
(1993) 04 AHC CK 0054
In the Allahabad High Court
Case No : Writ Petition No. 8 12 0 of 1987

Manbhavati Devi

APPELLANT

Vs

State of U.P.& others

RESPONDENT

Date of Decision : 13-04-1993

Acts Referred:

Constitution of India, 1950 — Article 141
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 77

Citation : (1993) 04 AHC CK 0054

Hon'ble Judges : I.S.Mathur, J

Final Decision : Allowed

Judgement

I.S. Mathur, J.—By this writ petition the petitioner prays for a writ of Mandamus directing the Opposite parties to appoint the petitioner on the post of ClassIV or any other suitable post under Regulation 77 of the U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981 in place of her deceased husband, Sri Mahngoo Prasad who died in harness.

2. The undisputed facts are that the petitioner's husband, Sri Mahngoo Prasad was employed as Cleaner in the workshop of Uttar Pradesh State Road Transport Corporation, Rae Bareli. He died on 2961981 while in service. The petitioner prayed for being appointed in his place. She was initially appointed on 2191981 at a consolidated salary of Rs. 100 which was increased to Rs. 221 later. The petitioner moved several representations before the opposite parties on 191982, 1251983, 1191984 and 141285 praying that she should be regularly appointed, but no orders were passed until February, 1992. By the order dated February, 5, 1992, the petitioner has now been appointed on a post of Water Boy in the pay scale 750950.

3. Learned counsel for the petitioner claims that the petitioner was entitled to be appointed on a regular post with effect from 1981.

4. In the Counter Affidavit, the facts alleged in the petition are not disputed.

However, it is stated that the petitioner has been appointed on a regular post of Water Boy by order dated 521992 (Annexure C1) and, as such, the petition is liable to be dismissed.

5. In the Rejoinder Affidavit, petitioner has reiterated the allegations made in the writ petition.

6. I have heard learned counsel for the parties. Since the petitioner has already been appointed on a regular post of Water Boy by order dated 521992, there may be no question of giving any direction for giving regular employment. However, learned counsel for the petitioner submits that the opposite parties be directed to give regular appointment with effect from 1981 and, in any case, with effect from the date of filing of this petition. The plea needs to be considered. It would appear that regulation 77 of the U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulation, 1981 clearly provides for appointment of a dependent of the employee dying in harness. This regulation reads as follows:

“In the event of death or permanent disability of an employee while in service his son or any other member of his family dependent on him may be appointed on a post in the service for which he possesses the prescribed qualification. The procedure for recruitment contained in these Regulations will not be applicable in his case. If necessary the age limit and academic qualifications may also be relaxed.”

It is true that the words used in this regulation are that a dependent of a person dying in harness “may be appointed” on a post in the service, but considering the legal position laid down by Hon’ble Supreme Court in *Phoolwati v. Union of India* AIR 1991 SC 469 and *Smt. Sushma Gosain & others v. The Union of India & others* AIR 1989 SC 1976, this regulation must be considered to be mandatory. In *Sushma Gosain’s* case, Hon’ble Supreme Court has observed as follows:

“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

7. In *Phoolwati v. Union of India* AIR 1991 SC 470, Hon’ble Supreme Court referred to and reiterated the view taken in *Sushma Gosain’s* case and gave the following directions to the Union of India:

“Accordingly, we direct the Union of India to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualifications within a period of one month from the date of this

order.?

8. In *Kamal Narain Tripathi v. Basic Shiksha Adhikari* 1991 LCD 76, a Division Bench of this Court, following the decision in *Sushma Gosain's* case, directed the appointment of the petitioner in an educational institution, where his father was a teacher, on a post in ClassIII by creating a post within one month.

9. In *Rajesh Singh v. The Director of Education* 1991 (17) ALR 46, a learned Single Judge of this Court interpreted rule 5 of the U.P. Recruitment of Dependent of Government Servants (Dying in Harness) Rules, 1974 to mean that on the death of an employee, a supernumerary post stands automatically created. In that case, father of the petitioners was employed as a Teacher in a recognized institution. On his death, the petitioner was given appointment on the post of Peon even though he possessed the qualifications for the post of a Clerk. The learned Single Judge held that the post of Clerk must be deemed to have been created and the petitioner be appointed on that post immediately.

