
(2001) 07 RAJ CK 0095
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4258 of 1994

Dharmendra Parth

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Rajasthan (Recruitment of Dependents of the Government Servant Dying While in Service) Rules, 1975 — Rule 10, 5

Citation : (2002) 93 FLR 403 : (2002) 1 RLW 653 : (2002) 1 WLC 609

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Narendra Jain, for the Appellant; B.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.—Under the provisions of Rules called Rajasthan (Recruitment of Dependents of Government Servants Dying while in Service Rule, 1975 (herein after called "Rules, 1975") one of the dependent of Government servant who dies, while in service is entitled to make application for the purpose of giving a suitable employment in Government Service against the existing vacancy in relaxation of normal recruitment rules, provided such member of family fulfils educational qualification prescribed for the post and is also otherwise qualified for the post. In case the vacancy is not available, in that situation the application is to be considered immediately on availability of the post as provided under rule 5A of the Rules, 1975. Under Rule 10 of the Rules, 1975 where the deceased Govt. servant was holding a subordinate service post, a member of his family may be considered for appointment to a lowest post of subordinate Service/ Ministerial Service/Class IV service which is filled by direct recruitment according to his eligibility. Sub Clause (e) of the Rule 10 further provides that if the dependent possesses specialised qualification like degree in Engineering and/ or Technology, degree in Medicine, Degree in Veterinary Science etc., such dependent shall be appointed to the lowest post in the State Service in the

respective discipline, coming under the purview of the Rajasthan Public Service Commission irrespective of the rank and status of the deceased Government servant subject to fulfilment of qualifications prescribed for the post. The Government had further clarified by issuing instructions vide circular No. F.3(6)/DOP/A-II/75, dated 1.4.89. The relevant portion of the circular is reproduced as under:-

"(A) In supersession of this department order of even number dated 4th Nov., 1985 and 29.9.87, the State Government hereby lay down the following principles and procedure under rule 10 of the above Rules to be strictly followed by the various Appointing Authority while considering cases of appointment of a member of the family of Government Servants Dying While in service."

"(b) When the Deceased is a Subordinate Service Employee - In cases where the deceased Government servant was holding a Subordinate Service post, a member of his family may be considered for appointment to a lowest post of Subordinate Service/Ministerial Service/Class IV service which is filled by direct recruitment according to his eligibility."

"(e) When the Dependent possesses Specialised Qualifications, in cases where the the dependent of a deceased Government servant possesses specialised qualifications like Degree in Engineering and/or Technology, Degree in Medicine, Degree in Veterinary Science etc. such dependent shall be appointed to the lowest post in the State Service in the respective discipline, coming under the purview of the Rajasthan Public Service Commission irrespective of the rank and status of the deceased Government servant subject to fulfilment of qualifications prescribed for the post."

2. The petitioner had qualified as Bachelor of Engineering (Computer) from Amravati University in the year 1990, having obtained the degree on 19.6.92 (Ann.8). The father of petitioner late Laxmi Chandra Parth had died, while serving in State Government as Teacher, on 15.8.91. The death certificate has been annexed as annexure-1. The petitioner was dependent. The deceased had left behind his widow, four sons and five daughters. The other members of family had no objection for giving appointment to petitioner as per his qualification. The petitioner had applied for the suitable post in accordance with his specialised qualification, but the respondent instead of accommodating him on suitable post according to his qualification had asked him to accept the post of Lower Division Clerk or a Asstt. Teacher which was not acceptable to petitioner. The petitioner submitted that under the rules he can be offered the post of Asstt. Engineer (Computer) and the post of LDC or Asstt. Post of Teacher is not suitable to his qualification. The petitioner even was prepared to accept some other post of equivalent pay scale, which was invariably being done by the department in number of other cases, but in no case the petitioner was accepting the post of clerk and that to a post of LDC. In my opinion, the petitioner was right in rejecting such an offer in view of trfe specific Rules, 1975 as applicable during that time read with circulars issued by the department. It is true mat the State

has framed the Rules which have got force of law to assist the dependants of deceased Government servant, but simultaneously the State has issued circulars in this regard to say that the post should be offered invariably befitting to the qualification possessed by such dependent. A medical Doctor cannot be offered a job of clerk and an Engineer cannot be asked to join as Asstt. Teacher. If an Architect is asked to work as a clerk or as a teacher; that would not only be improper but would also be suffocating; the specialised qualifications are bound to go waste. The State was aware of such situation, and therefore, instructions had been issued in this regard, but despite existence of such instructions, it is not known as to why the respondents instead of considering the case of petitioner for a suitable post as per acquired qualification asked the petitioner to join as a clerk or Asstt. Teacher. The petitioner could only serve and utilise his qualification well efficiently in the field he was qualified in instead of LDC or Teacher.

