

(2007) 02 AHC CK 0197
In the Allahabad High Court

Narendra Kumar Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Citation : (2007) 113 FLR 32

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Bharati Sapru, J.—Heard learned Counsel for the petitioner, Shri Suresh Singh, learned Counsel for the respondent No. 2 & 4 and learned Standing Counsel for the other respondents.

2. The petitioner has filed the present writ petition praying for a writ of certiorari to quash the impugned order dated 3.1.03 passed by the Zila Basic Shiksha Adhikari, Fatehpur, who has refused to grant to the petitioner relief of pension, Insurance, Provident Fund and other benefits due to the late mother of the petitioner and has also refused to give to the petitioner employment on the post of a clerk under the Dying and Harness Rules.

3. The facts of the case are that the petitioner claims that the petitioner's mother Shankuntala Devi was working on the post of a Head Mistress in Kanya Primary Pathshala, Anug, District Fatehpur.

4. The petitioner contends that the petitioner's mother rendered continuous service from the year 1969 to 2001. During the course of her employment, the petitioner's mother died on 17.11.2001 while she was posted as Head Mistress in Kanya Primary Pathshala, Anug, District Fatehpur.

5. After the death of his mother, the petitioner applied for employment under Dying and Harness Rules on 8.3.02. It is the petitioner's case that he kept on approaching the authorities, who paid no heed to his application. Ultimately, the

petitioner was served with a copy of the order dated 3.1.03 which is the impugned order, by which it has been held that the very appointment of the mother of the petitioner was illegal and, therefore, no post retirement benefits could be paid to her. The salary, which has been received by Smt. Shakuntala Devi, the petitioner's late mother is liable to be recovered from movable and immovable properties of the mother and since the appointment itself was illegal and had been obtained on the basis of fraud, no right accrued to the petitioner to get any employment under the Dying and Harness Rules.

6. This Court passed an order by which the record of the H.T.C. examinations held in the year 1966 have been produced in original before this Court. Smt. Shakuntala Devi, late mother of the petitioner, had obtained service as a teacher in the Department concerned, on the basis of a certificate, whereby, she claimed to be a trained teacher, having the H.T.C. certificate, which is a certificate of teachers training. The qualifications as obtained by the petitioner's late mother when she obtained service was Vidya Vinodani passed along with H.T.C.

7. The impugned order dated 3.1.03 was passed by the respondents after conducting an enquiry and on the basis of a report submitted by the Registrar, Departmental Examinations, U.P. It is revealed from the record as well as from the affidavit on record that the mother of the petitioner late Shri Shakuntala Devi, D/o of Shri Sukh Lal Prasad had not appeared in the H.T.C. examination in the year 1966. On the other hand, it was one other Shakuntala Shukla, D/o Shri S.P. Shukla, who had appeared in the examinations and her roll No. was 7028. It is reiterated that the record fortifies the statement made in the counter affidavit that it was not the mother of the petitioner who had appeared in the H.T.C. examination in the year 1966 but it was another candidate by the name of Shakuntala Shukla, D/o Shri S.P. Shukla, whereas the admitted position is that the mother of the petitioner was Shakuntala D/o Sukh Lal Prasad. The identities of the two persons are completely different.

8. In view of the position which emerges from the record, which has been produced in original, there is no doubt that the identity of the person who appeared in the year 1966 Examination is not the same as that of the petitioner's mother. It is clear that the petitioner's mother obtained employment on the basis of a false certificate.

9. The other aspect of the matter is that the enquiry in this matter was initiated according to the record on 18.8.01 on the basis of a complaint received in the department concerned. At the time when the enquiry was initiated, the petitioner's mother was alive. However, during the course of the enquiry, she expired on 17.11.01. The enquiry was finally concluded after her death and the impugned order was passed much after her death, on 3.1.03.

10. Learned Standing Counsel appearing for the State has placed before me a decision of the Hon`ble Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, wherein the Apex Court has taken a view that where the

employment is obtained on the basis of a false or forged certificate, then, the very appointment is void and non est and no relief of pensionary benefits can be granted.

11. Having heard learned Counsel for the petitioner as well as learned Counsel for the respondent State, I am of the view that there is no doubt that the petitioner's mother had obtained employment on the basis of a false certificate. But the other position, which emerges is that this matter has come to light only after the death of the petitioner's mother who died on 17.11.01 and the enquiry was concluded after her death.

12. Such being the position, I am of the opinion that the salary, which was paid to her for the work that she did, is not liable to be recovered from her heirs. However, other than that, no relief can be given to either the petitioner's mother in respect of post retiral benefits or to the petitioner in the shape of employment under Dying and Harness Rules. It is made clear that the petitioner's mother is not entitled to any pensionary benefits nor is the petitioner entitled to any employment under the Dying and Harness Rules. However, if any deposits had been made by the petitioner's late mother towards P. P. or gratuity, the same may be released to her heirs in accordance with law.

13. This writ petition is, thus, disposed of.