

(1996) 09 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4390 of 1989

Ravindra Singh

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : (1997) 1 RLW 139 : (1997) 1 WLC 133 : (1996) 2 WLN 356

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—The petitioner who is an Agriculture Graduate seeks a mandamus by this petition directing the respondents to appoint him as Assistant Agriculture Officer with effect from 26.4.85 when he applied for appointment on compassionate ground under the Rajasthan Recruitment of Dependents of Government Servants (Dying While in Service) Rules, 1975 (hereinafter referred to as The Rules").

2. The father of the petitioner expired on 8.4.35 while discharging his duties as a Government employee. This fact is not disputed. The fact that the petitioner is an Agriculture Graduate is also not disputed.

3. The petitioner, therefore, filed an application on 26.4.85 under the Rules, claiming appointment on compassionate ground. He was replied by a letter dated 7.8.85 that he will not be able to get appointment to the post of Assistant Agriculture Officer under the Rules of 1975 and he was offered an appointment to the post of Agriculture Supervisor. According to the petitioner, he accepted the appointment as Agriculture Supervisor to save his family members from starvation. According to the petitioner, he was eligible for appointment as Agriculture Officer as per the Rules of 1978 for appointment in the Agriculture Department and, therefore, he should be given appointment.

4. The petition is opposed and it is submitted that the petitioner having accepted the appointment is now not entitled to claim a higher post.

5. Mr.P.P. Choudhary, learned Counsel appearing for the petitioner submits that he is entitled to appointment to a post suitable to his qualifications and grant of such appointment under the Rules is as of right. The question as to the scope and extent of Rule 5 of the Rules, occurs regularly and, hence, I propose to deal with this question exhaustively,

Rule 5. Recruit of a member of the family of the deceased

In case of "deceased Government servants" one member of his family who is not already employed under the Central/State Government or Statutory Board of Organisation/Corporations owned or controlled by the Central/State Government shall on making an application for the purpose, be given a suitable employment in Government service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission, in relaxation of the normal recruitment rules provided such member fulfils the educational qualifications, prescribed for the post and is also otherwise qualified for Government service. In the event of non-availability of a vacancy or any of the members of the family being unqualified or minor, is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any of them become qualified or eligible for such employment under these Rules.

6. The following contentions usually arise for consideration on the basis of Rule 5 quoted above,:

(1) Since it is a part of Subordinate Legislation made by the State of Rajasthan by framing these Rules in exercise of its powers under Article 309 of the Constitution of India, it has a force of law and, therefore, a candidate covered by the Rules is entitled, as a matter of right, to an appointment,

(2) He is, therefore, entitled to appointment which is suitable to his qualification, and,

(3) the right to better his appointment and prospects by acquisition of higher qualification during the currency of the appointment, further entitles him to a consideration and grant of a higher post commensurate for his qualification.

7. Mr. Choudhary, learned Counsel appearing on behalf of the petitioner submitted that the candidate who was a dependent of a deceased Govt. Servant is entitled to appointment suitable to his qualification and merely because due to pressure of circumstances he accepts a lower post available, his right to be considered preferentially for a suitable post thereafter, is not taken away and, therefore, the petitioner is entitled to be appointed as Astt. Agriculture Officer, even though he could not be given that appointment immediately when he sought recruitment.

8. Opposing these submissions, it was contended by the learned Govt. Advocate, Mr. Rajvi that once an appointment is made under Rule 5, the right to be appointed is consummate and, cannot be reconsidered for betterment of the services. The learned Counsel placed reliance on some decision of this Court for this proposition.

9. The intention of the State, or the instrumentality of the State, in providing immediate appointment on compassionate ground is obvious. It is to provide immediate earning facility to the family of the deceased employee so that it does not further suffer because of the death of the employee. The entire provisions in this regard stem out of compassion existing in the State for its deceased employees. These rules do not and should not create any preferential treatment in favour of a dependent of a deceased employee. The appointments offered on compassionate ground in exercise of the powers of these Rules are extraordinary appointments given for a specific purpose and, therefore, amount to a reasonable restriction on the mandate of the Constitution given by Article 16 thereof that there shall be an equality of opportunity in the matter of public appointment. A preferential appointment, without competition or consideration of other eligible candidate would normally vitiate the mandate of Article 16 and would, therefore, be unconstitutional.

10. It will be seen that the Constitution of India has provided equality of opportunity in the matter of public employment by Article 16. Article 16 reads as under:

16. Equality of opportunity in matters of public employment:

(1) There shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment. "

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular

denomination.

11. It will, therefore, be seen that a provision made for giving appointment to a dependent of deceased Government servant in preference to others who enjoy equal right of consideration for appointment to a Government service is protected merely by reason of being exception to Article 16. So viewed, the rules providing for compassionate appointment will have to be construed strictly and cannot be construed widely and as benoalent legislation.

