

(2015) 01 AHC CK 0123

In the Allahabad High Court

Case No : Special Appeal Defective No. 36 of 2015

Sita Devi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 3 ADJ 178 : (2015) 110 ALR 132 : (2015) 2 ESC 1167 :
(2015) 146 FLR 382 : (2015) 2 LLJ 627

Hon'ble Judges : Rakesh Tiwari, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : Praveen Kumar Singh, for the Appellant; Ashutosh Vaish and Rakesh Kumar Pathak, Advocates for the Respondent

Judgement

Vijay Lakshmi, J.

1. This intra-Court Appeal is directed against the judgment and order dated 7.8.2014 passed in Civil Misc. Writ Petition No. 37833 of 2013, Ankita Tiwari and another v. State of U.P. and others, whereby the learned Writ Court has directed the Executive Engineer, Electricity Distribution Division II, Ghazipur, to pay Rs. Five Thousand per month to Ram Dulari Devi, (respondent No. 5 in this Special Appeal), who is the real mother of the appellant, after deducting it from the salary of the appellant. We have heard Sri Praveen Kumar Singh, learned counsel for the appellant, learned Standing Counsel for respondent No. 1, Sri Ashutosh Vaish, learned counsel for respondent Nos. 2 and 3 and Sri Rakesh Kumar Pathak, learned counsel for respondent Nos. 4 and 5.

2. The brief facts giving rise to this appeal are that the appellant Sita Devi and respondent No. 4, Ankita Tewari, are real sisters and respondent No. 5 is their mother. After declaration of civil death of the father of the appellant, the mother of the appellant moved an application to provide employment to her daughter i.e. Sita Devi-appellant on compassionate ground. The appellant was appointed on the post of Class IV employee on 10.11.2006. On 15.6.2008 the appellant got married and after her marriage she started living separately with her husband.

The appellant has alleged that before her marriage she used to spend entire amount of her salary on the maintenance of her mother and unmarried sister but due to the reason that the appellant had married against the wishes of her mother, her mother refused to accept the amount offered by her. Hence, the appellant opened a Bank Account and started depositing a sum of Rs. 1500/- per month for maintenance of her mother in that Bank account. Being aggrieved her mother and sister preferred Civil Misc. writ petition No. 62696 of 2012 in which this Court directed the authority concerned to look into the grievances of the petitioners and to pass a proper order. In pursuance of the aforesaid order the concerned authority passed a detailed order on 9.4.2013 dismissing representation of Ram Dulari Devi and expressing its view that the appellant has made efforts to maintain the petitioners and she has paid some amount to them for their maintenance. The mother and sister being aggrieved by the aforesaid order dated 9.4.2013 filed Civil Misc. Writ Petition No. 37833 of 2013 in which vide impugned order the appointing authority of the appellant was directed to deduct Rs. 5000/- per month from the salary of the appellant and to pay to respondent No. 5 as maintenance.

3. Challenging the validity and correctness of the aforesaid order of the writ Court, the appellant has preferred this appeal.

Learned counsel for the appellant has argued that the learned Single Judge without considering the material on record has directed the appellant to pay Rs. 5000/-per month to her mother. Learned Single Judge has ignored the liabilities of the appellant towards her own family, which includes two minor daughters and her unemployed husband. It has been further argued that being a Class IV employee she is unable to pay Rs. 5000/- per month to her mother and sister. Her mother is drawing family pension and is not solely depended upon her. However, the learned Single Judge taking a hyper technical view has directed the payment of Rs. 5000/- per month which is disproportionate to the salary drawn by the appellant. Hence the appellant has prayed that the order dated 7.8.2014 passed by the writ Court be set aside.

4. Sub-rules (3) and (4) of Rule 5 of the Uttar Pradesh Recruitment of Dependents of Government Servant Dying In-Harness Rules, 1974, make it obligatory on the part of a person, who has availed the benefit of compassionate appointment to maintain rest of the dependent family members. Rule 3 and 4 of Rules 1974 are quoted below:

"(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his

services may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

5. In the present case, as the mother and unmarried sisters of the appellant were the dependents of the deceased at the time of his death, they cannot be deprived of their rights to get maintenance from the salary of the appellant, who has got compassionate appointment on the condition to maintain other dependents of the deceased, failing which the service of the appellant may be terminated under sub-rule (4) of the 1974 Rules. Being appointed as a Class IV employee in the Electricity Department and a Government Servant the appellant must have got the benefit of the VI Pay Commission etc. and she must be earning at least Rs. 15000/-per month.

6. Under these circumstances, if the writ Court vide impugned order has directed the appointing authority of the appellant to pay Rs. 5000/- per month to her mother so as to enable her to maintain herself and her unmarried daughters, it cannot be said to be excessive amount disproportionate to the salary of the appellant. Moreover, keeping in view the fact that the mother (who has six daughters) is also saddled with the liability of marriage of her unmarried daughters, for which she requires more expenses and which is not possible in the meagre amount of the family pension she is receiving, it cannot be held that on account of receiving family pension she is not entitled to receive maintenance amount from the appellant. The appeal is without any force and is accordingly dismissed.

Keeping in view the fact that the salary of the appellant will certainly increase in future because of annual increment and appraisal of D.A. etc. we, before parting with this judgment, think it just and proper to modify the order dated 7.8.2014 to the extent that the appellant instead of a fixed amount of Rs. 5000/- per month, shall henceforth pay one-third of the appellant's salary to her mother.

Accordingly, the Executive Engineer, Electricity Distribution Division II, Ghazipur, is directed to deduct one-third amount from the gross salary of the appellant per month and to pay the same to the mother of the appellant for the maintenance of herself and her unmarried daughter from February 2015.