
(1997) 01 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1478 of 1996

Smt. Chand Bai and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-01-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1997) 2 RLW 1006 : (1997) 2 WLC 146 : (1997) 1 WLN 146

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—This petition relates to giving appointment on compassionate grounds under the Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules, 1975 (for short the Rules). Late Shri Panchu Lal Khatik (Chawla) was serving as Class-IV employee in Settlement Department of the State Government when he died on September 15, 1994, leaving behind his widow Smt. Chand Bai - Petitioner No. 1. Petitioner No. 2 - Hazari Lal is brother-in-law of the deceased employee, being real brother of Smt. Chand Bai. After death of her husband. Smt. Chand Bai made an application under Rule 5 to provide her suitable employment in Government service. However, her claim to get employment for herself was rejected on the ground of her being physically handicapped and unable to perform the duties. She therefore, sponsored/nominated the name of her brother Hazari Lal-petitioner No. 2 to provide him Government employment under the Rules by moving an application on May 9, 1995 before the Settlement Officer, Jaipur. When no action was taken on her subsequent request, she gave a notice for demand of justice to the Chief Settlement Commissioner on January 17, 1996. Even after receipt of the notice, when no action was taken, she has approached this Court, alongwith her brother Hazari Lal, by way of this writ petition under Article 226 of the Constitution, seeking mandamus to provide a suitable employment to petitioner No. 2, who is a close relative of the deceased employee.

2. The respondents, in their return, have taken the plea that widow of the deceased (petitioner No. 1) was not given employment as being medically unfit and unable to discharge the duties. The claim of petitioner No. 2, to get appointment under the Rules, is denied mainly on the ground that he was never dependent on late Shri Panchu Lal, the deceased government servant. It is also pleaded inter-alia that petitioner should move to the Department of Personnel (D.O.P.) for seeking prior special approval for employment under the Rules.

3. At the out-set, it may be stated that the claim of petitioner No. 2 to get employment under the Rules as a close relative of the deceased Government employee was never examined by the authorities concerned before filing return to the writ petition. When petitioner No. 1, the widow of the deceased employee, was denied employment under the Rules on the ground of her being medically unfit and unable to perform her duties, she sponsored the name of petitioner No. 2 in her application dated May 9, 1995 (Annex. 3) with a request to provide him suitable employment being a close relative of the deceased employee and the fact that she was dependent on him after her husband's death. Her notice for demand of justice also remained unattended as she was not intimated about any decision. This shows the apathy of the persons responsible to take decision in the matter. Matters relating grant of appointment on compassionate grounds on sudden and ultimately death of the only bread earner of the family require to be decided promptly and expeditiously. Long delays or inaction on the part of the authorities concerned defeat the very purpose for which the Rules have been framed. Apart from this, a timely and proper decision of the State functionaries would lessen un-wanted burden on the courts which are loaded with large number of cases. The State Government and its instrumentalities being the largest litigants in the State, at least before the High Court, a radical improvement in the functioning of their machinery is over due and the stage has now reached for taking drastic steps to arrest further decadence and to improve working of the system.

4. Be that as it may, the question that calls for consideration in this petition is: Whether petitioner No. 2, who is brother-in-law of the deceased Government employee, is entitled to get employment under the Rules of 1975? As a rule, appointments in public service are to be made strictly on the basis of open invitation of applications and merit. However, there are some recognised exception to this general Rule carved out in the interest of public and to meet certain contingencies. The claim to provide employment on compassionate ground has been up-held as reasonable and permissible by Judicial Courts on the basis of sudden crisis occurring in the family of the government employee who has served the State and dies while in service. The whole object of granting such appointment is to enable the grieved family to tide over the sudden crisis and to face financial crunch created on account of sudden and untimely death of the bread earner of the family. While dealing with such matters, it should not be lost sight of the fact that such appointments are in conflict with the general rule requiring public services to be filled in from open market with notices to all and

on merits, as such, it should be an endeavor of the Court to find out whether a particular case falls within the scope of law i.e. the frame work of the Rules, regulations or administrative guidelines which can stand the test of Articles 14 and 16 of the Constitution. The Courts cannot order appointment on compassionate ground dehors the provisions of such Rules and regulations or administrative guidelines in this connection. No direction can be given as a matter of course without examining each case on its facts and relevant provisions.

