

Ashok Kumar Jain Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jun-29-2009

Reported in : 2009(3)WLN142

Judge : Narendra Kumar Jain, J.

Appellant : Ashok Kumar Jain

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Narendra Kumar Jain, J.

1. At the request of learned Counsel for the parties the writ petition was heard finally and is being disposed of.

2. Petitioner preferred this writ petition challenging the order dt. 03.12.1998 (Annexure-4) passed by respondent No. 3, the District Education Officer (Elementary) Sawaimadhopur, thereby the respondent rejected the application of the petitioner seeking compassionate appointment in place of his father late Shri Mohan Lal Jain, who died while in service on 12.09.1998, on the ground that Shri Mukesh Kumar Jain, elder son of late Shri Mohan Lal Jain, is already in Government service.

3. The submission of learned Counsel for the petitioner is that late Shri Mohan Lal Jain, father of the petitioner, died while in service on 12.09.1998 and, as per the provisions of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 (hereinafter shall be referred to as 'the Rules of 1996'), the petitioner moved an application for appointment on compassionate ground on the post of L.D.C. in the prescribed form (Annexure-3), but the same has wrongly been rejected by the respondents vide impugned order dt. 03.12.1998 (Annexure-4). The learned Counsel for the petitioner further submitted that the sole reason for rejecting the application of the petitioner is that Shri Mukesh Kumar Jain, elder brother of the petitioner, is already in Government service, whereas Mukesh Kumar Jain was appointed purely on ad-hoc/temporary basis vide order dt. 02.11.1994 on the post of Junior Engineer in the Public Health and Engineering Department and his services were not regularized till the date of death of Mohan Lal i.e. 12.09.1998, whereas, as per Rule 5 of the Rules of 1996, there is bar to get compassionate appointment to the effect that employment under these Rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the central/any State Government or Statutory Board, Organization/Corporation owned or controlled wholly or partially by the Central/any State Government at the time of death of the Government servant. Admittedly, Shri Mukesh Kumar Jain was not in employment on regular basis, hence the application of the petitioner has wrongly been rejected by the respondents, as such, the writ petition of the petitioner is liable to be allowed and the respondents be directed to reconsider the case of the petitioner for compassionate appointment under the Rules of 1996. It is further contended that being aggrieved with the order dt. 03.12.1998, the petitioner moved a detailed representation (Annexure-5) clarifying the above position, but no heed was paid to that representation and the same remained pending with the respondents and, in these circumstances, the present writ petition was filed.

4. A notice to show cause was given to the respondents and, in response thereto, they filed written reply before this Court on 22.04.2004, and in Para 3 thereof, it has been contended that elder brother of the petitioner, Shri Mukesh Kumar, was appointed under Rule 5 of the Rules of 1996 and the said Rule does not provide

for any further appointment to another son of the deceased Government servant, hence the writ petition deserves to be dismissed.

5. The petitioner has filed rejoinder affidavit to the aforesaid reply to the writ petition filed by the respondents and contended that the contents of the reply, as referred above, are false in view of the order dt. 02.11.1994 (Annexure-8), filed with the writ petition itself, appointing Shri Mukesh Kumar Jain on ad-hoc/temporary basis. It is further contended that Shri Mukesh Kumar was never appointed under Rule 5 of the Rules of 1996. It is further averred that Mukesh Kumar was not regularized on his post till the date of death of late Shri Mohan Lal Jain.

6. I have considered the submissions of learned Counsel for the parties along-with their pleadings and documents enclosed therewith. There is no dispute in between both the parties that late Shri Mohan Lal was in Government service on the date of his death on 12.09.1998. The petitioner moved an application for compassionate appointment under the Rules of 1996 and the same was rejected vide order dt. 03.12.1998 on the ground that his elder brother Mukesh Kumar is already in Government service. However, it was further mentioned that in case the widow of deceased herself wants appointment then her application can be considered.

