
(2018) 04 RAJ CK 0230

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 739 of 2018

**Maharana Pratap University of Agriculture & Technology
@APPELLANT@Hash Dinesh Yadav**

Date of Decision : 24-04-2018

Acts Referred:

Rajasthan High Court Rules — Rule 134
Rajasthan Compassionate Appointment of Dependents of Deceased Government
Servant Rules, 1996 &mdashl Rule 2(b)
Constitution of India, 1950 — Article 225

Citation : (2018) 04 RAJ CK 0230

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : GR Punia, Rajesh Punia

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas

^ The instant appeal has been filed by the appellant Maharana Pratap University of Agriculture and Technology, Udaipur under Rule 134 of the

Rajasthan High Court Rules read with Article 225 of the Constitution of India^ against the judgment dated 5.12.2017 passed^ by the learned Single

Judge in SBCWP NO.603/2015 (Dinesh Yadav Vs. Maharana Pratap University of Agriculture and Technology, Udaipur & Anr.) whereby the

learned Single Judge allowed the writ petition and issued direction to the appellant University to consider the case of the respondent-petitioner for

appointment on compassionate ground on the post of Class IV employee within a period of three months.^

^ As per facts of^ the case, the respondent-petitioner's father Ram Karan was appointed in the appellant University on 29.10.1987 and worked

in the appellant University till his death.^ ^ ^ The appellant University issued a

seniority list of those employees who completed 10 years of service

on 20.10.2004.Â Â Â In the said list, theÂ respondent-petitionerâ??s father is granted regular pay scaleÂ on completion of 10 years of service in

the pay scale of Rs.1925-4-2125-45-2395.Â The said office order (Annex.1) was passed in accordance with the Welfare Scheme of 1990 frame by

the appellant University.Â Â

Â It is worthwhile to submit that industrial dispute was raised by late Ram Karan, father of the respondent-petitioner when he was discontinued from

service w.e.f. 1.9.1990.Â The said industrial dispute was raised through Union known as Majdoor Kishan Sabha Trade Union in which an award was

passed on 14.8.2003 wherebyÂ Â directions wereÂ issued by the Industrial Tribunal, Kota to reinstate theÂ respondent-petitionerâ??s father Ram

Karan withÂ continuity of service and 25% back wages.Â The said award was passed on 14.8.2003 whereby number of persons were reinstated in

service, who were illegally terminated from service.Â

Â Admittedly, the said award attained finality, therefore, after taking the respondent-petitionerâ??s father Ram Karn on duty on completion of 10

years of service, the pay scale was allowed w.e.f. 15.10.2004.Â Â Â The appellant University vide order dated 13.8.2013Â regularized all those ex-

cadre employees who were similarly situated and even junior to the respondent-petitionerâ??s father and absorbed them against the vacant post in

the pay scale of Rs.5200-20200 pay grade of Rs.1700/- alongwith other allowances.Â Â

Â In the writ petition, it is stated by the respondent-petitioner that his father worked upto 8.4.2012 till his death.Â Â He hasÂ completed more than

20 years of service, but due to his death his name was notÂ included in the order dated 13.8.2013 when his junior persons who were worked in the

ex-cadre employee were absorbed on the vacant post.Â Â

Â In the writ petition it is stated that appellant University has Â adopted the Rajasthan Compassionate Appointment of Dependents of Deceased

Government Servant Rules, 1996 (hereinafter referred to as the Rules of 1996 for short) and, therefore, after death of his father, the respondent-

petitioner moved an application for providing appointment on compassionate ground, but the appellant University rejected the application of

respondent-appellant for providing appointment vide order dated 13/17.11.2014

(Annex.5) on the ground that father of the respondent-petitioner died when he was working on the ex-cadre post.Â

Â The learned Single Judge after considering the entire facts of the case and important aspect of the matter that respondentpetitionerâ??s father

was granted regular pay scale videÂ Annex.1 and died on 8.4.2012 and till his death though he was entitled forÂ absorption against the vacant post,

he was not granted benefit of regularization and after his death, junior persons were regularizedÂ in the year 2013, but case of respondent-

petitionerâ??s father was not considered because he diedÂ prior to passing order on regularization. The learned Single Judge specifically held that

father of respondent-petitioner served with the appellant University from 1979 to 2012, therefore, obviously, he was entitled for regularization upon

availability of vacancy because his junior persons were regularized, therefore, the appointment on compassionate groundÂ cannot be denied to the

respondentpetitioner onÂ the ground that his father was working as ex-cadre employee as per the scheme. The learned Single Judge rejected the

plea of appellant University that engagement of the father of the respondent-petitioner on confirmed post has been transferred to the Agricultural

University, Kota after the death ofÂ respondentpetitionerâ??s father, therefore, if at all, claim lies than the same shall be granted to the Agricultural

University, Kota and issued direction to consider the case of the respondent for providing appointment on compassionate ground vide impugned

judgment dated 5.12.2017.Â Â

Â In this appeal, learned counsel for the appellant vehemently argued that as per the Rules of 1996 the respondent-petitioner is not entitled for

compassionate appointment because father of the respondent-petitioner Ram Karan was not working on regular post. He was initially appointed as

daily rated employee and after completion of 10 years he was allowed pay scale in the ex-cadre post and till his death he was not absorbed against the

post, therefore, obviously Ram Karan, father of the respondentpetitioner was employee in the ex-cadre post, therefore, cannot be treated regular

employee so as to provide appointment on compassionate ground under Rule 1996.Â

Â Learned counsel for the appellant invited our attention towards rule 2(b) of the Rules of 1996 in which definition of â??deceased government

servantâ? is provided and submits that as per the said definition, the father of the respondent-petitioner cannot be stated to be a regular employee,

therefore, claim of respondent- petitioner has rightly been rejected by the appellant University for the reason that respondent-petitionerâ??s father

was ex-cadre employee under the scheme of 1990. Learned counsel for the appellant invited our attention towards the judgments of the Hon'ble

