

Pankaj Kumar Srivastava Vs. State of U.P.

Pankaj Kumar Srivastava Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/458886

Court : Allahabad

Decided On : Sep-07-1994

Reported in : (1996)IIILLJ774All

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Intermediate Education Act - Regulation 103

Appeal No. : C.M.W.P. No. 3588/1994

Appellant : Pankaj Kumar Srivastava

Respondent : State of U.P.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ram Prakash Misra, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.R. Singh, J.

1. Daya Shankar Srivastava, the father of the petitioner, was a confirmed Asstt. Teacher in Baba Reghavdas Krishak Inter College. Bhatpur Rani, in the district of Dcoria, which is a recognised Educational Institution, receiving grant-in-aid

from the State of U.P. He died in harness. Pursuant to a direction given by the Distt. Inspector of Schools. Doria vide order contained in letter No. 7/Sadar/ 13289-13689/92-93 dated February 1, 1993, the Principal of the college appointed the petitioner vide letter dated February 3, 1993 (Annexure 1) against a class-4 post in the college. The said appointment was admittedly made on compassionate ground in view of the provisions contained in Regulation 103 of Chapter III of the Regulations made under the U.P. Intermediate Education Act, added by means of notification No. 4001/15-7-(1)/90 - Shiksha Anubhag-7 dated July 30, 1992. Regulation 103 is quoted below for ready reference.

^;fn fdlh ekU;rk izklr] lgk;rk izklr laLFkk dkf'k{k.k ;k f'k{k.ksRrj LVkQ ds fdlh deZpkjh dh] tks fofgr izf;k ds vuqlkj IE;d:i ls fu;qDr fd;k x;k gks] Isokdky esa e`R;q gks tk, rks mlds dqVqEc ds ,d lnL;dks tks 18 o'kZ ls de u gks] HkrhZ dh fofgr izf;k esa fdlh ckr ds izfrdwygksrs gq, Hkh f'k{k.ksRrj in ij fu;qDr fd;k tk ldsxk ;fn ,slk lnL; in ds fy,fu;qDr fd;k tk ldsxk ;fn ,slk lnL; in ds fy, fofgr vko';d 'kSf{kd vgrkZ,a j[krkgks vkSj fu;qfDr ds fy, vU;Fkk mi;qDr gks A**

2. The petitioner joined his duties in the college as class-4 employee pursuant to his appointment vide letter dated February 3, 1993 and is admittedly working there. The instant petition has been filed for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner as Class 3 employee in the college. The basis of the claim of appointment to class-3 post on compassionate ground, is that the petitioner is highly qualified, being M.Com. B.Ed. It was urged for the petitioner that he was entitled to be appointed on a clerical post commensurate with his qualification in the minimum and the respondents were not justified in giving appointment on a class-4 post in utter disregard of his educational qualification. Credence has been placed for the petitioner on certain decisions including decision dated August 29, 1991 rendered in writ petition No. 24870 of 1991. Rakesh Rai v. Director. Intermediate Education and Ors., on the basis of which another decision dated April 20, 1993 was rendered in writ petition filed by Gyanendra Kumar Misra. Copy of the decision dated April 20, 1993 rendered in writ petition filed by Gyanendra Kumar Misra has been annexed as annexure 6 to the petition.

3. Having bestowed its anxious consideration to the question involved in the case, the Court is of the considered view that the petitioner is not entitled to the relief claimed in the writ petition. As a rule, appointment in public services should be made strictly on the basis of open invitation of application on merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor public authorities are at liberty to follow another procedure or relax the qualification laid down by the rules for the post. However, to this rule which is to be followed strictly in every case there are some exceptions carved out in the interest of justice and to meet certain contingencies, one such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is furthermore, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family'. (Umesh Kumar Nagpal v. State of Haryana and Ors. (1995 -I- LLJ - 798) (SC).

4. As observed by the Supreme Court in Umesh Kumar Nagpal (supra), the object sought to be achieved by rules providing for appointment of a member of the family of the deceased on compassionate ground is to give the relief against destitution. The Supreme Court has clearly observed,.....that it must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families, which are equally if not more destitute' and further that '...The only ground which can justify compassionate employment is the penurious condition of the deceased's family.' and has held that "Neither the qualifications of the dependent nor the post which he held is relevant'. The Supreme Court has further observed 'If the dependent of the deceased - employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.' The language employed in Regulation 103 of Chapter III of the

Regulations made under section 9(4) of the U.P. Intermediate Education Act 1921 is extracted hereinafter, does not, in my opinion, lead to a conclusion that the one member of the family or a deceased teacher who is above 18 years of age should as a matter of course and as a matter of right be appointed on a non-teaching post, befitting his educational qualification. The object of the rule being to give relief against destitution and to see the family through the economic calamity, the dependent of the deceased cannot claim, as of right, to be appointed on a non-teaching post befitting his qualification. The expression *Shikshretra Pad Par Niyukta Kiya Ja Sakega Yadi Aisa Sadasya Pad Ke Liye Vihit Avashyak Shekshik Ahartayen Rakhta Ho Aur Niyukti Ke Liye Anyatha Upyukta Ho*; in my opinion does not confer a right in favour of the dependent of the deceased to claim appointment on a non-teaching post commensurate with his qualification irrespective of the fact whether or not there exists a vacancy in such a post. In my opinion, the provisions contained in Regulations for their sustenance, have to be construed in the light of the observations made by the Supreme Court in *Umesh Kumar Nagpal* (supra). The authority vested with the power to make appointment on compassionate ground under the Regulation, would be justified to offer appointment even to a class-4 post to the dependent of a deceased teacher, who may be otherwise qualified for appointment on a clerical post. Further, it is implicit in the rule read in the light of the observations made by the Supreme Court in *Umesh Kumar Nagpal* (supra) that the appointment may be refused if the financial condition of the family is otherwise sound. The dependent of a teacher dying-in-harness cannot claim appointment on compassionate ground as a matter of right irrespective of the financial position of the family of the deceased. Any other view of the rule would render it ultra-vires and violative of Articles 14 and 16 of the Constitution.

5. The decisions in Writ petition No. 24870/1991 *Rakesh Rai v. Director, Intermediate Education and Ors.* and Writ petition No. Nil of 1993, *Gyanendra Kumar Misra v. Distt. Inspector of Schools, Deoria and Ors.*, Writ petition No. Nil of 1993, *Navin Kumar Upadhyaya v. Director of Education (Secondary) U.P. at Allahabad and Ors.* decided on May 17, 1993 and Writ petition No. 29197/90 *Rajesh Singh v. Director of Education* decided on October 10, 1990 no doubt, lend support to the contention of the petitioner but these decisions, in my opinion, do

not hold water in view of the pronouncement of the Supreme Court in the case of Umesh Kumar Nagpal (supra). That apart, the petitioner having accepted the appointment to class-4 post on compassionate ground, is not entitled now to claim appointment on compassionate ground to a clerical post on the basis of his educational qualification.

6. In the conspectus of the facts and circumstances discussed above, the petition lacks merit and is liable to be dismissed.

7. Accordingly, the writ petition fails and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com