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Court : Allahabad

Decided On : May-06-1999

Reported in : 1999(3)AWC2457a

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 - Rules 5, 6 and 7

Appeal No. : Civil Misc. Writ Petition No. 18782 of 1999

Appellant : Manohar

Respondent : Executive Engineer and Another

Advocate for Def. : S.C. and ;S.P. Mehrotra, Adv.

Advocate for Pet/Ap. : Ambar Nath Rai, Adv.

Judgement :

D.K. Seth, J.

1. The father of the petitioner died in harness on 19th August, 1996. The petitioner applied for employment on compassionate ground on 9th October, 1996 under the Dying-in-Harness Rules, 1974. It is alleged that the petitioner is the eldest son of his mother and has two brothers. Since the appointment was not given, the

petitioner moved a writ petition being Writ Petition No. 21275 of 1998, which was disposed of on 7th July, 1998, by directing the respondents to consider the petitioner's representation in accordance with law. The said representation, was accordingly decided by an order dated 22nd March, 1986, which is Annexure-4 to the writ petition. This order has since been challenged by the petitioner on the ground that instead of giving appointment to the petitioner, the appointment has been proposed to be given to his younger brother Ramesh Kumar. According to him, Rule 5 of the Dying-in-Harness Rules provides that such employment would be available only to the person who has applied for the same. Therefore, by reason of Rule 5, the petitioner's brother Ramesh Kumar, who never applied for employment, could not be given employment superseding the claim of the petitioner who had applied for the same. Therefore, the impugned order should be quashed and the respondents should be directed to give appointment to the petitioner under the Dying-in-Harness Rules.

2. Mr. S. P. Mehrotra counsel for the respondents opposed the above contention raised by Dr. Ambar Nath Rai, counsel for the petitioner relying on Rule 7 of the said Rules, wherein it has been provided that while granting appointment, it is incumbent on the employer to ascertain the suitability of the candidate having regard to the welfare of the maximum number of the family members as well as the widow. Relying on Annexure-3 to the writ petition. Mr. Mehrotra points out that both the petitioner as well as Ramesh Kumar were claiming the employment, which is indicated in paragraph 1 of the said document. Whereas in paragraph 2, it has mentioned that the petitioner is the eldest son but the widow had disagreed with the proposal for giving appointment to the petitioner on the ground that the petitioner is married and is living separately and he has no connection with the family and she was eager for the appointment of Ramesh Kumar. Therefore, the decision to give appointment to Ramesh Kumar, is in commensurate with Rule 7 of the said Rules. Thus, according to him, there is no infirmity in the order. According to him, Rule 5 cannot be read in isolation irrespective of Rule 6. Rule 5 has to be read along with Rule 7. A provision or principle of law cannot be interpreted bereft of the context and in isolation. It has to be given full meaning having regard to the context and object and purpose as apparent from the provision of law itself. On these grounds, Mr. Mehrotra contends that the writ petition should be dismissed.

3. I have heard both the learned counsel at length.

4. Admittedly, the petitioner is the eldest son. There is no indication that the petitioner's brother Ramesh Kumar had ever applied on the pleadings. But from Annexure-3, it appears that Ramesh Kumar is also one of the claimants. Therefore, in absence of sufficient material, it is not possible to hold that Ramesh had never applied for the post. At the same time, the widow had claimed that the eldest son is living separately with his family and has no connection with her family. It is a question of fact which this Court cannot enter into. Then again Rule 7 requires the employer to ascertain the suitability as well as to look at the welfare of the family to ensure welfare to the maximum number of the members of the family, particularly the widow. As rightly contended by Mr. Mehrotra, a statute has to be read as a whole. A provision cannot be interpreted out of context or in isolation. It has to be interpreted having regard to the entire scheme so that it furthens the object and purpose. The Dying-in-Harness Rules were incorporated to enable the bereaved family to save itself from destitution. The interest of the widow and the other members are required to be secured. If there is a dispute particularly between the widow and one of the son, in that event, in view of Rule 5, it is the claim of the widow, whose welfare is to be given preference. At the same time, the welfare of the maximum number of the members of the family, particularly those who are dependent of the widow, are to be taken care of. Both Rules 5 and 7 are to be read together. Rule 5 is enabling provision by which the obligation is created to give appointment to one of the member of the family. 'But what should be the consideration for giving any such appointment and what consideration should weigh with the employer to give such appointment, are specified in Rule 7. Therefore, it is open to the respondents to consider the case of such person, who would best serve the purpose of the said Rules in terms of Rule 7. The materials produced before this Court indicates that such consideration has been made and that the widow and the second son is not supporting the petitioner as apparent from the fact that Ramesh Kumar has been added as respondent No. 4 and the widow did not join the petitioner as petitioner, which is sufficient indication that there is a rift between the petitioner and the widow and the other members of the family.

5. Be that as it may, these are only presumptive. This Court sitting in writ jurisdiction cannot go into the disputed question of fact on the face of the record. The question being disputed and the same having settled by respondents having regard to Rule 7 of the said Rules, I do not see any reason to interfere with the same.

6. The writ petition fails and is accordingly dismissed. No cost.

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