
(2009) 04 AHC CK 0760

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48368 of 2008

Kuldeep Kumar Rana

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0760

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India, inter alia, praying for issuance of writ, order or direction in the nature of mandamus directing the respondentsauthorities to appoint the petitioner as Clerk/Assistant Teacher (untrained), Basic in District Kaushambi on compassionate ground, and further directing the respondentsauthorities to regularize the petitioner, who has worked since last 9 years in place of his father at DistrictKaushambi.

2. It is, inter alia, averred in the writ petition that Sundar Lal, father of the petitioner, was initially appointed as Assistant Teacher (Basic) in DistrictKaushambi (at that time DistrictAllahabad) on 16.1.1970; and that after sometime, the said Sundar Lal was promoted on the post of Head Master; and that the said Sundar Lal has got blindness in his eyes since the year 1999; and that the said Sundar Lal informed the concerned authorities of the Basic Education Department that he was unable and unfit for teaching work and prayed that in his place the work be given to his son, Kuldeep Kumar Rana, (petitioner); and that the petitioner has been going to School daily with his father and teaching the children of the School in place of his father; and that the Zila Basic Shiksha Adhikari, Kaushambi passed an order dated 8.11.2000 (Annexure 3 to the writ petition) directing the said Sundar Lal to obtain Medical Certificate from the Chief Medical Officer, Kaushambi in regard to his blindness; and that the Chief Medical Officer, Kaushambi gave Certificates dated 22.2.2001 and 23,

4.2001 (Annexure 4 to the writ petition) regarding the blindness of the said Sundar Lai; and that the said Sunder Lal again gave an application dated 6.9.2002 (Annexure 5 to the writ petition), inter alia, stating that he could not see through his both eyes due to which he was unable to teach the children, and in the circumstances, his son, Kuldeep Kumar Rana, (petitioner) be given appointment.

3. It is, inter alia, further averred in the writ petition that the Medical Officer of the Primary Health Centre (PHC), Manjhanpur, Kaushambi again medically examined the said Sundar Lal on 27.8.2008 and give his report (Annexure 9 to the writ petition) that the said Sundar Lal was suffering from Paralysis all over the body with complete blindness.

4. It is, inter alia, further averred in the writ petition that the petitioner made an application/representation on 3.9.2005 for being given appointment as Assistant Teacher (untrained) in place of his father on compassionate ground.

5. It is, inter alia, further averred in the writ petition that as the respondents authorities did not take any action in the matter, the petitioner has filed the present writ petition seeking the reliefs, as mentioned above.

6. A counteraffidavit has been filed on behalf of the respondent Nos. 2 and 3.

7. The petitioner has filed the rejoinder affidavit.

8. I have heard Shri M.A. Mishra holding brief for Shri Jagdish Singh Bundela, learned counsel for the petitioner and Shri Ravi Shanker Prasad, learned counsel for the respondent Nos. 1, 2 and 3, and perused the record.

9. In the counteraffidavit, filed on behalf of the respondent Nos. 2 and 3, it is, inter alia, stated that the said Sundar Lal was suffering from Motiabind which could be cured by operation, and it was possible that after operation, the said Sudar Lal could see normally; and that the said Sundar Lal instead of getting required medical treatment, illegally declared himself as unfit for teaching work with a view to secure undue benefit and get his son, Kuldeep Kumar Rana (petitioner) employed.

10. It is, inter alia, further averred in the counteraffidavit that there are no provisions under which the dependent of medically unfit employee can be appointed in the school run by the Basic Shiksha Parishad.

11. In rejoinder affidavit, filed on behalf of the petitioner, it has not been disputed that there is no provision under which appointment can be given to the dependent of medically unfit employee.

12. In view of the averments made in the writ petition, counteraffidavit and rejoinder affidavit, it is evident that there is no Order/Rule making provision for giving appointment to the dependent of an employee who has become medically unfit to continue in the employment.

13. Shri M.A. Mishra holding brief for Shri Jagdish Singh Bundela, learned counsel for the petitioner, however, places reliance on a judgment of the Supreme Court in Civil Appeal No. 4210 of 2003, *V. Sivamurthy v. State of Andhra Pradesh and others*, decided on 12.8.2008 [since reported in JT 2008 (10) SC 275], and submits that in view of the said decision, the petitioner may be given appointment in place of his father, who has become medically unfit for teaching work.

14. As in the counteraffidavit, filed on behalf of the respondent Nos. 2 and 3, the fact of the said Sundar Lal having become medically unfit has not been specifically admitted, I am not going into the said factual question, and I am proceeding on the basis that the averments made by the petitioner in regard to the illness of his father Sundar Lal are correct.

