

(2009) 05 AHC CK 0126
In the Allahabad High Court

Kumari Renu Srivastava

APPELLANT

Vs

U.P. Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0126

Hon'ble Judges : B.K. Narayana, J

Bench : Single Bench

Judgement

B.K. Narayana, J.—Heard Sri R.C. Singh, learned Counsel for the petitioner and Sri Akhlaq Ali, learned Counsel for the opposite parties.

2. Sri Deepak Srivastava, son of the petitioner No. 1 and the brother of the petitioner No. 2 died on 23.06.1996 while in service of erstwhile U.P. State Electricity Board now U.P. State Power Corporation Ltd.

3. The instant writ petition has been filed by the petitioner claiming compassionate appointment against a suitable post and for quashing the impugned letters/ decisions dated 17.03.1997 and 07.08.1997 (Annexures No. 6 and 8 to the writ petition) passed by the Chairman/ Managing Director, U.P. State Power Corporation Ltd. During the pendency of the writ petition, the petitioner No. 1 died and his name was deleted from the array of the parties of this writ petition in terms of the order dated 01.09.2005 passed by this Court.

4. According to the petitioner, her claim for compassionate appointment has been rejected by the opposite parties by the impugned orders dated 17.03.1997 and 07.08.1997 only on the ground that the petitioner being sister of the deceased was not a member of the "family" of the deceased as defined under Rule 2 of the U.P. State Electricity Board Dying in Harness Rules, 1975, hereinafter referred to as "the 1975 Rules".

5. The impugned orders have been challenged by the petitioner mainly on the ground that that the opposite parties misconstrued the definition of the word "family" as provided under Rule 2 of the 1975 Rules while coming to the

conclusion that the petitioner being the sister of the deceased was not a member of the deceased's family and hence not entitled to compassionate appointment although under identical situation the opposite parties had appointed Sri Jitendra Kumar Mudawal, brother of one Ms. Raj Kumari Mudawal, who had died in harness and hence the petitioner's claim could not be rejected on the ground that she being the sister of the deceased employee was not covered by the definition of family as given under the 1975 Rules.

6. This Hon'ble Court taking note of the aforesaid ground of challenge to the impugned orders passed an interim order on 03.01.2000 providing that the matter shall be referred to the Chairman, U.P. State Electricity Board for taking a final decision, having regard to the Special circumstances of the case, as was done in the matter pertaining to Jitendra Kumar Mudawal, brother of late Ms. Raj Kumari Mudawal, who died in harness.

7. The petitioner filed a certified copy of the interim order passed by this Court on 03.01.2000 before the opposite party No. 2 along with a representation which was rejected by him by order dated 30.06.2000 virtually on the same ground as mentioned in the impugned orders dated 17.03.1997 and 07.08.1997 with an additional ground that the father of the petitioner No. 2 was a retired employee receiving pensionary benefits and the petitioner No. 2 was dependent upon her father and not upon the deceased, the petitioner was not entitled to compassionate appointment. By amendment of the writ petition, the petitioner has also challenged the order dated 30.06.2000.

8. In the counter affidavit filed on behalf of the opposite parties, it has been stated that the brother of Late Ms. Raj Kumari Mudawal was given appointment on compassionate ground in the exercise of special powers conferred upon the Chairman, U.P. State Electricity Board under notification dated 08.04.1981 and the said special powers were revoked vide notification dated 06.01.1993 and as such it was not possible for the opposite parties to give compassionate appointment to the petitioner as was done in the case of brother of Late Ms. Raj Kumar Mudawal.

9. The petitioner has filed rejoinder affidavit reaffirming and reiterating the averments made by her in the writ petition.

