

(2010) 07 AHC CK 0427
In the Allahabad High Court
Case No : Service Single No. 6416 of 2009

Shrish Pratap Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Uttar Pradesh Government Servants (Dying in Harness) Rules, 1974 — Rule 8(3)

Citation : (2010) 07 AHC CK 0427

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—By means of this writ petition, the Petitioner has prayed for a writ in the nature of mandamus commanding the opposite parties to pass appropriate order in pursuance to the Dying in Harness Rules for adjusting the Petitioner on a regular post of Junior Clerk and grant him seniority from the date of his initial appointment on the post of Junior Clerk in the Directorate of Ayurvedic & Unani Services, with consequential benefits.

2. Submission of learned Counsel for the Petitioner is that Petitioner's father was a Medical Officer in the Ayurvedic & Unani Services, U. P. who died on 24.6.1984 during service. The Petitioner applied for appointment in the Department under Dying in Harness Rules. The Petitioner was given appointment on 24.5.1995 on the post of Junior Clerk on a supernumerary post in the pay-scale of Rs. 950-1500 vide order dated 02.8.1996 the Petitioner alongwith the post was transferred to the Head Office in the Directorate. Sub-clause (3) of Rule 8 of Dying in Harness Rules provides that in case no post is available then supernumerary post shall be created and the same shall continue till the availability of a regular post meaning thereby that a person appointed under Dying in Harness Rules on a supernumerary post shall be adjusted against the first available regular vacancy in the Department. The services of the Petitioner are governed by the U. P. Ayurvedic and Unani Department Clerical Cadre Service

Rules, 1991. The Petitioner has been working since 1996 in the Directorate on the supernumerary post. Learned Counsel further submitted that the seniority list of clerical cadre in the subordinate office under the Directorate was released on 11.11.2003 and a fresh list was released on 22.9.2009 in which Petitioner's name did not find place as the Petitioner belongs to the Directorate. It is also submitted by the learned Counsel that till date the opposite parties have not released the tentative seniority list of the clerical cadre of the Directorate. The Petitioner is working regularly since 1996 in the Directorate. Grievance of the Petitioner is that two posts of junior clerk fell vacant due to promotion of Smt. Uma Bajpai and Sri Shiv Mangal Yadav to the post of Senior Clerk on 14.5.2003. The Petitioner made representation for adjustment against one of the said vacancies in pursuance of the sub rule (3) of Rule 8 but Petitioner's claim was ignored just to adjust one Km. Audrey Massey against the regular post who was appointed on the post of junior clerk vide order dated 01.12.1999 and was transferred from Govt. Ayurvedi and Unani Pharmacy, Lucknow vide order dated 24.5.2003 and posted as Junior Clerk in the Directorate. Neither the Petitioner has been adjusted against a regular post nor his representations have been decided so far and as a result of which the prospects of confirmation and further promotion and other benefits like regular employee are being prejudicially affected. On the other hand, Km. Audreyh Massay (Daily Wages), Adarsh Veer Airya (Apprentice), Suman Agnihotri (Daily Wages), Bharat Bhushan (Class IV), Mohan Lal (Class IV), Chandrika Tripathi (Adhoc), Praveen Kumar Misra (adhoc), Subhash Kumar Pathak (adhoc) have been regularised between the year 2003 to 2008 in the Directorate ignoring the claim of the Petitioner.

3. Learned Counsel for the Petitioner very fairly submitted that he has no grievance against any person who have already been regularised but his case be considered for adjustment against the future post.

4. Heard learned Counsel for the parties and perused the record. Petitioner was admittedly given appointment vide order dated 24.5.1995 on the post of Junior Clerk on supernumerary post in the pay-scale of Rs. 950-1500. The appointment order itself provides that the dependent of the deceased employee appointed on supernumerary post will be adjusted against the future post.

5. Rule 8 (3) of U. P. Government Servants (Dying in Harness) Rules, 1974 provides that an appointment under this Rule shall be made against the existing vacancy and if there is no vacancy, the appointment shall be made forthwith against the supernumerary post which shall be deemed to have been created for this purposes and shall continue till a vacancy becomes available. The stipulation of sub rule (3) of Rule 8 of U. P. Government Servant (Dying in Harness) Rules, 1974 is that the supernumerary post will continue to exist till a vacancy becomes available meaning thereby that a person appointed by creating a supernumerary post will have the first right of adjustment/ absorb as soon as the vacancy becomes available. This Court in the matter of Ravi Kiran Singh 1999 (17) LCD 641 pleased to hold that appointment under Dying in Harness Rules is of

permanent nature. Para 2 of the judgment reads as under:

In our opinion, an appointment under the Dying in harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of The Dying in Harness Rules because such appointment is intended to provide immediate relief to the family on the sudden death of the bread earner. We, therefore, hold that the appointment under Dying in Harness Rules is a permanent appointment and not a temporary appointment.

6. The Hon''ble Supreme Court in the matter of D.K. Reddy and Another Vs. Union of India (UOI) and Others, while dealing with almost similar controversy in para 17 pleased to observe as under:

17. As a result of such an exercise, if need arose Appellant 1 could be treated to have been holding supernumerary post in Junior Time Scale Grade of Group "A" posts and in all other promotional cadres. He cannot be treated to be outside the sanctioned strength of posts in Junior Time Scale of Group "A" or other promotional posts as contended by the learned Counsel for the Respondents.

7. In a subsequent judgment of Union of India and Another Vs. Dr. Akhilesh Chandra Agrawal, the Hon''ble Supreme Court affirming the view expressed in judgment of D. K. Reddy (supra) disagreed with the observation of the learned Tribunal of treating supernumerary post as different one from the regular post.

8. In view of the aforesaid discussion, this Court comes to the conclusion that action of the opposite parties of regularising the persons between 2003 to 2008 ignoring the claim of Petitioner was illegal. Since the Petitioner is not raising any grievance against the persons who have been regularised on their post and restricts his prayer of his adjustment/absorption against future vacancy in pursuance of sub rule (3) of Rule 8 of U. P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974, this Court without making any observation on the previous act of the opposite parties of regularising the subsequent employees ignoring the claim of Petitioner, directs the opposite parties to consider the case of Petitioner for adjustment against the first available vacancy of a regular post of Junior Clerk and grant him seniority from the date of his initial appointment on the post of Junior Clerk in the Directorate of Ayurvedic & Unani Services with all consequential benefits.

9. With the above observations, this writ petition stands allowed.