12. A careful consideration of Article 16 and the principles embodied therein, demonstrate the desire of the Constitution Makers to create equality in the matter of public employment and then equal right is, therefore, given to the citizens. These rules, which do away with this right of equality, therefore, form an exception to the General Rules enshrined in Article 16. Being an exception, therefore, the Canons of Interpretation requires that it should be construed strictly according to the Rules of Interpretation. Therefore, the provisions will have to be construed strictly.

13. I have, therefore, to consider the scope and extend of Rule 5 of the Rules applying these Canons of Interpretation. The interpretation given to Rule 5 will have to be such as it does not conflict with the Principles of Article 16 of the Constitution. A scrutiny of Rule 5 will further fortify this contention. It provides for grant of appointment without delay only against an existing vacancy to a post which is not within the purview of the State Public Service Commission in relation to normal Recruitment Rules, suitable employment is to be given. The word "suitable employment" occuring in Rule 5 have to be read with the point of view of availability of post as the rule contemplates existing vacancy because it is also provided that such dependent member fulfil the educational qualification prescribed for the post and is also otherwise qualified for Government service. Therefore, fulfilling the educational qualifications prescribed for the post would no doubt be one of the major ground for deciding which is suitable employment for the dependent member. But the words "existing vacancy" occuring in Rule 5 cannot be altogether ignored to give a wider meaning to "suitable employment." To illustrate, a candidate applying for appointment under Rule 5 may be eligible, as in the present case the petitioner is, for appointment as Assistant Agriculture Officer than a Class IV servant. But when there is no existing vacancy at the time when the appointment is to be. made without any delay, it cannot be said that offer of appointment of a Class IV post or another post in a lower scale in Class III, is improper. It must, therefore, be regarded a suitable employment in the existing vacancy in accordance with the rules.

14. Mr. P.P. Choudhary, learned Counsel appealing on behalf of the petitioner, has placed reliance heavily on the Division Bench judgment of this Court reported in 1989 (1) RLR 620, as also a Single Bench decision reported in 1995 (1) RLR 481 in support of his contention that suitable employment means, employment of which the dependent is eligible as per his qualifications and it cannot be the intention of the rule that the son of a class IV employee, who possess higher

education be employed as Class IV only and, therefore, it is permissible to seek suitable post or higher post, after appointment having been made. With deepest respect, I am unable to agree with the propositions, namely, suitable appointment means appointment suitable according to the qualifications held by the dependent and that betterment of such appointment is permissible under the Rules of 1975. Namely, the Principles of Precedence requires that in the event of a disagreement between two Single Benches, a reference is to be made to a Division Bench and the Division Bench judgment is binding on the Single Bench in all circumstances, except where the Division Bench judgment is per incuriam. As far as the Division Bench judgment in Vivek Goswami's case is concerned, it speaks of permissibility under Rule 5 of giving appointment on higher post when once it is given on a lower post. Such question does not fall for consideration in the present case directly. However, I need not make any reference in the instant case as the learned Government Advocate has cited before me a decision of the Supreme Court of India in the case of State of Rajasthan Vs. Umrao Singh, , where the Supreme Court of India has considered Rule 5 of the Rajasthan Recruitment of Dependents of the Government (servants (Dying while in Service) Rules and has held that once the candidate accepted the appointment, his right to be considered on compassionate ground is consummated. No further consideration on compassionate ground would further arise and it was, therefore, held that betterment of job is not open where appointment is accepted on compassionate ground. In view of this authoritative pronouncement by the Supreme Court of India, in my opinion, the decision of the Division Bench reported in 1989 (1) RLR 620 as also the decision in Pritam Singh's case 1995 (1) RLR 481 are no longer good law and I am, therefore, not bound to follow the same. I am firmly of the opinion that since the rules providing for compassionate appointment are based on humanitarian consideration and giving immediate employment to a bereaved family are liable to be considered as rules putting reasonable restriction on the fundamental right provided by Article 16. To give a wider interpretation to these rules may result in the rules becoming unreasonably restricting and such restriction is, therefore, not permissible in law.

15. I am, therefore, unable to accept the submission that merely because the petitioner is eligible to be appointed to a higher post, he should be, so appointed by issue of a writ of mandamus, when the basis of such appointment is compassion and no writ of mandamus can issue directing appointment on the higher post when thousands of other eligible candidates for that post are awaiting their turn and their consideration for employment in the public sector, when the petitioner is granted preferential treatment and given appointment on the post of Agriculture Supervisor. Even for the post of Agriculture Supervisor there could be several claimants and yet it has been given to the petitioner without permitting him or exposing him to competition. In such circumstances, in my opinion, it is not a case where there can issue a mandamus directing the respondent to appoint the petitioner as Assistant Agriculture Officer.

16. In the result, the petition fails and is dismissed. However, there will be no

orders as to costs.