10. Rules, Regulations or orders providing for employment of the dependent of an employee, dying in harness, are in the nature of social legislation. The purpose behind such rules or regulation is to provide social security to the dependents of the employee dying in harness. The prime need is to provide such employment immediately. Such beneficial legislations have to be liberally construed and faithfully implemented. In *Regional Director, Employees State Insurance Corporation v. Ramanuj Match Industry* AIR 1983 SC 278 at page 282, the Supreme Court has observed:

?The Court should not interpret a beneficial provision occurring in a Statute in such a way that the benefit would be withheld from employees, we do not doubt that beneficial legislation should have liberal construction with a view to implementing the legislative intent.?

In *M/s. International and Fertilizers Pvt. Ltd. v. ESI Corporation* (1987) 4 SCC 203, the Supreme Court has observed:

?While construing a welfare legislation like the Act and notification issued thereunder a liberal construction should be placed on these provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.?

11. It is, indeed, most unfortunate that, inspite of the laudable object of the legislature and of the Government and other bodies and the clear and categorical interpretation made by Hon"ble Supreme Court and this Court, as noted above, the implementing authorities generally remain oblivious to this particular human suffering and unmindful of the basic aims and objects behind these particular rule etc. Where an employee dies in harness, he generally leaves his wife & children in a state of utter helplessness. Bread winner suddenly goes, The family is stunned and shocked. Income suddenly stops. There is generally no standby alternative for even two meals a day. The wife and children of the deceased who

had no need to go out of the house suddenly find themselves on the streets or on the mercy of philanthropic minded people who are hard to find. Children find themselves without any means to pay for their education and have, perforce, to abandon their studies. Many a budding intellectuals have to fade away suddenly. Pensionary benefits, to which family is entitled, take long time to come. A request for the same is quite often than not lost in the maze of incomplete records, the rules, regulations or orders or, in any case, in faulty and inhuman interpretation of them. The technicality of the rules are given more importance and the intent or the object behind them is completely overlooked. In a welfare State, the authorities are expected to be more concerned and indulgent to the plight of such victims of sudden calamity. The least they could do in this connection is to follow the rules, regulations or orders and decisions of the Courts faithfully by providing immediate employment to the dependent of the deceased. Delay defeats the very purpose.

12. As indicated above, Hon'ble Supreme Court and this Court have repeatedly laid down that such employment has to be given immediately by creating supernumerary post, if necessary. In Rajesh Singh's case 1991 (17) ALR 46, this Court has also laid down that if there is no vacancy a supernumerary post must be deemed to have been created. I respectfully agree with this view. Since Hon'ble Supreme Court has clearly and categorically laid down that employment has to be given immediately by creating a supernumerary, post, there is no option but to create such post, if necessary, and, accordingly, it will be just and proper to draw the inference that such post must be deemed to have been created.

13. It has been repeatedly stressed by the Hon'ble Supreme Court that the law laid down by the Supreme Court is binding on all the departments and services and not merely on the parties. Thus in Amrit Lal Perry v. Collector of Central Excise 1975 (1) SLR 153 (SC), the Supreme Court observed at page 164 of the report:

"It is true that the petitioners were not parties to the decisions in Ravi Verma's case (Supra) so that they cannot claim the benefit directly of any direction given in that case. It seems that it is for this reason that learned counsel for the respondents attaches considerable importance to delay in approaching this Court against alleged allegations: We are unable to commend the argument, coming as it does on behalf of a " department of the State that the effect of the decision in Ravi Verma's case must be confined to parties before the Court in that case.?"

The Supreme Court further observed as follows at page 169 of the report:

"We may, however, observe that, when a citizen aggrieved by a decision of the Government department has approached the Court and obtained a declaration of law in his favour, others in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance

to the Court.?

14. In *M/s Star Diamond Co. India v. Union of India and others* AIR 1987 SC 179 also Hon"ble Supreme Court has held that law declared by it are binding on all and not merely on the parties. Hon"ble Court has observed:

?The applicant states that the applicant was neither a party nor was served with any notice of the said proceedings resulting in the said two decisions. According to the applicant, it was not bound by the directions therein. We are unable to accept the said contention. Such decisions of Court laying down the position of law are laws binding on all? (Emphasis supplied).

15. In *M/s. Devi Das v. I.T. Commissioner* AIR 1967 All 414, a division bench of this Court has held that the law declared by the High Court will be applicable generally to all citizens and authorities in the State. The division bench has observed:

?It is true that there is no Constitutional provision similar to Article 141 of the Constitution, relating to declaration of law by the Supreme Court of India, which can be relied upon in support of the proposition that declarations of law by this Court are binding upon all the authorities and citizens within the State of Uttar Pradesh. Nevertheless that appears to me to be object of the Constitutional provisions giving to the High Court the power to pronounce on the Constitutional validity of the legislative measures. The result flows logically from the Constitutional and other provisions of law making the High Court of a State the highest law declaring authority within the State.?

