
(2018) 02 AHC CK 0050
In the Allahabad High Court
Case No : 4216 of 2014

Moni Devi

APPELLANT

Vs

State Of U.P. And 3 Others

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0050

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Siddharth Khare

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the petitioner praying for issuance of a Mandamus commanding the respondents to forthwith grant appointment to her on a Class - IV post on compassionate grounds.

2. The facts as have been stated in the writ petition and as argued by the learned counsel for petitioner, Mr. Siddharth Khare, are to the effect that on 01.03.2008 the government had sanctioned one post of Safai Karmi for every Gram Panchayat in the State in the pay scale of Rs.2550-3200/-. The said government order dated 01.03.2008 was subsequently modified by another government order dated 11.04.2008 providing that the Safai Karmi was to be appointed by District Panchayat Raj Officer of the concerned District and would be a government employee working under the Panchayat Raj Department of the State and not an employee of the Gram Panchayat concerned.

3. In pursuance of the government order dated 11.04.2008 another government order was issued on 06.06.2008 prescribing the procedure for recruitment and conditions of service of such Safai Karmi and directing that the same will be governed by Group-D Rules, 1985 as amended from time to time. The District Panchayat Raj Officer, Mirzapur thereafter issued an advertisement on 16.06.2008 inviting applications for filling up the posts of Safai Karmi in District

Mirzapur. Such Safai Karmi were to be given status of Class - IV employees of the Panchayat Raj Department of the State. Shri Santosh Kumar Yadav, husband of the petitioner, being fully qualified and eligible, applied and was selected in the select list published in the newspaper on 15.09.2008. Instead of issuing appointment letters thereafter, the District Magistrate, Mirzapur cancelled the entire selection proceedings by an order dated 23.09.2008.

4. The order dated 23.09.2008 was challenged in several writ petitions, the leading writ petition being that of Ram Abhilash Maurya and others Versus State of U.P. and others (Civil Misc. Writ Petition No. 53313 of 2008), which was allowed by the writ court on 23.01.2009. Shri Santosh Kumar Yadav, husband of the petitioner, had also filed writ petition No. 59523 of 2008, which was allowed along with the bunch of the writ petitions as aforesaid.

5. The State Government thereafter filed Special Appeal Defective No. 625 of 2009, which was dismissed by the Appellate Court on 01.03.2011. Instead of complying with the order passed by this Court, the State Government filed Special Leave Petition before the Hon'ble Supreme Court, which was ultimately dismissed on 13.09.2012. The select list which was declared on 15.09.2008 attained finality only on 13.09.2012 and appointment letters were issued thereafter and 1900 selected candidates joined as Class-IV employees (Safai Karmi) in the months of October and November, 2012. However, before issuance of the appointment letter Santosh Kumar Yadav, husband of the petitioner, died on 17.10.2012.

6. It is the case of the petitioner that the petitioner thereafter applied for appointment on compassionate grounds. But the said application was not considered and the petitioner was forced to approach this Court by filing the instant writ petition.

7. It has been argued by Shri Siddharth Khare that in an identically situated case, husband of one Smt. Vandana Devi was also selected as Safai Karmi, but had died before issuance of appointment letters and aggrieved by the inaction of the authorities in not giving compassionate appointment to her, Smt. Vandana Devi filed writ petition No. 22449 of 2013. This Court passed a detailed interim order in her favour on 25.04.2013 directing for consideration of the case of writ petitioner therein in the light of observations made in the said interim order. The order dated 25.04.2013 was complied with by the State Government and a compliance affidavit was filed in the aforesaid writ petition No. 22449 of 2013 annexing therewith the approval for appointment of the petitioner - Smt. Vandana Devi by the government on 11.09.2013 and the issuance of appointment letter thereafter on 03.10.2013.

8. It has been argued that Smt. Vandana Devi being identically situated as the petitioner, was appointed as Safai Karmi on compassionate grounds and the petitioner should also be considered and given appointment in the like manner.

