

(2009) 05 AHC CK 0303
In the Allahabad High Court

Raj Kumar

APPELLANT

Vs

State of U.P. Thr.Prin Secy Lok Nirman Vibhag Civil Sectt.

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0303

Hon'ble Judges : Shabihul Hasnain, J

Final Decision : Disposed Of

Judgement

Heard Sri O. P. Tiwari learned counsel for the petitioner and learned Standing counsel for the opposite parties.

Case of the petitioner is that his father, who was working as work charge employee on the post of Beldar, died on 15.9.2008. After death of his father the petitioner applied for appointment under Dying in Harness Rules. When the appointment was not given, the petitioner approached this court under Article 226 and this Court while disposing of the writ petition No.958 (S/S) of 2009 directed the opposite parties to consider the case of the petitioner excluding consideration of Government Order dated 29.1.2003 and decide the representation submitted by the petitioner. On 28.3.2009, the opposite parties namely the Executive Engineer, Nirman KhandI, P.W.D., Unnao disposed of the representation and rejected the contention of the petitioner. While rejecting the representation of the petitioner the opposite parties reiterated their stand that since there is a Government Order dated 29.1.2003 which says that an employee working in work charged establishment although could have worked for several years but the dependent of this person will not be entitled for appointment under Ding in Harness Rules because he will not be treated to be a regular employee of the department.

In the present case, the petitioner's father had continued in service for about 27 years in total and in the work charge establishment for nearly 20 years as he was taken in work charge establishment on 1.4.1989. One of the arguments of the petitioner is that while deciding the representation, the opposite parties have

flouted the directions given by the court as they were specifically barred from taking into consideration the specific government order but the opposite parties while deciding the representation not only relied on the Government Order but reiterated their stand on the same ground.

Learned counsel for the petitioner has pointed out that on one hand the case of the petitioner was not considered excluding the government order but on the other hand, one Sri Ram Naresh son of late Sri Hori Lal was given appointment under Dying in Harness Rules although Hori Lal was an employee under work charged establishment. Thus the petitioner has been discriminated and a case of favoritism has been resorted to.

Learned Standing counsel has forcefully refuted this argument and he states that Hori Lal died in the year 1959 when the said Government Order was not in existence. He has filed counter affidavit also taking the same stand. The counter affidavit is taken on record. He further submits that the appointment to the dependent of Hori Lal was given under the directions of this Court in Writ Petition No.7310 (S/S) of 2005 and hence there was no case of favoritism.

Learned counsel for the petitioner submits that the fact remains that Hori Lal was working in work charge establishment and his dependent has been given the appointment on the date when the government order was in existence i.e. on 19.1.2009. So it can not be said that the case of the petitioner is anyway different from that of the case of Hori Lal. Compassionate appointment to the dependent of Sri Hori Lal has been given after 10 years of the death of Hori Lal in the year 2009.

In such circumstances a case of discrimination is clearly made out. The Court's order was in favour of the petitioner also in writ petition No.958 (S/S) of 2009. The Court had clearly directed the opposite parties to consider the case of the petitioner excluding the government order dated 29.1.2003. Effect of this direction will be that the opposite parties had to consider the case of the petitioner as if there was no government order and the petitioner had to be given compassionate appointment in the department where his father had worked for 27 years.

Considering the facts and circumstances of the case and the arguments of learned counsel for the petitioner that similarly situated person has been given appointment, the opposite parties are directed to consider the case of the petitioner afresh taking into consideration the directions in writ petition No.958 (S/S) of 2009 and parity of appointment of Ram Naresh for giving him appointment under Dying in Harness Rules within a period of two months from today.

Learned counsel for the petitioner prays for and is granted two weeks' time to file rejoinder affidavit.

List thereafter.