

Hasan Abbas Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-17-2003

Reported in : (2004)2UPLBEC1890

Judge : R.B. Misra, J.

Acts : Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974; Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness (Amendment) Rules, 1999; Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness (Amendment) Rules, 2001

Appeal No. : Civil Misc. Writ Petition No. 53956 of 2000

Appellant : Hasan Abbas

Respondent : State of U.P. and ors.

Advocate for Def. : Neeraj Tripathi and ;S.S. Sharma, Advs. and S.C.

Advocate for Pet/Ap. : S.F.A. Naqvi, Adv.

Judgement :

R.B. Misra, J.

1. Heard Sri S.F.A. Naqvi learned Counsel for the petitioner. Sri Neeraj Tripathi said to be the Counsel for the Secretary, Basic Shiksha Parishad, Allahabad is not present, counter and rejoinder affidavits have been filed, therefore, assistance has been taken from Sri S.S. Sharma learned Standing Counsel for the State Government.

2. In this petition, prayer has been made for issuance of writ of certiorari quashing the order dated 3.7.2000 passed by the Respondent No. 3 Basic Shiksha Adhikari, Sant Ravi Das Nagar. The claim of the petitioner is for getting employment on the compassionate ground in view of U.P. Recruitment of Dependants of Government servants Dying-in-Harness Rules, 1974 in short called 'Rules, 1974' hereinafter as amended Fifth Amendment Rules, 1999 as well as Sixth Amendment Rules, 2001.

3. According to the petitioner the father and mother of the petitioner had already died in between 80-90 and only elder sister Km. Darakshan Bano was appointed Assistant Teacher (Urdu) in Ghosia Primary Vidyalaya, Sant Ravi Das Nagar Vikas Chhetra, Auraiya. It appears that it was irony of fate that only unmarried sister on whom the petitioner was dependant had also died on 27.12.1999 leaving behind the surviving dependant petitioner. Undisputedly the petitioner was a dependant on her unmarried deceased sister and on 27.1.2000 an application was moved by the petitioner for seeking appointment on compassionate ground which was rejected on 3.7.2000 on the ground that the petitioner is not covered under the definition of family as defined in the 'Rules, 1974'.

4. In the counter affidavit it has been indicated that the petitioner cannot be given appointment on compassionate ground as the petitioner is not a member of the family and the benefits of the provision of 'Rules, 1974' as amended subsequently could not be given to the petitioner, however, the averments made in the counter affidavit has been denied in the rejoinder affidavit with further reiterating the contents of the writ petition. It is relevant to know that the Fifth Amendment was brought w.e.f. 20.1.1999 in the 'Rules, 1974' whereby the application by dependant could be given within five years from the date of death of the Government servant/employee. The substituted Rule 5 in original 'Rules, 1974' reads as 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 State Government Corporation owned or Controlled by the Central Government or a State Government, lone 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.'

5. In paragraph four of the rejoinder affidavit it has been indicated that by 6th Amendment brought on 12th October, 2001 in Dying-in-Harness Rules, 1974 was to be made effective from the date of Amendment. Earlier in the definition of the family the dependant unmarried brother, sister, widow and mother are also to be member of the family if the serving member become deceased who was unmarried.

6. Learned Counsel for the petitioner Sri Naqvi has contended that it was by chance that the application was filed immediately after the death of serving member where as the liberty was available to the petitioner to make his claim within five years from the date of the death of unmarried sister i.e. before 26.12.2004 by that time the definition of family could have been widened by 6th Amendment brought on 12th October, 2001 and the petitioner could have been entitled for being considered only by filing application earlier. The petitioner cannot be deprived from taking benefit of the subsequent amendment brought from 12th October, 2001 simply he filed the application promptly and had he preferred his claim little later i.e. after 12.10.2001 but before five years of statutory period of preferring application, he could have been entitled for the employment. The petitioner could be given relief provided liberty is given to reiterate his claim for getting employment on compassionate ground afresh.

7. I have heard Counsel for the parties. I find force in the contentions of the petitioner and in view of the Rules, 1974 above, 5th Amendment of Rules, 1999 and 6th Amendment of Rules, 2001 the petitioner is entitled to be considered for given appointment provided the vacancy is available and the petitioner is in possession of the requisite qualification for appointment to the Class IV post.

8. In these circumstances, mandamus is issued to the respondents to consider the case of the petitioner on the fresh application, which shall be given within one month to the concerned/competent authority and the competent authority shall take decision within two months subsequently or within 3 months from the date of production of the certified copy of this order along with application in view of the observations given above.

9. The impugned order dated 3.7.2000 is not legally sustainable, therefore is quashed.

10. In view of the above observations, writ petition is disposed of.