

(2011) 12 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4656 of 2007

Anil Kumar Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Citation : (2012) 2 ADJ 430 : (2012) 133 FLR 222

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Sunil Hali, J.—Petitioner claims his appointment under Dying-in-Harness Rules, 1974. According to the Scheme of the Rule, the petitioner is eligible as being son of the deceased-Late Yangya Narayan Sharma, who was working as Assistant Teacher in L.T. Grade in Shiv Pratap Inter College, Pawari Kala, Mirzapur. The case set out by the petitioner is that his father died on 16.12.2005. The petitioner has filed his application alongwith the required documents including his qualification on 12.7.2006 and applied for compassionate appointment before the District Inspector of Schools on 3.8.2006. In his rejoinder-affidavit, the petitioner has not denied the factual pleas regarding the date as to when he applied for compassionate appointment. So it is admitted that the petitioner filed the requisite affidavit on 12.7.2006 and applied for compassionate appointment on 3.8.2006. After his application was filed, there was no post available in the Institution and the petitioner was appointed on a post of Peon, which was lying vacant in Maharshi Dayanand Balika Inter College, Mirzapur and an order in this behalf was passed by D.I.O.S. on 14.9.2006. The grievance of the petitioner is that even though he was appointed but subsequently on his refusal to join there, he has been appointed by creation of a supernumerary post in the Institution where his father was working on 18.1.2007.

2. The contention raised by the petitioner is that (A) in terms of the Rule, Regulation 106 of the Intermediate Education Act provides that petitioner

seeking employment under Dying-in-Harness Rules, gets preference over all other candidates. (B) The appointment of respondent No. 6 has been made in violation of the Scheme of Administration applicable to the said Institution.

3. The petitioner states that the process for initiating selection for the post was initiated after the death of his father on 16.12.2005. Respondent No. 6 was appointed in July, 2006. He states that it was incumbent upon the respondents under Regulation 102 of the Intermediate Education Act to have informed the D.I.O.S. within 7 days of the death of an employee. He further states that under Regulation 104 of the Intermediate Education Act, there is corresponding obligation that the Management within 7 days of the date of death shall present a report to the Inspector about the members of the family of the deceased employee, in which all the particulars are required to be indicated. He further placed reliance upon the Regulation 101 of the Intermediate Education Act, which contemplates that appointing authority shall not fill any vacancy in non-teaching staff of a recognized aided Institution except with the prior approval of the Inspector.

4. On the other hand, stand of the respondents is that the petitioner has submitted his documents alongwith the affidavit to the concerned authorities on 12.7.2006 and applied for compassionate appointment on 3.8.2006. On receipt of his application, he was appointed as a class-IV employee in another Institution due to non-availability of the vacancy in the said Institution. On his failure to join in the said Institution, his request for being adjusted in the school where his father was working, was considered and he was appointed there on 18.1.2007. It is further contended that on the date the selection of the respondent No. 6 was concluded, petitioner had not filed any application for seeking his appointment under the Dying-in-Harness Rules, 1974.

5. I have heard learned counsel for the parties and perused the record. Petitioner claims his appointment under the Dying-in-Harness Rules, 1974. Rule 5 of the aforementioned Rules provides that in case a Government servant dies in harness after the commencement of these Rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government, one member of his family who is not already employed, on making an application for the purpose, be given a suitable employment in Government Service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission. Rule 5 contemplates that it is on an application being filed by a member of the family and if he is found eligible, an appointment order shall be issued in favour of the applicant. Regulations 102 to 106 provide the mechanism in enforcing these Rules. Such Regulations provide a preference for an applicant seeking appointment under the Dying-in-Harness Rules over other candidates. The obligation cast by such Regulation is that once an application has been made, strict adherence to Rule 106 has to be complied with which contemplates following :

A. That against any available vacancy, applicant has to be absorbed.

B. That if no such vacancy is available in the Institution, then he has to be adjusted in any other Institution.

C. In case there is no vacancy available in either of the Institution, then supernumerary post has to be created against which the applicant has to be appointed.

6. Petitioner applied in July, 2006, admittedly at that point of time there was no vacancy available as the selection process of the respondent No. 6 had concluded. In absence of any vacancy, the petitioner was appointed as a class-IV employee in another Institution, which he declined to accept. The matter should have ended here. However, showing compassion to the petitioner, he was appointed in the same college where his father was working. Violation made of Regulations 102 to 104 contended by the petitioner is misplaced in view of what has been said herein supra.

7. Regulation 102 only relates to the availability of the posts which have fallen vacant on account of retirement or death of an employee which is required to be intimated to the Inspector by the appointing authority within 7 days. Regulation 104 contemplates that within 7 days of the death of an employee, a report has to be sent to the Inspector by the appointing authority about the members of the family of the deceased employee indicating the particulars thereof. Much stress has been placed upon Rule 104 by stating that it was the duty of the Inspector to report about the death of the deceased as also to submit particulars of the members of the family alongwith their academic and training eligibility.

8. This Rule has been interpreted by the learned counsel for the petitioner as creating an obligation on the Inspector to inform the authorities within 7 days about the death of the person. I am not inclined to agree with this submission. Rule 5 provides that it is only on the application made by a member of the family, the process for his selection has to be initiated. Regulation 104 in my opinion is not happily worded, it contemplates a situation where the Management is called upon to present a report to the Inspector including the particulars of the family, their academic and training eligibility, if any. It may not be possible to procure the information regarding the strength of the family of the deceased, particulars of the members of the family in respect of their academic qualification etc. This information is required to be gathered by the Management from the family of the deceased employee. However, this is possible only where the deceased employee has provided such an information to the Institution either at the time of his appointment or during the tenure of his service.

9. Even otherwise also Regulation 104 does not provide that an order of appointment has to be issued under the said regulation. It only cast an obligation on the Managing Committee to provide such information to the Prescribed Authority. The power to seek appointment is mandated by Rule 5 of Dying-in-Harness Rules, 1974, which makes it clear that on an application being filed by the applicant, the process of making his appointment shall be made.

10. After having said so, it is to be seen as to whether there has been compliance of Regulation 106. After submitting the particulars of the members of the family, his qualification and eligibility on 3.8.2006, petitioner was appointed on 14.9.2006. This offer he has declined. The requirement of Regulation 106 stands complied with. The petitioner has now been appointed in 2007 on his application in the same Institution where his father was working. I do not find any violation in this behalf. Regarding the other contention that the appointment of respondent No. 6 has been made in violation of Rule 4 of Chapter III of Intermediate Education Act, 1921 is an issue which need not to be addressed in this case.

11. Even though there is a finding recorded by this Court in this case that he has procured the appointment in violation of the aforementioned provision. The said finding recorded has been upheld by the Division Bench of this Court but I think that it is not required to be done in the present case, as said appointment has been made much before he had applied for appointment under the said Rules. The petitioner cannot be termed to be an aggrieved person as this vacancy was not available at the time when he applied. I do not intend to go into this question. I, therefore, find no force in this petition. It is, accordingly, dismissed.