

Bhupendra Kumar Vs. District Inspector of Schools, Aligarh and Others

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Court : Allahabad

Decided On : Nov-24-2000

Reported in : 2001(1)AWC226; [2001(88)FLR210]; (2001)1UPLBEC478

Judge : V.M. Sahai, J.

Appeal No. : C.M.W.P. No. 50958 of 2000

Appellant : Bhupendra Kumar

Respondent : District Inspector of Schools, Aligarh and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Jai Narain, Adv.

Judgement :

V.M. Sahai, J.

1. Father of the petitioner Harish Chandra Verma was assistant teacher in Malviya Inter College, Andla, Aligarh. He died in harness on 29.3.1996 leaving behind his widow Smt. Mithlesh Devi, son Yatindra Kumar aged eighteen years, petitioner who was a minor and Km. Durgesh minor daughter. Smt. Mithlesh Devi and elder son Yatindra Kumar who could have claimed appointment immediately after the death did not claim any appointment. Petitioner's date of birth is 30.6.1981. He passed B.Sc. examination in 1999. He became major on 30.6.1999. Smt. Mithlesh

Devi moved an application on 6.7.1999 before the District Inspector of Schools, Aligarh (in brief D.I.O.S.) on the ground that her elder son Yatindra Kumar is not interested in the service of education department, therefore, petitioner be appointed under the dying-in-harness rules on the class-III post of clerk. By letter dated 23.7.1999, the D.I.O.S. intimated that no post of clerk was vacant and he offered appointment to the petitioner on a class-IV post. He asked for certain papers and consent of the petitioner. Mother of the petitioner filed an affidavit that there was no objection to the appointment of the petitioner on class-IV post. Thereafter, the petitioner moved an application on 21.9.1999 before the D.I.O.S. that in Malviya Inter College, Andla, Aligarh posts of teachers and clerk were vacant, and he may be appointed in the institution on a class-III post. The D.I.O.S. issued appointment letter to the petitioner on 21.10.1999 on a class-IV post in Mohini Adarsh Inter College, Badaun, Aligarh. He did not join. He wrote a letter to the D.I.O.S. on 18.5.2000 that as per his qualification, he should be appointed on a class-III post of teacher or clerk. This writ petition has been filed by the petitioner praying that a direction be issued to D.I.O.S. to appoint him on a class-III post.

2. I have heard Sri Jai Narain learned counsel for the petitioner and standing counsel for the respondent Nos. 1 and 3.

3. Learned counsel for the petitioner has urged that he is entitled for appointment on class-III post on compassionate ground as per his educational qualification and the District Inspector of Schools committed an error in offering an appointment on class-IV post on which the petitioner did not join. therefore, the District Inspector of Schools be directed to give appointment to the petitioner on class-III post of teacher or clerk. On the other hand, learned standing counsel has urged that the petitioner has been given appointment on compassionate ground on class-IV post which has been declined by the petitioner. The petitioner has got no right to claim appointment on class-III post.

4. From the facts, it is clear that mother and elder brother of the petitioner were eligible at the time of death of late Harish Chandra Verma to claim appointment on compassionate ground. They did not claim any appointment in 1996. The mother of the petitioner wrote that her elder son is not interested in service in education

department, therefore, the petitioner who has become major on 30.6.1999 be given appointment on compassionate ground. It has not come on record that as to whether petitioner's elder brother Yatindra Kumar was in employment or not, when application was moved on 6.7.1999 for appointing the petitioner on compassionate ground. Moreover, the petitioner who has been appointed by D.I.O.S. on 21.10.1999 on class-IV post has declined to accept the appointment on class-IV post. He is claiming that he should be appointed on class-III post. More than one year has passed but the petitioner did not accept the appointment on class-IV post. From the aforesaid facts, it is reasonable to assume that family of the deceased was not faced with any financial crisis due to death of the deceased, which took place in 1996. If the family would have been in financial crisis, the petitioner would have accepted and joined on class-IV post in pursuance of appointment made by the D.I.O.S. on 21.10.1999. But therefusal of the petitioner to Join the post clearly indicates that the family of the deceased could easily pull on even without any financial help, which could be provided to the family by giving employment to the petitioner.

5. The question which has arisen for consideration is whether the petitioner has any right to claim appointment on class-III post of teacher or clerk and what is the effect of refusal of the petitioner to join on the class-IV post on which D.I.O.S. appointed him on 21.10.1999 which has been refused by the petitioner. Appointment on compassionate ground to the dependants of teaching or non-teaching staff working in the institution was provided for the first time by Government order dated 23.9.1981. It said that where such an employee dies-in-harness, one member of the family of deceased having prescribed qualification for non-teaching post will be given appointment as early as possible, if he so desires. The object for granting appointment on compassionate ground is to enable the family of deceased employee to tide over the sudden crisis, which has occurred due to the death of sole bread earner of the family. Such appointments are made purely on humanitarian consideration with an object to provide the family some sources of livelihood. The appointment is given by making a departure from the general provisions for making appointment to a post. It is in the nature of exception to the general provision. It cannot be treated as creating a right, which could be enforced at will. The D.I.O.S. appointed the petitioner on class-IV post as no class-

III post was available on which the petitioner could be appointed. Therefore, the petitioner could have accepted the appointment and joined on class-IV post. He has no legal right to claim appointment as per his qualification on class-III post as the appointment granted on compassionate ground is an exception to the general provisions of recruitment. If the petitioner declined to accept the appointment on class-IV post on which he was appointed by the D.I.O.S., then the class-IV post was liable to be filled by the D.I.O.S. by appointing some other candidate who might be claiming appointment on compassionate ground or where no such candidates were available, then the post was liable to be filled by the appointing authority of the institution. But it could not be kept reserved for the petitioner that he will Join on it as and when he desires.

6. For the aforesaid reasons. I do not find any merits in this writ petition.

7. This writ petition fails and is accordingly dismissed.

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