
(1984) 12 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 3850 of 1984

Kamal Prakash Sahu

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

Citation : (1984) 12 AHC CK 0041

Hon'ble Judges : K.N.Goyal, J and O.P.Mehrotra, J

Final Decision : Allowed

Judgement

K.N. Goyal, J.—Admit. As only a short question is involved, and as Mr. H.N. Tilhari, learned counsel for Central Government has placed before us the relevant record, we dispense with the requirement of filing a counter? affidavit and proceed to dispose of this petition finally.

2. The petitioner is a Son of the Late Kanhaiya Lal who died on 161181 while he was in service as Daftari (Glass IV) in All India Radio, Lucknow. He made an application for being considered for appointment as a dependant of a government servant dying in harness. Relevant Circular O.M. No. 14014/I/77Estt. (D) dated 251178 from the Ministry of Home Affairs, Department of Personnel and Administrative Reform, to all heads of All India Radio Stations and Offices, besides other departments, lays down that ministries and departments are competent to appoint, in relaxation of the normal procedure of recruitment, the son/daughter/near relation of a Government servant who dies in harness leaving his family in immediate need of assistance, in the event of there being no other earning member in the family, to a Group "C" or Group "D" post, after the proposal for such appointment has been approved by the Joint Secretary Incharge of the administration or Secretary in the Ministry or department concerned. The petitioner in his application for appointment to a Group "D" post mentioned that his father had left the petitioner as his only son and the petitioner's mother as widow, apart from four married daughters. It was further mentioned in the application, which has been produced before us by learned

standing counsel, that none of the two was employed.

3. That even administrative orders are justiciable has not been disputed, vide *Amarjit Singh v. State of Punjab*, (1975) 3 SCC 503. Learned Standing Counsel has, however, pointed out that petitioner's application was rejected on the ground, as mentioned in Annexure 5 (letter dated 9283), that the resources of the family did not justify a 'compassionate appointment'. It has been pointed out by the learned Standing Counsel that the petitioner's own application showed that a family pension of Rs. 125/ per month had been sanctioned to the petitioner and his mother, apart from release of Gratuity and General Provident Fund and Life Insurance Policy and cash equivalent to leavesalary. According to the instructions received by the Standing Counsel the family pension now is Rs. 240/ per month. No other assets are mentioned. The petitioner and his mother had been held to be not in immediate need of assistance merely on the ground that they are in receipt of a family pension and they have also received the gratuity and other dues to the deceased from the Government and that the four daughters of the deceased having been married in his lifetime no liability remained with the widow or son on that account. None of the reasons advanced for holding that the petitioner and his mother were not in need of assistance appears to us to be sound. In Hindu families even after a daughter is married off the parents continue to remain under various obligations towards her throughout the life. So far as release of family pension, gratuity and provident fund etc. are concerned, it is to be noted that whenever a Government servant dies in harness, the family pension, gratuity etc. are always bound to be released in favour of the dependants, and if these are to be taken into consideration then no dependant could ever be held to be in need of assistance. What then was the rationale for providing for employment to dependants of government servants dying in harness in relaxation of the normal procedure ? It is true, as pointed out by learned Standing Counsel, that the proforma required to be filled in by the applicant mentions family pension etc. also among the 'assets left', but it cannot follow from this that every claim under the aforesaid circular must be rejected on the ground of the dependants being in receipt of family pension, gratuity, etc. These may save the family from total starvation, but the scheme set out in the Circular envisages additional relief so that the hardship caused to the family by the premature death may be mitigated. Of course, if the petitioner or his mother had been gainfully employed, the same could be taken into consideration. Also if they had been in receipt of any other incomeyielding assets, the same could be taken into account. But the mere receipt of the usual family pension and the dues of the deceased government servant to his heirs, being circumstances common to all, could not have been intended to be taken into account for denying the claim of the dependant

4. Learned Standing Counsel has also pointed out that aforesaid O.M. lays down a maximum of 3% of the vacancies in a year which may be filled as aforesaid, by the dependants of Government servants dying in harness. Of course, the petitioner's case could be considered along with other candidates for the posts

available within this limit of 3% and the circumstances of the various applicants should be comparatively considered, and thereafter it should be decided whether the petitioner falls within the said maximum of 3% or not. His case, however, cannot be rejected merely on the ground that he and his mother were in receipt of family pension etc.

5. In the result, the writ petition is allowed and a writ in the nature of mandamus is issued to the opposite parties directing them to consider the case of the petitioner in the light of the above observations, within three months from today.

6. A copy of this order may be issued to the parties counsel before the winter vacations on payment of requisite charges.