15. The question to be examined is as to whether in the absence of any Order/Rule in the State of Uttar Pradesh making provision for giving appointment to the dependents of an employee, who has been rendered medically unfit to continue in the employment, such dependents can be given appointment on compassionate ground. It is not disputed that the UP. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 deals with the cases where the compassionate appointment is to be given to the dependents of an employee dying in harness. The said Rules evidently have no application to the present case where the question is as to whether the dependents of an employee, who has been rendered medically unfit to continue in employment, can be given appointment on compassionate ground or not. In my opinion, as there is no Order/Rule issued/framed by the State Government nor is there any statutory provision in the relevant laws entitling the dependents of an employee, who has been rendered medically unfit to continue in employment, to get appointment on compassionate grounds, no such appointment can be given to the petitioner even if the averments made in the Writ Petition regarding illness of his father, Sundar Lal, were to be accepted.

16. In *V. Sivamurthy* case (supra), relied upon by the learned counsel for the petitioner, the facts were as follows:

"By the Government order dated 30.7.1980, the Government of Andhra Pradesh formulated a Scheme for providing compassionate appointment to the dependents (spouse/son/daughter) of Government servants who retired on medical invalidation. By a further Government Order dated 4.7.1985, the benefit of the Scheme was restricted to cases where the Government servants retired on medical invalidation, at least five years before attaining the age of superannuation. To prevent misuse of the Scheme, the State Government issued Government Order dated 9.6.1998 prescribing suitable safeguards and procedures. The Full Bench of the Andhra Pradesh High Court held that there could be no appointment on compassionate grounds in cases other than death of a Government servant in harness, and that any Scheme for compassionate appointment on medical invalidation of a Government servant, was

unconstitutional, being violative of Article 16 of the Constitution of India. In the Appeal before the Supreme Court, their Lordships of the Supreme Court framed the following questions for consideration:

(i) Whether compassionate appointment of sons/daughters/spouses of Government servants who retire on medical invalidation is unconstitutional and invalid?

(ii) Whether the High Court could have considered and decided an issue which was not the subject matter of the writ petitions, particularly when neither party had raised it or canvassed it ?

(iii) Whether the Government was justified in issuing clarificatory order dated 25.6.1999 that the left over period of five years should be reckoned from the date of issue of order of retirement on medical invalidation, is unreasonable and arbitrary ?

As regards Question No. (i), their Lordships of the Supreme Court upheld the validity of the compassionate appointment scheme as laid down in the said Government Orders. It was observed as under (paragraph 15 of the said Judgment Today):

"15. When compassionate appointment of a dependent of a Government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependent of a Government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a Government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated Government servant have to be held to be valid and permissible."

As regards Question No. (ii), their Lordships of the Supreme Court opined that the issue considered by the High Court was not wholly unconnected to the subjectmatter of the writ petitions, and the decision of the High Court could not be interfered with on the ground that it was a decision on a nonissue.

As regards Question No. (iii), it was held that clarificatory order dated 25.6.1999 issued by the Government was valid.

Their Lordships concluded as under (paragraphs 21 and 22 of the said Judgment Today):

"21. We, therefore, allow these appeals, set aside the judgment of the High Court. We also set aside the orders of the Tribunal though on different grounds. We uphold the validity of the compassionate appointment scheme (contained in the GO dated 30.7.1980, 4.7.1985 and 9.6.1998 as clarified by Memo dated 25.6.1999) providing that the period of five years of "left over service" should be reckoned from the date of issue of the order of retirement on medical invalidation and not from the date of application for retirement on medical invalidation.

22. As the scheme was withdrawn by GM dated 27.4.2002 to give effect to the impugned decision of the High Court, the State Government is at liberty to revive the scheme with or without modifications."

17. It is, thus, evident that the facts in V. Sivamurthy case (supra) were different from those in the present case. In V. Sivamurthy case (supra), as noted above, there was a Scheme laid down by the Government of Andhra Pradesh by issuing various Government Orders, and the question to be examined was regarding the validity of the said Scheme.

18. In the present case, as noted earlier, there is no Order/Rule making provision for giving compassionate appointment to the dependents of the employees who have been rendered medically unfit to continue in employment. There is no statutory provision in the relevant laws in this regard. Thus, the facts of the present case are distinguishable from those of V. Sivamurthy case (supra). The decision in V Sivamurthy case (supra) is, therefore, not applicable to the present case.

19. In view of the above, I am of the opinion that the petitioner is not entitled to any of the reliefs prayed for in the Writ Petition. The Writ Petition lacks merits, and the same is liable to be dismissed.

20. The Writ Petition is accordingly dismissed.