

Vinod Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-22-1993

Reported in : [1994(68)FLR384]; (1996)IILLJ482All

Judge : D.S. Sinha, J.

Acts : Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974

Appeal No. : C.M.W.P. No. 34880/1993

Appellant : Vinod Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ram Kumar Nigam, Adv.

Disposition : Writ petition allowed

Judgement :

D.S. Sinha, J.

1. Heard Sri Shailendra, holding brief of Sri R.K. Nigam, learned counsel for the petitioner and Sri C.P. Gupta, learned Special Counsel representing the respondents.

2. Upon joint request and agreement of the learned counsel for the parties, this petition is being disposed of finally at the admission stage under second proviso to Sub-rule (1) of Rule 2 of Chapter XXII of Rules of Court, 1952, as the facts are clear and no useful purpose would be served by calling for a return.

3. The father of the petitioner, Dr. Ram Lal Gangwar, a 'Government Servant' within the meaning assigned to the expression in the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, hereinafter called the Rules, died in harness.

4. By means of an order dated April 27, 1993 passed by the Director, Ayurvedic and Unani Sewa Nideshalaya, Uttar Pradesh, Lucknow, the respondent No. 2, the petitioner was given appointment on the post of Junior Clerk, under Kshettriya Ayurvedic/Unani Adhikari, Hardwar, the respondent No. 3, on compassionate ground, as envisaged in Rule 5 of the Rules. A copy of the order dated April 27, 1983 is to be found on record as Annexure 'I' to the writ petition.

5. The last paragraph of the order dated April 27, 1993 called upon the petitioner to join the post latest by May 15, 1993, and warned that in the event of default in joining the post by the stipulated date, it might not be possible to grant him the concession of appointment on compassionate ground.

6. The petitioner asserts that he was served with the order dated April 27, 1993 at Khan-depur, Tahsil Bisalpur, District Pilibhit, where he resides on May 15, 1993, which was the last date by which he was required to join his duties at Hardwar. Soon after the receipt of the order dated April 27, 1993, the petitioner proceeded to join the assignment in pursuance of the order dated April 27, 1993 and he reported to the respondent No. 3 on May 17, 1993 but the respondent No. 3, according to the petitioner declined to permit him to join the post in view of the fact that the order dated April 27, 1993 had fixed the last date for joining the post to be May 15, 1993 and the same had expired. Thereafter the petitioner by means of his representation dated May 25, 1993, a copy whereof is Annexure IV to the petition, approached the respondent No. 2 for re-dressal. No heed is being paid by the respondents in the matter. Hence this petition.

7. To fortify his assertion that the order dated April 27, 1993 was received by him on May 15, 1993 a photostat copy of the certificate from the branch post Master, Khandepur Post Office, certifying that the registered letter containing the order dated April 27, 1993 was served on the petitioner on May 15, 1993 has been filed by the petitioner as Annexure II to the petition.

8. There is no reason to doubt the authenticity of the certificate of the Branch Post Master, Khandepur Post Office.

9. Denial to the petitioner of statutory benefit of appointment on compassionate ground on account of his failure to join the post in pursuance of the order dated April 27, 1993 by May 15, 1993, and that too for the reasons beyond his control, cannot be countenanced by law, being contrary to the inherent object of the Rules. The purpose of compassionate appointment under the Rules is to provide prompt succour to the family members of the Government Servant dying in harness lest they are left destitutes. If the appointment on compassionate ground is denied on hyper technicalities, as in instant case, the very purpose of the compassionate appointment would stand frustrated causing serious miscarriage of justice prevention whereof is the prime goal of jurisdiction under Article 226 of the Constitution of India.

10. In the result, the petition succeeds and is allowed. The respondents generally, and the Director, Ayurvedic and Unani Sewa Nidesha-laya, Uttar Pradesh, Lucknow specifically, are directed to allow the petitioner to join the post of Junior Clerk under the control of the Directorate of Ayurvedic and Unani Sewa Nideshalaya, Uttar Pradesh, Lucknow either at Hardwar, as envisaged in the order dated April 27, 1993, or at any other place deemed proper by them, as soon as possible but not later than three months from the date of the production of a certified copy of this order and judgment.