

(1997) 08 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40521 of 1994

Santwana Kumari

APPELLANT

Vs

District Inspector of Schools, Ghazipur & Anr.

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 08 AHC CK 0080

Hon'ble Judges : O.P.Garg, J

Final Decision : Dismissed

Judgement

O.P. Garg, J.

1. In this petition under Article 226 of the Constitution of India, which has come in the wake of following facts, it is prayed that by means of a writ of certiorari, the order dated 1391994, passed by District Inspector of Schools (for short "DIGS") Ghazipur, respondent No. 1, be quashed.

2. One Smt. Girja Devi, who was employed as an Assistant Teacher in Kanya Junior High School, in village Mainpuri, Pargana Karanda, District Ghazipur died in harness on 1371993 leaving behind her two daughters, namely, Smt. Ranjana Pandey and the petitioner Smt. Santwana Kumari. Smt, Ranjana Pandey is already employed as a teacher in Agrasen Inter College, Varanasi. Smt. Santwana Kumari, the petitioner, who has passed High School in first division in 1985 and Intermediate examination in 1987, applied for appointment as the dependent of the deceased employee on compassionate grounds. The petitioner, who is a married woman, claimed that since she has been divorced by her husband, she was dependent on her mother and being a divorced daughter, is entitled to be considered for appointment as the dependent of her deceased mother. The request of the petitioner for appointment was not favourably considered. Consequently, she filed a writ petition, being

Civil Misc. Writ No. 21558 of 1994, in which a direction was issued that the

competent authority shall consider and take decision on the representation of the petitioner. The Basic Shiksha Adhikari wrote to Basic Shiksha Parishad recommending the case of the petitioner for appointment in place of her mother on compassionate ground but the request was turned down primarily on the ground that the petitioner, who is "divorced woman" does not fall within the category of "dependent", as contemplated by the departmental orders. By the impugned order dated 13/9/1994, the petitioner was informed that she cannot be appointed as a teacher as she does not fall in the category of dependents of her deceased mother, undisputedly, unemployed son, unmarried daughter, wife or husband, as the case may be, have been described as dependents of the deceased employee. On a subsequent clarification, the "widowed daughter" has also been included in the category of dependents. The case of the petitioner is that since unmarried daughters and widowed daughter have been treated as dependents, there is no justification for not including a divorced daughter within the definition of the expression "dependent".

3. Counter and rejoinder affidavits have been filed. Sri Sidhartha Varma, learned Counsel for the petitioner and Sri K.S. Shukla learned Standing Counsel appearing on behalf of the respondents have been heard. They have advanced their submissions touching the merits of the case also. Therefore, with the consent of learned Counsel for the parties, this writ petition is being disposed of finally on merits at the admission stage.

4. According to the learned Counsel for the petitioner there is no rationale to distinguish and discriminate the case of a "divorced daughter" from the case of a "widowed daughter or an "unmarried daughter", as a divorced daughter is relegated to the same, status as that of an unmarried and widowed daughter. It was also pointed out that the case of the divorced daughter is no much stronger footing than the widowed daughter or an unmarried daughter for one simple reason that the divorced daughter cease to have any connection with the family of her husband and, of necessity, reverts back to her parents' family where she lives like an unmarried daughter and that, more often than not, a divorced daughter is to be remarried by her parents. The distinction, it was urged, in between a divorced daughter, on the one hand, and the unmarried daughter, on the other, is artificial, unreasonable and arbitrary and since it has no nexus to the purpose sought to be achieved, it would be just and proper that a divorced daughter is also treated as one of the dependents of the deceased employee dying in harness.

5. The only submission made on behalf of the respondents is that since under the departmental orders, a divorced daughter does not find a place in the list of dependents of the deceased employee, the case of the petitioner for appointment merely by reason of the death of her mother cannot be taken into consideration.

6. To begin with, it may be mentioned that as a rule, appointment in public service is made strictly on the basis of open invitation of applications, on merits. No other mode of appointment nor any other consideration is permissible. The

public authorities are not at liberty to follow any other procedure or to relax the qualifications laid down by rules for the post. To this general rule, however, there are certain exceptions which have been carved out in the interest of justice and to meet certain contingencies. One such exigency is in favour of the dependents of an employee dying in harness and leaving his family in a state of financial destitution. Where a bread winner dies leaving his family in penury and without any means of livelihood, appointment of a dependent is permissible purely on humanitarian consideration so that the family would be able to make both ends meet. Under the statutory rules or the Government orders, a provision has been made to provide gainful employment to one of the dependents of the deceased who may be eligible for employment. The employment has been restricted only to the post falling in the categories of Class III and IV employees. There has been a good deal of obfuscation on the issue. The Hon'ble Supreme Court has dealt with the matter and provided guidelines in the case of Umesh Kumar Nagpal v. State of Haryana and others, SLP (C) No. 10504 of 1993, decided on 4 51994. It was observed that the sole 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 post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such sources of livelihood. The Supreme Court further observed that the exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

7. In an earlier case AIR 1989 SC 1976, Sushma Gosain v. Union of India, it was held that the purpose of providing appointment on compassionate ground is to mitigate hardship due to death of bread winner in the family. No dependent of the employee dying in harness can claim appointment as a matter of right. A death cannot be taken as a bounty to necessarily provide employment to a member of the family of the deceased. The appointment of one of the dependents of the deceased employee is nothing but a relief against destitution. If the dependents and other family members are in affluent conditions and have other independent resources to maintain themselves, then in that even, the appointment can be denied as they do not require any compassion.

