme of things provided under Rule 5 itself wherein the benefit can be extended, if 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. In that eventuality one member of his/her 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 purpose, be given a suitable employment in Government service. This is also not the case of the respondent in the present case that the financial position of the father of the petitioner is too good that he was not needing any financial help from the deceased wife and the entire burden of the family was on his shoulder. All these factual aspects of the matter are certainly required to be examined by the Competent Authority when he proceeds to consider the claim of the petitioner.

11. In view of this, the ground, on which learned Single Judge has proceeded to non-suit the claim of the petitioner that the father of the petitioner is still surviving, and in view of this the petitioner cannot claim compassionate appointment, is clearly in teeth of the scheme of things.

12. Accordingly the order dated 20.8.2016 passed by learned Single Judge is set aside and we proceed to pass an order asking the Competent Authority to proceed to consider the claim of the petitioner for compassionate appointment on merits in accordance with law preferably within next three months from the date of production of a certified copy of this order. At the point of time when he proceeds to consider the claim of the petitioner for compassionate appointment, the financial status of the family in question including the fact, as to whether the father of the petitioner-appellant and his elder brother have full financial resources or not, and as to whether petitioner-appellant is dependent on his mother or not, should also be adverted to.

13. With these observations, the present Special Appeal in question is allowed.