5. In the above back-drop and the facts and circumstances of the case, I now proceed to examine whether claim of petitioner No. 2 to get appointment under the Rules is sustainable? For this purpose, it would be useful to examine the relevant Rules. The Rules of 1975 have been framed by the Governor of Rajasthan in exercise of powers conferred by the proviso to Article 309 of the Constitution of India for regulating recruitment of the dependents of Government servants dying while in service. As per Rule 2(b), the Appointing Authority means the Government of Rajasthan and includes any other officer to whom powers have been delegated by the Government through a special or general order to exercise powers and functions of the appointing authority under the relevant service Rules, if any "Government servant" has been defined to be the person employed in connection with the affairs of the State and who (i) was permanent in such employment or (ii) though temporary, had been regularly appointed in such appointment; or (iii) though not regularly appointed had put in one year continuous service in a regular vacancy in such employment; and (iv) shall also include the person sent temporarily on deputation. Rule 5 prescribes recruitment of a member of the family of deceased Government servant on making application for this purpose. "Family" has been defined in Rule 2(f) and it is as under

Family "means the family of the deceased Government Servant and shall include wife or husband, sons and unmarried or "widow daughters and son/daughter adopted according to the provision of law by the deceased Government servant, who were dependent on the deceased Government servant.

Provided that if no such member of the family be eligible for getting benefit under these Rules, the benefit available under these Rules may be extended to any other close relative of the deceased to be named by the widow or the Guardian on the children of the deceased with the specific approval of the Department of Personnel.

6. The proviso referred to above makes it clear that if no member of the family is eligible to yet benefit under the Rules, the benefit can be extended to any other person if following conditions are fulfilled

(i) He/She is a close relative of the deceased;

(ii) is named by the widow or the guardian of the children of the deceased; and

(iii) there is a specific approval of the Department of Personnel.

7. At this stage, I would like to make it clear that in the present petition. I have not examined the Constitutional validity of the proviso referred to above, extending the benefit of providing employment to a close relative of the deceased and whether or not it has any rational nexus with the object sought to be achieved by the Rules, on a pointed query by the Court, learned Counsel appearing for the respondents, clearly stated that he does not challenge the Constitutional validity of the proviso. The claim of petitioner No. 2, if examined in light of the aforesaid proviso, is sustainable and he cannot be denied employment/appointment on the ground of his not being dependent on the deceased Government servant which is the principal ground taken by respondents to deny him the benefit. Undisputedly, no other member of the family of the deceased-employee, is eligible to get benefit of appointment under the Rules. As stated earlier, the deceased employee has left his widow behind him, who has been denied appointment on the ground of her being medically unfit to do the job. It cannot be disputed also that petitioner No. 2 is a close relative of the deceased being his brother-in-law. He has been named by the widow of the deceased for giving appointment under the Rules. Thus, all requisite conditions are fulfilled in the instant case, except approval of the D.O.P. which has to be obtained by the Department on referring the matter to it. In view of this, I am of the confirmed view that as per the Rules of 1975, petitioner No. 2 is entitled to get a suitable employment in the Government service and plea taken by the respondents for not extending him the benefit is not tenable in law. It is the submission of the petitioners that their case to provide appointment to petitioner No. 2 has been kept pending for all these years without processing the same.

8. In similar circumstances, a Division Bench of this Court in *Rajendra Singh Vs. The State of Rajasthan*, and Single Bench in *Bhawani Singh v. State of Rajasthan* and Anr. S.B. Civil Writ Petition No. 6847 of 1993 decided on August 13, 1996 have held that the application should be forwarded to the D.O.P. for approval and appointment be made after such approval, if so obtained.

9. From the record it appears that, except moving an application on 9th May, 1996 (Annex. 3), no formal application in the prescribed form for providing appointment to petitioner No. 2 has been moved by the petitioners. Hence, the petition is being disposed of in the following terms

(i) The petitioners shall make a fresh application in the prescribed form to the concerned Head of the Department, where the deceased Government servant was serving, within four weeks along with a certified copy of this order.

(ii) If any such application is submitted, the Head of Department shall take immediate steps in this connection and the said application alongwith nomination of petitioner No. 2 by the widow of the deceased shall be forwarded to the Department of Personnel, so that due consideration may be made in the matter

within a period of three months from the date of this order and if approval of the D.O.P. is obtained, the petitioner be given appointment forthwith.

(iii) In the event of non-availability of a vacancy in the Department where the deceased Government servant was serving, the D.O.P. (A-11) will take necessary steps to find a post for petitioner No. 2 according to his qualification and eligibility and direct the concerned Appointing Authority to issue an appointment order in accordance with law.

10. The writ petition stands disposed of as indicated above. The petitioners shall be entitled to costs which is quantified Rs. 1,000/- in the facts and circumstances, specially keeping in view that claim of the petitioner No. 2 was not considered by the authorities concerned inspite of representation, nomination and notice for demand of justice.