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Court : Rajasthan

Decided On : Apr-21-1995

Reported in : 1995(2)WLC438; 1995(1)WLN592

Judge : Arun Madan, J.

Appeal No. : S.B.Civil Writ Petition No. 1668 of 1990

Appellant : Kamal Singh

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Arun Madan, J.

1. The short question which arises for consideration of this court in the present writ petition is as to whether the fixation of cut off date i.e. 2nd September, 1972 occurring in the definition of the term 'deceased Government Servant' in Rule 2(e) of the Rajasthan Recruitment of Dependents of Government Servant Dying while in Service Rules, 1975 (hereinafter referred to as 'the Rules') by which benefit of recruitment to the members of the family of deceased Government servant while dying in service is limited only to the members of the family of the government servant dying on or after cut off date as referred to above, i.e. 2nd September,

1972 ?.

2. The brief facts giving rise to the filing of this writ petition are that the Late father of the petitioner was appointed on work charge basis by Public Health Engineering Department (for short 'PHED') (respondent No. 3) but later on he was fixed in his regular pay scale. The petitioner's father died on duty on 14.7.1969 while the petitioner was a minor. The matter was represented through the mother of the petitioner to the concerned authorities so that the petitioner could suitably be given appointment under the Rule of 1976. The representation of the petitioner was rejected on the ground that the question regarding fixation of cut off date is not material for consideration of the Authorities and no benefit of the same can be extended to the petitioner. The petitioner was however, taken in service as class IV servant on the post of helper on which post he has been discharging his duties till date.

3. In the reply to the show cause notice which has been filed by the respondents, it has been contended in para 4 of the said reply that no representation was made on behalf of the petitioner by his mother nor any application under the Rules of 1976 seeking appointment of the petitioner, was ever made to the concerned Authorities and, therefore, the question of the petitioner being given appointment under the Rules, does not arise.

4. As against the aforesaid contention, the petitioner has placed on the record additional affidavit controverting the above stand of the respondents specifically mentioning in para 3 of the said additional affidavit that both, the petitioner as well as his mother had personally gone to the office of the Executive Engineer, P.H.E.D. (respondent No. 3) in September, 1989 and had represented the matter that he should be given employment at the place of his Late father who was a deceased Government servant and he had personally represented the matter also to the Deputy Secretary of the said department in October, 1989. No reply has been filed to the said additional affidavit of the petitioner till date by the respondents and hence contentions made therein remain uncontroverted till date.

5. During the course of hearing attention of the court has been invited by the learned Counsel for the petitioner to D.B. Judgment of this court dated 16th March,

1989 in the matter of Shasikant v. State of Raj. & others and in my considered opinion the controversy involved in the present writ petition is squarely covered and answered by the aforesaid D.B. judgment of this court. In that aforesaid case it has been held 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 Rule 5 of the Rules made on March 25, 1976 by the same Notification substituting the word 'deceased government servant' for the then existing clause Government servant who dies on or at the commencement of these Rules, would be in consonance with the principle enunciated by us and will remain as such.

6. After hearing learned Counsel for the parties and after having perused the relevant documents placed on the record, I am of the considered opinion that the petitioner is entitled to succeed. I am further of the view that the case of the petitioner falls within the ambit of Rule 5 of the Rules and he is entitled to the benefit of the Rules by being extended all consequential benefits w.e.f. the date of filing of this writ petition in this court. It is further directed that the petitioner shall be deemed to have been appointed from the date of having moved this court by filing this writ petition, i.e. 8.2.1990 and he will be entitled to all the emoluments as permissible to him under the Rules for the post of Helper.

7. With the above observations this writ petition is allowed. The parties are left to bear their own costs.