

Surendra Singh Vs. State of Rajasthan and ors.

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SooperKanoon Citation : sooperkanoon.com/768784

Court : Rajasthan

Decided On : Apr-13-1999

Reported in : 1999(3)WLC716; 1999(1)WLN583

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition No. 3829 of 1997

Appellant : Surendra Singh

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. G.K. Vyas

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. The instant writ petition has been filed for issuing direction to the respondents to give employment on compassionate ground under the Rajasthan Recruitment of Dependents of Deceased Government Servant Dying while in Service Rules, 1975 (hereinafter referred to as the Rules of 1975).

2. The facts and circumstances giving rise to this case are that petitioner's father Narpat Singh was working as Driver with the Executive Engineer, Public Works

Department, Jodhpur, and while in service, he died on 26.9.1990. At the relevant time, petitioner was studying in Diploma in Mechanical Trade and he filed an application for employment under the said Rules in 1994. Petitioner's application was forwarded to the Department of personnel vide communication dated 12.3.1996 and the Deputy Secretary of Department of personnel, in his letter verified that as petitioner's father was in the regular cadre, he was entitled for appointment on regular basis and with this endorsement, petitioner's application was sent to the Office of the Chief Engineer (Annexure. 1). The grievance of the petitioner is that in spite of clear direction issued by the Department of Personnel for giving appointment on regular basis to the petitioner he had not been offered suitable employment on compassionate ground, rather he was offered the post of Beldar in 1997, which petitioner did not accept.

3. Respondents, in thier reply, have submitted that petitioner's father was workings as Driver and, thus, petitioner could have been offered the post of Beldar and accordingly he was offered the said post on 17.3.1997, which was not accepted by him; and as his father was working under the Rajasthan Work- charge Employees (including) P.W.D., Gardens, Water Works and Ayurvedic) Rules, 1964) (hereinafter called the Rules of 1964), petitioner was not entitled to claim any other employment.

4. Mr. G.K. Vyas learned Counsel for the petitioner has submitted that if a person works under the Rules of 1964 and completes ten years service, he becomes eligible for consideration and grant of permanent status and once the said status is conferred on him, the provisions of the Rajasthan Service Rules, 1951 (hereinafter called the Rules of 1951) become applicable on him and, therefore, on the basis of that, appointment must be offered to the petitioner considering his father as a government employee, in whose case the provisions of the Rules of 1951 are applicable.

5. On the contrary, Mr. Rajendra Vyas, learned Additional Advocate General appearing on behalf of the respondents, has placed reliance upon a Division Bench judgment of this Court in Chief Engineer, P.W.D., Jaipur v. Lalit Singhvi 1996 (1) WLC 51, wherein it has been held that as the Rules of 1975, which are

basically applicable only in case of government servant, had also been made applicable to the work-charge employees by the Circular dated 29.9.1975, it does not mean that the employees of work-charge establishment shall be considered to be the government servant for the purpose of application of the Rules of 1975. This Court has held that the work-charge employees are a class separate from the government servant and, therefore, as regards the employment of dependents of deceased work-charge employees, they can be treated differently from the dependants of government servant and both the classes of employees cannot be treated at par or equivalent. Mr. Vyas contended that as the Division Bench has held that the Rules of 1975 will be made applicable on work-charge employees as amended from time to time and in the instant case as the Rules of 1964 contain a specific provision that if a Driver dies in harness, his dependant can be offered the post of Beldar, petitioner cannot get any benefit treating his father's service being governed by the Rules of 1951.

