
(2010) 07 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No. 16935 of 2008

Devendra Kumar Jaiswal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 2

Citation : (2010) 6 AWC 5609

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Pradeep Narain Pandey, learned Counsel for the Petitioner and learned standing counsel for the State.

2. The Petitioner claims compassionate appointment after the death of his father late Dr. Ram Pratap Jaisawal, who died in harness within a short span of time while working as Medical Officer.

3. The Petitioner's father had been selected in the year 1988 but on account of pending litigations the appointment order could not be issued and that took several years. Ultimately, he came to be appointed on 7th April, 2000. The appointment order was issued after the litigation had come to an end and the appointment was made on a temporary basis against a substantive vacancy. After selection, it was a regular employment. Unfortunately, he died on 13th July, 2000 within a short span of time.

4. The Petitioner applied for compassionate appointment and the same has been rejected on the ground that the Petitioner's father had not completed three years of regular service and, therefore, in view of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, the Petitioner cannot get the benefit of compassionate appointment.

5. A counter-affidavit has been filed and the same stand has been taken in the

counter-affidavit.

6. Learned standing counsel contends that the Petitioner has been rightly non-suited as his father had worked only for three months.

7. Having perused the affidavit exchanged between the parties, it would be appropriate to quote Rule 2 (a) of the Rules, 1974 which indicates the definition of a Government servant:

2 (a) "Government servant" means a Government servant employed in connection with the affairs of Uttar Pradesh, who--

(i) was permanent in such employment; or

(ii) though temporary had been regularly appointed in such employment; or

(iii) though not regularly appointed, had put in three years continuous service in regular vacancy in such employment.

8. A perusal of the aforesaid definition indicates that a Government servant has been defined alternatively in three clauses as contained therein. All three clauses are independent of each other. The criteria of an employee having put in three years continuous service is in respect of a Government servant who has not been regularly appointed but has put in three years continuous service in a regular vacancy. Thus, the aforesaid rider of three years is a precondition in relation to such category of Government employees, who have not been regularly appointed.

9. On facts in the present case, it remains undisputed that the Petitioner's father had been regularly appointed and, therefore, the three years completion of service is not a sine qua non for such an employee to enable his dependant to claim appointment under the Dying-in-Harness Rules. The impugned order has, therefore, been passed against records and by misconstruing the Rules. The counter-affidavit also suffers from the same infirmity.

10. In this view of the matter, the order dated 26.12.2007 is unsustainable. It is hereby quashed. The Respondent-Director shall proceed to process the appointment of the Petitioner under the compassionate appointment rules forthwith and pass an order within a period of six weeks from the date of presentation of a certified copy of this order before him.

With the aforesaid observations, the writ petition is disposed of.