
(2007) 04 UK CK 0020
In the Uttarakhand High Court
Case No : Special Appeal No. 60 of 2006

Smt. Sarnawati	Vs	APPELLANT
Vishal alias Golu and Others		RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 86, 87

Citation : (2007) 3 UC 1780

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Sri M.C. Pant and Sri D.S. Mehta, for the Appellant; Sri Kishore Kumar for Respondent No. 1 and Sri N.C. Gupta Standing Counsel for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble J.C.S. Rawat, J.—This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 02-03-2006 passed by the learned Single Judge of this Court in Writ Petition No. 4619/2001 (S/S), Vishal alias Golu v. State of Uttaranchal and Ors., whereby the learned Single Judge has allowed the writ petition and directed the Respondents to reconsider the case of the Petitioner Vishal alias Golu for the appointment under Dying-in-Harness Rules within a period of six weeks.

2. A Writ petition bearing No. 4619/2001 (S/S) was filed before the learned Single Judge by the writ petition-Vishal alias Golu (now "respondent No. 1" in the present special appeal) for the following reliefs:

(a) To issue an order, direction or writ in the nature of certiorari calling the service record and quashing the appointment of the Respondent No. 3 made by the Respondent No. 2 on the compassionate ground in the District Mahila Hospital Dehradun, as a Sweeper.

(b) To issue an order, direction or writ in the nature mandamus commanding the

Respondent No. 1 & 2 to make fresh appointment of the Petitioner on compassionate ground in place of Respondent No. 3.

(c) To issue an order, direction or writ in the nature which this Hon"ble Court may deem fit and proper.

(d) award the cost of the petition to the Petitioner.

3. The father of the writ Petitioner i.e. Kamal Singh was employed in the District Mahila Hospital, Dehradun as Sweeper. Kamal Singh-deceased had two wives. The real mother of the writ Petitioner died in the year 1986. It was further alleged in the writ petition that after the death of real mother of the Petitioner, Kamal Singh has kept Smt. Sarnawati as second wife. Kamal Singh died on 07-12-1999 leaving behind his five unemployed dependents i.e., four unmarried daughters and one son- the writ Petitioner himself.

4. After the death of the father of the Petitioner, Smt. Sarnawati (appellant) made an application to the department claiming herself to be the widow of late Kamal Singh and obtained service on compassionate ground in place of Petitioner. It was alleged that the father of the writ Petitioner never married with Smt. Sarnawati. After getting service on compassionate ground, Smt. Sarnawati-appellant has married with one Sudesh Kumar and left the dependents of the deceased- Kamal Singh. The Petitioner-Vishal alias Golu made complaint to the authorities concerned regarding the remarriage of Smt. Sarnawati (appellant) as well as other fraudulent acts done by her for obtaining service on compassionate ground. On the complaint of the Petitioner, the authorities concerned made a detailed enquiry and found that Smt. Sarnawati-appellant has married with one Sudesh Kumar on 13-09-2000. It was further pleaded in the writ petition that Smt. Sarnawati- Appellant got the compassionate appointment by misguiding the authorities concerned. Feeling aggrieved by the appointment of Smt. Sarnawati, the Petitioner-Vishal alias Golu had filed the writ petition before the learned Single Judge for seeking compassionate appointment in place of Smt. Sarnawati under Dying-in-Harness Rules, 1974.

5. Smt. Sarnawati- Appellant had filed the counter affidavit denying the averments made in the writ petition. It was alleged in the counter affidavit that all the benefits on account of death of Kamal Singh were given to the Petitioner and she has merely received the compassionate appointment and as such there is no reason to cancel her appointment. It is wrong to say that the remarriage of Smt. Sarnawati will loose the right of compassionate appointment. There is no agreement between Smt. Sarnawati and the Petitioner or with the department that she will not marry again and thus the compassionate appointment cannot be cancelled merely on the ground that she had again married.

