

(1998) 12 KL CK 0027

In the High Court Of Kerala

Case No : O.P. No's. 10764 and 13961 of 1998

Reni K. Abraham

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-12-1998

Acts Referred:

Kerala Education Rules, 1959 — Rule 51B, 9A

Citation : (1998) 12 KL CK 0027

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : V. Philip Mathews, for the Appellant; V.K. Mohanan, Govt. Pleader for Respondent 1, Siby Mathew, for Respondent 3 and George Kuruvilla, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in these cases is whether a married daughter of a person who died in harness would get the benefit of Rule 51B Chapter XIV A of Kerala Education Rules in the case of teaching staff and under Rule 9A of Chapter XXIV A of K.E.R. in the case of non-teaching staff.

2. The object and purpose of granting compassionate employment is to give employment to the dependant of a family on the untimely death of the breadwinner. Claimants should have undergone normal selection process to get appointment but for the claim for compassionate appointment. As held by the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis, The object is not to give a member of such family a post much less a post for the post held by the deceased. The Supreme Court in Jagdish Prasad v. State of Bihar (1996) 1 S.C. 301 observed that the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by

sudden demise of the earning member of the family. Above-mentioned statutory provisions have been incorporated in the Kerala Education Rules to achieve objective mentioned herein before. Government have also issued various orders laying down eligibility criteria and also other procedural criteria to be followed.

3. Previously various Government Orders held the field for giving benefit to a dependant of a person who died in harness. Those Government Orders were subsequently replaced by statutory provisions. In the instant case as far as teaching staff is concerned claim could be made under Rule 51B of Chapter XIV A of K.E.R. which is extracted below:

51 B. The Manager shall give employment to a dependant of an aided school teacher dying-in-harness. Government Orders relating to employment assistance to the dependants of Government servants dying-in-harness shall mutatis mutandis, apply in the matter of such appointments.

As far as non-teaching staff is concerned the relevant provision is Rule 9A of Chapter XXIV A which is extracted below:

9A. The Manager shall give employment to a dependant of the non-teaching staff on an aided school dying-in-harness. Government Orders relating to employment assistance to the dependants of Government servants dying-in-harness shall, mutatis mutandis, apply in the matter of such appointments.

After the introduction of statutory provisions an applicant could submit an application to claim benefit of the said statutory provisions. This Court already took the view in *Narayanan v. State of Kerala* 1998 (2) K.L.T.446 that the date of death is not the criteria to claim the benefit of the said provisions. The question is whether still the person who claims the benefit would have continued to be a dependant of the deceased person. Manager is bound to consider his application for appointment, if the application shows that he is still a dependant entitled to the benefit of the statutory provisions. As soon as the vacancy arises and the applicant is still a dependant and fully eligible and qualified to be appointed, the Manager is bound to consider his statutory claim. The eligibility of a person to get appointment is to be determined as on the date of occurrence of the vacancy after the death of the employee. There must also be no other senior claimants in that category. Even though a person is dependant but not qualified or eligible for appointment when the vacancy arises the Manager is free to appoint another person as per rules. But as soon as the claimant becomes qualified and continued to be a dependent, the Manager is bound to consider his statutory claim.

4. In O.P. No. 13961/98, the Petitioner's mother was a teacher who died in harness on 29th May 1993. Petitioner has passed S.S.L.C. in 1985 and Hindi Bhooshan in February 1990. He obtained Sahithyacharya Certificate in February 1991 and later Acharya Certificate in May, 1992. The Government of Kerala vide Government Order dated 14 th May 1998 recognised Acharya title of the Kerala Hindi Prachar Sabha as an alternate training qualification for appointment to the

post of U.P.S.A./H.S.A. in Government Schools. From the said date, according to the Petitioner, she became eligible for appointment to the post of Hindi Teacher in the Schools. Petitioner submitted application for appointment under the scheme vide his application dated 15th April 1998. Petitioner applied for the post of Hindi Teacher in the school when the vacancy arises in June, 1998 and only then the Petitioner was qualified. When the Petitioner's mother died on 29th May 1993 Petitioner was a married person and she was living with her husband.

5. Petitioner's father in O.P. No. 10764/98 died in harness on 3rd October 1989. He was a Clerk in the school. Petitioner has passed S.S.L.C., Hindi Bhooshan and Hindi Sahityacharya and was qualified to be appointed as Clerk as well as L.G. Hindi Teacher. When the Petitioner's father died on 3rd October 1989 Petitioner was a minor. Therefore, the vacancy was filled up by promotion by a last grade servant. On 1st June 1998 a post of Clerk in the school arose. The Petitioner approached the Manager seeking appointment. Request was turned down by the Manager. Petitioner made various representations. Incidentally, Petitioner's mother is still an employee in the same school. Petitioners submitted that married daughters are entitled to get the benefit of the statutory provision. Counsel for Petitioners submitted the moment their mother/father died the right is accrued to them so as to get appointment in the school. They also contended that they still continue to be dependant of their mother/father and manager is bound to appoint them.

