
(2004) 01 RAJ CK 0041

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 120 of 1993

State of Rajasthan

APPELLANT

Vs

Shyam Kishan Tewari

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Rajasthan (Recruitment of Dependents of the Government Servant Dying While in Service) Rules, 1975 — Rule 8(2)

Citation : (2004) 102 FLR 850 : (2004) 2 RLW 1099

Hon'ble Judges : S.K. Keshote, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Bharat Vyas, AAG, for the Appellant; Ajay Rastogi, for the Respondent

Final Decision : Allowed

Judgement

Keshote, J.—Heard learned counsel for the parties, perused the entire record and carefully gone through the judgment of learned Single Judge.

2. This special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment dated 4.10.1991 of the learned Single Judge in S.B. Civil Writ Petition No. 4356/1998 filed by the respondent.

3. Facts, in brief, of the case are that late Anandi Lal Tiwari, the father of the respondent, was holding the post of accountant in the Cooperative Societies Department of the Government of Rajasthan and while in service and holding that post, he died on 1st January, 1988.

4. The respondent submitted an application praying therein for giving him appointment on compassionate ground under the Rajasthan Recruitment of dependents of Government Servants Dying While in Service Rules, 1975 (for short, "the Rules, 1975") and has claimed for appointment to the post of Accountant. However, appellant No. 2, under the order dated 5th of May, 1988 appointed the respondent on the post of Junior Accountant. The respondent

challenged that order in this court in S.B. Civil Writ Petition No. 4356/1998.

5. The writ petition was allowed by the learned Single Judge on 4th of October, 1991 and thus this special appeal by the appellants.

6. We are in agreement with the learned counsel for the appellants no writ of mandamus can be issued to the appellants to give appointment to the dependent of the deceased Government servant on the post on which he sought the appointment. No right accrues to the dependent of the government servant muchless any legal right under the Rules, 1975 to get the appointment on the post of their choice. It is true that Sub-rule (2) of Rule 8 of the Rules, 1975 dispense with the process of requirement of selection such as written test, type test or interview by selection committee or by another authority in the case of the appointment to be given to a dependent of the Government servant died while in service on compassionate ground. A candidate seeking appointment on compassionate ground, in order to satisfy that he will be able to maintain the minimum standards of work and efficiency, can be interviewed. It cannot be disputed that in the alleged selection committee the appellant No. 2 was there. Other members of the selection committee were his subordinate officers i.e. Deputy Director (Personnel) and Deputy Director (Planning).

7. From the judgment of the learned Single Judge we find that the respondent No. 1, no doubt, was interviewed, but only to satisfy that he will be able to maintain the minimum standards of work and efficiency expected on the post on which he is to be appointed. For recording this satisfaction what were the relevant factors have been taken into consideration. The post of Accountant is certainly a post of responsibility and it also carries the supervisory work and issuance of guide lines to its subordinates. There are the relevant and material considerations to record the satisfaction by the authority that the respondent will be able to maintain the minimum standard of work and efficiency expected on the post. The only fault found with this approach of the appellant No. 2 is that instead of doing this by the appointing authority he has taken assistance of his two subordinate officers.

8. The appointment under the Rules, 1975 is not a matter of rule of right. The purpose and object of giving these appointments are not needed to be repeated as these were given time and again by their Lordships of the Hon"ble Supreme Court in catena of decisions. It is also no more *res Integra* that a candidate cannot claim as a rule or right the appointment on the post which the deceased servant was holding, he cannot also claim as a matter of rule or right the appointment on a particular post. In the fact of this case we are satisfied that the learned single Judge has taken a technical view of the matter. The matter would have been different where the appointing authority was not there in that committee. But that is not the case. We do not find any error or illegality in the judgment of the appointing authority was assisted by his two subordinate officers to satisfy that the respondent will not be able to maintain the minimum standards of work and efficiency expected on the post. The appointment given to

the respondent on the post of Junior Accountant does not suffer from any illegality or perversity.

9. As a result of the aforesaid discussion, this special appeal succeeds and the same is allowed. The judgment dated 4th of October, 1991 of the learned Single Judge in S.B. Civil Writ Petition No. 4356/1958 is quashed and set aside.

10. In the fact of this case there shall be no order as to costs.