

Km. Rita Roy Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Sep-12-1997

Reported in : 1998(2)AWC864

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Article 16; Uttar Pradesh Dying-in-Harness Rules, 1974 - Rules 3 and 4

Appeal No. : C.M.W.P. No. 12953 of 1996

Appellant : Km. Rita Roy

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.D. Agarwal, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner claims appointment under Dying-in-Harness Rules. The respondents by an order dated 11.1.1996 informed the petitioner that she is not qualified for being appointed on the post of clerk, on the other hand she was offered class IV post. The said order has been challenged by means of this writ

petition.

2. Mr. R. D. Agarwal, learned counsel for the petitioner contends that for the post of clerk no height is prescribed. Therefore, the petitioner cannot be compelled to accept class IV post. Relying on Para No. 6 of the counter-affidavit. he contends that the petitioner's case for exemption in respect of her height has also referred to the State Government but the same has not yet been decided. Therefore, according to him, the petitioner should have given appointment in the post of clerk.

3. Learned standing counsel, on the other hand, contends that since for the post of clerk, specific physical qualification for woman have been provided, she cannot be given appointment in the post of clerk unless the height is exempted by the State Government. The petitioner's application for exemption of height has already been forwarded to the State Government but the same has not yet been decided, therefore, the respondents cannot offer the petitioner any post other than class IV post. He also contends that under the Dying-in-Harness Rules, a person does not acquire any vested right enforceable through writ jurisdiction to claim a particular posting and the very object of the Dying-in-Harness Rule is to save a family of the deceased from destitution.

4. After having heard learned counsel for the parties, it appears from para 6 of the counter-affidavit that there are no rules prescribed for clerical cadre in the Department in which the petitioner's father was appointed and the same rules which govern the appointment of the constables are made applicable for the clerical cadre as well, in respect of the woman, the minimum height is 152 cm, for the plain people and 147 cm. for the hill area people. Admittedly, the petitioner belongs to plain area but it appears that she was found only 142 cm. in height, even less than that for the hill people. Therefore, she was offered class IV post.

5. Dying-in-Harness Rules provide for appointment on compassionate ground to a post commensurate with the qualification of the candidate. It has never provided a right that such candidates are to be accommodated despite having been unqualified. Neither it entitles to relaxation of the rules despite disqualification while all others are required to fulfil such qualification. It does not create any such right in favour of a candidate. The compassion is not subject to such an extent of

stretching. It was carried out an exception to Article 16 of the Constitution and the rules of procedure for recruitment other than the qualification prescribed. There is no scope for dispensing with the prescribed qualification. Simply because claiming appointment on compassionate ground, it is not open to a candidate to ask for such appointment even though the candidate lacks qualification. The appointment is to be given within the ambit of recruitment rules with the exception that process of selection shall not be regular one in supersession of Article 16 of the Constitution because of specific provisions contained in Dying-in-Hamess Rules. The petitioner has not been able to show anything that there are separate rules prescribing qualification for clerical staff in the Police Department other than those as mentioned in the rule relating to clerical cadre except those governing appointment of the constables.

6. In view of the decision in the case of Umesh Rumor Nagpal v. State of Haryana and others, 1994 (2) SLR 677, wherein it has been held that the person does not acquire any vested right to claim appointment under the Dying-in-Harness Rules, it is not possible to hold that the petitioner has vested right to claim appointment in the post of clerk despite physical disqualification and contrary to the rules applicable to the employees under the said Department. It is open to the State Government to exempt or relax the rules if they so desired but until such decision is taken by the State Government, the respondents cannot offer the post of clerk to the petitioner in view of the said situation, the petitioner would be at liberty to accept a class IV post if she is so advised. However, her acceptance shall be subject to the decision if the State Government with regard to the relaxation if applicable and the decision that might be taken by the respondents at appropriate stage.

7. With the aforesaid observation, this writ petition is disposed of.

8. There will however be no order as to cost.