
(2008) 08 AHC CK 0049
In the Allahabad High Court

Shyam Dhar

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Citation : (2009) 1 AWC 984

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Judgement

Devi Prasad Singh, J.—Heard Sri R.S. Pandey, the learned Counsel for the petitioner and Sri Jai Shanker Mishra, learned standing counsel.

2. Affidavits have been exchanged and with the consent of parties counsel I proceed to decide the writ petition at the admission stage.

3. The petitioner's father late Sri Hanuman Prasad was a mechanic in Lok Nirman Vibhag. According to petitioner's counsel, he was working against regular establishment and was a permanent employee of the department. He died in-harness on 18.4.1983. After his death, the petitioner applied for appointment on compassionate ground. Accordingly, the petitioner was given appointment on compassionate ground on the post of chowkidar. The petitioner raised dispute before the labour court raising plea that he cannot be appointed on temporary basis under work charge establishment. Since the petitioner's father was working against regular establishment, he was entitled to be appointed as regular employee. Other plea was that he qualified for Class-III post hence, he is entitled for appointment in Class-III cadre. The labour court by the impugned award has rejected the petitioner's claim on the ground that the petitioner failed to establish that he qualified for the post of Supervisor or work agent. However, the labour court not adjudicated the matter relating to appointment of the petitioner as regular employee. Feeling aggrieved, the petitioner approached this Court under writ jurisdiction.

4. While assailing the impugned award, learned Counsel for the petitioner relied

upon the judgment of this Court in Rishiram, Tulsiram, Ram Sewak and Ram Suchit Vs. Board of Revenue and Others, wherein, it has been held that the appointment made under Dying-in-Harness Rules, has to be treated as permanent appointment otherwise, the service of the employee may be terminated soon after appointment nullifying the very purpose of Dying-in-Harness Rules. In view of the Rishiram's case (supra), the argument of the petitioners' counsel seems to have got force that the appointment under compassionate ground should be treated as permanent appointment and it cannot be temporary or short gap appointment.

5. With regard to next submission that the petitioner is entitled to be appointed against Class-III post having passed high school, petitioner's counsel relied upon the judgment of this Court in Sandeep Kumar Maurya v. State of U.P. and Ors. 2006 (24) LCD 447, wherein this Court directed to make appointment against Class-III post with direction to create supernumerary post in case vacancy was not available.

6. Rebutting the submission of the petitioner's counsel, Sri Badrul Hasan learned standing counsel submitted that under Dying-in-Harness Rules, dependant of the deceased employee has got no right of appointment or posting on a particular post. Learned standing counsel relied upon the judgment in Umesh Kumar Nagpal Vs. State of Haryana and Others, and Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , wherein Hon'ble Supreme Court has held that dependant of deceased Government employee has got no right to claim appointment on a particular post. Their Lordship of Supreme Court held that provisions of employment on compassionate ground on lowest post is justifiable and valid one more so when the deceased was not a person holding a very high office. In the case of Pushpendra Kumar (supra) Hon'ble Supreme Court reiterated the law laid down in earlier case and held that the dependant of deceased Government employee cannot claim appointment on a particular post. He possesses right to be considered for appointment against existing vacancy. It has also been held that no mandamus can be issued for creation of supernumerary post of Class-III post to adjust the dependant of deceased employee in case he is being chosen to be appointed against Class-IV vacancy.

7. It has been submitted by the learned standing counsel that the petitioner joined against Class-IV vacancy without any protest and only at the later stage, he raised grievance for appointment on a Class-III post. Once the petitioner-resumed duty against Class-IV vacancy, then at a later stage, he loses his right to raise grievance for higher post like Class-III cadre. The right to be considered for appointment under Dying-in-Harness Rules continues only to the point of time till an incumbent is appointed on a particular post. Immediately after appointment on compassionate ground, he loses his right to claim appointment on higher post for any subsequent cause of action or arising of vacancy.

8. There is one more reason why ordinarily the dependant of deceased employee cannot be permitted to claim appointment on a post of his or her choice. As

settled by Hon"ble Supreme Court in various cases including the case in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, proceeding to recruit a person on compassionate ground is an exception to general law. It cannot be converted as a mode of regular appointment. The power conferred by the Legislature to make appointment on compassionate ground is to give immediate relief to the family of the deceased Government employee and it cannot be substituted as another mode to make regular appointment.

9. In the case of Sandeep Kumar Maurya (supra) relied upon by the petitioner's counsel, the two Apex Court judgment were not considered and a direction was issued to create Class-III supernumerary post which could not have been done in case attention of this Court would have been invited towards the Apex Court judgment delivered in the case of Pushpendra Kumar (supra). In view of the above, there appears to be no good ground to direct the opposite parties to appoint the petitioner on a Class-III post. However, the petitioner's claim for appointment against regular vacancy as permanent incumbent, seems to be sustainable under law. In view of the above, the writ petition deserves to be allowed in part.

10. Accordingly, the writ petition is allowed in part. A writ in the nature of mandamus is issued directing the opposite parties to treat the petitioner as permanent employee of the department from the date of his initial appointment with all consequential benefit. Let appropriate orders be issued accordingly. So far other relief claimed by the petitioner for appointment on a Class-III post is concerned, the same fails. The impugned award stands modified accordingly.

There shall be no order as to costs.