

(2013) 01 AHC CK 0096

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 555 of 2013

Smt. Meera Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 2 ADJ 110 : (2013) 3 AWC 2939 : (2013) 118 RD 768

Hon'ble Judges : Virendra Vikram Singh, J; Vineet Saran, J

Bench : Division Bench

Advocate : Rajiv Dwivedi, for the Appellant; Anuj Kumar, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner as well as learned Standing Counsel appearing for the respondents and perused the record. Time was granted to learned Standing Counsel to obtain instructions which he states that he has received. With the consent of learned counsel for the parties, this writ petition is being finally disposed of at this stage.

2. The case of the petitioner is that on the death of her husband, who was the fair price shop dealer, the petitioner moved an application for appointment as a dealer on compassionate ground. Provision of law for the compassionate appointment has been made in paragraph 10 (Jha) of the Government Order dated 17.8.2002. The said paragraph 10 (Jha) of the Government Order provides that in case, the fair price shop dealer had a good reputation, then the dependent of such dealer may be considered for appointment as fair price shop dealer. The dependent has been defined as wife, son and un-married daughter of the deceased dealer. The petitioner being the widow of fair price shop dealer, had applied for appointment as a dealer under the said provision.

3. By means of the impugned order dated 5th December, 2012 passed by respondent No. 2-Sub Divisional Magistrate, the application of the petitioner for

appointment on compassionate ground has been rejected merely for the reason that the dealership of the village in question would be reserved for Scheduled Caste Category, for which category the post of Pradhan is reserved.

4. At this juncture, the question arises as to what should be the position where the deceased dealer was of the category other than that for which reservation of a particular class/category of society for a fresh dealer has been provided for. In our opinion, the policy of reservation for appointment as dealer will be considered only when a regular appointment is to be made and not otherwise. Where the vacancy of any dealership of a fair price shop has occurred because of the death of the dealer and the conditions provided in the Government Order for appointment on compassionate basis stand fulfilled, the appointment on compassionate ground is to be considered first under paragraph 10 (Jha) of the Government Order dated 17.8.2002. If any other interpretation than this is given to the above Government order, the provision of the Government order shall become a nullity and the same can be availed by the dependents of the deceased dealer only in a case where the dealer was of the category for which the reservation is provided and not otherwise. Such cannot be the purpose as obviously para 10 (Jha) of the Government order has been inserted to safeguard the interest of the dependents of the deceased dealer. As such without considering the position of reservation which has not been provided for his case of compassionate appointment, the concerned authority shall look to the welfare of the dependents of the deceased dealer, otherwise the entire purpose of providing for such appointment would be frustrated. The interpretation which has been given by the impugned order is opposed to the public policy of safeguarding the interests of the dependents of the deceased-dealer.

5. We are thus of the view that appointment under paragraph 10 (Jha) of the Government Order dated 17.8.2002 would not be covered by the Rule of reservation as it is a special appointment on compassionate ground and only condition which has to be considered is that the deceased-fair price shop dealer had a good reputation and the applicant is the dependant of such deceased-dealer.

6. In view of the aforesaid, the impugned order dated 5th December, 2012 passed by the Sub-Divisional Magistrate rejecting the application of the petitioner deserves to be quashed. The writ petition stands allowed and the order dated 5.12.2012 is quashed. The respondent No. 2 is directed to take fresh decision on the application of the petitioner in the light of the observations made here-in-above, as expeditiously as possible, preferably within two months from the date of filing of certified copy of this order before respondent No. 2.