

Sunil Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-16-2002

Reported in : 2003(3)AWC2224; (2003)1UPLBEC489

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Recruitment of Dependents of Government Servants (Dying-in-Harness) Rules, 1974 - Rules 2 and 5

Appeal No. : C.M.W.P. No. 30691 of 2002

Appellant : Sunil Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Prem Chandra, S.C.

Advocate for Pet/Ap. : J.P. Tripathi, Adv.

Disposition : Petition allowed

Judgement :

S. N. Srivastava, J.

1. The short question that looms large in this petition is whether the services of dependent of a Government servant dying-in-harness could be dispensed with as a sequel to the directions contained in the Government order dated 2.5.2002.

2. Matrix of the necessary facts is that petitioner's father, namely, late Hari Prakash, who had been serving as Safai Karamchari in the Nagar Nigam, Ghaziabad, died on 28.2.2001. Thereafter, petitioner applied for compassionate appointment and consequently, he was offered appointment on the vacant post held by his father though on daily wage basis vide order dated 3.7.2001 and was attached to Health Department of the Nagar Nigam. It would transpire from the record that State Government issued Government order dated 2nd May, 2002, addressed to Mukhya Nagar Adhikari, Nagar Nigam, Gorakhpur, the text of which was that the benefit of dying-in-harness rules would not be applicable to daily wage employees and as such appointment under dying-in-harness rules on death of a daily wage employee was invalid, attended with further direction to terminate the services of all casual employees under intimation to the Government. It would thus appear that background of the impugned order dated 21.5.2002, thereby rescinding the appointment and terminating the services of the petitioner, is the Government order aforestated.

3. Learned counsel for the petitioner began his submission arguing that the father of the petitioner had put in 13 years of service in the Nagar Nigam unto the date of his death and he served all these years in the Nagar Nigam as Safai Karmachari on the post which was born of requirements of the Nagar Nigam. He further canvassed that Dying-in-harness Rules, 1974, had been adopted for application to all the local bodies including Nagar Nigam. He also drew attention of the Court to the relevant provision in the dying-in-harness rules the quintessence of which is that benefit of dying-in-harness rules would extend coverage to a person appointed temporarily for more than 3 years. He assailed the order of the State Government containing direction to terminate the services of the petitioner, who wa's appointed under dying-in-harness rules, as one militating against the provisions of law and the U. P. Recruitment of Government Servants Dying-in-harness Rules, 1974. He also referred to the Government order dated 5.11.2002 (Annexure-4) and also the Government order dated 15th October, 1998, according to which even the work charge employees were entitled to the benefit flowing from dying-in-harness rules. Sri Prem Chand, learned counsel representing the Nagar Nigam and the standing counsel, in unison, contended in opposition that since the father of the petitioner had served in the Nagar Nigam on daily wage basis though

at the same time conceded that he had put in about 13 years of service at the time of his death, the petitioner was not entitled to compassionate appointment.

4. I have heard learned counsel for the parties and considered the respective argument of the learned counsel for the parties in all its ramifications. Before delving into analytical examination of the merits of the respective arguments, it is essential to refer to Rule 2 (a) of the U. P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974, which concededly is intended and has been made applicable to all the local bodies inasmuch as the assertion on this count specifically made in paragraph 6 of the writ petition has not been repudiated in para 8 of the counter-affidavit. In Rule 2 of the Rules, expression 'Government servant' has been defined in the following manner ;

'(a) 'Government servant' means a Government servant employed in connection with the affairs of Uttar Pradesh, who :

(i) was permanent in such employment ; or

(ii) though temporary had been regularly appointed in such employment ; or

(iii) though not regularly appointed, had put in three years' continuous service in regular vacancy in such employment.'

It would crystallise from perusal of Rule 2 (a) (iii) that if a person though not regularly appointed, had put in three years' continuous service in regular vacancy in such employment, dependants of such employees would be entitled to the benefits flowing from dying-in-harness rules. Besides, it is also explicit from a perusal of the Government order dated 18th October, 1998, that Government in terms of the provisions of the dying-in-harness rules issued a clarificatory order that the benefits of dying-in-harness rules were also applicable to work charge employees. In the instant petition, the deceased employee had concededly put in about 13 years of service though he could not be redeemed from the epithet of daily wage employee unto his death. It is also obvious from the record and it has not been repudiated that the deceased employee endured in the service of Nagar Nigam all these years against its permanent requirements. By this reckoning, it is

beyond the pale of controversy that the deceased employee held the post against permanent requirements of the Nagar Nigam even though for reasons not obvious on record, he wore the badge of daily wage employee unto his death. In the circumstances, I am of the firm view that benefits of dying-in-harness rules must on all fours apply to the dependent of the deceased employee, i.e., the petitioner. To cap it all, it defies logic that when the State Government has made applicable the benefits of dying-in-harness rules to the work charge employees, how could this be denied to the petitioner whose father had served the Nagar Nigam as Safai Karmachari for about 13 years in unbroken continuity. The necessary corollary that follows from the above is that the directions of the State of U. P. to terminate the service of dependents who were appointed under dying-in-harness, rules merely on the hypothesis that petitioner's father had worked as daily wage employee and the consequential order rescinding the petitioner's appointment and termination of his services, cannot be sustained in law. It is, therefore, held that a daily wage employee working against permanent requirements of the Nagar Nigam for more than 3 years in a vacancy existing for more than 13 years even though he continued to wear the badge of daily wage employee, his dependants are entitled to get the benefits of appointment flowing from dying-in-harness rules.

5. As a result of the foregoing discussion, the petition succeeds and is allowed. The impugned order dated 21.5.2002, passed by the Upper Mukhya Nagar Adhikari and the consequential order of Senior Nagar Swasthaya Adhikari, Nagar Nigam, Ghaziabad, dated 28.5.2002 are quashed. As a consequence thereof, the petitioner is held to have been rightly appointed under the dying-in-harness rules and he shall be entitled to be absorbed in the Nagar Nigam and to all consequential benefits.

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