Supreme CourtÂ in the case of General Manager,Â Uttranchal Jal Sansthan Vs. Laxmi Devi & Ors. reported in 2009 AIR SCW 5014, State ofÂ

Chhattisgarh & Ors. Vs. Dhirjo Kumar Sengar reported in 2010 DNJ (SC) 263, Union of India & Anr. Vs. Shashank Goswami & Anr. reported in

2012 AIR SCW 3257 and the judgment of this court in the case ofÂ State Bank of India & Ors. Vs. Kuldeep Kalla reported in 2013(3) WLC (Raj.)

363 and argued that appointment onÂ compassionate ground cannot be claimed as a matter of right in view of the verdict given by the Hon'ble

Supreme Court, therefore, the judgment impugned deserves to be quashed.Â

Â After hearing learned counsel for the appellant, we have perused the entire pleadings and the documents annexed with the writ petition and reply

filed by the appellant.Â Undisputedly, the respondent-petitionerâ??s father was initially appointed as daily ratedÂ employee and his services were

dispensed with without following the provisions of Industrial Disputes Act, therefore,Â against the said action of the appellantÂ University an

industrial dispute was raised through union in which theÂ IndustrialÂ Tribunal, Kota passed an awardÂ on 14.8.2003 whereby following directions

were issued:-

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Â In pursuance of the aforesaid award, father of the respondent-petitioner was
reinstated in service and, thereafter, order dated 20.10.2004

(Annex.1) was passed whereby the pay scale was allowed on completion of 10
years of service as per the Daily Rate Employees Welfare Scheme,

1990 and this fact is not in dispute.Â Â

Â The respondent-petitionerâ??s father Ram Karan worked till his death on
8.4.2012 under the appellant and after his death, an order was issued by

the appellant University on 30.8.2013 (Annex.7) whereby 87 employees working
as ex-cadre employee were absorbed against vacant post in the pay

scale of Rs.520020200 grade pay Rs.1700/-. In the said order, number of
persons who were reinstated alongwith the father of the

respondentpetitioner were absorbed on the post because vacancy was available.Â

Â WeÂ have perused the order (Annex.7) dated 30.8.2013 in

which theÂ directions were issued by this Court for absorption of ex-cadre
employees who were working from last many many years.Â It is not in

dispute that respondent-petitionerâ??s father Ram Karan was appointed on daily
rate base in the year 1979 and granted benefit of pay scale and died

on 8.4.2012, till then he completed more than 20 years of service, therefore,
obviously due to inaction on the part of appellant UniversityÂ in spite

ofÂ availability of regular post, he was not absorb and after his death number of
persons were absorbed as regular employee vide Annex.7.Â Â The

learned Single Judge considered this very important aspect of the matter to treat
the father of respondent as regular employee because he worked for

more than 20 years till his death and granted pay scale vide Annex.1.Â Â Â All
the judgments cited above by the learned counsel for the appellant

are notÂ Â relevant for the purpose of deciding theÂ present controversyÂ
because in this case the respondent-petitioner is claiming is right under

the rules of 1996 and his claim for appointment compassionate ground is rejected on the ground that father of the respondent-petitioner was working in ex-cadre services, therefore, rules of 1996 will not apply. All the judgments cited by the learned counsel for the appellant are based upon different fact, therefore, not relevant for the purpose of deciding the present controversy.

A Learned counsel for the appellant submits that identical DBSAW No.632/2014 (Maharana Pratap University of Agriculture & Technology,

Udaipur & Anr. Vs. Kailash Dangi) is pending and therefore, this appeal may be heard alongwith the said appeal, but in our opinion the facts of the

present case are altogether different than the facts of DBSAW no.632/2014, which is said to be pending, in this case, father of the respondent-

petitioner late Ram Karan worked for more than 20 years, still due to inaction on the part of the appellant though he was granted pay scale but not

given regular status till his death and after his death vide Annex.7, the benefit of regular cadre was given to the junior persons and other

similarly situated persons, therefore, this matter cannot be treated at par with the aforesaid appeal which is said to be pending before this

court.

A The learned Single Judge considered the fact that name of the respondent-petitioner's father was included at S.No.44 in the seniority list issued

on 29.9.2009 and junior persons of the said seniority list were regularized vide Annex.7, but the case of the respondent-petitioner's father was not

considered because he died prior to passing of the order dated Annex.7 for granting regular cadre.

A In view of the fact that, Rules of 1996 has been adopted by the appellant University, therefore, obviously for the purpose of considering the case

of respondent petitioner Dinesh Yadav for appointment on compassionate ground, the appellant University is under obligation to treat his father late

Ram Karan as regular employee so as to provide appointment on compassionate ground under the Rules of 1996. The learned Single Judge has

rightly come to the conclusion that it is a case in which appointment has wrongly been denied on baseless grounds.

A In view of the above, we are of the firmed opinion that the appellant University cannot deny consideration for appointment on compassionate

ground under the Rules of 1996 upon the pretext that father of the respondent-petitioner though worked for more than 20 years was ex-cadre employee, therefore, cannot be treated as regular employee.Â

Â Consequently,Â we find no force in this special appeal. Hence, this same is hereby dismissed.Â