6. After hearing the parties, the learned Single Judge had allowed the writ petition vide impugned order 02-03-2006 and directed the concerning authority to reconsider the case of the writ Petitioner- Vishal alias Golu for appointment under the Dying-in-Harness Rules. Apart from this, the learned Single Judge has

also quashed the order dated 03-01-2000 regarding the appointment of Smt. Sarnawati.

7. Felling aggrieved by the said order, the present special appeal has been preferred by the Appellant- Smt. Sarnawati.

8. Heard Learned Counsel for the parties and perused the record.

9. Learned Counsel for the Appellant contended that the learned Single Judge has erred in holding that the services of the Appellant was liable to be terminated on the ground that she was appointed in the department on compassionate ground, but she had re-married with one Sudesh Kumar and she would not be able to maintain the other family members of the deceased. It was further contended that there was no such terms and conditions in the appointment letter that the Appellant cannot re-marry and hence the re-marriage cannot be a ground to cancel the appointment of the Appellant. It was further contended that the appointment made by the competent authority under the Dying in Harness Rules is of a permanent nature and inspite of the second marriage solemnized by the Appellant the services cannot be terminated solely on the ground. Learned Counsel for the Respondents refuted the contention and supported the judgment of the learned Single Judge.

10. The appointments in public services on compassionate ground has been carved out as an exception, in the interest of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. A compassionate appointment is made out of pure humanitarian consideration on account of the fact that unless some source of livelihood is provided the family would not be able to make both ends meet. The whole object of granting such appointment is to enable the family to tide over the sudden crisis. It is also well settled position of law that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the authority concerned and no person can claim appointment on compassionate grounds in disregard of such rules or guidelines. Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 is quoted below:

5. Recruitment of a member of the family of the deceased.- (1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government, or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post except the post which is within the purview of the Uttar Pradesh Public Service Commission,

in relaxation of the normal recruitment rules if such person -

- i) fulfils the educational qualifications prescribed for the post,
- ii) is otherwise qualified for Government service, and
- iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

11. Sub-rule (3) & (4) of Rule 5 of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 were inserted by the 6th Amendment, 2001 and the said sub-rules came into force on 12-10-2001. Sub-rule (3) & (4) is quoted below:

12. On 23rd August, 2002 the State of Uttaranchal (now Uttarakhand) had adapted the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. The notification regarding adaptation and Amendment Order, 2002 is quoted below:

August 23, 2002 No 849/Ka-2/2002- Whereas, u/s 87 of the Uttar Pradesh Reorganization Act, 2000 the Uttaranchal Government may, by order, make such adaptation and modification of the law, by way of repeal or amendment, as necessary or expedient;

And, Whereas, The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 is in force in the State of Uttaranchal u/s 86 of the Uttar Pradesh Reorganization Act, 2000. Now, THEREFORE, in exercise of the powers u/s 87 of the Uttar Pradesh Reorganization Act, 2000 (Act No. 29 of 2000), the Governor is pleased to direct that the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 will be enforced in Uttaranchal subject to the provisions of the following order:

The Uttaranchal (the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974) Adaptation & Amendment Order, 2002.

1. Short title and commencement -

(1) This order may be called the Uttaranchal (Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974) Adaptation & Amendment Order, 2002.

(2) It shall come into force at once.

13. Thus, the afore-mentioned Rules clearly provide that if a person appointed under the Dying in Harness Rules refuses or neglects to maintain other members of the deceased, the department would be at liberty to terminate the services of the so appointed person. The writ Petitioner had filed a copy of the letter No. Bh./185/Vividh-Lipik-99 dated 01-01-2000 in which it has been mentioned that late Kamal Singh S/o Murari Lal has left the following persons as his legal heirs/dependents:

(i)

Smt. Sarnawati

wife

(ii)

Km.Meenu

daughter

(iii)

Km.Sonu

daughter

(iv)

Km.Sapna

daughter

(v)

Golu Kumar son

(petitioner)

(vi)

Km.Megha

daughter

14. Thus, the father of the writ Petitioner died leaving behind his five unemployed dependents (four daughters and one son). The Appellant had made an application to the authority concerned claiming herself to be the widow of late Sri Kamal Singh and obtained the service in place of the Petitioner on compassionate ground. The Appellant after getting appointment on compassionate ground married with one Sudesh Kumar and left the family of the deceased instead of maintaining the family of the deceased. The writ Petitioner has also filed the marriage certificate dated 13-09-2000 issued by the Registrar of Hindu Marriage, Dehradun which is at Annexure-II to the writ petition. Perusal of the said certificate reveals that the marriage was solemnized between Smt.