16. Thus the clear legal position is that the law declared by Hon"ble Supreme Court is binding on all citizens, State Government and other authorities and not merely between the parties. Further, the law declared by the High Court is similarly binding within the State. Accordingly, the State Government, other authorities and the concerned officers are bound to implement the Rules, Regulations and orders regarding giving employment to the dependents of the employees dying in harness in terms of the interpretation made & the directions given by the Hon"ble Supreme Court and by this Court. According to the interpretation made and directions given, employment to the dependent of an employee dying in harness has to be given ?immediately?. This expression ? immediately? must be kept within reasonable limits only and it will be just and proper to hold that one month from the date an application is made by the dependent must be considered to be outer limit. The further interpretation and direction of Hon"ble Supreme Court and of this Court is that in case there is no vacancy, a supernumerary post must be created. As noted above, this should reasonably mean that a supernumerary post must be deemed to be created. In such situation, the appointment must be made against the post which will be deemed to be created, though it will be open to the concerned authorities to adjust this appointment against any future vacancy in the particular office, institution or place of posting. The further requirement is that this appointment

must be made and the post must be deemed to be created of the category for which the dependent is qualified. Such appointment will naturally be in the minimum of the scale of the category of the post for which the concerned dependent may be qualified. Thus the interpretations made and the directions given may be summarised as follows:

(1) where an employee dies in harness, employment to his dependent must be provided immediately and the outer limit must not exceed one month from the date an application is made by dependent.

(2) The appointment must be made in the vacancy occurring due to the death of the employee provided the concerned dependent is qualified for such an appointment or is given exemption from the requisite qualifications. The appointment may be made in the minimum of the scale of the category of the post to which the dependent may be qualified, unless higher pay is directed to be given in exercise of power under any rules, regulations, etc.

(3) If there is no vacancy by reason of the fact that the dependent does not possess the requisite qualification for the post on which the deceased employee was working and exemption is not possible or by reason of the fact that the deceased employee may have been occupying a higher post in the category by promotion or selection or by any other reason, a post in the category for which the dependent may be qualified shall be deemed to have been created and the dependent must be appointed against that post within the aforesaid maximum period of one month.

(4) Where there is no immediate vacancy and a supernumerary post is created or deemed to be created, such supernumerary post may be adjusted in any future vacancy in the office or the institution.

17. The present case is representative of the callous apathy that the officers/authorities show to the victims of such tragedy. The deceased died on 29.6.1981. Even though regulation 77 of the State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981, providing for employment of the dependent of the deceased employee, existed, and the various decisions of Hon'ble Supreme Court and of this Court enjoined upon the authorities to provide employment expeditiously, by creating supernumerary post, if necessary, the petitioner was not given regular employment until February 5, 1992. Earlier she was given adhoc appointment in 1981 on a meagre consolidated salary of Rs. 100 which was later increased to Rs. 221, a salary which was even less than the wage of a daily wager. During the period she made several representations on 19.1.1982, 12.5.1983, 11.9.1984 and 14.12.1985 but no action was taken for more than 10 years. One shudders to think of the plight of the petitioner and her four minor children during all these years. It may seem a bit harsh to say but has to be said that if the concerned officers consider and decide such matters by placing themselves, for a moment, in the situation of the deceased or his family members, they will be able to take decisions expeditiously and humanely.

18. The petitioner has now been appointed on the regular post of Water Boy by order dated 521992. The learned counsel for the petitioner submits and, in my view, it will be just and proper if the appointment is directed to be made at least with effect from the date this petition was filed (1121987).

19. The petition is accordingly allowed. The opposite parties are directed to appoint the petitioner on the regular post of Water Boy or on any other regular ClassIV post with effect from 11287, by creating a supernumerary post, if necessary. On such appointment she will be entitled to the arrears of salary and other allowances, as admissible on the post from time to time, after adjusting the amount already paid. The order shall be passed and arrears shall be paid within two months of the date a certified copy of this judgment and order is produced before the opposite parties.

20. A copy of this judgment shall also be sent to the Chief Secretary, State Government and Chairman, UPSRTC for considering the desirability of amending the relevant rules or regulations & issuing appropriate directions in the light of the observations made in the body of the judgment.