

(1991) 08 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24870 of 1991

Rakesh Rai

APPELLANT

Vs

Director, Madhyamik Shaksha, Education Directorate and
Others

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (1991) 2 AWC 495

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : G.N. Chandra, for the Appellant; R.G. Padia, for the Respondent

Final Decision : Allowed

Judgement

B.M. Lal, J.—By means of the present petition under Article 226 of the Constitution, the Petitioner has prayed for issuance of a writ of mandamus commanding the Respondents to appoint him on Compassionate ground.

2. Late Gyanendra Rai (father of the Petitioner), who had been working on the post of Assistant Teacher, died on 5-10-1987 during the tenure of his service. The widow of the deceased nominated her son (Petitioner; for appointment Though he was qualified to be appointed as a class III employee, the Management, of the institution offered a class IVth post to him on the ground that no post in Class 1(1 was available. The Petitioner, who now possesses a degree of Bachelor in Science, did not accept the said offer and requested the management to provide a suitable post commensurate with his educational qualification When no heed was paid to his request, the Petitioner filed Writ Petition No. 16565 to 1991 and this Court while disposing of the said petition on 21-5-1991, directed the Petitioner to make a representation before the Respondents. The Respondents were also directed to decide the representation by a speaking order within a period of two months from the date of receipt of the order, and to take proper steps for appointment in case he is found entitled to be

appointed.

3. A perusal of the petition show that Petitioner submitted a detailed application before the District Inspector of Schools on 13-6-1991 with copies thereof to the Principal and Manager of the Institution. The D.I.O.S. by its letters dated 30-3-1991 and 14-7-1991 directed the management/Principal of the institution to take steps for appointment of the Petitioner on a class III post. But the Principal of the institution again by his letter dated 6-8-1991 informed the Petitioner that there is no post vacant in Class III, and hence this petition.

4. Heard learned Counsel for the Petitioner, Dr. R.G. Padia appearing on behalf of the Institution and learned Standing Counsel representing Respondent Nos. 1, 2 and 3.

5. It is not disputed that when an employee dies in harness, one of his legal representatives is entitled to be appointed on compassionate ground. In a similar case, Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Apex Court ruled that there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

6. Recently in Smt. Phoolwati Vs. Union of India and Others, , the Supreme Court not only directed the Union of India to employ the son of the deceased, but also permitted the family of the deceased to stay in the same residential quarter which was allotted to the deceased while in service.

7. In the instant case, when the Petitioner is entitled to be appointed and possessed requisite qualification for a class III post, there is no plausible justification to keep his appointment pending on the ground that no post in class III is vacant. If no suitable post is there, it has to be created to adjust the Petitioner.

8. Dr Padia by giving reference to Annexure-1 which is a Government Order dated 25-9-1981 issued by the Ministry of Education, U.P. to Director of Education, U.P. Allahabad, invited the attention of this Court that under such circumstances no doubt the dependant of the deceased may be employed in place of his deceased father subject to availability of the post in the same institution or he may also be employed in a nearby institution of the district even on a lower post than the post held by the deceased. He therefore contended that in the absence of the vacancy the management is not bound to provide employment in the same institution. According to him, the dependant according to his educational qualification may get employment elsewhere. While supporting the letter of the management dated 4-4-1991, the learned Counsel submitted that the management has rightly offered a class IVth post to the Petitioner as there is no post vacant in class III. The submission of the learned Counsel has no

force. The aforesaid G.O. was issued on 25-9-1991 whereas Smt. Sushma Gosai'' a case (supra) has been decided by the Apex Court on 25-8-1989 This being so, in view of the provisions of Article 141 of Constitution of India, the decision of the Apex Court will not only have binding effect upon the Courts in India but also have binding effect upon the officers and all persons of India whether they are party thereto or not, and to all pending proceedings. See Makhanlal Waza and Others Vs. State of Jammu and Kashmir and Others, , Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, and Star Diamond Co. India v. Union of India AIR 1987 SC 179. This being the legal position, the submission made by Dr. Padia referring to the GO Dated 25-9-1981 is of no avail.

9. It was also contended by Dr. Padia that in the prayer clause itself the Petitioner has prayed that he may be provided job in the Intermediate College Sathianu, Azamgarh (Respondent No. 4) or in any other nearby institution. The contention of the learned Counsel is that it is not incumbent upon the management only to provide a job to the Petitioner in view of the prayer clause if there is no existing vacancy in class 111, but it is also for the Respondent Nos. I, 2, and 3 to accommodate the Petitioner in any other nearby institution. This submission is also devoid of substance as a bare reading of the prayer clause indicates that the Petitioner has alternatively

pleaded that he be provided a job in the nearby institution. But since in the case of Smt. Sushma Gosai (supra) the Apex Court has ruled that in the absence of a suitable post supernumerary post should be created to accommodate the dependant, there is no other option left except to accept the first prayer of the Petitioner.

10. Therefore, applying the same principle as enunciated in the case of Smt. Sushma Gosai (supra) and Phoolwati (supra), I direct the Respondents to appoint the Petitioner in a suitable post commensurate with his educational qualifications in the same Institution where the deceased was employed within a period of four weeks from the date of this order.

11. In the result, this petition succeeds and is allowed at the admission stage. There will be no order as to costs.