
(2012) 05 AHC CK 0313

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5998 of 1998

Smt. Geeta Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Citation : (2012) 9 ADJ 1 : (2013) 1 AWC 66

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Ashok Khare, Siddharth Khare and S.K. Kulshrestha, for the Appellant; R.K. Tripathi and C.S.C., for the Respondent

Judgement

Hon"ble B. Amit Sthalekar, J.—In this writ petition the petitioner is seeking quashing of the order dated 15.1.1998 passed by District Basic Shiksha Adhikari, Fatehpur rejecting the claim of the petitioner for appointment on compassionate grounds on the ground that the benefit of U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974 does not extend to widowed daughter-in-law and for a further direction to the respondents not to interfere in the functioning of the petitioner as an Assistant Teacher and to pay the petitioner her regular monthly salary of the said post. The facts, in brief, are that the petitioner -Smt. Geeta Srivastava was married to one Anuj Kumar Srivastava son of Late Raj Narain Srivastava. The said Raj Narain Srivastava was employed as an Assistant Teacher in a Junior Basic School run by the Board of Basic Education, U.P. Shri Raj Narain expired while in service. In the meantime Anuj Kumar Srivastava, husband of the petitioner has also expired leaving behind his widow, the present petitioner. The petitioner, therefore, submitted an application for grant of compassionate appointment as a widowed daughter-in-law of the deceased employee. Her application was considered and she was given compassionate appointment as an untrained assistant teacher on a consolidated salary of Rs. 850/ - per month and she joined in Prathamik Pathshala, Sarai Sayeed Khan, Development Block, Teliyani, Fatehpur. However, when the salary

was not being paid to her she filed a writ petition No. 881 of 1998 seeking a direction to the respondents to pay her salary. The said writ petition was disposed of with a direction to the respondents to pay regular salary to the petitioner from month to month. She was also recommended for under going training at the District Institute of Education and Training, Fatehpur. Her case is that in-spite of the order of this Court she has not been paid her salary. By the impugned order dated 15.1.1998 her appointment has been cancelled on the ground that the benefit of compassionate appointment is not available to a widowed daughter-in-law.

2. I have heard Shri Adarsh Bhushan, Learned Counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

3. The facts arising in this case are not disputed between the parties. The only question now remains is as to whether the appointment of the petitioner could have been cancelled by the impugned order on the ground that the benefit of compassionate appointment would not be available to a widowed daughter-in-law under the Dying in Harness Rules, 1974?

4. This controversy had earlier came up for consideration before a learned Singh Judge of this Court and the learned Single Judge interpreting the term family" in the case in Smt. Amrita Mishra v. State of U.P. and others, 2010(1) ADJ 657 : 2010(1) ESC 773 (All), relying upon a Division Bench decision in the case of Zila Panchayat Kaushambi and others v. Lalti Devi and another, 2008 (2) ADJ 428, has held as under:

6. Having considered the Rule in question and having perused the Division Bench judgment of this Court in the case of Zila Panchayat, Kaushambi and others v. Lalti Devi and another, 2008 (2) ADJ 428, it is not necessary call for any counter-affidavit on behalf of the State as the said decision squarely covers the case of the petitioner. It has been held by this Court that the word "family" includes the relations as defined therein. According to the Division Bench judgment the said definition is inclusive and to the extent of daughter-in-law is not exhaustive. It has been held that a daughter-in-law who is a widow, is also entitled for compassionate appointment.

7. Learned Counsel for the petitioner further relied on the judgment of this Court in the case of Smt. Sanyogita Rai v. State of U.P. and others, 2006 (5) ADJ 501. The said decision has also been noticed in the judgment of Division Bench referred to hereinabove.

8. Accordingly, the impugned order for the reasons aforesaid is unsustainable. The order dated 5.9.2009, insofar as it relates to the petitioner, is hereby quashed and the matter is remitted back to the District Basic Education Officer to reconsider the claim of the petitioner in the light of the observations made herein above and pass an appropriate order within a period of six weeks from the date of presentation of a certified copy of this order before him.

The writ petition is allowed. No costs.

5. Subsequently, this controversy has also been settled by a Full Bench decision of this Court in the case in U.P. Power Corporation Allahabad v. Smt. Urmila Devi, 2011(3) ADJ 453 (FB): 2011(2) ESC 1585 (All)(FB), wherein the Full Bench interpreting the term "family" occurring in the U.P. Electricity Board Appointment of Dependants of Employees of Board (Dying in Harness) Rules, 1975 has held as under:

8. We must, however, note one feature of the definition of the word "family" as generally contained in most Rules. The definition of "family" includes wife or husband; sons; unmarried and widowed daughters; and if the deceased was an unmarried Government servant, the brother, unmarried sister and widowed mother dependant on the deceased Government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of "family". It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents" is abhorrent to our civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by including the daughter-in-law in the definition of family". Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter, is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied.

6. The State Government has also now amended the U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974 and has included a widowed daughter-in-law in the category of family". The said amendment has also been published in the official gazette dated 22.12.2011. The term "family" has been defined to include the following members:

(C) "Family" shall include the following relations of the deceased Government servant :

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and

widowed daughter-in-law;

(iv) unmarried brothers, unmarried, sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent Court;

provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

7. In view of the above legal proposition as well as the amendment in the Dying in Harness Rules, 1974 to include the widowed daughter-in-law in the definition of the term family", this writ petition is allowed and the impugned order dated 15.1.1998 passed by the Basic Shiksha Adhikari, Fatehpur is quashed. The petitioner shall be treated to be in service with all consequential benefits. The petitioner will also be entitled to the arrears of salary which shall be paid to her within two months from the date a certified copy of this order is received by the respondent No. 4-Basic Shiksha Adhikari, Fatehpur. There shall be no order as to cost.