

(2009) 03 AHC CK 0208
In the Allahabad High Court
Case No : Writ Petition No. 1392 of 2009

Smt. Neelam Shukla

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 122 FLR 348

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Manish Kumar, for the Appellant;

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the petitioner and learned Standing Counsel, who has accepted notice on behalf of opposite parties No. 1 to 5.

With the consent of learned Counsel for the parties, the writ petition is being disposed of finally at the admission stage itself.

2. Through the instant writ petition, the petitioner is assailing the orders dated 29.1.2009, 8.12.2008, 23.1.2008 and 18.12.2007 passed by the opposite parties Nos. 1, 2, 3 and 4, respectively, to the writ petition.

3. Late Kuldip Shukla, husband of the petitioner, was a permanent Government Servant and while working as Ward Boy in the Community Health Centre, he left for heavenly aboard on 15.4.2004. After the death of the husband, the petitioner, who is Intermediate and having knowledge of Typing, applied for appointment on the prescribed format for the post of Junior Clerk. The Superintendent of the Health Centre forwarded the said application to the Chief Medical Officer on 12.7.2006, who in turn, forwarded the same to the Director General Medical & Health Services. Late Kuldip Shukla left behind the petitioner and two minor children. Instead of giving appointment to the petitioner on compassionate ground under the Dying-in-Harness Rules, 1974, the petitioner was required to appear in the test.

4. Counsel for the petitioner contends that the appointment under the Dying-in-Harness Rules, 1974 is given to the member of the deceased family on the basis of the qualification of the candidate without requiring him to appear in the Test. To support his argument, Counsel for the petitioner has relied upon the Government Order dated 22.6.1984 of the State Government, which provides that one person of the deceased family will be given appointment on the post of outside the purview of Public Service Commission on the basis of qualification. Therefore, the petitioner should have been given on the post of Junior Clerk as requirement for the post of Junior Clerk is only Intermediate.

5. Reliance has also been placed by learned Counsel for the petitioner on a judgment of this Court rendered in Smt. Anju Tewari Vs. District Magistrate/Collector, Etawah, wherein this Court, while considering the provisions of Dying-in-Harness Rules, 1974 as well as the qualifications for Clerk-copiest provided under the statutory Rules is only Intermediate, has held that Rule 5(1) clearly entitles a dependent of deceased employee to get suitable employment, if he/she fulfils the educational qualification prescribed for the post and the dependent acquires the entitlement under the Rule 5 to get an appointment according to her qualification.

6. Learned Standing Counsel has stated that the petitioner applied for the post of Junior Clerk and as such she was required to appear in the Typing Test. In the Typing Test, the speed of the petitioner was found below the prescribed standards and as such, her claim for appointment on the post of Junior Clerk was rejected by the letter dated 8.12.2008. The petitioner gave an application on 11.12.2008 and after considering the said application, the office of Director General communicated to the petitioner that her request for appearing in the Typing Test have been refused and she should contact the Chief Medical Officer, Unnao as mentioned in the letter dated 8.12.2008. It may be mentioned that in the letter dated 8.12.2008, it was provided that in case the petitioner is willing to work on Class-IV post, she would inform the Director General. Summarizing his arguments, it was submitted that there is no illegality and infirmity in the orders as the petitioner's Typing Speed was found below the prescribed standards.

7. Rule 5 of the Dying-in-Harness Rules, 1974 entitles dependent of deceased employee to get suitable employment if he/she fulfils the educational qualification prescribed for the post. Admittedly, the petitioner fulfils the requisite qualification as she is Intermediate and has also knowledge of Typing. It is not the case of the opposite parties that the petitioner does not know Typing but her speed was found to be below standards. The authorities failed to consider that the petitioner was a housewife and was not in regular touch with the Typing. The compulsions and the situations are such that the petitioner has to apply for a job in order to provide morsel to the minor children. If a dependent of deceased employee fulfils the educational qualification, neither she can be denied appointment nor insistence of fulfilling any other qualification can be made.

8. In Anju Tiwari's case on which reliance has been placed by learned Counsel

for the petitioner, this Court struck down the condition, which was laid down in the appointment letter of the petitioner wherein it was mentioned that the petitioner should acquire knowledge of Typing.

9. In the instant case, as I have already noted that the petitioner has no means to maintain the family, and, therefore, to tide over the financial crisis on the sudden death of the husband, refusing appointment on the post of Junior Clerk on compassionate ground to the petitioner is wholly unjustified. I am of the view that the financial position of the family of the deceased employee requires such compassionate appointment on the facts of the case.

10. Looking to the pathetic condition of the family and financial stress and strain that it has undergone all these years, the impugned orders are not justified and reflects non-application of mind. The opposite parties have not at all taken into account the tremendous difficulties that the petitioner and his family faced upon the death of their head of family way back in the year 2004.

11. For the reasons aforesaid, the impugned letters, contained in Annexures 1 to 3 are hereby set-aside. The concerned authorities [opposite parties Nos. 2 to 4] are directed to consider the claim of the petitioner for compassionate appointment on the post of Junior Clerk under Rule 5 of Dying in Harness Rules, 1974 and in light of the observations made hereinabove. The authorities shall pass the appropriate orders, expeditiously, say, by 31.3.2009.

With the above observations and directions, the writ petition is disposed of finally.