

(2010) 10 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58694 of 2008

Raj Kumar

APPELLANT

Vs

Joint Director of Education, Gorakhpur and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 12
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 101, 103, 105, 107
Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 7

Citation : (2011) 1 ADJ 129 : (2011) 128 FLR 792

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—The Petitioner who claims himself to be son of late Paras Nath Singh, who was an Assistant Teacher L.T. Grade in Bapu Shatabdi Inter College Jahda District Maharajganj. appears to be aggrieved by an order dated 22.10.2008 passed by District Inspector of Schools, Maharajganj, by which the Petitioner's application seeking appointment on compassionate ground has been rejected on the ground that the other dependents have not given consent for the appointment of the Petitioner.

2. On 14.11.2008, this Court had directed the learned standing counsel who has put in appearance on behalf of Respondent Nos. 1 and 2 to file counter-affidavit and issued notice to Respondent Nos. 4, 5 and 6. Pursuant thereto, the steps have been taken by the learned Counsel for the Petitioner on 20.11.2008.

3. From the perusal of office report dated 15.1.2009 it transpires that the notices issued to the Respondents have neither been returned un served nor there is any acknowledgment of service. In view of the office report dated 15.1.2009, the service of notices on Respondent Nos. 4 to 6 are deemed to be sufficient under Rule 12 of Chapter VIII of Allahabad High Court Rules, 1952. With respect to

Respondent No. 3 this Court has not issued notice and nobody has put in appearance but with the kind of order which this Court intend to pass no notice is issued to the Respondent No. 3 and the writ petition is taken up for final disposal on the admitted facts with the consent of the learned Counsel of the representing parties.

4. The brief facts giving rise to this case are that the Petitioner's father was an Assistant Teacher (L.T Grade) in Bapu Shatabdi Inter College, Jahda, District Maharajganj (hereinafter referred to as Institution) which is a recognized Institution under U.P. Intermediate Education Act, 1921. The payment of salary of the teachers and other employees are governed under the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. It appears the Petitioner's father died while working in the Institution on 11th December, 2004 leaving behind his widow namely Smt. Rachla and three sons including the Petitioner namely Arun Kumar and Hemant Kumar.

5. After the death of the father, Sri Arun Kumar and the Petitioner both have applied for appointment on compassionate ground in view of Regulation 103 of the regulations framed under Chapter III of the U.P. Intermediate Education Act, 1921. This application was rejected by the impugned order dated 22.10.2008 by the District Inspector of Schools for the absence of no objection certificate of the other members of the family and pendency of another application of his younger brother Sri Arun Kumar for the same purpose.

6. Sri Rituvendra Singh, holding brief of Sri R.C. Singh, learned Counsel for the Petitioner submits that the impugned order has been passed without jurisdiction as under regulation 105 of the Regulations framed under U.P. intermediate Education Act, it is the Committee constituted for considering the appointment on compassionate ground is empowered to take decision on compassionate appointment, whereas in the present case the impugned order has been passed by the District Inspector of Schools, Maharajganj individually. He has further submitted that in case there was no consent of the other dependents of the deceased (Late Paras Nath Singh) then it was incumbent upon the Committee of Management as well as District Inspector of Schools to invite objections for considering the appointment on compassionate ground and the absence of no objection certificate of other members of the family cannot be a ground for rejecting the application.

7. Refuting the submissions of learned Counsel for the Petitioner, learned standing counsel has put in stiff resistance in support of the order passed by District Inspector of Schools by submitting that under the present facts and circumstances of the case, there was no option before the District Inspector of Schools except to reject the application of the Petitioner, as there is no provision under the regulation to deal with such situation where there are more than one application or objection from other members of the family. In his submissions, the impugned orders do not suffer from any illegality and the writ petition

deserves to be dismissed.

8.I have heard Sri Rituvendra Singh holding brief of Sri R.C. Singh, learned Counsel for the Petitioner and learned standing counsel for the Respondent Nos. 1 and 2 and considered their submissions.

9. It is not in dispute that the Institution in question where the Petitioner's father was working is a recognized Institution under the U.P. Intermediate Education Act, 1921 and the regulations framed there under are applicable with respect to the conditions of service of the teachers and other employees of the Institution.

10. Regulation 103 of the Chapter III provides that if any teacher or employee of a Government added Institution whose appointment has been made in accordance with the procedure prescribed under this Act as well as other relevant Act and the regulation framed there under, dies during the course of employment, a member of his family whose age is not less than 18 years and he/she is trained may be appointed against the post of Assistant teacher or against non-teaching post for which he/she is having qualification.

