

State of Rajasthan and ors. Vs. Sharvan Kumar and ors.

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Court : Rajasthan

Decided On : Jul-25-1997

Reported in : 1998(1)WLC79; 1997(2)WLN151

Judge : B.R. Arora and; A.K. Singh, JJ.

Appeal No. : D.B. Civil Special Appeal No. 724 of 1997

Appellant : State of Rajasthan and ors.

Respondent : Sharvan Kumar and ors.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 5.3.97 passed by the Hon'ble Chief Justice, by which the Hon'ble Chief Justice allowed the writ petition filed by the petitioner and directed the respondents to consider the case of the writ petitioner for employment in accordance with law over-looking the factum of the writ petitioner having crossed the upper age limit as a special case.

2. Respondent Shraavan Kumar's father Shil Jograj was working as a Jamadar (Watchman) with the Krishi Upaj Mandi Samiti, Rani. While in service, Shri Jograj died on 17.3.95. Shraavan Kumar, being the only son of deceased Jograj and was

unemployed, applied for his appointment on the post of Class IV employee in the Mandi Samiti, Rani under the Rajasthan Recruitment of Dependants of Government Servant Dying While in Service Rules, 1975, on compassionate ground. The appointment of Shravan Kumar was refused on the ground that he has crossed the upper age limit and being 38 years of age, he is not entitled for appointment.

3. Aggrieved with the denial of appointment on compassionate ground under the Rules, 1975, Shri Shravan Kumar filed a writ petition before this Court. The writ petition filed by the petitioner-respondent was allowed by the Hon'ble Chief Justice with the direction to the present appellants to consider the case of petitioner-respondent Shravan Kumar for appointment as a special case. It is against this judgment that the appellants have preferred this appeal.

4. It is contended by the learned Counsel for the appellants that in giving appointment on compassionate ground under the Rules, 1975, a process of regular selection can be ignored but the conditions like educational qualification and age etc. cannot be ignored and the appointment on compassionate ground can be given only if the applicant is qualified or eligible for employment under the Rules. Since Shri Shravan Kumar has crossed the upper age limit as per the Rajasthan Service Rules, 1951, therefore, he was rightly refused employment.

5. We have considered the submissions made by the learned Counsel for the appellants.

6. The appointment under the Rules of 1975 is given to the dependants of the deceased employee on compassionate ground so that they may over-come the sudden financial crisis which occurred on account of the death of the earning-member in the family. It is with this object that Sub-clause (f) of Rule 2 has been given a very wide definition to the word 'family' which includes the wife or the husband, sons and unmarried or a widow daughter and, also, includes the adopted son or daughter dependant on the deceased government servant.

7. Rule 4-of the Rules, 1975 gives an over-riding effect to these rules and provides that these Rules and orders issued thereunder, shall have effect notwithstanding

anything to the contrary contained in any rule, regulation or order in force at the time of commencement of these Rules. Rule 5 of the Rules, which deals with the recruitment of the members of the family of the deceased government servant, reads as under:

5. Recruitment of a member of the family of the deceased.--In case of deceased Government servants one member of his family who is not already employed under the Central/State Government or Statutory Board/Organisations/Corporations owned or controlled by the Central/State Government, shall, on making an application for the purpose, be given a suitable employment in Government Service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission in relaxation of the normal recruitment rules, provided such member fulfills the educational qualification prescribed for the post and is also otherwise qualified for Government Service. In the event of non-availability of a vacancy or any of the members of the family being unqualified or minor is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any one of them becomes qualified or eligible for such employment under these rules.

Provided that recruitment may be made on posts which are within the purview of the Rajasthan Public Service Commission except the major State Services mentioned in Rule 3 where the Appointing Authority is satisfied in consultation with the Department of Personnel and the Rajasthan Public Service Commission that the dependant of a deceased Government Servant is qualified and suitable for appointment to such post.

8. Rule 8, which deals with the age, provides the minimum age of 16 years at the time of appointment. No maximum age limit has been prescribed under the Rules of 1975. A specific provision has been made in Rule 8 that the upper age limit relating to the wife (widow) of the deceased government servant cannot be provided. A reading of this rule alongwith rules 4 and 5 makes it clear that though the upper age limit can be provided for other dependants of the deceased but so far as the wife (widow) of the deceased is concerned, under the rules, no

maximum age limit in giving appointment to her under these Rules can be made. No maximum age limit has been provided in these rules in the employment on compassionate ground. If any age limit in any other rules or in Rajasthan Service Rules is provided in giving employment then in view of the over-riding effect of these Rules, that maximum age limit cannot be made applicable for giving employment under these Rules. In view of the fact that the rule does not provide any upper age limit for appointment on compassionate ground under the Rules, 1975, the Hon'ble Chief Justice was right in allowing the writ petition filed by the respondent-petitioner and directing the appellants to consider his case for employment as a special case. We see no infirmity in the judgment passed by the Hon'ble Chief Justice.

9. In the result, we do not find any merit in this appeal and the same is hereby dismissed.

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