
(2013) 01 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6551 of 2008

Kumari Gyanti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Citation : (2013) 4 UPLBEC 2826

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ajay Kumar Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—The petitioner, claiming herself to be unmarried daughter of late Ram Jhalak, who was appointed as Constable in U.P. Civil Police, approached this Court under Article 226 of the Constitution of India for redressal of her grievance with regard to the compassionate appointment. It is stated in the writ petition that the petitioner's father was constable in Civil Police and he was abducted while he was in the service. Consequently an F.I.R. was lodged by one Sub-Inspector namely Sri Chandra Dev Singh, which was registered as Case Crime No. 37/1998, u/s 364 I.P.C. on 9.3.1998. In the aforesaid case, a final report was submitted to the effect that his whereabouts was not known. It appears taking shelter of Section 108 of Indian Evidence Act, the petitioner filed an application for compassionate appointment in the year 2004 to be more specific on 31.12.2004 claiming civil death of her father. At one point of time, the department has initiated proceedings for offering appointment on compassionate ground but later on taking note of the Government Order dated 9.12.1998 and Circular of the Police Headquarter dated 27.8.2007, the appointment was refused.

2. A counter-affidavit has been filed by the State respondents in which the factum of lodging an F.I.R. u/s 364 I.P.C. on 9.3.1998, the submission of final report, the acceptance of the same by the Court and the petitioner's application

seeking appointment on compassionate appointment in view of the provisions contained u/s 108 has not been disputed. What has been stated in the counter-affidavit is that in view of the Government Order dated 9.12.1998 and the Circular of the Police Headquarter dated 27.8.2007, the dependent of the deceased on account of presumption of civil death are not entitled to get benefit of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (herein after referred to as Rules).

3. A rejoinder affidavit has also been filed stating therein that the petitioner falls in the ambit of the Rules of 1974 and the Government Order/Circular issued by the State Government or the Police Headquarter are ultravires to the Rules of 1974.

4. I have heard learned Counsel for the petitioner and learned Standing Counsel.

5. For appreciating the controversy, the various provisions contained in the Rules are required to be looked into. The Rule 2(b) of the aforesaid Rules provides "deceased Government servant" means a Government servant who dies while in service. Sub-rule (c) of Rule 2 provides the definition of family which shall include (i) wife or husband (ii) sons, and (iii) unmarried and widowed daughters. Rule 3 talks about the application of the Rules according to which these rules shall apply to recruitment of dependants of the deceased Government servants to public services and posts in connection with the affairs of State of Uttar Pradesh, except services and posts which are within the purview of the Uttar Pradesh Public Service Commission. Rule 4 talks about the overriding effect of the rules notwithstanding anything to the contrary contained in any Rules, regulations or orders in force at the commencement of the Rules. Rule 5 of the aforesaid Rule provides recruitment of a member of the family of the deceased which is reproduced below:

In case, a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or Controlled by the Central Government or a State Government one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-(i) fulfils the educational qualifications prescribed for the post (ii) is otherwise qualifier for Government service and (iii) makes the application for employment within five years from the date of the death of the Government servant.

Provided that where the State Government is satisfied that the times limit fixed

for making the application for employment causes undue hardship in any particular case, it may dispense such or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

6. From the bare reading of the aforesaid Rule, it transpires that if a Government servant dies in harness, one of his/her dependent of his family as given in Sub-rule 2(c) shall be entitled to be considered for employment subject to condition given in Rule 5.

7. Here in this case, the appointment has not been offered to the petitioner for the reason that in view of the Government order dated 9.12.1998 and the Circular dated 27.8.2007 the dependents of those Government servants, whose death is presumed to be civil death, u/s 108 of the Evidence Act would not fall in the ambit of Rules of 1974.

8. For appreciation, Section 108 of the Evidence Act, 1872 is reproduced below:

Section 108. Burden of proving that person is alive who has not been heard of for seven years.--Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

From going through the aforesaid Rules, now it is clear in view of the lodging of an F.I.R. and filing of the final report, no information about his whereabouts for more than seven years and its acceptance by the Court, further the father of the petitioner shall be treated to be dead which in legal terminology would be mentioned as civil death.

9. The word "Death" in The New Lexicon Webster's Dictionary of the English Language has been defined as under:

Death means "the end of life" and "destruction".

