

**Phool Mohammed Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Oct-16-1989

**Reported in :** 1990(1)WLN621

**Judge :** Kanta Bhatnagar, J.

**Appeal No. :** S.B. Civil Writ No. 2206 of 1989

**Appellant :** Phool Mohammed

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**Miss Kanta Bhatnagar, J.**

1. Heard learned counsel for the parties.

2. Though the case was put up for admission to day but in view of the submission of Mr. B.N. Kalla that the case is covered by the Division Bench decision of this Court in the case of Shashikant v. State of Rajasthan and Ors. D.B. Civil Writ Petition No 2194 of 1984 decided on March 16, 1989 the case may be heard or final disposal to day.

3. Mr. Dave did not object to the arguments of the case being heard for final disposal today.

4. The grievance of the petitioner is with regard to the order Annex. 9 by which the concerned authority declined to give the petitioner benefit Under the Rajasthan Recruitment of Dependants of Government Servant Dying While in Service Rules, 1975(for short 'the Rules' here in after) on the ground that the father on the petitioner had died on 2-9-1972.

5. The question about the legality of the date September 2, 1972 in the rules came for consideration before the Division Bench (of which I was a party) in the case of Shashikant v. State of Rajasthan and Ors. and the word 'on or after September 2, 1972' Under Rule 2 (e) of the Rules vide Department of Personnel notification No. F. 3(6) Karmik (Ka-II) 75 were struck down.

6. The relevant portion regarding the relevancy of the words 'on or after September 2, 1972' in Rule 2 (e) of the Rules in the Division Bench decision read as Under:

Consequently, the words 'on or after September 2, 1972' in Rule 2 (e) of the Rules vide Department of Personnel (A Group-II), Notification No. F.3 (6) Karmik (ka-II) 75, are struck down. The definition of the term 'deceased Government servant' would therefore be as it stood prior to this Notification. Because of this decision the amendment in R 5 of the Rules made on March 25, 1976 by the same Notification substituting the word 'deceased Government servant who dies on or after the commencement of these Rules, would be in consonance with the principle enunciated by us and will remain as such

7. In view of that decision, the denial of the benefit to the petitioner on the ground that his father expired on 2-9-1972 is not correct.

8. Mr. Dave submitted that the father of the petitioner had expired as back as in the year 1972 and he has filed the writ petition in the year 1989 and, therefore, the writ petition should be dismissed on that count. The reason for filing the writ petition after delay as submitted by Mr. B N Kalla is that it was after the decision in Shanshikant's case that the petitioner could claim benefit Under the Rules and,

therefore, he has filed the writ petition now. The submission has force. The delay in filing the writ petition would not come in the way of the petitioner and he is entitled to relief in accordance with the decision in the aforesaid Division Bench decision.

9. Consequently, the writ petition of Phool Mohd is allowed and the order Annexure 9 dated 20th August, 1986 is set aside Respondents are directed to consider the case of the petitioner according to the provisions of Rules ignoring the date of death of his father.

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