

Sayoom Khan Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-19-2000

Reported in : 2000(4)AWC2678; [2001(89)FLR288]

Judge : Pradeep Kant, J.

Acts : Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 - Rules 2, 3, 5, 5(1), 8 and 10; [Constitution of India](#) - Articles 14, 16 and 21

Appeal No. : Writ Petition NO. 2622 (S/S) of 2000

Appellant : Sayoom Khan

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Ritu Raj Awasthi, Adv.

Judgement :

Pradeep Kant, J.

1. This petition has been filed by the petitioner claiming appointment under the U. P. Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 (hereinafter referred to as Dying-in-Harness Rules) as amended upto date.

The admitted case of the petitioner is that his father, a Class IV confirmed employee in Government service died on 10.11.1972. The petitioner claims appointment under Dying-in-Harness Rules, under which Rules he approached the authorities for giving him appointment in the year 1997. Since the appointment was not being given, the petitioner feeling aggrieved has knocked the doors of this Court.

2. The Dying-in-Harness Rules, 1974, came into force with effect from 21st December, 1973, a date which has been mentioned in Rule 2 Itself. These Rules have been amended in the year 1991, by virtue of which Rule 3 of the said Rules was amended, which amendment is not relevant for the present controversy. Rule 8 sub-clause (3) was also amended and it is stated that appointment under these Rules shall be done against existing vacancies but if the vacancy does not exist, the appointment shall be done on a supernumerary post, which would continue till the vacancy is available. On 16th April, 1993, a further amendment was made in the Rules wherein Rule 5 was subject-matter of amendment, which prescribed conditions of eligibility criteria for appointment of the dependants of a deceased Government servant under the aforesaid Rules. This Rule also provides maximum period of fiveyears for a dependant to apply for appointment. The period of five years was to be counted from the date of death of the Government servant. Rule 5 as amended is being quoted 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.'

3. Rule 5 (1) (iii) vests the State Government with the power of relaxation in entertaining an application for appointment even beyond the period of five years, if the State Government is satisfied that there exist special and exceptional reasons for not moving the application for employment within the prescribed period of five years from the date of death of the Government servant and there is extreme hardship. The State Government was therefore, given power to relax the embargo of five years for moving the application for employment in case it was expedient to do so.

4. Dying-in-Harness Rules are special set of Rules which have been made for providing a source of livelihood and to give some respite to the members of the deceased Government servant's family at a time when the family is suddenly struck off with a calamity where the sole bread-earner dies. In such a situation, it becomes difficult for the family to survive and to meet even the basic necessities of life. The family finds itself in extreme economic hardship and needs some help to make both ends meet in these hard economic days. The Rules have been enacted to mitigate the hardship to some extent so that the family may survive. The Rules, no doubt, are a social piece of legislation giving protection to the family of the deceased whose children may be small or may be unemployed and

the widow may also not be working and thus the entire family may not be having any other source of livelihood. The State being the protector and guardian of its citizens and being under a mandate under Article 21 of the Constitution has to provide for basic needs subject to its economic capacity. The purpose of the Rules is that their family should not be left as destitute and the children may not go astray for want of financial assistance. Keeping in mind the above constitutional obligations a special set of Rules in which the scheme of appointment to one of the members of the deceased Government servant's family has been provided. The overall idea and concept of these Rules is to keep the family in main streamline of the society for which economic security and social status is to be provided by the State Government.

5. The purpose of these Rules is not to open a new source of recruitment or device for getting employment by the heirs or dependants of the Government servant who has died-in-harness. It is only a protective provision and not a device for getting employment and settling the children at the cost of the death of the father of the dependant. In case such, a liberal interpretation is given to the Rules. It would not only create discontentment in the society where many more young persons are running from pillar to post in search of employment but would also be discriminatory and without any legal nexus with the object for which the Rules have been framed. It cannot be said that simply because the family has faced the shock of death of the father or the sole bread earner, the need for employment to the member of such a family would be more pressing, hard and genuine even after lapse of a considerable period, i.e., even after the period of five years, as compared to those who have to seek employment Independent of these Rules.

6. Admittedly, petitioner's father died in the year 1972 when Dying-in-Harness Rules were neither framed and were not in force. The petitioner had applied for appointment in the year 1997. i.e.. after a lapse of 25 years. It was for the first time that the Rules were enforced on 21st December, 1973. The petitioner obviously cannot claim appointment under these Rules as he is not covered by any of the provisions of the Rules and his candidature cannot be considered for that matter under said Rules.

