
(2002) 01 AHC CK 0185
In the Allahabad High Court
Case No : C.M.W.P. No. 19301 of 1998

Sima Devi

APPELLANT

Vs

Senior Superintendent of Police, Jhansi and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Evidence Act, 1872 — Section 108

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 5

Citation : (2002) 2 AWC 1023

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.K. Tiwari and Ashok Khare, for the Appellant; N.D. Kesari, S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—The petitioner has filed this writ petition seeking direction to give appointment on compassionate ground under the U. P. Recruitment of Dependants of Government Servant (Dying-in-Hamess) Rules, 1974 (known as "Rule 1974" hereinafter) in place of her husband treating to have been died in the course of service.

2. Heard learned counsel for the petitioner as well as learned standing counsel for the State.

3. The relevant facts necessary for adjudication of this writ petition are that the husband of the petitioner whose date of birth was 12.10.1966, was appointed as Constable in Civil Police, Jhansi in 1988. He took casual leave on 29.10.1988 for three days but he did not return thereafter. An F.I.R. was lodged on 17.3.1989 on behalf of the father-in-law of the petitioner and after investigation, a final report was submitted on 26.12.1990 wherein the petitioner's husband Balendra Prasad Mishra had been declared missing. The petitioner was legally dependent being wife of Sri Balendra Prasad Mishra. The petitioner gave a representation to be

appointed under "Rule 1974" to the Senior Superintendent of Police, Jhansi and the Senior Superintendent of Police, Jhansi had also notified through news papers seeking objections, if any. from the public regarding missing Constable Sri Balendra Prasad Mishra but till date whereabouts of the husband of the petitioner is not known. The petitioner claims to have passed Intermediate Examination and sought appointment on compassionate ground in the Ministerial Cadre. On the application of the petitioner, the Senior Superintendent of Police, Jhansi had recommended the Deputy Inspector General (Karmik) Police Head Quarter, U. P., Allahabad, by his letter dated 4.11.1996 for giving employment to the petitioner and to allocate the pensionary benefit to her. The other Police Officer, e.g., the Additional Superintendent of Police, Department of Police (Karmik) Police Head Quarter, Lucknow, on 27.9.1997 had also requested to the Joint Secretary, Home (Police) Section 10, U. P. Government, Lucknow (Annexure-6 to the writ petition), to give appointment to the petitioner under "Rules, 1974" treating the husband of the petitioner to have died during the course of employment.

4. Learned counsel for the petitioner has referred Section 108 of the Indian Evidence Act. 1872. The Section 108 is given as below :

"108. Burden of proving that person is alive who has not been heard of for seven years.--(Provided that when) the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it."

5. It has been submitted that the husband of the petitioner was missing from 29.10.1988 and has not yet been traceable in reference to the provisions of Section 108 of Evidence Act, therefore, it is to be presumed that the person has been dead in the eyes of law after the lapse of seven years and once the husband has been acknowledged to be dead during the course of service hence, the petitioner being the dependent should be given employment on compassionate ground under "Rules 1974". It has also been submitted that paras 8 and 9 of the "Rules 1974" also provide in detail the relaxation of age and other qualifications.

6. The counter-affidavit has been filed on 4th January, 1999, and in para 4 of the counter-affidavit, it has been indicated that as per Government order dated 20.3.1987, the dependent of the missing person has to file a bond that in case the missing employee is present, all the payments made to the family would be adjusted. Such bond on demand from the respondents was submitted on 1.12.1997 and petitioner was given benefit of leave encashment on 18.10.1997. The family pension and gratuity have already been paid to the petitioner and steps were to be taken regarding the Provident Fund and Group Insurance after obtaining the photographs and relevant documents from the petitioner. The latest position of grant of such later benefits are not available, however, that makes no difference for adjudication of issue in question.

7. Learned standing counsel for the State has submitted that since the two types of benefits firstly giving appointment on compassionate ground secondly payment of the pensionary benefit, family pension to the petitioner could be conceived of in the present facts and circumstances whereas, out of the two alternatives, the second alternative, i.e.. the grant of family pension, gratuity and other benefits were to be extended to the petitioner at the choice of the petitioner and that -since the petitioner's husband has not died in the manner known to the public and in the case of presumed death in the eyes of law, the benefit of giving appointment under "Rules 1974" should not be extended to the petitioner.

8. In my consideration, this is not the correct understanding of provision and spirit of the "Rules 1974". The benefit of giving appointment on compassionate ground has to be extended to the dependent of a person who died in service and the same is to be given to a person who is legally entitled for such benefit. The nature, manner and cause of death may be many, such death, might occur in natural course, accidental, murder, natural calamities, during war, anti-terrorist activities, etc. as the manner the death likely to occur in service has not been specified in the "Rules 1974", therefore, the death caused by every possible manner could be conceived of and has to be considered for the purpose of extending benefit for giving employment to the dependant of person died in service in reference to Rule 5 of "Rules 1974".

9. In view of the above observations, the writ petition is allowed. The respondents are directed to consider to give the employment to the petitioner to the post of Class IV post/Constable in the Department of Civil Police in State of Uttar Pradesh and take such decision within six weeks from the date of receipt of the order and place the petitioner at some suitable place near her home town and previous benefits which have already been extended to her could be adjusted or reimbursed from the benefits which are to be extended to her in accordance to the law after giving fresh appointment to the petitioner.