3. A Division Bench of this court in case of Vivek Goswami vs. State of Raj. and Ors. (I), while interpreting the Rule 5 of the Rules, 1975 and also certain instructions had observed that Rule 5 makes it abundantly clear that if one is qualified, his case can be considered for the post for which the person had applied and the Rule 5 does not say that if any temporary appointment, as such has been given, thereafter, on acquiring requisite qualification higher employment cannot be made to such person applying under Rule 5. If a suitable post is vacant, it was obligatory for the State Government under rule 5 to give employment to person against existing vacancy.

4. The case of Vivek Goswami (supra) was on the point that even a person who has already accepted the post of Lower Division Clerk can still ask the Government to act under Rule 5 to give him appointment on the suitable post befitting his qualification.

5. The case of Sanjay Choudhary v. State of Rajasthan and Ors. (2), was a case of dependent possessing the qualification of B.E. (Computer Science) who was offered the job of LDC. It was held that the post offered should be commensurate with qualifications of candidate. It was observed as under:-

"(4). It goes without saying that if on the one hand the rules do help and are to be used for the assistance of the dependants of the deceased dying while in government service, but it is to be kept in mind while considering the application that the very zeal and the qualifications of such applicants may not go waste by offering to them such a post which is not even near to the qualifications acquired by such candidate. A Mechanical Engineer, Civil Engineer or Computer Engineer has an aptitude for technical job and his services can be utilised preferably in the field for which he is qualified and to offer a clerical post to such an Engineer would amount to nothing but failing the inside spirit of such a young man which may affect his career throughout with remorse and regret."

"(5) It is one of the cases where an Engineer is being offered the post of LDC and the candidate is reluctant to accept the same on the ground that his career

would finish once he enters in the life as clerk. Untimely death of the father of the petitioner was a sufficient shock to the family and to offer to the petitioner a post not commensurate to his qualifications or not near to his qualifications would not be justified in the circumstances of the case. By all means, an effort should be made to adjust such candidates as per the qualifications. The matter was referred by the Chief Engineer to the Department of Personnel for consideration of the case of the petitioner. The Department of Personnel has not acknowledged so far. In the State of Rajasthan there may be vacancies available to the Lab. Operator or Computer Programmer. The petitioner would be considered for the post of Lab. Operator or Computer Programmer or any other post befitting the qualifications of the petitioner."

6. Counsel for the respondent relies on the judgment in case of State of Rajasthan vs. Umrao Singh (3), where after having accepted the post of LDC, the dependent wanted appointment to the post of sub Inspector of Police i.e. the post on which his late father was working. The contention of the candidate was not accepted by the Apex Court. The case of Umrao Singh (supra) was not the case of specialised qualification.

7. Similarly the reliance has been placed on the judgment in case of Umesh Kumar Nagpal vs. State of Haryana and Others (4), The case also does not help the respondents, firstly there are no such rules applicable in State of Haryana, secondly the case of Umesh Kumar Nagpal was that the compassionate employment cannot be granted after lapse of reasonable period. The facts of the present case are distinguishable from the judgments cited by counsel for respondent, for the reason that the dispute involved in the present case is whether the petitioner was entitled to a suitable job according to his specialised qualifications and as per circular of Government itself.

8. After hearing counsel for parties and in view of the facts and law laid down, the petitioner is liable to be succeed. If the petitioner is qualified as B.E. (Computer), and if any vacancy was available or is available, he is entitled to be considered against such post under the provisions of Rule, 1975 and in case no such vacancy is available befitting his qualification, the petitioner shall be considered whenever such vacancy is made available, but in no case the stand of the respondent can be justified to say that their duty is over if a post of LDC is offered to such dependent which is not commensurate with his qualification. A candidate with higher specialised qualification, is normally to be adjusted as per circular of State Government on vacancy as per rules befitting such qualification for which direct recruitment is permissible to the lower cadre in service to the candidate possessing such specialised qualification.

9. With the above said observations, the respondents including the Department of Personnel are directed to consider the case of petitioner for offering the appointment to petitioner commensurate with his qualification if any such vacancy is available or whenever it becomes available.

10. With the above directions, the writ petition is allowed. No order as to cost.