
(2005) 11 AHC CK 0121

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6358 of 1999

Sanjay Kumar Sharma

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Citation : (2005) 11 AHC CK 0121

Hon'ble Judges : Sanjay Misra, J

Final Decision : Disposed Of

Judgement

Sanjay Mishra, J.—The petitioner has prayed for issue of a writ in the nature of certiorari for quashing the order dated 29121998 (Annexure6 to the writ petition) whereby the claim of the petitioner for being given an appointment on the post of pharmacist has been refused by the respondent No. 2. He has further prayed that suitable directions be issued to the respondent No. 2 to appoint the petitioner on the post of pharmacist.

2. It is the case of the petitioner that the land of his maternal grandfather (Ghanshyam Sharma) was acquired by the State Government under the provisions of the Land Acquisition Act for the respondent No. 2, (National Thermal Power Corporation Ltd.) in village Jarcha District Gautam Buddha Nagar. An area of 3 Bigha, 11 Biswa and 3 Biswansi land was acquired from the holdings of the petitioner's maternal grandfather. Placing reliance upon a Government order dated 2921990 (Annexure4 to the writ petition), the petitioner contends that he was entitled to be given appointment under the respondent No. 2 in accordance with his qualification since Ghanshyam Sharma being the land oustee had only one daughter who is the mother of the petitioner and there are no other heirs. He had submitted the prescribed form before the respondent No. 2 nominating the petitioner as his heir for being given employment under the respondent No. 2 by virtue of the said Government order and the scheme of respondent No. 2.

3. In a supplementary affidavit filed by the petitioner, he has enclosed the

certificates regarding his educational qualification and has further prayed for a writ in the nature of mandamus commanding respondent No. 2 to appoint the petitioner on any ClassIII post.

4. A counteraffidavit has been filed on behalf of the respondent No. 2 wherein the claim of the petitioner has been contested on the ground that under the scheme provided by the corporation regarding facilities to be given to land oustees, the petitioner was not found to be eligible for being given employment in view of the fact that he does not come within the definition of family as defined in clause 4.1 of the scheme. It has further been contended that extent of land acquired from Ghanshyam Sharma is only 1/3rd of his holding and that there are very limited number of jobs available under the respondent No. 2 and therefore, in accordance with scheme (Annexure CA1) vacancies are advertised against which the petitioner can apply to be considered alongwith other eligible candidates. Under the scheme, a list is prepared of such eligible persons by the respondent No. 2 and it is sent to the employment exchange for being recommended. Since the petitioner's name did not find place in any such list therefore, he was not entitled to appointment in accordance with priority fixed under the clause 7.1 of the said scheme. It is contended that the entitlement for being given employment is based on the amount of compensation paid, economic status of the family, proportion of the land acquired etc. and highest priority is given to those whose entire land has been acquired. In the rejoinder affidavit, the petitioner has reiterated that he was the nominee/heir of his maternal grandfather and therefore, in accordance with Government order, he was entitled to be appointed according to his educational qualification and by denying the same respondents have committed an illegality. Heard learned Counsel for the petitioner and standing Counsel appearing on behalf of the respondents.

5. Learned Counsel for the petitioner has contended that in view of Section 171 of U.P. Zamindari Abolition and Land Reforms Act, the petitioner is an heir being daughter's son and therefore, he is entitled to inherit the interest of his maternal grandfather under the provision of subclause (h) of clause (2) of Section 171 in the absence of any other heir as defined in clause (a) to (g) of the aforesaid section. Learned Counsel for the petitioner has placed reliance upon a decision of Patna High Court given in the case of Union of India & Ors. v. Mst. Shitali Devi & Ors., 2003 (1) SLR 790, and contended that in the matter of compassionate appointment a rigid interpretation of the Rules would defeat the very purpose of the Dying in Harness Rules and therefore, the Court had given a direction for considering the compassionate appointment to an adopted son. Learned Counsel for the petitioner submits that in the present case also rigid interpretation of the definition of family as given in clause 4.1 of the scheme would amount to defeating the very purpose of the scheme, in case the petitioner is refused appointment under the scheme of facilities to be given the land oustees as framed by the respondent No. 2. It is further contended that the petitioner is fully qualified and is therefore, entitled to be given employment on the post of pharmacist which is lying vacant.

