
(2015) 08 AHC CK 0252
In the Allahabad High Court
Case No : C.M.W.P. No. 4639 of 2015

Neha Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2016) 2 ALJ 173 : (2015) 5 AWC 4963 : (2016) 148 FLR 861

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Som Kartik Shukla, for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Som Kartik Shukla, learned counsel for the petitioner, Sri Badrul Hassan, learned Additional Chief standing counsel for opposite parties No. 1 and 2 and perused the record. Undisputed facts in the present case are that petitioner's father Sri Suresh Nath Mishra (now deceased) while working on the post of Assistant Teacher in Public Inter College, Sampoorana Nagar Kheri, died during the tenure of his service as such the petitioner, who is married daughter of late Suresh Nath Mishra submitted an application for consideration of her case on compassionate ground before the authority concerned. When no heed has been paid by the official respondents so she approached this Court by filing Writ Petition No. 6032 (SS) of 2014, Neha Mishra v. State of U.P. and others, disposed of by order dated 17.10.2014 with the following directions;

"In view of the above, this writ petition is disposed of with liberty to the petitioner to file fresh representation alongwith certified copy of this order before respondent No. 2, who shall, thereafter, examine the claim of the petitioner and pass appropriate orders in accordance with law, expeditiously and preferably within next three months. Needless to mention that this Court has not expressed any opinion on the merits of the claim of the petitioner and which shall be examined by respondent No. 2, while taking decision in the matter."

2. Thereafter, by means of order dated 21.1.2015, opposite party No. 2/District Inspector of Schools, Lakhimpur Kheri rejected the petitioner's claim for compassionate appointment on the ground that petitioner is married daughter of late Suresh Nath Mishra so she does not fall within the definition of family, as per the provisions as provided under Regulation 103 Chapter III of U.P. Intermediate Education Act, 1921.

3. Learned counsel for the petitioner while assailing the impugned order submits that the same is contrary to law as laid down by this Court in the case of Soniya Vs. State of U.P.--> , relevant portion is quoted herein below:

"Merely because a daughter is looking after her parents is not a criteria for grant of compassionate appointment. The object with which a married daughter has been excluded from the expression "Family" is based on an intelligible differentia and the dependency should be a yardstick for consideration of compassionate appointment and is commensurate with the sole object of grant of compassionate appointment. It is in these circumstances, the married daughter has not been included in the expression "Family" under Dying-in-Harness Rules, 1974.

However, for transfer of retail licence, the criteria is "inheritance" whereas in the matter of grant of compassionate appointment, it is "dependency" and hence, ratio of judgment of Bombay High Court (supra), applies in the facts and circumstances of that particular case and is not applicable in the facts of the present case.

So far as the judgments in R. Jayamma (supra) and Manjula (supra), are concerned, it is found that in both the cases, the Karnataka High Court found that the married daughter was financially dependent upon her parents for the reason that in R. Jayamma (supra), the husband of the petitioner (who was a married daughter) has become mentally deranged. In Manjula (supra), the petitioner has become widow after filing of the petition. In paragraph 10 of the judgment in Manjula (supra). It was observed that no married daughter can be denied of an entry into the service on compassionate employment just because she is married. There may be cases whether the married woman may be living with her parents notwithstanding her marriage for various reasons and there may be cases where married women would be dependent on their parents on account of their individual circumstances. Thus, the court in those cases, may read down the rule of dependency in the facts and circumstances of the case and issue a direction to provide employment to dependent married daughters subject to satisfaction of their dependency in the given circumstances."

4. Accordingly, he submits that impugned order dated 21.1.2015 passed by opposite party No. 2 thereby rejecting the petitioner's claim for compassionate appointment on the ground that she is married daughter of late Sri Suresh Nath Mishra, is contrary to law, liable to be set aside.

5. Sri Badrul Hassan, learned Additional Chief standing counsel for opposite parties while defending the impugned order submits that as the petitioner is

married daughter of late Suresh Nath Mishra so keeping in view of the said fact as well as the definition of "Family" given under Regulation 103 Chapter III of U.P. Intermediate Education Act, 1921, there is no illegality or infirmity in the impugned order passed by opposite party No. 2.

6. In order to decide the controversy involved in the present case, it will be appropriate to consider the Regulation 103 Chapter III of U.P. Intermediate Education Act, 1921 which reads as under:

"103. In case an employee of teaching or non-teaching staff of a recognized aided institution who has been duly appointed in accordance with the prescribed procedure, dies in harness one member of his family not below the age of 18 years shall be given appointment to a non-teaching post notwithstanding anything contrary in the prescribed procedure for recruitment if such member possesses requisite educational qualifications prescribed for the post and is otherwise suitable for appointment.

Explanation.--For the purpose of this regulation "member of family" shall means widow/widower, son, unmarried or widowed daughter of the deceased."

7. From the perusal of the explanation of Regulation 103 Chapter III of U.P. Intermediate Education Act, 1921, it is apparently clear that the word which has been used therein is family shall mean widow/widower, son, unmarried or widowed daughter of the deceased family. The word "means" used therein is exhaustive in nature and includes the persons in the family of the deceased as mentioned therein for the purpose of giving compassionate appointment. Taking into the said facts as well as the settled principle of interpretation of Statutes that a statutory provisions should not be construed in a manner which would lead to manifest absurdity, futility, or anomaly or chaos. Reference may be made to the decision of Apex Court in H.S. Vankani and Others Vs. State of Gujarat and Others, .

8. Further, in the Sate of Uttar Pradesh the matter in regard to compassionate appointment is governed by the Rules known as under U.P. Recruitment of Dependants Government Servants Dying in Harness (Ninth Amendment) Rules, 2011 and the definition of family is being given in Rule 2C of the Rules which reads as under:

"2 (C) family" shall include the following relations of the deceased Government servant;

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was

unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court;

Provided that, if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus, ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried grand daughters of the deceased Government servant dependent on him."

9. A Division Bench of this Court in the case of Smt. Sunita Bhadooria Vs. State of Uttar Pradesh, , after considering the provisions as provided under Rule 2 (c) of U.P. Recruitment of Dependants Government Servants Dying in Harness (Ninth Amendment) Rules, 2011 has held that the married daughter of the deceased is not entitled for compassionate appointed under Dying-in-Harness Rules, 1974. (See also Smt. Reeta Singh Vs. State of U.P. and Others, ; Sarita Singh Vs. State of U.P. and Others, and in Special Appeal No. 553 of 2014, Gayatri Singh v. State of U.P. and others.

10. The said view has further reiterated by this Court in the case of Sapana Tiwari v. State of U.P. and others, 2015 (33) LCD 1381, wherein it is also held that married woman does not fall within the definition of family of the deceased as given under Rule 2 (c) of U.P. Recruitment of Dependants Government Servants Dying in Harness (Ninth Amendment) Rules, 2011.

11. Accordingly, the petitioner being married daughter of the late Suresh Nath Misra, who died while working and discharging his duties on the post of Assistant Teacher of the institution known as Public Inter College, Sampooran Nagar Kheri is not entitled for compassionate appointment under Regulation 103 Chapter III of U.P. Intermediate Education Act, 1921, so I do not find any illegality or infirmity in the impugned order dated 21.1.2015 passed by opposite party No. 2/ District Inspector of Schools, Lakhimpur Kheri, the writ petition liable to be dismissed. For the foregoing reasons, the writ petition lacks merit and is dismissed.