

(2011) 04 AHC CK 0456

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30654 of 2008

Smt. Sudha Jain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Uttar Pradesh Basic Shiksha Adhiniyam, 1972 — Section 13(1)

Citation : (2011) 5 ADJ 730 : (2011) 5 AWC 4871 : (2011) 130 FLR 486 :
(2011) 2 UPLBEC 1396

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court made an application for compassionate appointment on the allegation that her mother-in-law expired during harness and that her husband had pre-deceased the mother-in-law meaning thereby that the Petitioner was widowed doughtier-in-law of the deceased employee. This application of the Petitioner was considered and appointment was offered to her. However, on complaints being made, the appointment has been cancelled under the impugned order dated 28.4.2008. Hence this petition.

2. On behalf of the Petitioner, it is contended that the impugned order has been passed without opportunity of hearing to the Petitioner and further that the same proceeds on presumption that there is a dispute in respect of the right of the Petitioner for such compassionate appointment. He submits that the order cannot be legally sustained.

3. On behalf of the Respondents, it is pointed out that a Division Bench judgment of this Court in the case of Basic Shiksha Adhikari Hardoi v. Madhu Mishra and Ors. 2009 (27) LCD 995 has specifically held that widowed daughter-in-law of the deceased employee is not included in the scheme providing for compassionate appointment and, therefore, Petitioner can have no claim for such

appointment. Irrespective of the reasons assigned in the impugned order since the Petitioner was not within the category of persons entitled for compassionate appointment, this Court may not interfere in this matter inasmuch as any order in favour of the Petitioner would only perpetuate an illegal appointment.

4. Person seeking impleadment as set up her independent claim for compassionate appointment on the ground that she is divorced daughter of the deceased employee.

5. Shri H.N. Pandey, counsel for the Petitioner in rejoinder-affidavit submits that appointments has been offered to her in terms of the Government Order dated 4.4.2000 and that the authorities have interpreted that the widowed daughter-in-law is within the definition of family of the deceased employee. He contends that the person seeking impleadment has not been divorced. The allegations in that regard are false. She has been married and there is no decree of divorce granted by any Court of law. In any case even a divorced daughter-in-law is not entitled for such compassionate appointment.

6. I have heard counsel for the parties and have examined the records.

7. The issue with regard to the entitlement of a widowed doughtier-in-law being within the scheme providing for compassionate appointment, has specifically been considered by the Division Bench of this Court in the case of Basic Shiksha Adhikari (supra). After overruling the judgments of the Single Judge reported in Smt. Urmila Devi Vs. U.P. Power Corporation and Others, and reported in 2006 (5) ADJ 501 the Division Bench after considering the definition of "family" as contained under the U.P. Recruitment of Dependants of Government Servants Dying-in-harness Rules, 1974, which have been applied to the employees of Basic Shiksha Parishad under Government Order dated 4.9.2000 in exercise of powers u/s 13(1) of U.P. Basic Shiksha Adhiniyam, 1972 has proceeded to hold that daughter-in-law is not covered within the definition of family, hence she is not entitled to appointment on compassionate ground. Reference para 14 of the said judgment which is quoted here-in-below:

...14. "Hard case makes bad law" is a concept well known in Courts of Law. In the cases of Urmila Devi (supra) and Sanyogita Rai (supra), much emphasis has been laid on the word "includes" in the definition of "family". It is true that inclusive definition is often used in the interpretation clauses in order to enlarge the meaning of the word but the said principle does not contemplate inclusion of such persons which has no nexus with the description of the relations mentioned in the Rules. Rule 2(c) of the Rules 1974 does include "widowed daughter" but does not include daughter-in-law. The Rulemaking Authority having not included "widowed daughter-in-law", it would mean adding something in the Rule which the Rule-making authority did not intend to include. In our opinion, enlarging the meaning of the word would mean adding words, which is not permissible.

8. The judgment of the Division Bench in the case of Basic Shiksha Adhikari (Supra) was referred for consideration to a larger Bench. The Full Bench in the

case of U.P. Power Corporation Ltd. v. Smt. Urmila Devi 2011 (3) ADJ 432 FBspecifically held that the Division Bench had specifically overruled the judgment of the Single Judge in the case of Urmila Devi (supra) and, therefore, the reference as made itself was not maintainable.

9. However, the Full Bench proceeded to make certain recommendations for the widowed doughtier-in-law being included in the definition of family for the purpose of compassionate appointment and, therefore directed that the State Government may consider this aspect and take appropriate decision so that widowed doughtier-in-law also become entitled to be considered for compassionate appointment, if other criterias are satisfied. Reference para 8 of the Full Bench judgment which reads as follows:

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 dependent 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.

10. It is therefore clear that the Full Bench of this Court has not found any error in the Division Bench judgment of this Court in the case of Basic Shiksha Adhikai, (supra). The Full Bench only proceeded to make a recommendation to the State Government to amend the definition of family so as to include the widowed daughter-in-law within the ambit of family.

11. It is not the case of the Petitioner that such amendment in the definition of "family" has been carried out till date. The suggestion made by the Full Bench, it appears that has not found favour with the State Government. The law as it

stands today cannot be by passed by this Court merely because certain suggestions had been made by the Full Bench for amending the definition of family.

12. In the facts and circumstances of the case, this Court has no hesitation to hold that widowed daughter-in-law is not within the definition of family for being considered for appointment on compassionate ground, in view of the Division Bench of this Court in the case of Basic Shiksha Adhikari (supra).

13. This Court will not interfere with the impugned order inasmuch as any order to the contrary will result in an illegal order of appointment in favour of the Petitioner being perpetuated, which can never be the outcome of a judgment of the writ Court.

14. So far as the divorced daughter-in-law is concerned, the issue stands decided under the judgment of this Court in the case of Akhilesh Tiwari v. State of U.P. and Ors. 2006 (3) ESC 1865 All

15. Writ petition is dismissed with the observations made.