10. The word "Death" has been defined in The law Lexicon the Encyclopedic Law Dictionary as below:

"Death" has been mentioned as "the end or termination of life".

11. The word "Death" as defined in The Concise Oxford English Dictionary, means "the action or fact of dying or being killed," "the state of being dead", and "the end of something": the death of hopes".

12. From the bare reading of the meaning of word "death" it would transpire that it means the end of life, termination of life meaning thereby the consequence of death is death of hopes, of anything from that bodily entity.

13. In this rule, no exception has been carved out with respect to natural death, death otherwise or civil death. The word used in the aforesaid Rules do not restrict that only on a particular type of death, a person shall be offered appointment. The death may be due to any reason, may be by illness, by an accident, in a natural calamity or under general law (the Evidence Act). The Government Order and the Circular have tried to draw a line of distinction in between the civil death and the death falling under other categories. Now the question would be as to whether this line of distinction is a legal line drawn on the basis of some statutory basis or it is merely an outcome of abrupt imagination of the State authorities particularly in the circumstances when the Government itself has issued a Government Order No. Sa-3-G-I-88/ten-909-97 extending the benefit for payment of post retiral dues taking note of Section 108 of the Evidence Act.

14. For appreciating this controversy, the language used in the Rule 4 of the Rules would also be required to be looked into, which is reproduced below:

Overriding effect of these rules.--These Rules and any Orders issued thereunder shall, have effect notwithstanding anything to the contrary contained in any Rules, regulations or Orders in force at the commencement of these Rules.

15. From the perusal of aforesaid Rule, it would transpire that this rule will have overriding effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force.

16. It is not in dispute that these Rules have been framed under Article 309 of the Constitution of India, therefore any Government Order which is inconsistent with the provisions of these Rules will be of no avail.

17. From the perusal of the Government Order which has been brought on record of the counter-affidavit it does not transpire that the said Government Order has been issued while invoking power either under Article 162 of the Constitution of India or under any other statutory provision, therefore it cannot be said to be a statutory Government Order and even if it be so, the rules framed under Article 309 will have overriding effect over the Government Order dated 9.12.1998 and the Circular of the Police Headquarter dated 27.8.2007. It is well-settled that if there is any conflict in between the statutory Rules and the Government Order it is the Rule which shall prevail over the Government Order.

18. The view taken by me finds support from the judgment of the Apex Court in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, .

19. The matter may be examined from another angle also the purpose of framing of the Rules is to save out the family of the deceased employee from the financial crunch which has fallen upon the family after the death of an employee. The hardship which has fallen upon the family is to be mitigated at the earliest. The end of life or termination of life either because of the natural death or accidental

death or death otherwise would result into the recurring financial loss to the family of the employee. It cannot be said that the death within the meaning of Section 108 in any way differentiable than the death otherwise where, where about of an employee for more than seven years is not known. In my considered opinion in the case of civil death the consequences would be more serious as here the family shall make its all endeavor to search out the person who has been disassociated from the family either because of his abduction or otherwise and naturally that would involve the finance and if after the continuance efforts of seven years the persons availability is not known, the family would not only suffer financial loss but otherwise also there would be mental distress and agony. Therefore also the distinction drawn by the State Government is contrary to the object of the rules.

20. In view of foregoing discussions, I am of the view that if a dependant of deceased on account of civil death claims appointment under the provisions of Rules, 1974, he/she is entitled to be considered under the Rules and no distinction can be drawn in between the civil death or death otherwise.

21. This Court has also taken the same view in the case of Sima Devi Vs. Senior Superintendent of Police, Jhansi and Others, ; Ajay Kumar Shukla Vs. State of U.P. and Others, ; Sanjai Kumar Singh Vs. State of U.P. and Others, and Amit Sharma Vs. State of U.P. and others, . In the result, the writ petition succeeds and is allowed. The Government Order dated 9.12.1998 and the Circular of the Police Headquarter dated 27.8.2007 are hereby quashed. The D.I.G. Karmic Police Headquarter, Allahabad is directed to take an appropriate decision and consider the petitioner's case for appointment on compassionate ground within a period of two months from the date of receipt of certified copy of the order of this Court.