
(2010) 04 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10102 of 2009

Jeevi (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Rajasthan (Recruitment of Dependent of Government Servant Dying while in Service)
(Amendment) Rules, 1996 — Rule 5(2)

Citation : (2010) 4 RLW 3580

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. In view of the fact that Petitioner being a lady of 67 year's old claiming that she is not being maintained by her husband's brother, who was given appointment on compassionate ground under the Rajasthan Recruitment of Dependent of Government Servant Dying while in Service Rules, 1975 (hereinafter referred to as the Rules of 1975) as in the year 1980 specific on 14th Nov., 1980, the Petitioner's husband died and Petitioner submitted to the Respondent-employer that since her two sons and two daughters are minor and her husband's brother-Respondent is eligible to get compassionate appointment, therefore, the compassionate appointment may be given to the Respondent No. 4. The Respondent No. 4 also gave in writing (Annex. 5) that he be given appointment and he will maintain the family of the Petitioner. The Petitioner's contention is that since last 3 years, the Respondent No. 4 is not maintaining the Petitioner, therefore, the present writ petition has been filed for the reliefs as prayed.

3. Brief facts of the case are that the Petitioner's husband Pukh Raj died while working in the office of the Municipal Board, Bheenmal on 14th Nov., 1980 and at the time of his death he was holding the post of Class-IV Employee. The

Petitioner's family was consisting of herself, her two sons and two daughters, all of them were minor. The Petitioner gave affidavit in the Municipal Board, Bheenmal that she has no source of income and compassionate appointment may be given to the Respondent No. 4. The Respondent No. 4 also submitted a written undertaking in the year 1981 that he will maintain his brother's family, obviously, the Petitioner's family after compassionate appointment is given. In the year 1980-81 no provision was there of maintaining the family members of the deceased to be provided by the persons who gets appointment on compassionate ground and in the year 1996 the Rules was amended by making a specific provision that a person who gets compassionate appointment shall be responsible to maintain the other family members of the deceased employee and if he failed to maintain the appointment itself may be cancelled. The Petitioner's counsel submitted that since last 3 years, the Petitioner and Petitioners' family is not being maintained by the Respondent and, therefore, the direction be issued to the Respondent to pay 50% of the salary of the Respondent No. 4 to the Petitioner. The salary of the Respondent No. 4 as alleged by the Petitioner is Rs. 21,000/-whereas according to Respondent No. 4 after deduction he is getting at present Rs. 13,000/- plus amount only and not Rs. 21,000/-. The Petitioner further prayed that in case the Respondent No. 4 shall not maintain the Petitioner then his services may be terminated and Petitioners son may be granted appointment on compassionate ground.

4. Learned Counsel for the Respondent submitted reply to the writ petition and stated that after compassionate appointment, the Respondent No. 4 maintained the Petitioner and her family consisting of 4 children. He got the Petitioner's daughter's marriage and now the Petitioner's son are of the age of 41 and 39 years respectively. It is submitted that Petitioner was transferred from Municipal Board, Bheenmal to Municipal Corporation, Jodhpur. The Respondent No. 4 offered the Petitioner to come down the Jodhpur and live with him and he will maintain the Petitioner also. It is also submitted that now the Respondent No. 4 has two sons, who are students and one daughter who is married obviously marriage was arranged by the Respondent No. 4 for his daughter. Learned Counsel for the Respondent also submitted that putting a liability to maintain the family member was incorporated in the year 1996 in the Rules and that was not in the year 1980 when the Petitioner's husband died and Respondent No. 4 got appointment in the year 1980.

5. The Petitioner submitted rejoinder to the reply filed by the Respondent No. 4 and submitted that Respondent gave Fax to the Petitioner that if she will not withdraw the writ petition then he will kill the Petitioner and her son. It is also submitted that the Respondent No. 4 also did not incur a single penny on the marriage of the Petitioner's son and daughter. The Respondent No. 4 never fulfilled any requirement of the Petitioner. The Respondent No. 4 wrongly stated that Petitioner's son is earning member. In fact, the Petitioner's son is in private job and earning Rs. 1500/- per month, as against it the Respondent's earning is Rs. 20,000/- per month thereby the Petitioner's contention is that Petitioner's

own son is not in position to maintain the Petitioner. The Petitioner, however, admitted that she is getting family pension of Rs. 250/- per month then in para No. 7 the Petitioner stated that Respondent tried to assault many times by hokey stick. The Petitioner also submitted that Respondent has two sons namely, Vijay Nath of the age of 22 years and doing the job of mobile repairing and he is earning 7,000/- per month, whereas the second son Deepak Nath is of the age of 20 years and is doing the work on Readymade shop and is earning Rs. 4,000/- per month. The Respondent's daughter since already married therefore, there is no liability upon the Respondent No. 4 so far as the daughter is concerned.

6. In the backdrop of these facts if we examine the issue raise by the Petitioner then Petitioner is seeking the maintenance from the Respondent No. 4 on the ground that Respondent No. 4 was given compassionate appointment due to death of her husband and because of the fact situation that Petitioner's own two sons and daughters were minor in the year 1980 and therefore, they could not have get the appointment on compassionate ground and that was given to the Respondent No. 3. The Respondent No. 4 undertook to maintain the Petitioner and her family and because of that reason only, the Respondent No. 4 got appointment, otherwise the Respondent No. 4 was not entitled to the appointment as he was not family member of the Petitioner's husband being brother of the Petitioner's husband only.

