

(2017) 01 AHC CK 0316
In the Allahabad High Court
Case No : 60 of 2012

Shalini Singh

APPELLANT

Vs

State Of U.P. Through Secy. Deptt. Of Basic Edu. Lko. & Ors.

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Citation : (2017) 01 AHC CK 0316

Hon'ble Judges : Dr. Devendra Kumar Arora

Bench : Single Bench

Advocate : Mayankar Singh, Sushil Kumar Singh, J.B.S.Rathore, Jogendra Nath Verma

Judgement

1. Heard Mr. Sushil Kumar Singh, learned Counsel for the petitioner, learned Standing Counsel and Mr. J.B.S.Rathore, learned Counsel for the opposite party No.3.
2. By means of the present writ petition, the petitioner is seeking a writ of Mandamus directing the Basic Shiksha Adhikari, Sultanpur to provide compassionate appointment to her on the suitable post according to her qualification.
3. Submission of the learned Counsel for the petitioner is that the petitioner's husband Late Manoj Kumar Singh, while working as Assistant Teacher in the Primary School Umari, Block Kurebhar, District Sultanpur, died on 7.7.2011, leaving behind wife (petitioner herein) and a minor son.
4. The petitioner, who possessed degree in Arts, moved an application on 1.11.2011 for giving compassionate appointment to her under Dying-in-Harness Rules. But as no action was taken by the opposite party No.3, the petitioner has filed the present writ petition, seeking a direction against the opposite party No.3 to examine her claim for giving appointment on the post of Assistant Teacher in accordance with the provision of Dying-in-Harness Rules.

5. It has been brought to the notice of the Court through a Supplementary Affidavit filed by the petitioner that during the pendency of the present writ petition, in the compelling circumstances i.e. her child was to be admitted in the School and the serious illness of the family person-Rajesh Singh, the petitioner was forced to make another application in the month of February, 2014 for appointment on Class-IV post on compassionate ground, which was considered by the opposite party No.3 and an appointment order has been issued to the petitioner.

6. In pursuance of the appointment order, the petitioner joined as Class-IV employee.

7. Thereafter, the petitioner qualified T.E.T. Examination. In these backgrounds, the petitioner claims to be appointed on the post of Assistant Teacher.

8. Mr. J.B.S. Rathore, learned Counsel for the opposite party No.3 has submitted that the petitioner has been given compassionate appointment and since then she is discharging her duties on Class-IV post. Clarifying the position, he further contended that the petitioner accepted the appointment unconditionally and as such now, it is not open for her to claim appointment on a higher post as per her own choice.

9. To strengthen his arguments, learned Counsel for the opposite party No.3 has relied upon Union of India and others Vs. Central Administrative Tribunal and another : 2011 (4) ADJ 158 (DB) and Vivek Kumar Sharma and others vs. State of UP and another; [2015(2)ADJ 3 (DB)] wherein it has been held that once the right of compassionate appointment was consummated, any further consideration for higher post on the ground of compassion would not arise.

10. I have given my anxious consideration to the above rival arguments advanced by the counsel for both the parties and have also gingerly gone through the documents placed on record of the present case. First of all, I would like to point out that the paramount object of the Dying-in-Harness scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical ground thereby leaving his family in penury and without any means of livelihood, in order to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The efficiency of the administration cannot be completely sacrificed while making appointment. In cases of compassionate appointments, the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death.

11. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule

which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favor of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration, taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment.

12. Thus, it can be easily summed up that 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 held by the deceased. Mere death of an employee in harness does not entitle his/her family to such 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 provision of employment, the family would not be able to meet the crisis then a job is to be offered to the eligible member of the family.

13. In the case of Umesh Kumar Nagpal Vs. State of Haryana and Others (1994) 4 SCC 138, the Apex Court has held as under:- "4.....The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant.

5..... If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

14. Similarly in the case of Pepsu Road Transport Corporation Vs. Satinder Kumar & Another 1995 Supp (4) SCC 597 , it was held by the Hon"ble Supreme Court as under:- "we find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be metric, however, generally graduates and even post-graduate degreeholders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the courts to compel appointment to particular posts. The fact of the matter is that though this kind of appointment is sui generis and it is reasonable to expect that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification."

15. Admittedly, the petitioner's husband died in harness while working as Assistant Teacher under Basic Education Officer, Sultanpur 7.7.2011. Thereafter, the petitioner has filed an application for her appointment on compassionate ground. On consideration of her plea, she was appointed to Class-IV post. She accepted the appointment as Peon. The petitioner in the present case has based her claim for compassionate appointment to a particular post of Assistant Teacher after the joining on Class IV post unconditionally only on the ground that her qualification is Graduate and also obtained TET qualification, therefore, she is eligible for the said post.

16. In the case of State of Rajasthan Versus Umrao Singh [(1994) 6 Supreme Court Cases 560], the Apex Court has categorically held that once the right has been consummated, any further or second consideration for a higher post on the ground of compassion would not arise.

17. In the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandran Ambekar & Ors. (JT 1994 (2) SC 183) the Apex Court propounded that even the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

18. In view of the aforesaid legal position, this Court could not and should not give any direction to the authorities for appointment of a such person to a specified post of Assistant Teacher. The Hon'ble Supreme Court has laid down in the case of Umesh Kumar Nagpal (Supra) that mere possessing of minimum qualification to hold a particular post does not bestow any legal right on the dependent of a deceased employee to seek employment on compassionate grounds to a particular post.

19. The petitioner was informed by the opposite party No.3 that in view of the Government Order dated 11.7.2011, no appointment can be given to untrained teacher on the post of Assistant Teacher. In view of the aforesaid facts compassionate appointment to a particular post cannot be claimed by any one as a matter of right. Non-appointment of the petitioner to a post of her choice does not violate any of her fundamental right guaranteed to every citizen under the Constitution.

20. In view of the above, I do not find any merit in this writ petition, which fails and is hereby dismissed.

21. For the facts and circumstances of the case, there is no order as to costs.