9. The learned Standing Counsel on the basis of the compliance affidavit filed by

the District Panchayat Raj Officer in the writ petition No. 22449 of 2013 has, on the other hand, contended that the case of Smt. Vandana Devi was entirely different as in the case of Smt. Vandana Devi her husband late Radhey Shyam had been issued appointment letter in ignorance of his death on 10.04.2012. On the other hand, the petitioner's husband was never issued an appointment letter. It is also case of the respondents that in pursuance of the appointment letters issued to selected candidates 2003 candidates have already joined as Safai Karmi in various Gram Panchayats of District Mirzapur. Since the husband of petitioner had died before issuance of the appointment letter to him and no Mandamus can be issued by this Court directing the appointment of petitioner as dependent under the Dying in Harness Rules.

10. Shri Siddharth Khare in rejoinder has submitted that the case of petitioner is better than that of Smt. Vandana Devi as the writ court's order dated 01.03.2011 attained finality on 13.09.2012 and prior to the dismissal of the SLP on 13.09.2012 late Radhey Shyam, husband of Smt. Vandana Devi had died on 10.04.2012 itself. On the other hand, the petitioner's husband late Santosh Kumar Yadav died on 17.10.2012 after the SLP was dismissed. It has been argued by Shri Siddharth Khare that appointment letter could not have been issued to a dead person by the District Panchayat Raj Officer, Mirzapur and if the same had been issued in ignorance of death of late Radhey Shyam, it could not be said that it created any right in favour of his dependents, yet the government thought it fit to comply with the interim mandamus issued by this Court on 25.04.2013, and appointment letter was issued to Smt. Vandana Devi on 03.10.2013 in compliance of the interim order.

11. Shri Siddharth Khare has also relied upon a judgment and order dated 04.02.2015 passed in Special Appeal Defective No. 71 of 2015: State of U.P. through Secretary and another Versus Vinay Yadav. In the said Special Appeal a Division Bench of this Court was considering a case where the brother of respondent was selected in Provincial Armed Constabulary (PAC) as a Constable on 05.07.2006 and he was also appointed thereafter in 28th Battalion at PAC Etawah. The government cancelled the selection process and appointment of the Constable on 08.11.2007 and consequential orders were issued thereafter cancelling the appointments of over 18700 personnel. A large number of writ petitions were filed in this Court which were allowed, the leading writ petition being that of Pawan Kumar Singh Versus State of U.P. and others (writ petition No. 45645 of 2007) by judgment and order dated 08.12.2008. The judgment and order dated 08.12.2008 was challenged in Special Appeal No. 244 of 2009, which was dismissed on 04.03.2009, and the State Government thereafter filed Special Leave Petition and the Supreme Court by order dated 25.05.2009 directed the respondents therein to be allowed to rejoin on a provisional basis. Eventually, the Special Leave Petition was dismissed as withdrawn and consequently, directions issued by this Court attained finality. The brother of respondent, Vinay Yadav, in that case met with an accident and died on 26.02.2008. The claim of respondent for compassionate appointment was rejected by the order dated 10.04.2013 on

the ground that although the brother of respondent has joined service on 02.09.2006, the appointment was cancelled on 08.11.2007 by the government and the services of brother of respondent were also terminated thereafter on 12.09.2007. Before the order passed by the Hon'ble Supreme Court on 25.05.2009 reinstating such constables provisionally, the brother of respondent had already died in accident on 26.02.2008.

12. The writ court held that under the amended definition of "family" in Dying in Harness Rules as notified on 12th of October, 2001 an unmarried brother, unmarried sister and a widowed mother were included in the definition of "family" as dependents if the deceased government employee was unmarried, and such heirs were dependent on the deceased. The writ court had not issued any Mandamus for appointment of the respondent but had remanded the matter back to the State Government after setting aside the order dated 10.04.2014 rejecting the claim for compassionate appointment of the respondent, the Division Bench dismissed the Special Appeal.

