

(2014) 08 AHC CK 0255

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Certiorari) No. 37833 of 2013

Ankita Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) 9 ADJ 672 : (2014) 106 ALR 469 : (2014) 5 AWC 4751 :
(2014) 4 UPLBEC 2787

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Rakesh Kumar Pathak, Advocate for the Appellant; Ashutosh Vaish, Ayank Mishra and P.K. Singh, Advocate for the Respondent

Judgement

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Suneet Kumar, J.—Heard learned Counsel for the petitioner and Sri Ashutosh Vaish appearing for respondent Corporation and Sri P.K. Singh appearing for respondent No. 5. The first petitioner and fifth respondent are sisters and second petitioner their mother.

2. The father of the first petitioner was working in the respondent-power corporation and the Competent Court declared his civil death on 24.11.2005. The fifth respondent was given service under the dying in harness rules by the respondent-Corporation in 2006.

3. The contention of learned Counsel for the petitioner is that after being employed, the fifth respondent has married and has started living separately and is not maintaining the mother and the unmarried, unemployed sister (first petitioner) as per sub-clause (3) of Rule 5 of "The Uttar Pradesh Recruitment of Dependents of Government Servant Dying In-Harness Rules, 1974 rules, it is incumbent upon the person being appointed under the dying in harness rules to maintain the other family members, failing which such person can be proceeded under the U.P. Government Servant (Discipline and Appeal) Rules 1999. Sub-

rules (3) and (4) of Rule 5 of 1974 Rules are as follows:

"(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his services may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

4. Sri P.K. Singh appearing for fifth respondent does not dispute that petitioners were dependent upon deceased employee immediately before his death and are unable to maintain themselves. In the counter-affidavit, the fifth respondent has stated that she is maintaining the mother and her sister and in the letters dated 25.3.2013 and 12.4.2013 it has been stated that fifth respondent is prepared to maintain the petitioners. Being confronted with a query as to how much maintenance the fifth respondent is prepared to pay, Sri Singh submits that the fifth respondent has two minor children and it will not be possible for the fifth respondent to pay 50% of her wages, as she is a Class-IV employee, however, Sri P.K. Singh submits that he has instructions to state that the fifth respondent is prepared to pay reasonable amount per month to the petitioners.

5. Sri Vaish appearing for the respondent-Corporation submits that order passed by the Court shall be complied with and the maintenance amount shall be drawn in favour of the petitioners.

6. The object granting appointment on compassionate ground is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner who had left the family in penury without any means of livelihood. Such appointments are made purely on humanitarian consideration with an object to provide the family some sources of livelihood. The appointment on compassionate ground is not a source of recruitment, death of the employee is also not the basis for appointment, the only consideration is the distress to which the family is put into, thus all the stake holders viz. the dependents upon the deceased employee are entitled to maintenance. The fifth respondent alongwith the petitioners was dependent upon the deceased at the time of his death, the fifth respondent cannot deprive the petitioners of their right to maintenance from the salary of the fifth respondent which she earns with a condition to maintain other dependents failing which the service of the fifth respondent can be terminated under sub-rule (4) of the Rules.

7. In such view of the matter, the fourth respondent, Executive Engineer, Vidhyut Vitran Khand (IIInd) Purvanchal Vidhyut Vitran Nigam Limited, Ghazipur shall w.e.f. 1st September, 2014 pay Rs. 5,000 per month, by way of cheque, drawn in favour of the second petitioner, Ram Dulari Devi wife of Late Bhola Nath Tiwari,

payable from the monthly salary of fifth respondent. The payment shall be made by tenth of each month. On the next date fixed, the fourth respondent as well as the fifth respondent shall file affidavit of compliance.