

(2003) 12 AHC CK 0048

In the Allahabad High Court

Case No : Writ Petition No. 7792 (S/S) of 2003 (S/S)

Smt. Alka Mishra

APPELLANT

Vs

Dy. Director of Education (Secondary) and Others

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Uttar Pradesh Intermediate Education (Amendment) Regulations, 1995 — Regulation 101, 103, 104, 105, 106

Citation : (2004) 2 AWC 1153

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Rama Kant Dixit, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a writ petition under Article 226 of the Constitution for issuing a writ of mandamus directing the opposite parties to appoint the petitioner on the post of L.T. Grade Teacher /Assistant Teacher according to her qualification under dying-in-harness rules and to consider her claim for appointment according to her qualification in pursuance of the Government order dated 2.2.1995. The case of the petitioner is that her father Misri Prasad Awasthi was a L.T. grade teacher in Jagat Jit Inter College, Ikauna, district Bahraich, who died on 30.6.1991. The petitioner was given appointment in place of her father under the dying-in-harness rules on a non-teaching post on 5.11.1992. She possesses M.A. B.Ed. qualification. The Regulation Nos. 101, 103 to 107 were amended by Notification dated 2nd February, 1995, as contained in Annexure-5 and now it has been provided that the appointment can be given in trained graduate scale of teachers in the case of compassionate appointment and these Rules have been enforced in those cases of deceased employees who died after first January, 1981. The petitioner has also annexed the judgment of this Court in Writ Petition No. 1846 (S/S) of 1996, Sudhakar Srivastava v. Deputy Director of Education, as contained in Annexure-8. In that petition, the petitioner was

given appointment on the Ministerial Staff on 17.9.1992. It was held that the petitioner had accepted the appointment under compelling circumstances and it will not deprive of him his rights to get employment on the basis of the amended provision with effect from 2.2.1995.

2. After hearing the learned counsel for the petitioner, I am of the view that the provision of compassionate appointment does not create a vested right in the legal heir of the deceased employee. The whole object of granting compassionate employment is to enable the family to get over the sudden crisis. The object is not to get the member of such family a post much less a post for post held by the deceased. In Haryana State Electricity Board Vs. Naresh Tanwar and Another, it has been held by the Supreme Court that the compassionate employment is not a vested right. It is an exception to a general rule. The object of compassionate appointment is to get the immediate relief to the family of the deceased and it is not a legal right. In Maya Devi v. D.I.O.S., Itawah 1998 (3) AWC 2161 (NOC) : 1998 (3) ESC 14 and Manish Mishra v. State of U. P. 1998 (3) ESC 1877, it was held by this Court that if a person accepts the appointment on class IV post and joins, his claim under the Rules comes to an end. The rules do not provide to any subsequent change after the amendment of the Rules by saying that those persons who had already been appointed, they shall be considered afresh for appointment on compassionate ground to that post. In Pankaj Kumar Srivastava v. D.I.O.S. 1994 (2) ESC 648, it was held by this Court that the petitioner cannot claim as a matter of right appointment befitting his qualifications.

3. The petitioner cannot claim any advantage of the judgment as contained in Annexure-8 because in the referred petition aforesaid decisions of the Supreme Court and the High Court were not cited at the Bar.

4. In view of the above, legal position I am of the view of the amended Regulations as contained in Annexure-5 of the, writ petition, do not give any right to those persons who have accepted the appointment before the Amendment of the Rules.

5. In view of the above, the writ petition is dismissed.