13. The Appellate Court, however, left it open for the State to consider whether the respondent therein fulfilled all other requirements of the Rules and to duly assess the claim for appointment of the respondent on the basis of Rules as explained the judgment of the Full Bench of this Court in Special Appeal No. 356 of 2012 decided on 6th of February, 2014 in Shiva Kumar Dubey Versus State of U.P. and others.

14. It has been argued on the basis of the said judgment rendered by the Division Bench of this Court on 04.04.2015 that even in appeal filed by the State of Uttar Pradesh the Division Bench had not interfered with a direction of the writ court in considering the case of respondent therein treating the brother of respondent to be still in service as a Constable having been appointed and then terminated in pursuance of the government order dated 8th of November, 2007, the case of the petitioner can be considered. It has been argued that in the case of late Santosh Kumar Yadav his writ petition No. 59523 of 2008 was allowed by this Court on 23.01.2009 and the Special Appeal was thereafter dismissed on 01.03.2011. In the Special Leave Petition there was no interim order staying the operation of the order dated 01.03.2011 and thus, the respondents, should have appointed Santosh Kumar Yadav immediately after the dismissal of Special Appeal on 01.03.2011 instead the Government filed Special Leave Petition. It was unfortunate that after the dismissal of Special Leave Petition on 13.09.2012, appointment letters were not issued immediately thereafter and Santosh Kumar Yadav died on 17.10.2012. Only because of delay in issuance of appointment letters in compliance of the orders of this Court, the petitioner cannot be prejudiced and her claim was liable to be considered sympathetically.

15. Having considered the rival submissions and the judgments relied upon by the learned counsel for petitioner, this Court finds that the name of petitioner's husband late Santosh Kumar Yadav was indeed mentioned in the select list published on 15.09.2008. This Court is also aware of the judgment rendered by

the Hon'ble Supreme Court to the effect that mere selection does not confer any indefeasible right upon the selected candidates to be appointed.

16. In the case of *Tagin Litin Vs. State of Arunachal Pradesh and Another* reported in (1996) 5 SCC 83 the Supreme Court has observed in paragraphs - 11, 12 and 13 thus:- "It is settled law that, in order to be effective an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the concerned authority to reconsider the matter and later or rescind the order. [(See : *Bachhittar Singh v. The State of Punjab*, 1962 (Supp.) 3 SCR 713, at p. 721].

Here we are concerned with appointment to a post. An appointment to a post or office postulates -

- (a) a decision by the competent authority to appoint a particular person;
- (b) incorporate of the said decision in an order of appointment; and
- (c) communications of the order of appointment to the person who is being appointed.

All the three requirements must be fulfilled for an appointment to be effective."

17. However, this Court finds that even if late Santosh Kumar Yadav had not been issued an appointment letter and could not be said to be a government servant at the time of his death, and mere selection does not confer an indefeasible right in favour of the selected candidate, yet the fact remains that the selection was indeed finalized and a select list was published on 15.09.2008. It contained the name of late Santosh Kumar Yadav and several other selected candidates. From the same select list others were appointed after dismissal of the SLP on 13.09.2012. It was unfortunate that appointment letter could not be issued to late Santosh Kumar Yadav by the time he died on 17.10.2012. In the Application submitted by the petitioner to the District Panchayat Raj Officer, Mirzapur on 29.03.2013 it has been mentioned that her deceased husband had participated in hunger strike held by selected candidates outside the office of District Magistrate, Mirzapur and her husband remained without food and water w.e.f. 8th October to 17th of October, 2012 as a result whereof her husband's health deteriorated to such an extent that he was hospitalized. The District Hospital, Mirzapur referred Santosh Kumar Yadav to Varanasi and while he was being taken in the government ambulance, he died on way to Varanasi.

