

(2000) 02 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4488, 4809, 6637 of 1997 and 2020, 5800, 4432, 6 of 1998 and 30, 1317 of 1999

Roop Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 309
Limitation Act, 1963 — Section 5

Citation : (2000) 3 RLW 1383 : (2000) 3 WLC 481 : (2000) 2 WLN 165

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—It is often said that death now-a-days, is too cheap. A pathetic, morbid question is asked every morning, every day, so who died today? If a Government servant dies, one of the dependents of his family is provided with the compassionate appointment to help the family in getting over the sudden tragedy. In order to regulate the recruitment of the dependents of deceased Government servants on compassionate grounds the Governor of Rajasthan enacted in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (for short the Rules of 1996). These Rules came into force from the date of their publication in the Rajasthan Rajpatra i.e. January 25, 1997. With effect from April 21, 1999, Rules 5 and 10(3), (5) and (6) have been amended.

2. All the petitioners before me are the dependents of deceased Government servants but they have been denied appointment on compassionate grounds by the respondents. Feeling aggrieved by the action of the respondents the petitioners have approached this court challenging the validity of Rule 5 and Rule 10(3), (6) of the Rules of 1996.

3. Rule 2(c) of the Rules of 1996 defines "dependant" thus-

Dependant" means a spouse, son, unmarried or widowed daughter, adopted son/ adopted unmarried daughter, legally adopted by the deceased Government servant during his/her life time and who were wholly dependant on the deceased Government servant at the time of his/her death.

4. Rule 5 of the Rules of 1996 has been substituted in 1999 thus-

5. Appointment subject to certain conditions-When a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these rules shall not be admissible in cases where spouse or atleast one of the sons, unmarried daughters adopted son/adopted unmarried daughter, of the deceased government servant is already employed on regular basis under the Central/any State Government or statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government at the time of death of the Government servant:

Provided that this condition shall not apply where the widow seeks employment for herself.

5. Before I proceed to deal with the submissions of the learned Counsel I deem it necessary to incorporate the facts of each case in brief.

6. Petitioner Roop Singh's father was Beldar. He died on December 8, 1996. Roop Singh submitted application seeking appointment on December 28, 1996 which was rejected on June 5, 1997 on the ground that his one brother is working in Border Security Force therefore he was not entitled to appointment in view of Rule 5 of the Rules of 1996. The petitioner's contention is that he is not governed by Rules of 1996. Alternatively, the petitioner has challenged the validity of Rule 5 and Rule 10(6) of the Rules of 1996.

7. Petitioner Manoj Singh Chauhan's father was Constable. He died on November 2, 1996. Petitioner Manoj Singh submitted application on November 26, 1996 which was rejected on June 27, 1997 on the ground that his brother is working as Agriculture Supervisor. The petitioner's contention is that he is not governed by Rules of 1996. Alternatively, the petitioner has challenged the validity of Rule 5 and Rule 10(6) of the Rules of 1996.

8. Petitioner Dilip Singh's father was UDC. He died on October 7, 1995. Petitioner submitted application on October 20, 1995 which was rejected on the ground that mother of the petitioner is in employment. The petitioner contends that he is not governed by Rules of 1996. Alternatively, the petitioner has challenged the validity of Rule 5 and Rule 10(6) of the Rules of 1996.

9. Petitioner Bhanu Kumar Sharma's father was a teacher. He died on October 11, 1996. Application submitted on August 16, 1997 was rejected on January 3, 1998 on the ground that application was submitted after expiry of 45 days and in view of Rule 10(3) of the Rules of 1996 it was barred by limitation. Validity of Rule 10(3) of the Rules of 1996 has been challenged by the petitioner.

10. Petitioner Vikas Mathur's mother was Teacher Grade III. She died on July 23, 1995. Father of petitioner retired on Feb. 28, 1989. At the time of death of his mother the petitioner was hardly 16 years of age as his date of birth is Sept. 22, 1979. Application of the petitioner was forwarded by the Principal of the School on August 16, 1997. It was dismissed being barred by limitation in view of Rule 10(3). The petitioner contends that he is not governed by Rules of 1996. Alternatively validity of Rule 10(3) is challenged.

11. Petitioner Umed Singh Yadav's father was a Teacher. He died on September 29, 1996. Petitioner submitted application on Sept. 8, 1997. It was rejected on October 9, 1996 being barred by limitation. Petitioner contends that he is not governed by Rules of 1996. Alternatively validity of Rule 10(3) is challenged.

12. Petitioner Jojie P. Verghese's mother was a Staff Nurse. She died on Feb. 6, 1983, Petitioner's age was at that time six years. Petitioner submitted application on October 3, 1994. It was rejected on August 20, 1996 on the ground that as her father is alive, it cannot be believed that she was dependant on her mother.

13. Petitioner Rajendra's father was Patwari. He died on May 4, 1995. At that time the age of the petitioner was 15 years. Petitioner's application was rejected on October 18, 1997 being barred by limitation. Petitioner contends that he is not governed by Rules of 1996. Alternatively, the petitioner has challenged the validity of Rule 5 and Rule 10(3) of the Rules of 1996.

14. Petitioner Ajay Upadhyaya's mother was a senior teacher. She died on July 3, 1978. At that time the petitioner was minor. He submitted application in 1993 but it has not been decided as yet. Contention of the petitioner is that his case is not governed by the Rules of 1996.

