

(1999) 10 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22080 of 1995

Narendra Singh Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Citation : (2000) 1 UPLBEC 135

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : C.B. Yadav and Akhilesh Singh, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—Narendra Singh Yadav filed this writ petition for writ of certiorari to quash impugned order of termination dated 22nd July, 1989 (Annexure 3 to the writ petition).

2. It is admitted at the Bar that petition was subsequently reinstated vide order dated 8th March, 1996 issued by the then District Magistrate, Agra (Order No. 5401/Istha) referred to in another Annexure 1 to the affidavit filed in support of the Amengment Application, copy of which has been served upon Standing Counsel.

3. During the pendency of the writ petition; Petitioner died, who was suffering from Incoiling spondelitice. Petitioner was terminated vide order dated 22nd July, 1989 because of his said illness, as is evident from the record of the present case. Since said termination order, according to the petitioner, was passed without affording opportunity, it appears that termination order was revoked by the District Magistrate, Agra vide his aforementioned order dated 8th March, 1996.

4. It appears that Petitioners could not join because of his illness affecting of his spinal as connection made suo moto of file being placed by the decided clerk

(Shri Sheo Pd.) today at the instance of the learned Counsel for the petitioner chord and later died on 15th September, 1996.

5. There is no complaint in the present petition regarding arrears or any other claim pertaining to the petitioner. In any case the same can be claimed by the legal representatives, if they are so entitled under law and thus dismissal of writ petition will not prejudice their right to receive said amount.

6. Heirs of the petitioner (his widow and son) have been substituted as petitioners in place of deceased Narendra Singh Yadav, original petitioner and, as mentioned above, an amendment application is being filed. It appears that son of the deceased petitioner had applied for seeking compassionate appointment under Dying in Harness Rules, but it has been rejected vide order dated 2nd January, 1997 issued by Chief Development Officer, Agra (respondent No. 3). The said order dated 2nd January, 1997 shows that claim of the widow of deceased petitioner has been denied solely on the ground that her case does not fall within the eligibility filed contemplated under relevant Dying in Harness Rules since here husband (Petitioner) did not rejoin his duties after his termination was revoked. Normally this Court would have required the widow of the deceased petitioner to file a fresh petition, but considering the facts of the instant case, it will not be expedient to require writ to be filed afresh over and again. Facts are not disputed as the record stands today and hence I propose to decide writ petition finally in the light of the relief claimed in the amendment application, which is being allowed today itself.

7. The ground taken in the impugned order dated 2nd January, 1997 (Annexure 1 to the affidavit filed in support of the amendment application) has no merit besides being devoid of logic sense of fairness and justice. Once termination order was revoked and thereafter there was no termination of the service of the petitioner. Petitioner cannot be said to be out of employment and consequently on his death during employment, his legal representatives/heir can certainly maintain application for seeking appointment on compensate ground subject, however satisfying the requirement of relevant Dying in Harness Rules.

8. The impugned order dated 2nd January, 1997 Annexure 1 to the affidavit filed in support of the amendment application is being quashed. The concerned and competent authority (said to be District Magistrate, Agra) is directed to consider the application of Smt. Sunita Devi (wife of late Narendra Singh Yadav) present petitioner No. 1/1, substituted as legal representative of original petitioner (Narendra Singh Yadav) in accordance with law. Application of Smt. Sunita Devi, aforementioned shall not be rejected on the ground that her husband late Narendra Singh Yadav was unable to rejoin duty after 8th March, 1996 and before his death consequently shall not be rejected on the ground of delay. Petitioner cannot be granted relief claimed in the original writ petition and, therefore the same cannot be allowed as having rendered infructuous and stale by virtue of passage of time and change of event.

9. Writ petition stands allowed to the extent of the amended relief claim. The Petitioner shall file additional representation (giving her address for correspondence) with the certified copy of this judgment and copy of the amendment application before respondent No. 2 concerned authority within six weeks from today. If additional representation is made within the time stipulated, as indicated above, concerned authority shall decide the same in accordance with law and taking into account all the circumstances and material, which may be relevant for the decision of the case under law within two months of the receipt of the representation by a reasoned order, which shall be dispatched/communicated by registered post acknowledgment due within two weeks of its date by registered post acknowledgement due on the address shown in the additional representation.