
(2000) 11 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 51429 of 2000

Hemant Kumar Rai

APPELLANT

Vs

Joint Director of Education, Azamgarh and others

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Citation : (2001) 1 AWC 232 : (2001) 88 FLR 327

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : D.B. Misra, A.K. Yadav, for the Appellant; Senior Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—Petitioner's mother Smt. Uma Rani was an Assistant Teacher (L.T. Grade) in Government Girls Uchchar Madhyamik Vidyalaya, Ajmatgarh, Azamgarh. She died in-harness on 28.6.1996. She left behind her husband Sri Ravindra Nath Rai and the petitioner, her only son. Petitioner's father wrote a letter on 23.7.1997 to the Joint Director of Education, Fourth Region, Azamgarh (in brief J.D.E.) that his wife who was a teacher in the Vidyalaya died on 28.6.1996. And on 21.7.1997 an application was moved for appointing the petitioner under dying-in-harness rules. But the petitioner on the date of application had not completed his education and was not eligible, therefore, he was moving the application for appointment of petitioner after completion of the course and till then a post in L.T. Grade may be kept reserved for him. On the application of the petitioner claiming appointment under dying-in-harness rules, the J.D.E. appointed him on 13.1.2000 on a class-III post of junior clerk in the same institution. He accepted the appointment, reserving his right to claim appointment on the post of Assistant Teacher (Art). On 30.6.2000, he made a representation to J.D.E. that he had accepted the appointment in class-III without losing his right to claim appointment in L.T. Grade and since a Division Bench of the High Court has held that a candidate could claim appointment to

the post of Assistant Teacher under dying-in-harness rules, therefore, the petitioner may be appointed Assistant Teacher (Art) under the dying-in-harness rules.

2. Sri D. B. Misra, the learned counsel for the petitioner has vehemently urged that in view of decision in *Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others* : 2000 (1) UPLBEC 634 : 2000 (1) ESC 635, petitioner possessed the qualification to be appointed Assistant Teacher (Art) and his appointment on the post of junior clerk could not take away his right to claim the post of Assistant Teacher. On the other hand, Sri K. K. Chand, the learned standing counsel appearing for respondent Nos. 1 and 2 has urged that once the petitioner accepted the appointment of junior clerk under the dying-in-harness rules, he could not claim appointment on the post of Assistant Teacher. And the decision in *Sanjeev Kumar (supra)* was not applicable to the facts of this case. He further urged that father of petitioner is alive, therefore, the petitioner would be dependant of his father and not of his mother. He submitted that since it has not been disclosed as to what his father was doing and what was his source of income he was not entitled for compassionate appointment.

3. The facts of the case demonstrates that the petitioner and his father were under complete misapprehension about the purpose and objective of the appointment under the Dying-in-Harness Rules. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , the Apex Court while considering similar rule held that employment under such rule was not a vested right. The object was to enable the family to get over financial crisis which it faces at the time of death of the sole bread earner. U. P. Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974, framed by the State Government and amended from time to time and those framed by the Education Department are no different. The petitioner's father while approaching the department on behalf of his son sought reservation of one post in L.T. Grade as he was not qualified and eligible on the death of his mother. The compassionate appointment is permitted at the time of death. It does not entitle anyone to claim that since he was not eligible or qualified on the date of death, the post may be reserved for him when he becomes eligible. The rules do not contemplate any reservation. If such request is accepted, it would defeat the objective of the rule which would convert itself from compassionate employment to tide over financial crisis in the family to reservation of post for employee's dependant as and when he desires. The claim of petitioner's father, therefore, for keeping a post in L.T. Grade reserved for his son was misconceived. The argument of the learned counsel for the petitioner that he accepted the appointment to class-III post without prejudice to his right to claim appointment on the post of Assistant Teacher is equally devoid of any merit.

4. The object for granting appointment on compassionate ground is to enable the family of deceased employee to tide over the sudden crisis, which has occurred due to the death of sole bread earner of the family. Such appointments are made

purely on humanitarian consideration with an object to provide the family some sources of livelihood. The appointment is given by making a departure from the general provisions for making appointment to a post. It is in the nature of exception to the general provision. It cannot be treated as creating a right, which could be enforced at will. The petitioner in his representation dated 30.6.2000 (Annexure-2) clearly stated that he has accepted the appointment on the post of junior clerk. Learned counsel for the petitioner failed to show any rule that entitles a dependant who has been appointed can claim a change of post either in the same or higher grade. In absence of any rule, once the petitioner Joined on class-III post of Junior clerk, he could not claim the post of Assistant Teacher. The decision in Sanjeev Kumar Dubey (supra) is of no help to the petitioner. Petitioner is not entitled to any relief.

5. For the reasons aforesaid. I do not find any merit in this petition.

6. This petition fails and is accordingly dismissed.