

(2016) 09 AHC CK 0130

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 44424 of 2016

Smt. Sunita Singh Kushwaha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-09-2016

Acts Referred:

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 2, 5

Citation : (2016) 10 ADJ 402 : (2016) 6 AILLJ 379 : (2016) 6 AllWC 6150 :
(2016) 119 ALR 565 : (2017) 152 FLR 445

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Jitendra Pandey and Birendra Pandey, Advocates, for the Petitioner;
C.S.C. and Qamrul Hasan Siddiqui, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—; Heard Sri. Jitendra Pandey, learned counsel for the petitioner, learned standing counsel for respondent no.1 and Sri. Saiful Islam Siddiqui holding brief of Sri. Q.H. Siddiqui, learned counsel for respondent nos. 2 to 4.

2. This writ petition has been filed for the following relief:

(i) Issue a writ in the nature of mandamus directing the respondent no.2 to consider the employment of petitioner as per Dying-in-Harness Rules.

Facts

3. Briefly stated facts of the present case are that the mother of the petitioner Smt. Vimla Devi was working on the post of Peon in Jal Nigam, Varanasi. She died on 31.10.2014. Petitioner is a married daughter of the deceased Vimla Devi. She has filed this writ petition with the allegation that she is a divorced lady and, therefore, in view of the Division Bench Judgement of this Court in Writ - C No.60881 of 2015, Smt. Vimla Srivastava v. State of U.P. and another, she is

entitled for appointment on compassionate ground. It is alleged that after the death of her mother her husband filed a divorce petition No.813 of 2014 on 20.11.2014 in Family Court, Azamgarh. However, despite being asked repeatedly, learned counsel for the petitioner could not inform about further development in the aforesaid divorce petition and its present status. In the writ petition also there is no averment in this regard except that a divorce petition No.813 of 2014 was filed by her husband.

Submissions

4. Learned counsel for the petitioner submits that the petitioner being a divorcee is entitled for appointment on compassionate ground in view of the Division Bench judgment in the case of Smt. Vimla Srivastava (supra). Learned standing counsel submits that a married woman does not fall within the category of dependent under the Dying-in-Harness Rules, 1974. He submits that the Division Bench judgment in the case of Smt. Vimla Srivastava (supra) has been stayed by Hon'ble Supreme Court. He submits that there is no evidence of divorce decree and as such it can not be said that the petitioner is a divorced lady.

Discussion and Findings:

5. I have carefully considered the submissions of learned counsel for the parties. Rule 2 (c) of the Uttar Pradesh Recruitment of Dependents of Government Servants, Dying-in-Harness Rules, 1974 (hereinafter referred to as "Dying-in-Harness Rules") defines the word "family" as under:

"2(c) "family" shall include the following relations of the deceased Government servant:

(i) Wife or husband;

(ii) Sons/adopted sons;

(iii) Unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) Unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent Court;

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him."

6. In the case of Smt. Vimla Srivastava (supra) decided on 4.12.2015 the word

"unmarried" before the word "daughters" occurring in sub clause (iii) of Clause C of Rule 2 was struck down by the Division Bench in the case of Smt. Vimla Srivastava (supra) and a direction was issued to the concerned respondents to reconsider the claim of Smt. Vimla Srivastava for compassionate appointment on the basis of relevant facts and circumstance and she shall not be excluded from consideration only on the ground of marital status.

7. Solely relying upon the judgment in the case of Smt. Vimla Srivastava (supra) another Division Bench in Special Appeal Defective No.863 of 2015 (Neha Srivastava v. State of U.P. another) took the same view and allowed the special appeal by judgment dated 23.12.2015. Against the judgment in the case of Neha Srivastava (supra) the State of U.P. preferred a Special Leave to Appeal (C) CC No. 13846 of 2016 in which Hon'ble Supreme Court passed an interim order on 29.7.2016 as under:

"Delay condoned.

Issue notice.

In the mean time, the operation of the impugned final judgment and order shall remain stayed."

8. The basic rationale and the foundation for granting compassionate appointment is the financial need of the family of a deceased Government servant who has died in harness and it is with a view to alleviate financial distress that compassionate appointment is granted as per provisions of Rule 5 of the Dying-in-Harness Rules. It is settled law that compassionate appointment is an exception to the basic rule that there must be equality of opportunity in matters of public employment. Equality of opportunity postulates a level playing field where all eligible persons are entitled to compete in an effort to secure public employment. The basis of the exception that is carved out by the Dying-in-Harness Rules is that the death of a wage earner while in the service of the State may result in severe financial hardship on the family faced with an untimely death. Compassionate appointment is intended to provide immediate financial support to such a family by stipulating that upon the death of its wage earner while in harness as a Government servant, another member of the family would be granted appointment. It is, thus not a reservation of a post in public employment but it is in the nature of an enabling provision under which a member of the family of a deceased Government servant who died while in harness, can seek appointment based on financial dependency and need. Keeping in mind the aforesaid settled principles of compassionate appointment, I proceed to examine as to whether the petitioner has made out a prima facie case for compassionate appointment on the facts disclosed in the writ petition.

9. The petitioner has neither impleaded her husband as respondent against whom allegation of filing a divorce petition has been levelled nor she has disclosed the source of livelihood, earning and financial status of her husband. According to her own case her mother died on 31.10.2014 and allegedly

thereafter a divorce petition was filed by her husband on 28.11.2014. A photostate copy of the said divorce petition has been filed as Annexure No.7 without disclosing that how petitioner has obtained it. Nothing has been brought on record about the status of the aforesaid alleged divorce petition. In paragraph 6 of the writ petition the petitioner has alleged that she along with her son aged 14 years and daughter aged 7 years were living with the deceased employee, Smt. Vimla Devi and were fully dependent on her. This para has been sworn on personal knowledge in the affidavit dated 7.9.2016. In the alleged divorce petition the age of aforesaid two children is mentioned as 15 Years and 13 years as on 28.11.2014. The alleged copy of family register filed as Annexure No.3 to the writ petition was obtained on 29.12.2014 i.e. after the death of the deceased employee and yet her death is not recorded in it. This register also does not record the name of two children of the petitioner.

10. No documents indicating dependency of the petitioner and her children on the deceased employee has been filed along with writ petition. The petitioner has also not filed her address proof and address proof of her son and daughter. In paragraph 9 of the writ petition, the petitioner has alleged that she moved a representation on 7.1.2015 before the Executive Engineer for her compassionate appointment. Copy of the representation dated 7.1.2015 has been filed as Annexure No.5 to the writ petition. Perusal of this representation dated 7.1.2015 shows that it was allegedly filed along with proof of divorce of the petitioner and death certificate of the deceased employee which was issued on a subsequent date on 9.5.2015 as per Annexure No.2. Thus the averments made in the writ petition are apparently false.

11. The sequence of the events as discussed above shows that the petitioner has cooked up the entire story so as to obtain illegally the Government employment on compassionate ground without actually being dependent of the deceased Government employee. The writ petition is based on false and misleading averments and suppression of important facts.

12. In view of the aforesaid, I do not find any good reason to grant the relief as prayed by the petitioner.

13. Consequently, writ petition fails and is hereby dismissed.