11. The member of the family has been defined as "the member of the family means the widow/widower, son/unmarried daughter/widowed daughter.

12. Regulation 104 provides that the Committee of Management of a recognized Institution will intimate the District Inspector of Schools regarding the death of a teacher or an employee as the case may be, including the number of members of the deceased family, name of deceased employee, post held by him/her, pay scale, date of appointment, name of the appointing Institution. While sending this Information the educational qualification of the members of the family including the age be also informed to the District Inspector of Schools within a week from the date of the death of a teacher or employee.

13. Regulation 105 provides that if any member of the deceased family makes an application under Regulation 103 then the application be considered by a Committee constituted under this regulation and thereafter the Committee shall recommend the name, if found suitable for appointment to the Committee of Management for issuing appointment letter as provided under the Regulations 106 and 107 of the regulations.

14. Here in this case, from the perusal of the impugned order it transpires that there is no dispute with regard to the Petitioner's being son of late Paras Nath Singh who happened to be Assistant Teacher in L.T grade in the Institution. The application of the Petitioner has been rejected merely on the ground that there is no objection of the other members of the family and further the younger brother of the Petitioner namely Sri Arun Kumar has also made an application.

15. From a bare perusal of the impugned order it transpires that after receipt of the application made by the Petitioner, the Inspector of Schools has not put up the application before the Committee meant for that purpose, whereas

Regulation 105 provides that for considering such appointment, there will be a Committee in the chairmanship of District Inspector of Schools alongwith two members namely the Account Officer posted in the office of District Inspector of Schools and District Basic Education Officer. Here in the present case, from a perusal of the impugned order it transpires that the matter was never put up before the Committee and the District Inspector of Schools has himself passed the impugned order. The learned standing counsel appearing for the Respondent Nos. 1 and 2 could not dispute this fact that the impugned order has been passed only by the District Inspector of Schools and not by the Committee.

16. From the perusal of impugned order, it also transpires that the impugned order has been passed on the direction of this Court dated 1.8.2008 issued in Writ petition No. 37405 Of 2008, where the District Inspector of Schools was directed to decide the matter therefore i do not find any force in the submissions of learned Counsel for the Petitioner that the impugned order has been passed without jurisdiction, as in view of the direction of this Court it was only the District Inspector of Schools who was competent to take appropriate decision in the matter. It may be noticed that this Court is not sitting under an appeal over the judgment passed by Hon"ble Single Judge therefore the Petitioner"s submissions to the extent that the impugned order is without jurisdiction is misconceived as it will not be open to the Petitioner to raise this point here in this writ petition. If the Petitioner was aggrieved by the order dated 1.8.2008, he would have sought clarification from the Hon"ble Single Judge deciding the writ petition No. 37405 of 2008 which was filed by the Petitioner himself.

17. Here at this juncture, it has to be visualized that even if by virtue of the order of this Court the District Inspector of schools has assumed the jurisdiction of the Committee constituted under Regulation 105 even then whether the decision taken by him on 22.10.2008 is sustainable in the eye of law or not. For deciding this question, it would be appropriate to give a look to the provisions meant for consideration of appointment on compassionate ground with respect to the death of a teacher or other employee working in the Government added Institution recognized under U.P. Intermediate Education Act, 1921. From a perusal of the Regulations 101 to 107 which are meant for consideration of this kind of appointment, it transpires that there is no such provision under the regulations which may provide any guideline to the Committee/constituted under Regulation 105 or to District Inspector of Schools to deal with such situation, where there are more than one applicant for the appointment on compassionate ground after the death of a teacher/employee of an Institution.

18. In such a situation where there is no guideline, it is well settled principles of interpretation of the statutes that for achieving the aim and objects of the statute if there are other *pari materia* statutes then with a view to make the statute workable, help of other statutes may be taken. Such type of extension of the rule is always permissible, as stated by Lord Mansfield "where there are different statutes in *pari materia* though made at different times, or even

expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other." AG v. HRH Prince Ernest Augustus of Hanover (1957) 1 All ER 49, p. 53:1957 AC 436 (HL). This view has been followed by the Apex Court in the case of *Sirsilk Ltd. Vs. Textiles Committee and Others*, *Jugal Kishore Vs. State of Maharashtra and Others*, and *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, and in many other cases. In these judgments the Apex Court has taken the view that statute on the same point, *pari materia* have to be read in a complementary manner so that they do not create contradictions while operating in the same field. Here, as has been pointed out that the Regulation 103 do not provide any guideline to deal with such situation where there are more than one applicant therefore the help of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974, is taken, where there is a provision under Rule 7 to deal with such situation, where there are more than one applicant seeking compassionate appointment.