6. Learned Counsel for the respondents has contended that only a part of the land of Ghanshyam Sharma was acquired by the State of U.P. and therefore, under the scheme framed by the respondent No. 2 Ghanshyam Sharma would be in the last category for the purpose of availing facilities under the scheme. It is contended that only 1/3rd share of the land of Ghanshyam Sharma was acquired and therefore, he could not come within the category of a land oustee entitled to avail benefit of the scheme particularly in view of the fact that he has been paid due compensation and has not been rendered landless. He still owns 2/3rd portion of his holding and the nomination of the petitioner by Ghanshyam Sharma was not liable to be considered. It has been contended that there is no landless certificate filed by the petitioner or by Ghanshyam Sharma alongwith his declaration form and a perusal of the Jot Akar Patra and affidavit of Ghanshyam Sharma clearly indicates that he was not entitled to claim appointment of his dependant under the respondent No. 2. Learned Counsel for the respondents has placed reliance upon a decision of Full Bench of this Court in the case of Ravindra Kumar v. District Magistrate Agra & Ors., 2005(1) LBESR 8 (SC) : 2004 (4) E.S.C. 2354 (All), and has contended that Government orders and circulars providing for employment to one Member of the family whose land has been acquired "over and above compensation awarded under law" are invalid and the acquiring body is not bound by such Government orders or circulars, consequently no writ can be issued directing acquiring body to consider a claim in accordance with Government orders/circulars. Learned Counsel therefore, submits that in the present case, compensation has been paid to the landholder in accordance with law and only 1/3rd share of his land has been acquired leaving rest of the land with him and therefore, he would not be entitled to claim appointment of a member of his family under the respondent No. 2. It is contended that there is no provision under the Act whereby such a benefit can be extended particularly in view of the compensation paid under the provision of the Land Acquisition Act.

7. Having considered the submission of the learned Counsel for the parties the record of this case indicates that admittedly only 1/3rd portion of the land of Ghanshyam Sharma was acquired for which he was paid compensation in accordance with law. He is now in possession of 2/3rd portion of his holding and as such it cannot be held that Ghanshyam Sharma has been rendered landless by virtue of the acquisition made for the respondent No. 2. It is also seen that the petitioner is maternal grand son of the landholder and is not included within the definition of family as given in clause 4.1 of the scheme framed by the respondent No. 2. The contention of the learned Counsel for the petitioner that the petitioner is entitled to inherit right, title and interest of his maternal grandfather by virtue of Section 171 (2) (h) of U.P.Z.A. and L.R. Act would not be applicable in the present case, inasmuch as the facility of giving appointment to one member of the family of a landholder whose land has been acquired is not an interest flowing to the landholder by virtue of any statute. Such a claim is based upon either the Government orders/circulars issued from time to time or

schemes framed by the body for whom State had acquired the land. Therefore, succession as contemplated under Section 171 of the U.P.Z.A. and L.R. Act relates to inheritance of the right, title and interest of a Bhumidhar or Asami upon his death. The claim in the present case is at most a facility provided to such eligible members of the family of a landholder whose land has been acquired to meet out the hardship which is likely to be faced by the dependant family due to having become landless. In the present case, there is no such certificate showing that Ghanshyam Sharma had become landless and further the petitioner's claim for employment on the basis of the order of succession under Section 171 of the U.P.Z.A. and L.R. Act cannot be accepted.

8. In the counteraffidavit, respondents have contended that posts are advertised and eligible and qualified persons are entitled to apply for the same and in case the petitioner applies for appointment on such a post, the respondents would consider the same. Upon a perusal of the impugned order also it is found that the respondent has advised the petitioner to apply for appointment when the vacancies are notified/advertised and his case would be considered in accordance with law.

9. For the reasons aforesaid, no relief can be granted to the petitioner as prayed for. However, in view of the own stand as taken by the respondents in the impugned order, the petitioner would be at liberty to apply for being considered for appointment if he is found eligible and qualified for the same. This writ petition is finally disposed of as above. No order is passed as to costs.