10. It has been contended by the learned Counsel for the petitioner that the notification dated 08.04.1981 reveals that by the said notification, special powers were conferred upon the Chairman to deal with the cases of the period prior to 1974 and the same was withdrawn by the notification dated 06.01.1993 but the said notifications have no application to the petitioner's case. Learned Counsel for the petitioner next submitted that the definition of family as provided under Rule 2 of the 1975 Rules was amended by Government Order dated 24th October, 2002 filed as Annexure No. 1 to the affidavit filed in support of the Civil Misc. Application No. 28882/02 by which unmarried brother and unmarried sister have been included in the definition of the family of the deceased employee and

hence the opposite parties are liable to reconsider the petitioner's claim for compassionate appointment in the light of the amended Rule 2 of the 1975 Rules. Learned Counsel for the petitioner also submitted that the petitioner No. 2 was dependent upon the deceased, her real brother and even if it is assumed though without admitting that the petitioner No. 2 was dependent upon the petitioner No. 1, the said ground no longer survives as the petitioner No. 1 has admittedly died sometimes in the year 2004.

11. Learned Counsel appearing for the opposite parties has submitted while admitting that the petitioner No. 1 has died, that a person cannot claim appointment on compassionate ground as a matter of right. The claim of the petitioner was duly considered by the opposite parties and since the petitioner No. 2 was not found covered by the definition of family as defined under Rule 2 of 1975 Rules and she was further found to be dependent upon her father, petitioner No. 1, who himself was a pensioner, the petitioner's claim for compassionate appointment was rightly rejected.

12. According to the learned Counsel for the opposite parties, the impugned orders do not suffer from any illegality and infirmity warranting interference by this Court.

13. Learned Counsel appearing for the opposite parties, however, has not disputed the fact that under the amended Rule 2 of 1975 Rules unmarried sister who was dependent upon the deceased has been included in the definition of family.

14. I have examined the submissions made by the learned Counsel for the parties and have also perused the record.

15. The scheme for appointment on compassionate ground is a scheme in the nature of beneficial legislation for those on whom the destiny has inflicted the extreme misery. The underlying object of this beneficial legislation is to alleviate the suffering of the grief stricken family. There is no doubt that a person cannot claim appointment on compassionate ground under the scheme as a matter of right but at the same time the authorities are also required to apply liberally the object of beneficial legislation.

16. It is not in dispute that under the amended Rule 2 of the 1975 Rules unmarried sister who was dependent upon her deceased brother has been included in the definition of family and hence the first ground on which the petitioner's claim for compassionate appointment has been rejected no longer exists and the opposite parties are liable to reconsider the petitioner's claim for compassionate appointment in accordance with law keeping in view the amended definition of family under 1975 Rules. Even otherwise there is an instance on record where the opposite parties have given appointment to the brother of one deceased employee Ms. Raj Kumari Mudawal on compassionate ground under the unamended Rule 2 of the 1975 Rules. The opposite parties have not been able to distinguish the case of Ms. Raj Kumari Mudawal from the petitioner's case.

17. The second ground on which the petitioner's claim for compassionate appointment has been rejected by the opposite party No. 2 as contained in his order dated 30.06.2000 is that the petitioner was dependent upon her father, petitioner No. 1, who was receiving pensionary benefits and not upon her deceased brother.

18. I have perused the record and I am of the opinion that the second ground on which the petitioner has been denied compassionate appointment is not warranted by any material on record. The opposite parties have failed to produce any evidence before this Court which may indicate that the petitioner No. 2 was dependent upon her deceased father and not upon her deceased brother. Even otherwise the said ground has also ceased to exist as admittedly the petitioner's father, the petitioner No. 1, has died sometimes in the year 2004.

19. For the aforesaid reasons, this Court is of the view that the petitioner's claim for compassionate appointment requires reconsideration by the opposite parties under the changed circumstances and in the light of the subsequent events notice whereof has been taken hereinabove without interfering with the impugned orders.

20. In view of the above, in the interest of justice, this writ petition is finally disposed of with a direction to the opposite parties to consider and decide the petitioner's claim for appointment on compassionate ground in the light of the observations made hereinabove by a speaking and reasoned order, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of this order.