7. The word "maintenance" has been used in the rules specifically putting a liability upon the persons who gets the compassionate appointment to maintain the family members of the deceased. The maintenance is not synonym to the partnership or share in the others income or property. Maintenance is a known word in legal term and well defined when it was interpreted in various laws wherein provisions have been made for maintaining one person by another person. The maintenance means the amount required to maintain oneself. A person who needs maintenance is entitled to maintenance is inherently within the word "maintenance" because if there is no need of maintenance, there cannot arise occasion of maintenance. As already observed, a person who is entitled for maintenance is not co-sharer to the income of the other party so as to claim any percentage of the income of the other party, it is required to be determined as per the fact situation of each case and primarily on the basis of the need and the income of the two parties. A person if is able to maintain then normally is not entitled to any maintenance from anybody. Therefore, we have to examin whether the Petitioner is in need of maintenance amount not being a co-sharer in the income of the Respondent.

8. The Petitioner is presently of the age of 60 plus and according to the Petitioner she is of the age of 60 where the Respondent's contention is that she is of the age of 67 years. Petitioner's two sons are concerned, their age is 41 and 29 years which is not denied. The Petitioner's own case as stated by learned Counsel for the Petitioner is that Petitioner and her family members were maintained by the Respondent No. 4 and that he maintained the Petitioner and

her family since 1981 to 2007 as according to the Petitioner she is not being maintained since last 3 years only. Therefore, the Respondent No. 4 on the basis of his voluntary undertaking given in the year 1981 maintained the Petitioner and her family for 26 year and this fact is admitted by the Petitioner herself. The Petitioner's own affidavit submitted before the Respondent Municipal Board is that she had no source of income and today the Petitioner in rejoinder stated that the Respondent No. 4 did not spent any amount on the marriages of the Petitioner's children. Not only this, the Petitioner who lived with her family with the Respondent No. 4 for 26 years has raised this dispute when Respondent No. 4 was transferred from Bheenmal to Jodhpur Municipal Corporation and in rejoinder without specifying any date or specific event, levelled serious allegations against the Respondent No. 4 to the extent that with whom the Petitioner lived for 26 years now he has threatened the Petitioner to withdraw the writ petition otherwise the Respondent No. 4 will go to the extent of killing her and her two sons. For these serious allegations no material particulars like when, where and how the threats were given and what action was taken by the Petitioner in consequence and to save herself and her sons. The Petitioner has also not given any material particulars about the allegations of beating by hokey stick by the Respondent No. 4. In contrast to above learned Counsel for the Respondent even during the course of arguments submitted that Respondent's offered the Petitioner to come to Jodhpur to live with in spite of the fact that he has two sons and one married daughter as well as one unmarried daughter. At this juncture, it will be worthwhile to mention here that Petitioner's contention is that Respondents daughter is married, therefore, there is no liability upon the Respondent in spite of the fact that she being brother's wife is claiming maintenance and she being lady yet forget to remember that it is a pious obligation of the father to discharge his obligation towards his daughter as per rites and customs of his family.

9. Be it as it may be, the Petitioner's further self destructive pleas are that her sons of the age of 41 and 39 years respectively are earning about Rs. 1500/-per month only and another is that Petitioner counsel admitted that in Bheenmal the Petitioner was residing in ancestral house with the Respondent No. 4 and from this fact it is clear that Respondent is living at Jodhpur on transfer and, therefore, he had to establish his own home at Jodhpur. As already observed that maintenance can be granted on the basis of the need of the person and after taking into account of the need of the person from whome the maintenance is claimed. If the Petitioner's claim is up to the extent of 50% of the salary of the Respondent No. 4 then certainly, the Respondent's family members also have legal right to claim maintenance from the Respondent No. 4. The Respondent has not denied maintenance to his brother's wife and obeyed his undertaking for 26 years.

10. To sum up it may be observed that in the Rule 5(2) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 it has been mentioned that a person who get compassionate

appointment shall reasonably maintain the other members of the family and, therefore, what is reasonable maintenance is required to be looked into before issuing any direction to the person who got the compassionate appointment. The Petitioner got benefit of maintenance for about 26 years and who had no source of income and today also she is not in position to disclose if she and her family members were not maintained by the Respondent No. 4 which includes all supports to the family of the Petitioner including to some extent to share, if he has not incurred all the expenditure of the marriage of the children of the Petitioner, then in the year 2010 how the Petitioner came in a position to that she cannot maintain herself from her own source of income.

11. As already observed about the conduct of the Petitioner which clearly demonstrate that she can level any wild allegation against the Respondent No. 4 and that too after getting all the benefits from the Respondent No. 4 for 26 years and to extent of stating firstly that the Respondent No. 4 has given threatens to her and her family members to withdraw the writ petition failing which, he will kill them and secondly, the Respondent No. 4 has given beating to the Petitioner by hockey stick, which on the face of its are false allegations. The Petitioner is invoking extra ordinary jurisdiction which is not available to such persons. The Petitioner further failed to show that she is in need of maintenance.

12. In view of the above reasons on the ground of equity, the Petitioner is not entitled to any relief and in law the Petitioner failed to show that she is entitled to maintenance and particularly in view of the offer of the Respondent that he already maintained the Petitioner for all the time till he transferred from Bheenmal to Jodhpur and still ready to give the accommodation in the house of the Respondent No. 4 to the Petitioner.

13. In view of the above, the writ petition is dismissed and the interim order dated 27.1.2010 is vacated.