

(2006) 01 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44541 of 2002

Anshuman Singh Bhadoria

APPELLANT

Vs

Director of Education (Higher Education), Assistant Director
of Education Directorate of Education (Higher Education) and
Regional Higher Education Officer

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 3 AWC 2457 : (2006) 2 UPLBEC 1321

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Ashok Khare, Vinod Kr. Singh and S.K. Rai, for the Appellant; S.M.A. Kazmi and S.C., for the Respondent

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. This petition is directed against an order dated 3rd September, 2002 by which the claim of the petitioner for compassionate appointment has been rejected.

3. Pandit Sunder Lal Memorial Post Graduate College, Kannauj, is affiliated to Dr. B.R. Ambedkar University, Agra, wherein Lakhan Pal Singh Bhadoria father of the petitioner, was working as clerk and expired in harness on 25.3.2002. The petitioner claimed compassionate appointment in pursuance of a Government Order dated 21.11.1995 by which the rules of compassionate appointment have been made applicable to aided non-governmental Degree Colleges. The claim of the petitioner has been rejected by the impugned order as admittedly his mother Smt. Indira Bhadoria is working as an Assistant teacher in Gomti Devi Girls Inter College, Kannauj.

4. Petitioner has firstly urged that in the scheme there is no such bar placed and, therefore, the impugned order cannot be sustained.

5. The rule or scheme of compassionate appointment is one of those few

exception to the normal rule of recruitment which stands at the very brink of the fire of arbitrariness and equality as enshrined under Articles 14 and 16 of the Constitution and has been saved only on humane considerations. The only object is to give succour to the bereaved family whose sole bread winner has suddenly left them in a financial lurch. Compassionate appointment cannot be claimed as a matter of right in all circumstances as it is hedged by the condition that there is financial distress due to untimely death of the bread winner and requires immediate relief. It cannot be said that irrespective of a comfortable financial situation the family can yet take recourse to this rule or scheme, as it cannot be held that it is a new source of recruitment. The Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, while propounding the aforesaid principle has held that "...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 that job is to be offered to the eligible member of the family." This proposition has again been reiterated in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, . Applying the principle to the present facts, it is apparent that the petitioner is the only son and his mother is already employed, though, conveniently her salary has not been disclosed in the writ petition. Further, there is no pleading to show that financially the duo of mother and son cannot carry on or they are in such a financial position that needs the exception rule to be invoked. Only a vague statement has been made that his mother does not maintain the petitioner, but he has failed to show who is maintaining him or how the petitioner is surviving. Thus, the court is not inclined to accept the first argument raised on behalf of the petitioner.

6. The second argument urged on behalf of the petitioner is that in an identical matter, appointment had been given to one Sharad Dixit by the District Inspector of Schools, Farrukhabad/Kannauj, even though his mother Smt. Sushila Dixit was employed in another institution, while the petitioner is being discriminated. In support of his contention, the petitioner has relied upon a decision of the Apex Court in the case of Surya Kant Kadam v. State of Karnataka and Ors. AIR 2001 S.C. 2415.

7. Article 14 is not available to perpetuate illegality and the High Court cannot issue directions that a mistake be perpetuated on the ground of discrimination or hardship. This principle has been upheld by the Apex Court in the cases of Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, The Jalandhar Improvement Trust Vs. The State of Punjab and Others, and State of Punjab and Others Vs. Dr. Rajeev Sarwal, . The facts of the case of Smt. Susheela Dixit have not been disclosed. Assuming that the petitioner is similarly placed, in view of the principles enshrined above, the appointment of Mr. Dixit would be illegal. Having perused the judgment in the case of Suryakant Kadam (Supra), it is apparent that it does not apply to the present set of facts.

8. For the reasons given above, I do not find that it is a fit case for interference under Article 226 of the Constitution of India. Rejected.