
(2014) 07 AHC CK 0044
In the Allahabad High Court
Case No : Special Appeal No. 621 of 2014

State of U.P.

APPELLANT

Vs

Pushpa Devi

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 7 ADJ 268 : (2014) 6 ALJ 297 : (2014) 106 ALR 829 : (2015) 1 AWC 308 : (2014) 3 UPLBEC 2308

Hon'ble Judges : Vineet Saran, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : C.B. Yadav, Addl. A.G. and A.K. Roy, Advocate for the Appellant;
Manish Pandey and K.K. Tripathi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. In brief the facts of this case are that the husband of the sole respondent-writ petitioner Smt. Pushpa Devi was an employee of the Public Works Department who died in harness on 30.6.1991. The respondent-writ petitioner applied for appointment on compassionate ground under The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred as the "Dying in Harness Rules"). On her application, she was given appointment on 24.4.1993 as a permanent class IV employee. By order dated 18.2.2005 passed by the Executive Engineer, Public Works Department, the appointment of the respondent-writ petitioner was downgraded from that of a permanent employee to a work charge employee on the ground that her husband was a work charge employee, and not a permanent employee. Further, recovery of the difference of salary from the date of initial appointment i.e. 24.4.1993 till the date of passing of the order i.e. 18.2.2005 was also directed. Challenging the same, the respondent-writ petitioner filed Civil Misc. Writ Petition No. 12190 of 2005 which was allowed by a learned Single Judge vide his order dated 10.8.2011. Challenging the same, this special appeal has been filed by the State. We have heard Sri C.B. Yadav, learned Additional Advocate General appearing

alongwith Sri A.K. Roy, learned Standing Counsel, learned counsel appearing for the appellants and Sri Manish Pandey, learned counsel holding brief of Sri K.K. Tripathi, learned counsel for the respondent-writ petitioner and have perused the record.

2. The submission of the learned Additional Advocate General is primarily that since the husband of the writ-petitioner was a work charge employee, the writ-petitioner would not have been entitled to the benefit of Dying in Harness Rules but on misrepresentation of the writ-petitioner that her husband was a permanent employee of the Public Works Department, the appointment was wrongly given to her and on coming to know of the correct facts regarding her misrepresentation at the time of seeking appointment, her appointment as a permanent employee has been down-graded to that of a work charge employee, on which position the husband of the writ-petitioner was working.

3. Learned counsel for the appellants has relied on the Full Bench decision of this Court in the case of Pawan Kumar Yadav Vs. State of U.P. and Others, in support of his contention that a work charge employee would not be entitled to the benefit of the Dying in Harness Rules. There is no dispute about such proposition and we accept the said submission of the learned counsel for the appellants.

4. The contention of the learned counsel for the appellants in so far as it relates to the grant of appointment to a dependent of a work charge employee under the Dying in Harness Rules is perfectly justified. A work charge employee, who is not a permanent employee, cannot be given the benefit of the Dying in Harness Rules. However, as far as the present case is concerned, the writ-petitioner had been granted appointment under the Dying in Harness Rules way back on 24.4.1993 and it is presumed that the said appointment was given after verification of the documents which had been filed by the writ-petitioner. After more than a decade if it had come to the light of the appellants that the appointment was obtained by the writ-petitioner on misrepresentation or fraud i.e. by wrongly showing her husband to be a permanent employee of the department instead of correctly placing his position as that of a work charge employee, the option which could have been available to the appellants would be that of cancellation of the appointment and not to downgrade the same from that of a permanent employee to a work charge employee. We say so because appointment under the Dying in Harness Rules can only be given to the dependent of a permanent employee and not to a dependent of a work charge employee or temporary employee. Once the appointment had been given, it is presumed that the writ-petitioner had fulfilled all the conditions of grant of compassionate appointment under the Dying in Harness Rules. Once the authorities have given such appointment to the writ-petitioner, the same cannot be down-graded to that of a work charge or temporary employee on the ground that the initial appointment was incorrectly provided. If the writ-petitioner was not entitled to the appointment under the Dying in Harness Rules because of her husband being a work charge employee, the option available to the State was

not to place her as a work charge employee as there is no provision in law for appointment as a work charge employee under the Dying in Harness Rules. Any appointment made under the Dying in Harness Rules can only be on a permanent post and not on temporary or work charge post. That being the position, the option exercised by the State in downgrading the appointment of the petitioner from that of a permanent class IV employee to a work charge employee and also a direction for recovery of the excess amount paid to the writ-petitioner cannot be justified in law. As such, this appeal stands dismissed. No order as to cost.