

Urmila Devi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-23-2010

Judge : Amreshwar Pratap Sahi, J.

Appeal No. : WRIT - A No. - 61214 of 2008

Appellant : Urmila Devi

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : Ram Autar Verma; Ghan Shyam Das, Advs

Judgement :

1. The petitioner is the widow of late Sri Ved Prakash who was a Lekhpal and died in harness on 16th December 1996. The petitioner was offered appointment on compassionate basis on the strength of her certificate from Hindi Sahitya Sammelan which the petitioner claims equivalent to the Intermediate examinations conducted by the Board of High School and Intermediate, Uttar Pradesh. The petitioner was accordingly appointed as a Class III employee keeping in view the aforesaid qualification.

2. The petitioner however did not make any efforts to learn typing and subsequently the petitioner was put to notice that her services would be terminated in case she does not improve upon herself. The petitioner has been

now found ineligible to continue on the said post, vide order dated 25th September 2008 on the ground that her qualification at the time of her initial appointment was not Intermediate, inasmuch as the certificate from the Hindi Sahitya Sammelan obtained by her was not an equivalent qualification.

3. Learned counsel contends that the said order works great hardship inasmuch as the petitioner has lost her service that too even after 11 years of having served the respondents and therefore the impugned order deserves to be set aside.

4. Learned Standing Counsel on the other hand contends that the law as declared by the Supreme Court is that an illegality cannot be cured and had the petitioner improved upon her qualifications the same could have been regularised keeping in view the offer made by the respondents which opportunity was not availed of by the petitioner. He therefore submits that the impugned order does not suffer from any infirmity much less a legal infirmity so as to interfere in the exercise of jurisdiction under Article 226 of the Constitution of India.

5. Having heard learned counsel for the parties and perused the affidavits, the fact that the petitioner was ineligible could not be successfully disputed by the learned counsel for the petitioner inasmuch as the certificate of the petitioner for Intermediate examinations has not been found to be equivalent upon a verification by the Board. In such situation, the petitioner was therefore not eligible for being appointed against a Class III post.

6. Needless to say that the alleged ineligibility of the petitioner cannot be cured in view of her long years of service as per law laid down by the Apex Court in the case of Mohd. Sartaj & another v. State of U.P. & Ors., reported in (2006) 1 U.P.L.B.E.C 719.

7. So far as the status of the petitioner is concerned, it is undoubtedly admitted to the opposite parties that she was entitled for compassionate appointment. The petitioner did not play any fraud nor has she committed any such act which may amount to misrepresentation. In such a situation the petitioner was entitled for an employment and keeping in view the fact that she has passed her High School from the U.P. Board, she was entitled for a compassionate appointment against a

post commensurate to such qualification.

8. Accordingly the Court is of the firm opinion, that even though the impugned order dated 25.9.2008 may not require any interference, in view of the conclusions drawn hereinabove the petitioner is entitled for a mandamus directing the respondents to forthwith appoint the petitioner against a Class IV post or any other post equivalent and commensurate to the qualifications possessed by the petitioner keeping in view her status as indicated hereinabove. She would be entitled for relaxation in age in the event she has crossed the upper age limit for such employment.

9. Accordingly the writ petition is allowed to the aforesaid extent with a direction to the respondent District Magistrate Etah to ensure that the petitioner is appointed against a Class IV post without any further delay as early as possible but not later than three weeks from the date of presentation of a certified copy of this order before him.

10. It is further made clear that the respondents shall not take any further action pursuant to the impugned order including recovery of salary etc.

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