

(2011) 08 AHC CK 0279

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12190 of 2005

Smt. Puspa Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2012) 2 ADJ 428 : (2012) 4 AWC 4028

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed challenging the validity and correctness of the impugned order dated 18.2.2005 (Annexure-7 to the writ petition) passed by respondent No. 5, Executive Engineer Yantrik Khand Public Works Department, Kanpur Nagar. A further prayer has been made in the nature of mandamus directing the respondents to treat the petitioner as permanent class IV employee and pay her the salary of a permanent class IV employee which she was being paid prior to passing of the impugned order dated 18.2.2005.

3. Brief facts of the case are that husband of the petitioner was working as a work-charge employee in the office of Executive Engineer Yantrik Khand Public Works Department, Kanpur Nagar in the year 1985. He died in harness on 30.6.1991. The petitioner after protracted proceedings and several representations was given compassionate appointment under the Dying in Harness Rules on 24.4.1993. It appears that by the impugned order, respondent No. 5 has converted the petitioner's appointment from permanent class IV employee to temporary class IV employee and has further directed deducting of the difference of salary from her amounting to Rs. 1,23,509/- in instalment of Rs. 700/- per month.

4. Aggrieved by the aforesaid order dated 18.2.2005, the petitioner has filed this writ petition with the prayer aforesaid.

5. Learned counsel for the petitioner submits that the appointment of the petitioner was not temporary but is permanent one as she has been appointed under the Dying in Harness Rules.

6. Per contra, learned Standing counsel submits that the husband of the petitioner was working as work-charge employee in the department. He has relied upon paragraphs 6 and 11 of the counter-affidavit which read thus :

6. That the contents of para 5 of the writ petition as stated above are wrong, hence denied. It is submitted that petitioner Smt. Pushpa Devi wife of late Ram Ujagar concealed the facts in his application when she applied for service under the Dying in Harness Rules, 1974 that her husband was in regular cadre. At the time of death, her husband was work-charge (temporary) cadre, on the basis of petitioner's false information in the application she was given regular appointment on the direction of respondent No. 3 by the respondent No. 5, Executive Engineer, Mechanical Division, P.W.D. Kanpur.

11. That the contents of para 10 of the writ petition as stated are wrong, hence denied. It is further stated that at the time of death, her husband was working in Work-charge cadre, not in regular cadre because petitioner's husband salary was refixed in work-charge cadre from permanent cadre to temporary cadre, vide respondent No. 5 office order No. 116/4E dt. 26.2.86. The petitioner was wrongly appointed as regular class IV employee on the basis of her false information given in her application for the service.

7. In rebuttal, learned counsel for the petitioner submits that it may be that the husband of the petitioner was a work-charge employee and even if it is assumed that he was not working on permanent post, the appointment given to the petitioner by the department concerned under the Dying in Harness Rules is a permanent appointment. In this regard he has referred to the judgments rendered in Smt. Sunder Devi Pandey v. State of U.P. and others rendered in Civil Misc. Writ Petition No. 34898 of 1993 decided on 22.4.1997 and Ravi Karan Singh v. State of U.P. and others, (1993) 3 UPLBEC 2263.

8. In the case of Smt. Sunder Devi (supra), the petitioner's husband died in harness, hence she was given appointment under the Dying in Harness Rules but the said appointment was on daily wage basis. The Court relying upon the case in 1991(2) UPLBEC 995 held that the appointment under the Dying in Harness Rules shall be treated as a permanent appointment and directed the authority concerned to pay regular pay scale to the petitioner. Special Appeal No. 396 of 1997 filed against the aforesaid judgment and order dated 22.4.1997 was dismissed and Special Leave to Appeal (Civil) No. 2217/98 was also dismissed by the Apex Court.

9. In the case of Ravi Karan Singh (supra) a reference was made by the learned

Single Judge to a larger Bench as to whether an appointment under the Dying in Harness Rules is a permanent appointment or temporary one. Referring to the decisions rendered in Budhi Sagar Dubey Vs. Dt. Inspector of Schools and Others, , Gulab Yadav v. State of U.P. and others, (1991) 2 UPLBEC 995 and Dhirendra Pratap Singh v. D.I.O.S. and others, (1991) 1 UPLBEC 427, wherein it was held that an appointment under the Dying in Harness Rules is a permanent appointment, the Court held that an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rules as such appointment is intended to provide immediate relief to the family of the sudden death of the bread-earner.

10. In my view, the appointment of the petitioner having been made under the Dying in Harness Rules is to be treated as a permanent appointment and not a temporary. If the appointment of the petitioner would not have been made under the Dying in Harness Rules, probably the contention of the respondents that the petitioner was a temporary employee could be accepted. But that being not so, the writ petition succeeds and is allowed. The impugned order 18.2.2005 being illegal, arbitrary and against the law is quashed. No order as to costs.