

(2015) 05 AHC CK 0145

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Service Single) No. 2741 of 2015

Abu Ahmad Khan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 642 : (2015) 4 AWC 4079

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : M.C. Shukla, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J—Heard learned Counsel for the petitioner and Sri Badrul Hasan, Additional Chief Standing Counsel. Petitioner's father, namely, Qamruddin Khan, while working on the post of Driver in the office of Executive Engineer, PWD, District Fatehpur, died on 22.8.2009 leaving behind petitioner and other legal heirs. Thereafter, the petitioner being graduate and well versed in Hindi Typing, moved an application under Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 [hereinafter referred to as "1974 Rules"] for appointment on the post of Lipik (Class III post). Thereafter, the authorities fixed for test of Hindi Typing but same was not conducted on one pretext or the other and later on, he was given appointment on the post of Daftari (Class IV post) by the Executive Engineer, PWD pursuant to which petitioner gave his joining on 28.3.2012.

2. Learned Counsel for the petitioner has contended that the petitioner being qualified and eligible, is entitled for appointment on a class III post but the opposite parties are illegally denying the legitimate claim of the petitioner which is highly unjust and unreasonable. Therefore, petitioner claims that necessary directions be issued to the respondents for appointment of the petitioner on a class III post.

3. In contrast, the learned State Counsel has submitted that the petitioner has been given compassionate appointment in the year 2012 and since then he is discharging his duties on the post of "Daftari". Clarifying the position, he further contended that the petitioner accepted the appointment unconditionally and as such now, it is not open for him to claim appointment on a higher post as per his own choice.

4. To strengthen his arguments, Sri Badrul Hasan, Additional Chief Standing Counsel has relied upon Union of India and others v. Central Administrative Tribunal and another, 2011 (4) ADJ 158 (DB) and Vivik Kumar Sharma and others v. State of U.P. and another, 2015 (2) ADJ 3 (DB), wherein it has been held that once the right of compassionate appointment was consummated, any further consideration for higher post on the ground of compassion would not arise.

5. I have given my anxious consideration to the above rival arguments advanced by the counsel for both the parties and have also gingerly gone through the documents placed on record of the present case.

6. First of all, I would like to point out that the paramount object of the Dying-in-Harness scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical ground thereby leaving his family in penury and without any means of livelihood, in order to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The efficiency of the administration cannot be completely sacrificed while making appointment. In cases of compassionate appointments, the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death.

7. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favor of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration, taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment.

8. Thus, it can be easily summed up that the whole object of granting compassionate employment is thus to enable the family to tide over the sudden

crisis. The object is not to give a member of such family a post, much less a post held by the deceased. Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis then a job is to be offered to the eligible member of the family.

9. In the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 68 FLR 1191 : (1994) 3 JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994) 3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322 , the Apex Court has held as under:

"4.....The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant.

5.....If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

10. Similarly in the case of Pepsu Road Transport Corporation v. Satinder Kumar and another, 1995 Supp (4) SCC 597, it was held by the Hon"ble Supreme Court as under:

"we find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be metric, however, generally graduates and even post-graduate degree holders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the Courts to compel appointment to, particular posts. The fact of the matter is that though this kind of appointment is sui generis and it is reasonable to expect that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification."

11. Admittedly, the petitioner's father died in harness while working as Driver in the office of the Executive Engineer, PWD, District Fatehpur, on 22.8.2009. Thereafter, the petitioner filed an application for his appointment on compassionate ground. On consideration of his plea, he was appointed to the post of Daftari (Class TV). He accepted the appointment as Peon. The petitioner in the present case has based his claim for compassionate appointment to a particular post of "Lipik (Class III)" after the joining on the post of Daftari (Class

IV) unconditionally only on the ground that his qualification is Graduate and is eligible for the said post.

12. In the case of State of Rajasthan Vs. Umrao Singh, (1995) 70 FLR 552 : (1994) 6 JT 372 : (1995) 1 LLJ 908 : (1994) 4 SCALE 372 : (1994) 6 SCC 560 : (1994) 4 SCR 67 Supp : (1995) 1 SLJ 132 : (1995) 1 UJ 15 , the Apex Court has categorically held that once the right has been consummated, any further or second consideration for a higher post on the ground of compassion would not arise.

13. In the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, AIR 1994 SC 2148 : (1994) 68 FLR 791 : (1994) 2 JT 183 : (1994) 2 LLJ 173 : (1994) 1 SCALE 748 : (1994) 2 SCC 718 : (1994) 2 SCR 163 : (1994) 1 UJ 592 : (1994) WritLR 492 , the Apex Court propounded that even the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

14. In view of the aforesaid legal position, this Court could not and should not give any direction to the authorities for appointment of a such a person to a specified post of "Lipik (Class IV)". The Hon"ble Supreme Court has laid down in the case of Umesh Kumar Nagpal (Supra) that mere possessing of minimum qualification to hold a particular post does not bestow any legal right on the dependent of a deceased employee to seek employment on compassionate grounds to a particular post.

15. In view of the aforesaid facts compassionate appointment to a particular post cannot be claimed by any one as a matter of right. Non-appointment of the petitioner to a post of his choice does not violate any of his fundamental right guaranteed to every citizen under the Constitution. In view of the above, I do not find any merit in this writ petition, which fails and is hereby dismissed. For the facts and circumstances of the case, there is no order as to costs.