

(2015) 08 AHC CK 0246

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 46438 of 2015

Ram Nakshatra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2015) 10 ADJ 196 : (2015) 5 AWC 5399 : (2016) 1 UPLBEC 106

Hon'ble Judges : B. Amit Sthalekar, J.

Bench : Single Bench

Advocate : Abhishek Tiwari and Vrindavan Mishra, for the Appellant

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—Heard Sri Abhishek Tiwari, learned counsel for the petitioner and Sri Mata Prasad, learned Additional Chief Standing Counsel for the respondents. The petitioner in this writ petition is seeking a direction to the respondents to appoint his dependent son on compassionate ground on account of medical incapacitation.

2. The submission of the learned counsel for the petitioner is that the petitioner is a permanent Government servant and subsequently he suffered 100/% medical incapacitation and certificate to that effect was also issued by the Chief Medical Officer, Deoria dated 16.10.2003.

3. Learned Additional Chief Standing Counsel on the other hand submitted that under the U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 (hereinafter referred to as the Dying in Harness Rules, 1974), there is no provision for providing compassionate appointment to a Government servant who is medically incapacitated.

4. Learned counsel for the petitioner then referred to a judgment of the Supreme Court in V. Sivamurthy Vs. State of Andhra Pradesh and Others, , in which the Supreme Court has upheld the validity of the Government orders issued by State

of Andhra Pradesh which provided that period of five years left over service" should be recommended from the date of order of retirement on medical invalidation not from the date of application for retirement on medical invalidation.

5. In *V. Sivamurthy* (supra) the Supreme Court was considering the G.O. dated 30.7.80 whereby the Government of Andhra Pradesh had formulated a Scheme for providing compassionate appointment to the dependents (spouse/son/daughter) of Government servants who retired on medical invalidation, and held in para 9 of the judgment that such a provision is based on a classification which is not only on ground of descent.

6. Para-9 of the said judgment reads as under:

"9. Article 16 of the Constitution bars discrimination in employment on the ground only of descent. If the service rules or any scheme of Government provides that whenever a Government servant retires from service, one of his dependants should be given employment in his place, or provides that children of Government servants will have preference in employment, that would squarely fly in the face of prohibition on the ground of descent. Employment should not be hereditary or by succession. But where the policy provides for compassionate appointment in the case of an employee who dies in harness or an employee who is medically invalidated, such a provision is based on a classification which is not only on the ground of descent. The classification is based on another condition in addition to descent: that is death of the employee in harness, or medical invalidation of the employee while in service."

7. In the present case there is no provision for grant of compassionate appointment in the case of medical incapacitation of a Government servant under the Dying in Harness Rules, 1974.

8. The preamble to the Rules 1974 provides that these are special rules regulating the recruitment of the dependents of Government Servants dying in harness.

9. "Deceased Government Servant" has been defined in Rule 2(b) of the Rules to mean a Government servant who dies while in service.

10. Rule 2(c) gives a list of persons who shall be family" members of the "deceased Government servant".

11. Rule 3 provides that the Rules shall apply to recruitment of dependents of the "deceased Government servant" to public services and posts in connection with the affairs of the State of Uttar Pradesh, except services and posts which are "within the purview of the U.P. Public Services Commission".

12. Rule 5 provides for the recruitment of a member of the family of the "deceased Government servant".

13. Thus from reading of the provisions of the Dying in Harness Rules, 1974, it is noticed that there is no such provision for allowing compassionate appointment

on medical invalidation of the Government servant. The appointments permissible are only in respect of a "deceased Government servant". Therefore, the judgment of the Supreme Court referred to by the learned counsel for the petitioner in V. Sivamurthy (supra) has absolutely no application to the facts of the present case. The writ petition is devoid of merit and is accordingly dismissed.