

Manoj Kumar Garg Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-09-2000

Reported in : 2001(1)AWC248; [2001(88)FLR411]

Judge : V.M. Sahai, J.

Acts : U.P. Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 - Rule 5(1)

Appeal No. : C.M.W.P. No. 48897 of 2000

Appellant : Manoj Kumar Garg

Respondent : State of U.P. and Another

Advocate for Def. : Senior Counsel

Advocate for Pet/Ap. : Awadh Narain Rai, Adv.

Judgement :

V. M. Sahai, J.

1. Petitioner was born on 2.1.1975. His father was working since 1.7.1974 as Assistant Teacher in aided institution Dayanand Vedic Vidyalaya Junior High School. Shamli, district Muzaffarnagar. He was a permanent assistant teacher. He died-in-harness on 19.11.1989. At the time of his father's death, petitioner was a

minor of about 14 years. No one in the family was qualified to claim appointment in 1989. The petitioner passed his High School and Intermediate examinations in 1991 and 1995. He, after attaining the age of majority and qualification for the post of clerk, claimed appointment under the Dying-in-Harness Rules and applied on 31.5.2000. His claim has been rejected by District Basic Education Officer (in brief BSA) by order dated 7.6.2000. It is this order dated 7.6.2000 which has been challenged in this writ petition.

2. Sri Awadh Narain Rai, learned counsel for the petitioner has urged that father of the petitioner died when the petitioner was a minor aged 14 years. He applied for appointment after becoming major. The BSA committed an error in rejecting the claim of the petitioner. He placed reliance on a decision of this Court in *Manoj Kumar Saxena a. District Magistrate. Bareilly and others*, 2000 (2) ESC 967.

3. On the other hand, learned standing counsel has urged that the petitioner is claiming appointment under Dying-in-Harness Rules after more than ten years of his father's death which is not permissible. The petitioner cannot be appointed. He further urged that order passed by BSA is not liable to be interfered with.

4. The first question that arises for consideration is whether under the Dying-in-Harness Rules, a person who was a minor at the time of his father's death, could claim appointment subsequently after becoming major. Appointment under the Dying-in-Harness Rules is provided for granting relief to the family whose sole breadwinner had died for meeting the immediate exigency in family of the deceased. Mere death of an employee in harness does not entitle a family to employment as of right, irrespective of financial condition of the family of the deceased, Nor a right is created in the dependent of the deceased to claim appointment at any point of time. A Division Bench of this Court in *Mohd. Danish Siddiqui v. State of U. P. and others*, 2000 (1) ESC 692, after considering decision of the Apex Court and this Court has held that appointment under the Dying-in-Harness Rules cannot be given unless there is material on record that the family of the deceased was facing any undue hardship. In the affidavit filed by the mother, brother and sister of petitioner before the BSA, it has been stated that they have no objection if the petitioner is appointed. In paragraph 9 of the writ petition, it has

been stated that the petitioner's family is very poor and after the death of father, entire family has been suffering and is in crisis economically. Apart from pension received by the mother, there is no other income. No material has been furnished in support of these allegations. The Apex Court in *Umesh Kumar Nagpal v. State of Haryana and others*, (1994) 4 SCC 138, has laid down as under ;

'.....Compassionate appointment, cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such an employment is not a vested right, which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.'

5. If the family of the deceased had been in financial crisis, petitioner's mother could have claimed appointment on a class-IV post to meet the immediate exigency in the family. She could have claimed relaxation in qualification or age. But she did not claim appointment as provided by Government order dated 23.9.1981. The family of the deceased survived for more than ten years. For ten years, there was no financial exigency in the family. Petitioner passed High School examination in 1991. He became major on 2.1.1993. But he did not claim appointment. He passed intermediate examination in 1995. He again did not claim appointment. In his application dated 31.5.2000, he has stated, that he claimed appointment with the respondents several times but no material has been filed to support this assertion. Therefore. It is reasonable to assume that the petitioner claimed appointment under the Dying-in-Harness Rules on 31.5.2000, more than seven years after becoming major. The application of the petitioner has been rejected on 7.6.2000.