6. The judgment of the Division Bench of this Court is in consonance with the law laid down by the Hon'ble Supreme Court in *Manipur v. Thingujam Brojen Meetei* : (1997)ILLJ415SC , wherein the Apex Court has held that if a work-charge employee is confirmed or granted the permanent status, it does not alter the character of his work-charge employment. The only change that is brought-about as a result of confirmation of a work-charge employee, is that by virtue of Terminal Benefit Rules, a confirmed work-charge employee would become entitled to certain benefits, which may include the pension, provident fund and other retrieval benefits as the same benefits could not have been made applicable to him otherwise. However, a work-charge employee, after confirmation, does not cease to be a work-charge employee and shall continue to be a work-charge employee. The Court further held that the compassionate employment on the death of work-charge employee would depend upon the Rules and Circulars applicable on the work-charge employees and in case there is a complete bar regarding applicability of the Rules providing for compassionate employment in work-charge establishment, the High Court cannot issue a direction to offer employment on compassionate ground to the dependant of the deceased permanent work-charge employee treating him to be an employee of the State Government.

7. In *Sujan Singh v. State of Rajasthan* WLR 1991 Raj. 340 *Ismail Khan v. State of Rajasthan and Ors.* 1986 RLR 24; and *Smt. Sayari Devi v. State of Rajasthan and Ors.* 1995 (1) RLR 87, it has been held that if an employee has rendered more than ten years' service even as a work-charge employee, his widow is eligible and entitled for family pension as the employee had been entitled for grant of status of a permanent employee. Thus, in such an eventuality, the employee or his dependant may be entitled for pensionary benefits but he is not entitled for any benefit under the Rules of 1975, nor he is entitled for any other benefit under the provisions of the Rules of 1951 (*Vide State of Rajasthan v. Roop Lal Sharma : (1997)IILLJ781SC*) and the position will remain unchanged in spite of the fact that Proviso to Rule 2(g) of the Rules of 1951 makes the said Rules applicable in case a work-charge employee has acquired the permanent status and is carrying of the work of permanent nature and is not being paid out of the provisions for expenditure on works, maintenance of the work or State Trading Scheme or similar other provision for funds etc.

8. In *State of Bihar and Ors. v. Samsuz Zoha : (1996)IILLJ647SC* , the Hon'ble Supreme Court has held that the purpose of compassionate employment is to redeem the grieved family from the financial constraints immediately and the appointment is to be offered strictly as per the Rules/Circulars applicable in a particular service. In absence of any particular rule, the dependant cannot insist that he should be offered suitable employment as per his educational qualification as the compassionate employment is not to be offered to the dependant assessing his qualification and family status.

9. Similarly, in *Director of Secondary Education and Ors. v. Pushpendra Kumar and Ors. : [1998]3SCR432* , the Hon'ble Supreme Court considered all its earlier judgments on the subject and held that the Court cannot issue a direction to offer an appointment on compassionate ground in a particular cadre in absence of any Statutory Rules merely because the dependant fulfills the requisite qualification for higher post and in the said case, the Court directed to offer appointment only on Class IV posts.

10. During the course of arguments, Mr. G.K. Vyas has given up the issue for offering appointment to a near relative in view of the judgment of this Court in Ramlakhan v. State of Rajasthan and Ors. 1998 (2) WLC 208, wherein this Court has declared the said provision as invalid being violative of Articles 14 and 16 of the Constitution of India. In that case, reliance had been placed upon the judgment of the Hon'ble Supreme Court in Auditor General of India and Ors. v. G. Ananta Rajeshwara Rao : (1994)IILLJ812SC , wherein the Hon'ble Apex Court has held that extension of benefit of employment on compassionate ground to a near relative of deceased government servant, is violative of Articles 14 and 16 of the Constitution.

11. The instant case squarely falls within the four corners of the judgment of the Hon'ble Supreme Court in Thingujam Brojen Meetai (supra), wherein it has been categorically held that The grant of permanent status does not alter the nature of service of a work-charge employee and the grant of that status may simply make him eligible for post-retrial benefits and his dependant cannot claim the benefit of the Dying in Harness Rules applicable in cases of government employees.

12. Thus, the petition is devoid of any merit and accordingly dismissed.. If petitioner is interested to join as Beldar, he may make a representation to the said effect to the Competent Authority and if he does so within four weeks from today, the Competent Authority may offer the said post irrespective of the fact that petitioner has earlier not accepted the said employment There shall be no order as to costs.