19. Rule 7 of the aforesaid rule is reproduced below.

Procedure when more than one member of the family seeks employment-

If more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof.

20. From a perusal of the aforesaid rule, it transpires that if there are more than one member in the family of the deceased Government employee seeking appointment under the rules then the Officer empowered for dealing such appointment, keeping in view the over all interest of the welfare of the entire family, particularly the widow and the minor members of the family, shall take the final decision. Here in view of the decisions rendered by the Apex Court as noted above i feel no hesitation to take help of the Rule 7 of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974, while deciding the controversy in hand.

21. It may be noticed here that the impugned order has been passed mainly on two grounds:

(1) For the absence of no objection certificate of the other members of the family, in case the applicant is offered appointment.

(2) There is another application of the younger brother of the Petitioner namely Sri Arun Kumar for the same purpose.

22. The purpose of offering appointment on compassionate ground, upon the death of an employee, is to save out the members of the deceased family from the financial crunch which has fallen upon the family after the death of an employee. These kind of rules have been framed almost in all sectors where

there is a relationship of employer and employee. The purpose behind framing these rules are to save out the family from the financial crunch, which has fallen on the family after the death of an employee, at the earliest possible. There is a catena of decisions of the Apex Court as well as of this Court that after a long lapse of time such appointment are not desirable, therefore while considering such type of appointment and rejecting the same on technical ground, the authority empowered under the relevant rules is supposed to discharge such kind of duty by putting itself in the steps of deceased family, with a view to realise the pain of financial hardship and mental agony of the members of the family, which has fallen on it after the death of employee, as even the slightest slackness may render the purpose of Rule frustrated. For example for the lack of financial assistance as intended by the rule maker at the appropriate time, a member of the family dies due to lack of medical help, or the study of the children are stopped, the marriages etc. of the dependents are unnecessarily lingered and many other alike problems, due to paucity of fund.

23. Here in this case, the reason assigned by the District Inspector of Schools to my mind has resulted in miscarriage of justice as by virtue of the impugned order nobody has been considered/offered appointment after the death of the employee who passed away in December, 2004 almost six years ago. It is not a case where the appointment has not been offered for the reason that the economic condition of the deceased family is very sound but the reason for non-offering the appointment is a rival claim. In fact, if the District Inspector of Schools was in difficulty in absence of such provision under the regulations framed under the relevant statute meant for this purpose, he would have immediately taken guidance of the higher authorities instead of rejecting the Petitioner's application on the ground that there is another application of the younger brother and further there is no, no objection certificate of the other members of the deceased's family. Another course open for the District Inspector of Schools was to invite the version of other members of the family and after that considering the entire facts and circumstances, would have passed an appropriate order in consonance with the aim and object of the regulations meant for consideration of compassionate appointment.

24. In view of that i find that the impugned order dated 22.10.2008 passed by the District Inspector of Schools is unsustainable in the eye of law and deserves to be quashed.

25. In the result, the writ petition succeeds and is allowed. The impugned order dated 22.10.2008 passed by District Inspector of Schools, Maharajganj (Respondent No. 2) is hereby quashed and the matter is sent back with the direction to District Inspector of Schools to place the matter of the compassionate appointment before the Committee constituted under Regulation 105 of the regulations contained under Chapter III of the U.P. Intermediate Education Act, 1921 within two weeks from the date a certified copy of the order is produced before him. The Committee is also directed to consider the

compassionate appointment of the Petitioner including the other dependents of late Paras Nath Singh who have already applied for the said purpose within a period of two months from the date the matter is placed before the Committee. Before taking the final decision, the Committee shall invite the version of the other dependents of the deceased family and the Committee of Management of the Institution. In case, the Committee finds that any member of the family of deceased employee is entitled for appointment, suitable direction be issued to the Committee of Management of concerned Institution to issue an appointment letter to the person who is found fit. The District Inspector of Schools (the Respondent No. 2) is further directed to ensure the joining of the person in whose favour appointment letter has been directed to be issued by the Committee constituted under Regulation 105 within a month thereafter. In case, the Committee constituted under regulation takes otherwise decision, not to appoint then it shall record its reason within the said time. One thing is also made clear that the Committee shall not refuse to recommend the name for issuing appointment letter on the ground of delay.