6. In order to appreciate the contentions of the Petitioners, it is necessary to consider the question of eligibility of the Petitioners. As I have already indicated the crucial time to determine the eligibility is the date of occurrence of the vacancy. If a person dies in harness a vacancy may arise immediately on the death of that person. Applicant would stake a claim to the post only if the applicant is qualified to be appointed to that post. If a teacher dies and his dependant is not qualified to claim for the post of teacher but only to a post of non-teaching staff it cannot be said that he is entitled to get appointment as soon as the employee died in harness. In other words, his/her statutory right occurs only when the vacancy arises and only when the claimant is qualified and eligible to get appointment in that vacancy.

7. In the instant case, both the Petitioners became qualified for appointment only in the year, 1998. Therefore, we have to decide as to whether they are qualified and eligible to get appointment and whether they continue to be a dependant to get appointment to that post. Before the coming into force of the statutory provisions, the Government Order which was in force is G.O. (P) 20/92/P and ARD, dated 10th April 1992 which defined the dependant as follows:

12 (a) Where the Government servant was married. Widow/Widower, unmarried son/unmarried daughter shall be eligible in that order of priority as chosen by the family. Son and daughter shall be considered for the benefit only with the consent of widow/widower.

(b) Where the Government servant was not married.-Unmarried brother or unmarried sister alone shall be eligible as chosen by father and mother.

13 (a) Sons and daughters will not include adopted sons and adopted daughters.

(b) Brothers and sisters will not include step-brothers and stepsisters, half brothers/half sisters.

(c) In the case of Government servants dying-in-harness leaving behind none in any of the categories specified in para 12 above nobody in the family of the deceased will be eligible for the benefit of the scheme.

(d) Under no circumstance will nephew/niece and married sons/daughters and married brothers/sisters will be eligible for the benefit of the scheme.(sic)

14. Only one member of a family will be given employment assistance under the scheme even if more than one member of the family (such as father, mother, unmarried brother/daughter) dies while in service.

Later Government issued yet another Order G.O. (P) 45/92/P and ARD, dated 23rd November 1992. The said order modified the earlier order and explained as to who all are the dependants, which is extracted below:

In the case of married Government servants widow/widower son or daughter; and in the case of unmarried Government servants brother or sister alone shall be eligible for the benefit of the scheme- The dependant son, daughter, brother or sister, as the case may, will be eligible for employment assistance irrespective of the fact whether he/she is married or not.

Later Government issued another Order G.O. (P) 7/95/P and ARD, dated 30th March 1995 where the dependant has been defined as follows:

13 (a) Only one dependant will be given employment assistance under the scheme in the event of death of a Government servant. Employment assistance shall be given to the widow/widower, son, daughter, brother or sister in the said order of priority. Son and daughter shall include adopted son and adopted daughter respectively and will rank after son/daughter. No other dependant shall be eligible or given appointment under the scheme.

Counsel for the Petitioners contended that since their claim arose as soon as their mother or father died they are entitled to get the benefit of the statutory provision whether they are married or not. Counsel contended that 1995 Government Order gives the benefit to the son and daughter whether they are married or not. According to the Counsel, status of marriage would not or cannot defeat their right if they are still dependant of the deceased person.

8. I am afraid the above contention cannot be accepted. Government Order dated 23rd November 1992 once included the married and unmarried son, daughter, etc., for granting the benefit. The said clause is extracted below for reference:

Dependant son, daughter, brother or sister, as the case may, will be eligible for employment assistance irrespective of the fact whether he/she is married or not.

9. However, 1,995 Government Order specifically excluded the said sentence and therefore the intention to exclude the "married daughters or sons" from G.O. dated 30th March 1995 could be inferred. Married son and daughter, it is true continue to be son and daughter but we have to interpret the G.O. dated 30th March 1995 reasonably and taking note of the object of the provision.

10. Over and above, 1995 Government Order after describing the various categories of persons made it clear that no other dependant shall be eligible for appointment under the scheme. Considering the fact that the purpose of the scheme is to give compassionate employment to the dependant and when we compare the 1992 Government Order with 1995 Government Order I am of the view Government deliberately excluded the "married sons and daughters" from the purview of dependants. Further, I am of the view marriage alters the status of the person.

11. Therefore, I am of the view Petitioners are not entitled to get the benefit of either Rule 51B of Chapter XIV-A or Rule 9A of Chapter XXIV-A of K.E.R. In the instant case Petitioners mother in O.P. No. 10764/98 is still an employee in the said school and therefore it cannot be said that still Petitioner can claim compassionate employment. Under the above mentioned circumstances I am of the view as per the Government Order of 1955 married daughter/son cannot claim the benefit of Rule 51B and Rule 9A of K.E.R.

Original Petitions therefore lack merits and are dismissed.