15. Petitioner Shiv Shankar's father was a police officer. He died on October 6, 1996. Petitioner's mother submitted application for seeking appointment for the petitioner before promulgation of Rules of 1996 but it has not been disposed of as yet. Petitioner has challenged the validity of Rule 5 of the Rules of 1996 though contention of the petitioner is that he is governed by the old Rules of 1975.

16. It is now to be seen as to whether the cases of the petitioners are governed by the Rules of 1996 or not? As per Rule 1(ii), the Rules of 1996 came into force from the date of their publication in the Rajasthan Raj Patra. Though Department of Personnel (A-II) issued notification on December 31, 1996 but it was published in Rajasthan Gazette Extra Ordinary, Part 4 (Ga) on January 25, 1997". Rule 15 of the Rules of 1996 provides that the existing Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules 1975 and any order issued thereunder shall stand repealed but a proviso has been added that any action taken under the rules and orders so repealed/superseded shall be deemed to have been taken under the provisions of Rules of 1996. A bare perusal of Rule 15 demonstrates that till Rules of 1996 came into force,

Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules 1975 (for short the Rules of 1975) and orders issued thereunder were applicable to the dependents of the deceased Government servants. Therefore it can safely be held that dependents of deceased Government servants who died before January 25, 1997 shall be governed by the Rules of 1975 and the orders issued thereunder. Rules of 1996 shall not be made applicable to such cases.

17. Now, I proceed to test the validity of Rules 5 and 10 of the Rules of 1996. The object of granting compassionate appointment to one of the dependents of the deceased Government servant is based on humanitarian consideration. While granting such employment it must be kept in mind that this is a charity at the cost of others. There are million of unemployed persons in this country whose families are struggling on account of sudden demise of their bread winners who were not Government servants. Compassionate appointment is given to the dependant of a deceased Government servant who was the sole bread winner of the family to help it in getting over the sudden financial crisis. Before offering job to the eligible member of the family the Government has to be satisfied that the family of the deceased will not be able to meet the crisis without the job. Their Lordships of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, indicated that mere death of an employee in harness does not entitle his family to source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family.

18. It is contended on behalf of the petitioners that the provision of Rule 5 washes away the definition as provided under Rule 2(c) and thus Rule 2(c) read with Rule 5 becomes otiose and therefore Rule 5 to the extent of exclusion of dependant in case where any sons, daughters, or spouse of deceased Government servant is in employment, is liable to be declared arbitrary and the same may be struck down being violative of Articles 14 and 21 of the Constitution of India. The argument is magnified further by submitting that in a given case son or daughter who is in service may not be financially supporting the family of the deceased and in such a case the family is not in a position to get over the sudden crisis.

19. I do not find merit in the submission. One of the persons shown in Rule 2(c) who were wholly dependant on the deceased at the time of his/her death is eligible for the compassionate appointment provided that none of the dependents is already employed on regular basis in State or Central Service, Board, Organisation Corporation owned and controlled by the Central/State, at the time of the death of the deceased. But this condition shall not apply where the widow of the deceased seeks employment for herself. On account of the death of a person whole family suffers but widow of the deceased suffers the most.

Therefore the framers of the Rules of 1996 added proviso to Rule 5 to give benefit of compassionate appointment to the widow. Looking to the pious duty of the earning members towards the family of the deceased, the framers imposed a condition that the dependant of the deceased shall not be entitled to employment if any other dependant of the deceased is already in employment. To my mind this condition is rightly imposed. It is the duty of the earning member of the family of the deceased to look after the family at the time of financial crisis but if on account of selfishness or some other reason, earning member ignores the other surviving members of the family of the deceased the State Government is not duty bound to create the mode of recruitment for the other dependant. And what is he guarantee that after seeking compassionate appointment such a dependant shall remain with other members of the family and shall not become selfish? Under these circumstances provisions contained in Rule 5 of the Rules of 1996 cannot be said to arbitrary as there are enough safeguards to take care of the welfare of the family of deceased Government servant.

20. I also do not see any unconstitutionality in Rule 10(3) and (6) of the Rules of 1996. Prescribing the period of limitation is necessary in view of the fact that the object of granting compassionate appointment is to relieve the family of the deceased of the financial destitution and to help it in getting over the emergency. But at the same time the Government or authority concerned is expected to take immediate decision on the applications. Time limit of 45 days, from the date of receipt of the application may be fixed so as to avoid the allegation of proceeding at a pace unduly slow like a snail walk. If application is received after prescribed period of 45 days and reasonable explanation is offered for such delay then the Government or authority concerned should take recourse to the provisions of Section 5 of the Limitation Act in condoning the delay.

21. In view of the above discussion, the writ petitions stand disposed of in the following terms-

(i) The dependents of the deceased Government servants who died before promulgation of Rules of 1996 i.e. before January 25, 1997 shall be governed by the Rules of 1975 and the order issued thereunder. Rules of 1996 shall not be made applicable to such cases. As all the Government servants in the instant writ petitions had died before January 25, 1997 the respondents are directed to decide their cases afresh in view of Rules of 1975 within a period of 45 days from the date of receipt of this order.

(ii) Rules 5 and 10(3) and (6) of the Rules of 1996 are adjudged valid. But the State Government or authority concerned is expected to take immediate decision on the applications. Time limit of 45 days from the date of receipt of the application may be fixed so as to avoid the allegation of proceeding at a pace unduly slow like as snail walk. If application is received after prescribed period of 45 days and reasonable explanation is afforded for such delay then the Government or authority concerned should take recourse to the provisions of Section 5 of the Limitation Act in condoning the delay.

(iii) In the facts and circumstances of the cases the parties shall bear their own costs.