

Ramu Vs. Executive Officer, Nagar Palika, Mirzapur and Others

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Court : Allahabad

Decided On : Aug-31-2000

Reported in : 2000(4)AWC2876; [2000(87)FLR355]

Judge : V.M. Sahai, J.

Appeal No. : C.M.W.P. No. 19919 of 1993

Appellant : Ramu

Respondent : Executive Officer, Nagar Palika, Mirzapur and Others

Advocate for Def. : S.N. Shukla, Adv. and ;S.C.

Advocate for Pet/Ap. : V. Singh, Adv.

Judgement :

V.M. Sahai, J.

1. The question that arises in this writ petition is where father and mother both are in service and one of them dies, whether his son can claim appointment under the Dying-in-Harness Rules.

2. The father of petitioner Sri Jangi Lal, and his mother Smt. Radha wife of Sri Jangi Lal both were working as sweepers on permanent posts in Nagar Palika, Mirzapur. On 20.9.1991 Smt. Radha mother of petitioner died. The petitioner

moved an application on 24.9.1991 claiming appointment as sweeper under the Dying-in-Harness Rules. He was appointed by Executive Officer, Nagar Palika, Mirzapur, as sweeper on 10.10.1991 on compassionate ground on probation of one year. He joined as sweeper from the date of his appointment but his salary was not paid in spite of resolution dated 3.3.1993 passed by the Nagar Palika. The President also directed the Executive Officer to pay salary of petitioner. On 12.5.1993, the Executive Officer passed an order terminating the services of the petitioner. It is this order dated 12.5.1993 which has been challenged in this writ petition.

3. I have heard Sri V. Singh, learned counsel for the petitioner and Sri S. N. Shukla, learned counsel appearing for the respondents. Learned counsel for the petitioner has urged that mother of the petitioner was a permanent sweeper and on her death, petitioner was entitled for appointment under Dying-in-Harness Rules as salary of his father was not sufficient for the entire family. He claimed that he was dependent on his mother, therefore, he was entitled for appointment under the Dying-in-Harness Rules. Learned counsel further urged that the Impugned order of termination has been passed by the respondents without affording any opportunity of hearing to the petitioner therefore, the termination of petitioner's services is illegal. On the other hand, learned counsel for the respondents has urged that since father of the petitioner was in service as sweeper, Government Order dated 16.10.1974 which provided for appointment under the Dying-in-Harness Rules, was not applicable and the petitioner could not be appointed under the said Government Order. It is urged that since the appointment of the petitioner was illegal and without jurisdiction and was made under mistake, therefore, no opportunity of hearing was required to be given to the petitioner.

4. The appointment under the Dying-in-Harness Rules are provided to meet immediate exigency in the family of the deceased. The reason behind compassionate appointment is that the family which is in peril and whose breadwinner has died, be given relief so that the immediate financial difficulties of the family may be overcome. The Government Order dated 16.10.1974 which has been filed as Annexure-2 to the rejoinder-affidavit clearly provides that appointment under the Dying-in-Harness Rules has to be given if the family of the

deceased is in serious financial trouble. In this case, father of the petitioner is already in service as sweeper. There is no Immediate exigency in the family of the deceased. The argument of learned counsel for the petitioner that the family of his father is big and all the children could not be maintained in his salary, therefore, the petitioner was dependent on the salary of the mother cannot be accepted. Since father of the petitioner was in employment, he was not entitled to be appointed on the death of his mother under the Dying-in-Harness Rules. The submission of learned counsel for the petitioner that there are other employees working in the office of the respondents whose father and mother both were in service and in case where one of them has died, they were given appointment under the Dying-in-Harness Rules and are continuing in service of the respondents cannot be accepted. Even if some person has illegally been appointed by the respondents under the Dying-in-Harness Rules, such an appointment cannot confer any right on the petitioner to claim appointment or to continue in service.

5. The other argument of learned counsel for the petitioner is that before terminating his services opportunity of hearing ought to have been given to him by the respondents. I have given anxious consideration to this argument of learned counsel for the petitioner. No doubt the respondents did not give any opportunity of hearing to the petitioner but it is admitted to the petitioner that his father was in employment of the respondents as sweeper, therefore, the petitioner could not have been appointed by the respondents under the Dying-in-Harness Rules. Since the appointment of the petitioner was initially void, the petitioner is not entitled to any relief.

6. For the reasons stated above. I do not find any merit in this writ petition. The writ petition fails and is accordingly dismissed.

7. There shall be no order as to costs.