7. Being conscious of the fact that the petitioner was not entitled for claiming appointment under the aforesaid Rules, learned counsel for the petitioner pressed into service Rule 10 of the aforesaid Rules which gives power to the State Government to remove difficulties. Rule 10 which reads as follows empowers the State Government to remove any difficulty in the implementation of any provision of these Rules by issuing a general or special order as it may consider necessary or expedient in the interest of fair dealing or in public interest.

'10. Power to remove difficulties.--The State Government may, for the purpose of removing any difficulty (of the exercise of which it shall be the sole Judge (in the Implementation of any provision of these Rules, make any general or special order as it may consider necessary or expedient in the interest of fair dealing or in public interest.'

8. Relying upon the aforesaid Rule, learned counsel for the petitioner urged that the State Government has got power to relax the date of enforcement of these Rules so as to give effect to these Rules to any other person, if the State Government is satisfied that it is in public interest. He also submitted that earlier also certain appointments have been made by the State Government in similar circumstances and in his case, the Commissioner of the Department has made recommendation to the State Government. The heading of Rule 10 says 'power to remove difficulties'. Such provision is not new in any Service Rule. The scope of such a provision is not to expand the scope of the Rules but to give effect to the object of the Rules or Act, as the case may be. Any interpretation to a rule under an enactment, which defeats the purpose of the rule or goes beyond the scope of the Rules or Act, cannot be accepted. Any such action, order or decision, particularly in the matter of service jurisprudence would be hit by Articles 14 and 16 of the Constitution. The relaxation which can be considered and granted by the State Government under Rule 10 would confine only to the provisions of the Rules and not to the date of enforcement of the Rules. The Rules are enforced by publication in the official Gazette or the Rules themselves prescribe the date of their enforcement, for example, in the instant case Rule 2 prescribes the date of enforcement of these Rules as 21st December, 1973. The date of enforcement of the Rules thus cannot be enlarged or deferred by means of an executive order,

which may be passed by the State Government in exercise of powers under Rule 10. Besides this, the State Government has no power to make the Rules effective from a date different on which the Rules have come into force. The State Government cannot bring within the ambit of the Rules such persons or class of persons, who otherwise do not fall within the purview of the Rules. It is also of great significance that by Amendment Act, 1991, the object and purpose of the Rules was clarified where the aforesaid provisions said that the appointment shall be made against the existing vacancy and if no vacancy exists, the appointment shall be made on a supernumerary post which would be deemed to have been created for this purpose and shall continue till the vacancy is available. The true import of inserting such a provision was that that the family needs immediate mitigation of its financial difficulties and, therefore, such a member of the deceased Government servant's family cannot -be denied appointment on the ground that there exists no vacancy. The anxiety of the State Government in providing immediate employment to one of the family members of the deceased Government servant leaves no room of doubt in knowing the Intention of the Legislature in framing these Rules. The intention of the State Government is obvious that in case of sudden demise of sole bread earner, the family of the deceased should be provided means to carry on in the society and to meet their basic needs with dignity and independence. The scheme of the Rules thus, envisages immediate relief to the family of the deceased Government servant who died in harness and not for providing a source of recruitment irrespective of the time lapse from the date of death of deceased Government servant and the date of moving application for appointment by one of the family members.

9. It was in the aforesaid background that the amendment of the year 1993 prescribes five years period for making application for appointment by the dependant of deceased Government servant from the date of death. In exceptional cases and in extraordinary matters where the State Government is satisfied that it would be unjust to deprive the applicant from getting employment because he could not move application within five years, the power have been given to relax the period of five years in such cases. A note of caution is necessary in this regard. The discretion which has been given to the State Government for granting relaxation from the limit of five years has to be exercised on sound legal principles

taking into consideration the relevant factor and comparing with the conditions when the death of Government servant has occurred from the present economic condition. The State Government is to find out as to and from what source the family have been able to pull on for such a long period, i.e., even after five years and in case on the basis of material on record and after objectively considering all relevant factors, the State Government is satisfied that a case for relaxation of time period has been made out only then by means of a reasoned order such relaxation can be granted. The State Government is not at liberty to grant relaxation in one case and to refuse the same in other cases under Rule 5 (1) (itt) without applying its mind which application of mind should be reflected in the reasons which should be recorded in the order either granting relaxation or refusing relaxation.

10. Rule 5 (1) (iii) is the provision for granting relaxation. This relaxation can be claimed by only those persons who are otherwise eligible for being considered for appointment under the aforesaid Rules. In case a person is not eligible for appointment under the aforesaid Rules. Rule 5 (1) (iii) would also not be available to him.