7. It is relevant to mention that the matter was listed before this Court on 16.12.2008 and after considering the contents of the reply to the writ petition about appointment of Mukesh Kumar under the Rules of 1996 this Court directed the respondents to place on record the relevant order to substantiate their submissions, but till date the respondents have not placed on record any document or order of appointment of Shri Mukesh Kumar Jain under Rule 5 of the Rules of 1996. The learned Counsel for the State is unable to show any order even during the course of arguments, appointing Shri Mukesh Kumar under Rule 5 of the Rules of 1996. The learned Counsel for the State does not dispute the order dt. 02.11.1994 (Annexure-8) whereby Mukesh Kumar, the elder son of late Shri Mohan Lal, was appointed purely on ad-hoc/temporary basis on the post of Junior Engineer. The respondents have not disputed in their reply that Mukesh Kumar was not appointed on regular basis. Thus, from the documents placed on the

record it is clear beyond any doubt that Mukesh Kumar had been appointed on 02.11.1994 much before the death of late Shri Mohan Lal in 1998 and his appointment was purely on ad-hoc/temporary basis and he was not regularized till 1998, and that no order has been placed on the record by the respondents to show that Mukesh Kumar was appointed under Rule 5 of the Rules of 1996 or he has been regularized on the post of Junior Engineer till the date of death of late Shri Mohan Lal.

8. So far as reply to the writ petition is concerned, it is relevant to mention that the reply has been filed in a very casual manner by the respondents without considering even their own order dt. 03.12.1998 (Annexure-4), impugned in this writ petition, wherein application of the petitioner for compassionate appointment was not rejected on this ground. Rule 5 of the Rules of 1996 provides that when a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the central/any State Government etc. For ready reference, Rule 5 of the Rules of 1996 is reproduced as under:

5. Appointment subject to certain conditions.-(1) When a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the central/any State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government at the time of death of the Government servant.

Provided that this condition shall not apply where the widow seeks employment for herself.

(2) Appointment under these rules shall be given on the condition that the person appointed on compassionate ground shall maintain properly the other family members who were dependent on the deceased Government servant and on furnishing an undertaking in writing that he/she shall maintain properly the other family members who were dependent on the deceased Government servant. If subsequently, at any time, it is proved that such dependent family members are being neglected or are not being maintained properly by him, the appointment may be terminated by the Appointing Authority after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him to explain why his services should not be terminated.

9. A bare perusal of above quoted Rule 5 makes it clear that as and when a Government servant dies while in service, one of his/her dependents is required to be considered for appointment in Government service, however, it is subject to the condition that where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is not in Government employment on regular basis. The petitioner has placed on the record a copy of the order dt. 02.11.1994 (Annexure-8) along-with the writ petition itself showing that Mukesh Kumar was appointed on ad-hoc/temporary basis on the post of Junior Engineer. In Para 4 of the writ petition it has specifically been mentioned by the petitioner that Shri Mukesh Kumar has not been regularized on this post. The contents of Para 4 of the writ petition have not been denied specifically by the respondents in their reply to the writ petition contending that Mukesh Kumar has been regularized on his post, and thus one of the dependents of the Government servant, who died while in service, is already in employment on regular basis, therefore, the application of the petitioner cannot be considered and allowed.

10. In view of the above discussion, it is clear that the respondents committed an illegality in rejecting the application of the petitioner vide order dt. 03.12.1998 (Annexure-4), which is contrary to Rule 5 of the Rules of 1996 and as such the same cannot be allowed to stand and it is liable to be quashed and set-aside.

11. Consequently, the writ petition is allowed. The impugned order dt. 03.12.1998 (Annexure-4) passed by the respondent No. 3-District Education Officer (Elementary Education), Sawaimadhopur, is quashed and set-aside. The respondent No. 3 is directed to reconsider the application of the petitioner for compassionate appointment of the petitioner under the Rules of 1996 in place of his father late Shri Mohan Lal, as per the Rules, within a period of three months from the date of submission of certified copy of this order and pass necessary order of his appointment on the post of L.D.C. in accordance with Rules if the petitioner is otherwise found eligible. The costs is made easy.

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