
(2009) 04 AHC CK 0331
In the Allahabad High Court

Kiran Devi

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0331

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.

The petitioner has sought the quashing of the order dated 5th July, 2005 passed by the Deputy Commissioner Excise, Gorakhpur by which family pension has been denied to her on the sole ground that her husband Pramod Kumar Varma, who had died in harness and had worked for less than a year, had not submitted any certificate in the Office regarding his health at the time of appointment.

The records of the writ petition indicate that Promod Kumar Varma had been appointed as a Lab Attendant by the order dated 4th June, 1999 in the pay scale of Rs.2550552600603200 on a temporary basis. He, however, died on 28th December, 1999. His widow Smt. Kiran Devi, who is the petitioner, was thereafter given appointment on compassionate grounds. She made a representation before the Department for payment of family pension but that was denied by the order dated 5th July, 2005.

Learned counsel for the petitioner submitted that in terms of the Government Order dated 21st September, 1979, the applicant was not required to submit any medical certificate regarding his health at the time of appointment and on the other hand, it was the duty of the Department to medically examine him to determine whether he was fit for service. It is also his submission that before granting the appointment, Pramod Kumar Varma had been medically examined by the Department. He, therefore, submitted that the reason mentioned in the impugned order for denying the benefit of family pension is against the

provisions of the Government Order dated 21st September, 1979.

The Government Order dated 21st September, 1979 mentions that previously under the Government Order dated 24th August, 1966 family pension was payable only if the government servant had worked continuously for at least one year. However, the Government had reconsidered the matter in respect of those government servants who died within one year and it was decided that family pension should not be denied to them only on this ground. It was, therefore, ordered that the requirement of working continuously for one year should be done away but before appointment the incumbent should be medically examined and he should be given appointment if he was found fit.

It is, therefore, clear that the said Government Order does not require the applicant to submit a medical certificate regarding his health before seeking appointment and it is for the Department to get him medically examined for finding whether he was fit to be given appointment. The reason mentioned in the impugned order that the petitioner was not entitled to family pension since Pramod Kumar Varma had not submitted any medical certificate at the time of appointment is, therefore, not a requirement contemplated under the Government Order dated 21st September, 1979.

In paragraph 4 of the writ petition, it has been categorically stated that Pramod Kumar Varma had been given appointment after due medical examination. Though a vague denial has been made in the counter affidavit but what has been firmly stated is that Sri Pramod Kumar Varma had not submitted any medical certificate prior to his appointment and it was his duty to submit the same either prior to his appointment or in due course of time.

As noticed hereinabove, the requirement of medical examination is to ascertain whether the applicant is fit to be given appointment. In the present case, it is not disputed that appointment order was issued and he was also subsequently given appointment. The policy of the Government as contained in the Government Order dated 21st September, 1979 was to give benefit of family pension in respect of such persons also who had died within one year of service. The respondents cannot deny family pension to the petitioner only on the ground that he had not submitted medical certificate about his health, since it was their duty to examine him before giving appointment.

Thus, the reason given for denying the family pension to the petitioner cannot be sustained. The impugned order dated 5th June, 2005 is, accordingly, set aside. The petitioner shall be entitled to family pension in accordance with the Government Order. The writ petition succeeds and is, accordingly allowed to the extent indicated above.