

(1989) 12 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5450 of 1989

Shiv Raj Singh Rathore

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1990) 1 WLN 671

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.C. Sharma, J.—Heard him. This is a writ petition Under Article 226 of the Constitution of India where in the petitioner has prayed for the quashing of an order passed by the Deputy Inspector General of Police (Headquarters) Rajasthan, Jaipur on March 9, 1988 and for a direction to the respondents to appoint the petitioner on the post of Sub-Inspector of Police (CP) from June 22, 1987 with all benefits.

2. The facts leading to the filing of this writ petition lie in a narrow compass. The petitioner's father late Shri Anand Singh was posted as Suq-Inspector of Police (CD) in Police Department at District Bikaner. He expired while in service after 22 years of his renowned services to State on September 16, 1979. At the time of the death of the petitioner's father Anand Singh, the petitioner was his major son. He was matriculate and was appointed as Lower Division Clerk in the office of Superintendent of Police, Bikaner in pursuance of the provisions contained in the Rajasthan Recruitment of Dependents of Government Servants Dying While in Service Rules, 1975 (here in after referred to as "the rules") with effect from September 25, 1979. While employed as LDC in the office of the Superintendent of Police Bikaner, the petitioner obtained permission for further studies and passed his graduate examination in the academic session 1987-88. Thereafter, he passed MA. Previous Examination in History in the year 1988-89. Annexure 2

is the marks sheet showing that he passed IIIrd Year Arts Examination 1987 of the University of Rajasthan. On the basis that he has farther acquired academic qualification, he elaims that he is entitled to be appointed to the post of Sub-Inspector of Police under the provisions contained in the said rules.

3. In order that on the death of a Government servant, while in service, his family may not face miserable conditions on account of the death of the earning member of the family, the Governor, in exercise of the powers, conferred by the Proviso to Article 309 of the Constitution of India framed the aforesaid rules and they came into force on September 29, 1975. These rules and any orders issued thereunder shall have overriding effect not with standing any thing to the contrary contained in any, rule, regulations or orders in force at the commencement of these rules. Rule 5 of the rules is the beneficial provision. It provides that in case of "deceased Government servants" one member of his family who is not already under the Central/State Govern-meat or Statutory Board/Organisation/Corporation owned or controlled by the Central/State Government shall, on making an application for the purpose, be given a suitable employment in Government service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission, in relaxation of the normal recruitment rules, provided such member fulfils the educational qualifications prescribed for the post and is also otherwise qualified for Government service. In the event of non availability of a vacancy or any of the members of the family, being unqualified or minor, is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any one of them becoming qualified or eligible for such employment under these Rules. A bare perusal of this rule would go to show that the member of the family of the deceased Government servant who wants to the benefit of rule 5 of the Rules, has to make ah application for the purpose. There must be an existing vacancy which is not within the purview of the State Public Service Commission. The member of the family of the deceased must fulfil the educational qualifications prescribed for the post and he should also otherwise be qualified for the Government service, This is one aspect of the Rules. How ever, there may be cases, where there does not existing vacancy or any member of the deceased"s family does not possess the qualifications necessary for the post for which he wants to make an aplicatian. There may also be cases where the member of the family of the deceased Government servant may be minor at the time of the death of a Government servant. In such cases, the member of the family can be considered immediately on the availability of the post or anyone of them becoming qualified or eligible for such employment under the rules.

4. The very pharaseology of the Rule 5 clearly indicates that once benefit has been taken by a member of the family of the deceased Government servant Under Rule 5 of the rules by making an application for appointment to a post which is vacant and which is not within the purview of the State Public Service Commission and is appointed to that post, the benefit conferred by the said

Rules exhausts itself. By subsequent acquisition of higher academic qualifications that member of the family of the deceased Government servant cannot make a second application for appointment to a higher post. It is the option of the member of the family of the deceased Government servant to make an application immediately on the death of the deceased Government servant of whose family he is member or he may pursue further higher studies and acquire higher academic qualifications so that he may become eligible and qualified for appointment to a higher post. If the member of the family waits and does not apply to take the benefit of the Rules immediately after the death of the Government servant and wants to postpone taking of the benefit after acquiring higher educational qualifications, he can do so. However, having once taken the benefit under the Rules, he is not entitled under the same rule to take second benefit on his acquiring higher academic qualifications during the course of employment

5. The learned Counsel for the petitioner referred to the decision in *Vivek Goswami v. State of Rajasthan* 1989 RLR (1) 620. I have gone through the decision and I find that in *Vivek Goswami*'s case facts were quite different. In the case, the petitioner was initially seeking employment on the post of Junior Employment Officer. The application moved by him was primarily made for appointment to the post of Junior Employment Officer. The petitioner in that case gave out that the fact that although he has cleared B Com Examination, which is an essential qualification for the post of Junior Employment Officer, the university is holding fresh examination in respect of boycotted paper and he has to clear that paper. The petitioner in that case had made prayer very categorically that even adhoc appointment on the post of Junior Employment Officer may be given to him till the boycotted paper is cleared by him although he had passed B.Com examination.

6. In *Vivek Goswami*'s case is not a case laying down the proposition that a member of family of the deceased Government servant having already taken up an appointment Under Rule 5 of the Rules once can, after pursuing further studies and acquiring further higher academic qualifications, move a second application under the said rule for seeking appointment to a higher post than the post to which he had been initially appointed. I am clearly of the opinion that no second application for the purpose is maintainable Under Rule 5 of the Rules.

7. In this view of the matter. I do not find any force in this writ petition and it is hereby dismissed in limine.