

(2006) 01 AHC CK 0198

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2605 of 2006

Bhupendra Kumar Kushwaha

APPELLANT

Vs

State of U.P., Director of Education (Basic) and District Basic
Education Officer

RESPONDENT

Date of Decision : 16-01-2006

Acts Referred:

Citation : (2006) 7 AWC 7122 : (2006) 2 UPLBEC 1839

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

**Advocate : R.K. Pandey, for the Appellant; P.D. Tripathi and S.C., for the
Respondent**

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner and learned standing counsel and Sri P.D. Tripathi for the respondents no. 1 2 and 3.

2. The goal of providing cheap and expeditious justice to the citizens of the State by this Court is being thwarted, which is evident from the facts of this case. The respondent No. 2 was commanded by this Court vide judgment dated 25.4.2005 to consider the claim of the petitioner for appointment on compassionate basis after the death of his grand father in view of the ratio of the decision of this Court in Rajendra Kumar v. State of U.P. reported in 1999 A.C.J. 545. The matter was examined by the respondent no. 2 and the claim of the petitioner was rejected on 20.7.2005.

3. The ground for rejection is that a grand son is not entitled for compassionate appointment, in view of the definition contained in relevant provisions for extending such benefits. The authority concerned has referred to the same in the order dated 20.7.2005.

4. The petitioner was compelled to challenge the said order once again by filing writ petition No. 54764 of 2005 and this Court after examining the facts found

that the authority had passed the order dated 20.7.2005 in breach of the directions issued by this Court. The order dated 20.7.2005 was accordingly quashed and the respondent no. 2 was again directed to decide the claim of the petitioner keeping in view the ratio of the decision of Rajendra Kumar (supra)

5. The impugned order once again repeats the same mistake and the same opinion has been expressed by the authority stating therein that the petitioner being the grand son of the deceased employee was not entitled for compassionate appointment.

6. It is unfortunate that the officer of the rank of the Director has chosen conveniently to avoid the orders of this Court on two occasions.

7. Before dealing with the same, it would be appropriate to deal with the law on the issue as has been dealt with in the judgment, under which the respondent no. 2 was commanded to provide compassionate appointment to the petitioner. In the case of Rajendra Kumar, a learned Single Judge of this Court held that the son of a predeceased son was entitled to be considered for compassionate appointment keeping in view the fact that he was entirely dependent on his grand father and the claim was founded on destitution and in the circumstances that the sole bread winner of the family has expired in harness. The definite clause contained in Clause 2(c) of the Rules was interpreted as being inclusive of grand son. The said judgment of the learned Single Judge was challenged by the State in special Appeal No. 557 of 1999 and the Special appellate Bench upheld the decision of the learned Single Judge after dealing with the issues elaborately, which decision is reported in 1999 A.C.J. 1429.

8. The law, therefore, was settled by this Court that the son of a predeceased son, who was dependent on his grand father was entitled to be considered for compassionate appointment in the event the grand father died in harness. There is absolutely no ambiguity in the law laid down by this Court in the division Bench judgment referred to herein above, which is binding on me and was more binding on the officer concerned, who has passed this order.

9. The impunity with which the impugned order was passed clearly indicates that the officer concerned did not even care to have a glance of the judgment of the Division Bench, which reference has been made in the direction of this Court contained in the order dated 9.8.2005 The aforesaid procedure adopted by the respondent no. 2 is reprehensible and is deprecated.

10. Learned standing counsel could not successfully defend the impugned order in view of the decision of the Division Bench of this Court and therefore, has urged that appropriate orders be passed and the matter be finally disposed of.

11. Keeping in view the facts and circumstances, stated herein above and the law applicable to the controversy, the impugned order dated 13.12.2005 is quashed with a direction to the Director of Education Basic respondent no. 2 to issue necessary directions for appointment of the petitioner giving him the benefit of

compassionate appointment Rules in the light of the observations made herein above.

12. This order is being passed in view of the fact that the respondent no. 2 has nowhere disputed the status of destitution of the petitioner, who claims himself to be solely dependent on his grand father.

13. The writ petition accordingly succeeds and is allowed. The impugned order dated 13.12.2005 Annexure VIII to the writ petition, is quashed and the respondents 2 and 3 are directed to implement this judgment within three weeks from today.

14. With the aforesaid directions, petition is disposed of.