11. The argument of the learned counsel for the petitioner that Rule 10 gives power to the State Government to defer the date of enforcement of the Rules and to treat the Rules applicable even in the case of such persons who are otherwise not covered by the Rules, as their father or the sole bread earner has died even before the enforcement of these Rules cannot be accepted. If Rule 10 is interpreted in the manner as has been pressed by the learned counsel for the petitioner it would provide another avenue for granting relaxation to the State Government although the person may not be falling within the ambit and scope of the Rules itself for being considered for appointment and it would override the provisions of relaxation specifically provided under Rule 5 (1) (iii). The two provisions, namely. Rule 5 (1) (iii) and Rule 10 would, therefore, give concurrent authority to the State Government to grant relaxation and that too without any limitation. Such interpretation would not only defeat but would also negate the specific provisions given under Rule 5 (1) (iii). Such interpretation, therefore, is not possible to be given to the said provision. The Rules have to be construed in a

manner so that widest effect is given to the Intention of the Rules but without encroaching upon the other provisions of the Rules. Such an encroachment would make either of the two Rules invalid. On a reading of the aforesaid provisions. It is clear that that the two Rules, namely. Rules 5 (1) (iii) and Rule 10 operate in two different fields. Rule 10 cannot be extended or stretched to extend the date of enforcement of the Rules nor the same be done by an order of the State Government. It further does not give power to the State Government to relax the period with respect to a person who otherwise does not fall within the ambit of the Rules. Rule 5 (1) (tit) is the only Rule, which empowers the State Government to grant relaxation from the period of limitation from moving the application for appointment with respect to those persona who are otherwise entitled for claiming appointment under the aforesaid Rules.

12. The next argument of the learned counsel for the petitioner is that the State Government have been making appointment of such persons who are dependants of the Government servant who died prior to the enforcement of these Rules while in service and thus the power has been exercised by the State Government under Rule 10. Further submission is that the petitioner cannot be discriminated and his case should also be directed to be considered by the State Government keeping in view the earlier decision taken by the State Government under Rule 10. It is cardinal principle of law that two wrongs cannot make a right. Any incorrect or illegal order even if has been issued by the State Government and advantage is being derived by such beneficiary, it would not give right to other persons to claim the same benefit. There cannot be a violation of Article 14 of the Constitution nor the same can be pressed into action for perpetuating a wrong or for issuing a direction to give the benefit of an illegal order to the other persons. Article 14 cannot be claimed for the purpose of claiming benefit of a wholly illegal, without authority and without jurisdictional order.

13. In the instant case, the petitioner's father having died much before the enforcement of Dying-in-Harness Rules, the petitioner is not entitled, to take benefit of the provisions of the aforesaid Rules and Rule 10 cannot be extended to mean that the State Government has got power to treat the Rules enforced from a date different than the date prescribed under the Rules. Since the provisions of

Dying-in-Harness Rules are not available to the petitioner, he cannot claim his appointment under the said Rules nor the State Government has got any authority to bestow this privilege upon him.

14. Before parting with the Judgment, I would like to put on record that even the matters where the dependants of deceased Government servant are entitled for appointment under Dying-in-Harness Rules, the State Government or the authority concerned takes its own time in dealing with such cases and more often even after years are passed, no decision is taken on the request of such needy persons which compel them to approach the Court. It is a paradox that the Rules have been framed to give respite to the family of the deceased Government servant but because of the inaction on the part of the State and its authorities, such family members are dragged into litigation making them to spend considerable money in approaching the Court and also negating the very object of the Rules of providing immediate relief to the family members of the deceased Government servant. It is the legal and bounden duty of the State functionaries that if an application is received under the Dying-in-Harness Rules for appointment, the cognizance of the same should be taken immediately and within a reasonable time, a decision should be taken on the said application so that if the applicant is entitled for appointment, he should be given appointment without any unnecessary delay and if he is not entitled for the appointment, he must know the fate of his application at the earliest so that he may go in search of another job or means of earning livelihood. In my opinion, the State and its authorities should consider and dispose of such application for appointment expeditiously and I, therefore, provide that if an application seeking appointment under Dying-in-Harness Rules is moved by a person, who claims himself to be the dependant of the deceased Government servant who has died in-harness, the same shall be considered and disposed of within a reasonable time, preferably within a period of six months from the date of receipt of the application.

15. For the reasons stated above, the petitioner has not been able to make out a case for issuing any direction to give him appointment under Dying-in-Harness Rules. The writ petition being devoid of merits is liable to be dismissed.

The writ petition is accordingly dismissed. No order as to costs.

16. Let a copy of this judgment be sent to the Chief Secretary, Government of U. P. for being circulated to all the Departments of the Government.

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