Sarnawati- Appellant has admitted in para 9 of the special appeal that her husband left five children at the time of his death, out of these five children four are from his first wife and one is from the Appellant. Hence she alone was unable to maintain them and she faced problems and ultimately she has married with one Sudesh Kumar for the support of her family. Thus, it is admitted to the Appellant that after getting service under the Dying in Harness Rules she has married with one Sudesh Kumar. The Petitioner has pleaded in his writ petition that the purpose of the appointment of the Appellant on compassionate ground was to mitigate the hardship of the families of the bread earner (Kamal Singh), but the Appellant after getting the compassionate appointment married with one Sudesh Kumar and left the family of the deceased. The Appellant had not made any averment in the counter affidavit that she is maintaining the other family members of the deceased even after her second marriage. She had not stated that after the marriage she had given any amount to the dependents of the deceased and she is maintaining them. Instead of saying so, she had stated that the post-death benefits of the deceased were given to the Petitioner and the other family members of the deceased. The Appellant has pleaded in the special appeal that the pensionary benefits of her husband were surrendered by her in favour of the children of first wife of late Kamal Singh. The entire amount of G.P.F. and insurance was released in favour of the children of first wife of her husband late Kamal Singh. It was further pleaded that she was given appointment under the Dying in Harness Rules according to the wishes of late Kamal Singh. Thus, the Appellant had an intention to take appointment under the Dying in Harness Rules after giving some benefits to the family of the deceased. Thus, it is clear from perusal of the counter affidavit of Appellant that she had not stated anywhere that she has been maintaining other family members of the deceased. It is not disputed that the writ Petitioner is the son of the deceased born from the first wife of Kamal Singh- deceased. One daughter of first wife of the deceased is unmarried and she is living with her grandfather. It is evident from the record that the Appellant is not maintaining the dependants of the deceased. Thus, the sub-Rule 4 clearly empowers the appointing authority to terminate the services of the Appellant. It is the settled position of law that all the public appointments must be in consonance with the provision of the Constitution of India. Exception carved out there from are the cases where appointments are given to the dependent or particularly to a widow of the employee who died in harness. Such exception has been carved out with a view to see that the family of the deceased employee who has died in harness does not become destitute. That being the sole purpose of the compassionate appointment. It is inherent in the appointment itself that if such condition is not fulfilled and the widow remarries with other person and allows the other members to become destitute, the compassionate appointment is liable to be terminated.

15. In the writ petition, the Petitioner has sought the relief to quash the appointment of Smt. Sarnawati- Appellant in the District Mahila Hospital,