8. Now, in the backdrop of the above legal position, let us examine the case of the present petitioner, Smt. Santwana Kumari. Admittedly, she is a married woman. According to her, she has reverted to her mother's family on account of her having been divorced by her husband. As a divorced wife, she has the right to claim maintenance from her husband both under the Hindu law as well as under Section 125 of the Code of Criminal Procedure. Various facts, which are germane to the controversy in hand, such as, whether the petitioner has been actually divorced, she was living with her mother as dependent, does not have sufficient means to maintain herself and allied facts, cannot be sifted in a petition under Article 226 of the Constitution of India which deals with an extraordinary

remedy. The matter has to be left for decision by the competent authority. This aspect of the matter was considered by Hon"ble Supreme Court in AIR 1994 SC 2148, Life Insurance Corporation of India v. Mr. Asha Ram Chandra Ambekar and another, and by a Division Bench of this Court in 1995 ALJ 1276, Kendriya Vidhyalaya Sangathan Jawahar Lal Nehru University Campus and others v. Smt. Rita Sharma, wherein it was held that the court should not direct an appointment to be made on compassionate ground. Jurisdiction under mandamus cannot be exercised in that fashion. The Court may direct the appropriate authority to consider the case for appointment on compassionate ground. The power and function which are vested in an authority cannot be usurped by this court under Article 226 of the Constitution of India.

9. The other limb of the controversy pertains to the eligibility of the petitioner, viz., whether she falls within the category of dependents of the deceased employee. It is an indubitable fact that the unemployed son, unmarried daughter, husband and wife, as the case may be, come within the category of the dependents of the deceased employee as would be apparent from the Government order dated 2331990, which is contained in Annexure 2 to the writ petition. By a subsequent Government order dated 621992 (Annexure 3 to the writ petition), widowed daughter was also included in the category of dependents of the deceased employee dying in harness. A divorced daughter does not find a place in the list of the dependents. The petitioner is the divorced daughter and obviously she is not covered by the definition of expression dependents as she is neither an unmarried daughter nor a widowed daughter. The learned Counsel for the petitioner pointed out that the difficulty is not unsurmountable as a divorced daughter may well be treated as equivalent to unmarried daughter. According to the learned Counsel, there is no justifiable reason to distinguish or differentiate a divorced daughter from that of an unmarried or a widowed daughter. It was also asserted that if, at all, an appointment is to be made on compassionate ground, the divorced daughter requires more compassion and sympathy as her ties with her husband and his family are totally snapped while a widowed daughter continues to have connection and support with her husband's family. It was also suggested that a divorced daughter is relegated to the position of an unmarried daughter and more often than not her remarriage is to be arranged by her parents and so long as remarriage takes place, she continues to be the dependent of her parents. Therefore, the distinction, it is urged, between a divorced daughter on the one hand and the unmarried and widowed daughter on the other, is nothing but artificial and cannot be supported on any ground, whatsoever, if considered with reference to the purpose sought to be achieved.

10. The only simple answer to the above submissions on behalf of the petitioner offered by the learned Standing Counsel is that the appropriate authorities, in their wisdom, while exercising executive powers have thought it proper to exclude the divorced daughter from the purview of the dependents of the deceased employee and since a conscious policy decision has been taken, this court cannot treat a divorced daughter on the same footing as the unmarried and

widowed daughter.

11. It was further urged that if a divorced daughter is treated as having been included in the category of unmarried and widowed daughter, in that event, the possibility of manipulations, machinations and malpractices cannot be ruled out. The submission of the learned Standing Counsel cannot be lightly brushed aside. The fact that a married daughter has become widow is beyond the pale of challenge. She became widow as a result of act of God. Similarly the fact that a daughter is unmarried is fairly certain and is known to all and sundry. There can hardly be any chance of manipulation about the status of unmarried and widowed daughter. In contradistinction to this, the position of a divorced daughter is altogether different. By sheer manipulation a married daughter, who is living under the same roof with her husband, may profess to be a divorced daughter, merely to get the advantage of a particular concession or compassion. It is for this reason that a conscious decision has been taken by the executive authorities not to equate a divorced daughter with an unmarried and widowed daughter. In any case, the function of the court is to interpret the law and not to make the law. In the very nature of things, a would not be within the province or even competence of the court to impinge upon the conscious executive decision relating to a policy matter. The court is not required to venture into such "exclusive thickets" to discover ways out, when the matters are appropriately left to the wisdom of the executive authorities. It is equally important that the court should also, as far as possible, avoid any decision or interpretation of statutory provisions, rule, byelaw or a Government order with regard to conscious policy decision, which would bring about the result of rendering the policy unworkable in practice. As said above the departmental authorities have taken a decision to confer benefit of employment to the dependents of the employee dying in harness limiting to certain persons, such as, unemployed husband and wife, as the case may be, son, unmarried and widowed daughter. For obvious reasons, a divorced daughter was not taken to be the dependent of the deceased employee. To read a divorced daughter as included in the category of unmarried and widowed daughter would amount to doing violence with the departmental policy. Such a distortion, I fear, is not possible through the agency of court.

12. The net result of the above discussion is that the petitioner is not eligible to seek the appointment on compassionate ground consequent upon the death of her mother, who died in harness for one simple reason that she does not fall in the category of dependents who are sought to be conferred the benefit of appointment on compassionate ground. Even otherwise, it is for the departmental authorities to consider whether a person is required to be appointed as a dependent of the deceased employee with a view to prevent destitution in the family. In fact, it has been done in the instant case and it was found that the petitioner is not entitled to the appointment on compassionate ground.

13. The petition, therefore, fails and is accordingly dismissed.