18. It is indeed unfortunate that the selection which was finalized on 15.09.2008 was not allowed to crystallize in favour of late Santosh Kumar Yadav on account of inaction of the respondents even when the cancellation of selection was declared unlawful by the writ court on 23.01.2009. On the date of delivery of the judgment on 23.01.2009 late Santosh Kumar Yadav was very much alive and he was entitled for being appointed as a Safai Karmi. The judgment of writ court has been affirmed in Appeal on 01.03.2011 and also by the Supreme Court in SLP

filed by the State Government, which Special Leave Petition was dismissed on 13.09.2012. Late Santosh Kumar Yadav was alive on 01.03.2011 and even on 13.09.2012. If the appointment letters had been issued immediately thereafter in compliance of the orders of this Court or of the Supreme Court, late Santosh Kumar Yadav would have been appointed as a Class-IV employee, and the right under the Dying in Harness Rules for compassionate appointment would have accrued to the petitioner herein.

19. In a similar case, a Division Bench of this Court in the case of State of U.P. and others vs Kuldeep Thakur, 2017 (3) ESC 1137, distinguished the judgment rendered by Full Bench in Pawan Kumar Yadav vs State of U.P. and others, 2010 (8) ADJ 664 to hold that the writ petitioner's father therein continued to be a daily wager and was not regularised before his death, but since he was entitled for such regularisation in terms of the Government Order issued on 13.08.2015, on which the date the father of the writ petitioner was admittedly alive, then the said right which accrued to the father of the writ petitioner therein for regularisation had to be taken into account and the father of the writ petitioner was to be treated as regularised before his death in October, 2015. It was held that had the father of the writ petitioner been so regularised in terms of the Government Order dated 13.08.2015, as per the right accrued to him to be considered for such regularisation automatically, then he would have been a Government servant at the time of his death in October, 2015 and the writ petitioner would then be entitled to claim compassionate appointment under U.P. Recruitment of Dependents of Government Servants under Dying-in-Harness Rules, 1974. The Division Bench had dismissed the appeal, but modified the judgment of the learned Single Judge dated 22.11.2016 to the extent that it was left open to the appellant-State to consider the status of regularisation of the father of the writ petitioner and then, proceed to take an appropriate decision with regard to claim of the writ petitioner for compassionate appointment in the light of observations made in the judgment by the Division Bench.

20. The case of the petitioner herein also deserves to be considered in the light of the observations made by the Division Bench of this in the case of State of U.P. and others Vs. Kuldeep Thakur and State of U.P. Versus Vinay Yadav (supra).

21. In a similar case with respect to a similarly situated writ petitioner the State Government had already passed an order on 11th of September, 2013 permitting the appointment of writ petitioner namely Smt. Vandana Devi and appointment letter in pursuance of the order dated 11th of September, 2013 was issued to the Smt. Vandana Devi under Dying in Harness Rules on compassionate ground. The order dated 11th of September, 2013 is reproduced below:- "VERNACULAR MATTER OMITTED"

"Accordingly, an ad interim mandamus is issued to respondent no. 1 to consider the appointment of the petitioner in the aforesaid circumstances keeping in view the fact that the petitioner's husband had already succeeded before this Court and up to the Apex Court as referred to herein above. The respondent no. 1 shall

endeavour to persuade the Government to offer appointment to the petitioner in the aforesaid background and show cause by filing an Affidavit by the next date fixed.

List on 13.5.2013 along with the record of Writ Petition No. 17353 of 2013.

Let a certified copy of this order be issued within 24 hours to the learned counsel. The same shall be filed by the petitioner before the respondent no. 1, who shall proceed to comply the same."

"VERNACULAR MATTER OMITTED"

22. In this view of the matter, a direction is issued to the State-Respondents to consider the case of petitioner in the light of observations made herein above and appropriate orders be passed within a period of three months from the date a certified copy of this order is produced before the authorities concerned.

23. The writ petition is allowed to this extent.