Dehradun. The Petitioner has further sought the relief directing the concerning authority to make fresh appointment of the Petitioner on compassionate ground in place of Smt. Sarnawati. Smt. Sarnawati- second wife of the deceased Kamal Singh was appointed in the District Mahila Hospital as Sweeper on 03-01-2000 on compassionate ground. Dr. R.C. Balui (deponent) has alleged in the counter affidavit on behalf of C.M.S., District Mahila Hospital, Dehradun (respondent No. 2) that the said appointment was made on the basis of documents i.e. (i) affidavit dated 19-03-1987 of late Kamal Singh by which the deceased has nominated his second wife Smt. Sarnawati Devi; (ii) Varish Certificate dated 01-01-2000 issued by the District Magistrate, Dehradun; (iii) affidavit dated 1-1-2000 issued by Km. Monu, the eldest daughter of late Kamal Singh and (iv) application dated 16-12-1999 of Smt. Saraswati Devi. The said documents have been filed before the court along with the counter affidavit CA-2 to CA-5 respectively. The deceased Kamal Singh has stated in his above mentioned affidavit dated 19-03-1997 that the name of his wife Smt. Sarnawati and daughter Megha may be recorded in the service record. Thus, when the Appellant was appointed as Sweeper on 03-01-2000 on compassionate ground, the authority (department) was satisfied from the record that she was legally wedded wife of deceased and as such the appointment was given to her. It is admitted case of the parties that Smt. Sarnawati got herself married with one Sudesh Kumar on 13-09-2000 after her appointment in the department and she informed about her re-marriage to the department. She has submitted the marriage certificate to the department also. In view of the above, it cannot be held that the appointment order dated 03-01-2000 of the Appellant- Smt. Sarnawati Devi on compassionate ground was illegal ab-initio.

16. The main contention of the writ Petitioner was that after getting on compassionate ground the Appellant- second wife of the deceased got herself re-married with one Sudesh Kumar on 13-09-2000. Learned Counsel for the Appellant (respondent No. 3 in writ petition) contended that vide order dated 02-03-2006 the learned Single Judge has allowed the writ petition and has issued a writ certiorari quashing the appointment order dated 03-01-2000 of Smt. Sarnawati Devi. Pursuant to the said order, the Chief Medical Superintendent, District Mahila Hospital, Dehradun has cancelled the appointment of the Appellant on 30-06-2006. It was further submitted that the order of cancellation of her appointment passed by the department pursuant to the order of the learned Single Judge was illegal. It is apparent from the record that since the Single Judge has quashed the appointment order dated 03-01-2000, the authority (department) was under the obligation to cancel the appointment order. Now, we are of the opinion that the learned Single Judge was not justified in quashing the order of appointment dated 03-01-2000. Therefore, the order dated 30-06-2006 terminating the service of the Appellant is also liable to be quashed.

17. It is pertinent to mention here that the Chief Medical Officer issued a notice dated 28-06-2005 (Annexure-8 to the counter affidavit of Respondent No. 3) to

the Appellant stating therein that she was provided appointment on compassionate ground by the department on the condition that she would look after the dependents of late Kamal Singh. It was further indicated in said notice that instead of performing the aforesaid obligation she married with one Sudesh Kumar and left all the dependents of late Kamal Singh. She was asked to show cause as to why her services should not be terminated on the ground of her second marriage as she would not be able to fully support the family members of the deceased- Kamal Singh. The Appellant has also given her reply dated 01-07-2005 (Annexure-9 to the counter affidavit). It is revealed that the department has already seized with the matter and the enquiry is in progress. Therefore, it would be just and proper to direct the Chief Medical Superintendent, District Mahila Hospital, Dehradun to-conclude the enquiry within a period of two months from the date of receipt of this order. After completing the enquiry, the authority (department) may pass an appropriate order in accordance with law. In case, the enquiry is terminated against the Appellant the department may consider the case of Petitioner-Vishal alias Golu with regard to the appointment on compassionate ground within a period of three months from the date of termination of enquiry.

18. In view of the above, the special appeal deserves to be partly allowed. The order of learned Single Judge passed in the writ petition No. 4619/2001 (S/S) quashing the appointment order dated 03-01-2000 is set aside. The order dated 30-06-2006 terminating the service of the Appellant passed pursuant to the order of learned Single Judge is also set-aside. The special appeal is allowed to the above extent. The Chief Medical Superintendent, District Mahila Hospital, Dehradun is directed to conclude the enquiry, which has been initiated by him as indicated above, within a period of two months from the date of receipt of copy of this order. After completing the enquiry, the authority (department) may pass an appropriate order in accordance with law. In case, the department concludes that the service of the Appellant deserves to be terminated, in such contingency the department may consider the case of the Petitioner-Vishal alias Golu for his appointment on compassionate ground within a period of three months from the date of termination of enquiry. No order as to costs.