6. The question that arises is whether the petitioner could claim appointment after he attained majority. The decision *Pushpendra Singh v. Regional Manager. UPSRTC Aligarh and others*, 2000 (1) ESC 448, was the basis on which decisions in *Manoj Kumar Saxena. (supra)* and *Sanjay Kashyap v. Chief Medical Officer, Mahrajanj and others*, Spl. Appeal No. 28 of 2000 decided on 17.1.2000, were

given. In these decisions, directions were issued for considering the application for compassionate appointment. In Jagdish Prasad v. State of Bihar and another, (1996) 1 SCO 301 : 1996 (1) SLR 7, the Apex Court laid down :

'It is contended for the appellant that since the appellant was minor; when his father died-in-harness, the compassionate circumstances continue to subsist even till date and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employee who dies in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the applicant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of the deceased Government servant which cannot be encouraged, de hors the recruitment rules.'

7. The Apex Court in Sanjay Kumar v. State of Bihar, 2000 (87) FLR 132, considered the case of a minor who was ten years old when his mother, an Excise constable died on 10.12.1988. Soon after his mother's death during minority, he applied for compassionate appointment. His application was rejected on 10.12.1996 as time-barred. On 26.12.1996, he moved a fresh application which was also rejected on 21.4.1997 as time barred. The Court held that on the date first application was made he was a minor and was not eligible for appointment. The Court held :

'There cannot be reservation of a vacancy till such time, as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.'

8. The law is clear that in absence of any specific provisions, the minor who becomes major after a number of years cannot claim appointment. Father of petitioner died in 1989. Petitioner became major in 1993. He did not claim

appointment for about seven years after becoming major. The plea of compassionate appointment is not to enable the family to tide over the sudden crises or distress that took place in 1989. The family had pulled on for nearly ten years without any difficulty. Poverty is one thing and immediate financial crises is another. No rule has been pointed out which provides for the minor to claim appointment after he becomes major. The vacancy of the deceased could not be treated to be reserved for his dependant beyond a reasonable period.

9. The learned counsel for the petitioner urged that the application for appointment under the Dying-in-Harness Rules is liable to be considered as the petitioner's family is poor and in financial crises. He relied on proviso to Rule 5 of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974. This Rule was amended on 13.10.1993 by Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness (Third Amendment) Rules, 1993, by which Rule 5 was substituted. Another amendment has been made by Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness (Fifth Amendment) Rules, 1999, on 20.1.1999 by which Rule 5 had been substituted (in brief Rules). Rule 5 (s extracted below :

'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.'

10. Appointments in public service should be made by an open invitation on merit, from the open market. An exception to this rule has been provided in Dying-in-Harness Rules to provide immediate relief to the family of Government employee who dies during service on humanitarian considerations. Compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood. The Apex Court has held that appointment on compassionate ground could be claimed within a reasonable period. What should be a reasonable period within which compassionate appointment could be claimed? The State Government considered it and amended Rule 5 of the Rules in 1999. Rule 5 (1) (iii) fixed a period of five years from the date of death of the Government servant within which an application has to be made by the person who claims appointment. In my opinion, this is a reasonable period during which appointment could be claimed.

11. Learned counsel for the petitioner vehemently argued that in view of proviso to Rule 5 (1) an application could be made and the State Government could relax the requirements of the rule. Rule 5 (1) (iii) provides that a person has to make the application for employment within five years from the date of death of the Government servant. I have given my anxious consideration to proviso to Rule 5 (1). It gives power to the State Government to grant relaxation if it is satisfied that the time limit fixed for making application causes undue hardship in any particular case. Admittedly, the petitioner did not approach the State Government. The

question, therefore, whether he was entitled for relaxation is academic. The learned counsel for the petitioner lastly urged on the basis of observation made in Pushpendra Singh (supra) that the respondents be directed to consider petitioner's claim for temporary appointment. The observation is extracted below :

'As a result of foregoing discussion, the appeal is bereft of merits. However, by reason of reliance upon the said observation as also upon the Rule which envisages consideration of an application for compassionate appointment made even after five years of the death of the employee if the circumstances so warrant, the appeal is disposed of post-fixed with the observation that in case an application is moved, the respondents may reckon with the feasibility of a temporary appointment if the family is still reeling under financial straits.'

12. The Division Bench in Mohd. Danish Siddiqui (supra) has held that this Court in Pushpendra Singh (supra) did not issue any direction to State Government to consider the claim of the petitioner. The learned counsel for the petitioner could not point out any such direction in Pushpendra Singh (supra). The District Basic Education Officer, therefore, did not commit any error in rejecting the application of the petitioner for appointment under the Dying-in-Harness Rules.

13. For the aforesaid reasons this writ petition fails and is accordingly dismissed.