
(2017) 11 AHC CK 0024
In the Allahabad High Court
Case No : 92019 of 2017

State of U.P., & Ors.

APPELLANT

Vs

Smt. Suman Singh, & Anr.

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

Constitution of India, Article 14, Article 16 -
Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-In-Harness) Rules, 1974, Rule 10

Citation : (2017) 11 AHC CK 0024

Hon'ble Judges : Devendra Kumar Upadhyaya

Bench : Single Bench

Advocate : Amit Bose, Abhishek Bose

Final Decision : Dismissed

Judgement

1. Heard learned Additional Chief Standing Counsel appearing for the review-applicants-State-authorities and Sri Amit Bose, learned counsel appearing for the respondents.

2. This petition/application seeks review of the final judgment and order dated 12.07.2016 rendered by this Court whereby the writ petition filed by the petitioners, Smt. Suman Singh and another was disposed of with the direction to the State-authorities to consider the entire matter raised by the petitioners keeping in view the observations made by Hon"ble Supreme Court in Paragraph-26 of the judgment in the case of V. Sivamurthy Vs. State of Andhra Pradesh and others, reported in (2008) 13 Supreme Court Cases 730.

3. Learned Additional Chief Standing Counsel appearing for the review-applicants-State-authorities has submitted that the judgment rendered by Hon"ble Supreme Court in the case of V. Sivamurthy (supra) does not have any application in the matter relating to the compassionate appointments in the State of U.P. for the reason that the said judgment is based on the scheme of compassionate

appointments prevalent in the State of Andhra Pradesh. He has further stated that the compassionate appointments in the State of U.P. are governed by the U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 which do not envisage any compassionate appointment to be given to the dependent of a Government employee who seeks voluntary retirement on the ground of medical invalidation.

4. Lastly, it has been submitted by the learned Additional Chief Standing Counsel representing the State-authorities that in fact the father of the petitioner No.2 while making the application seeking voluntary retirement in February, 2003 had not indicated his ailment or medical invalidation as a ground for seeking voluntary retirement and accordingly, the judgment and order dated 12.07.2016 requiring the State-authorities to consider the claim of the petitioners in the light of the observations made by the Hon''ble Supreme Court in the case of V. Sivamurthy(supra) needs to be reviewed.

5. Hon''ble Supreme Court while rendering the judgment in the case of V. Sivamurthy (supra), as is apparent from perusal of the said judgment, did not confine itself to the scheme of the compassionate appointments prevalent in the State of Andhra Pradesh. Hon''ble Apex Court in the said judgment has dealt with, in detail after reviewing the entire law on the subject, the issue relating to compassionate appointments in general. The judgment rendered by Hon''ble Supreme Court in the said case, in fact, culls out the broad principles relating to compassionate appointments. The said principles concerning the compassionate appointments as deduced by the Hon''ble Supreme Court in the case of V. Sivamurthy (supra) can be found in Paragraph-18 of the said judgment, which is extracted herein below:

"18. The principles relating to compassionate appointments may be summarized thus :

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner".

6. In the said judgment, their Lordships of Hon''ble Apex Court have clearly held

that the compassionate appointment is not restricted to death-in-harness only. Citing various earlier pronouncements of the Hon"ble Supreme Court, their Lordships have clearly observed that the general rule of appointments in public service should be strictly on the basis of open invitation of applications and merit, however, the said rule is subject to "some exceptions carved out in the interest of justice and to meet certain contingencies". Dealing with said "certain contingencies", the Hon"ble Supreme Court has concluded that the consequences in case of an employee being medically invalidated on account of ailment or accident, will be no less, in fact far more, than the consequences of death-in-harness. It is in the said back-ground discussions that the Hon"ble Supreme Court in the case of V. Sivamurthy (supra) has held that it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness etc. The relevant paragraphs, where such a discussion has been made by Hon"ble Supreme Court to arrive at the aforesaid conclusion, are paragraphs 23 to 27, which are quoted hereunder.

"23. In fact several decisions of this Court make it clear that compassionate appointment is not restricted to death-in-harness cases only. As noticed above, in Umesh Kumar Nagpal (supra) this Court observed that the general rule that appointments in public service should be strictly on the basis of open invitation of applications and merit, is subject to "some exceptions carved out in the interest of justice and to meet certain contingencies." To the same effect are the observations of this Court in Hakim Singh where this Court again said that the rule of appointments to public service is that they should be on merit and through open invitation, but there are a few exceptions to the said rule which have been evolved to meet certain contingencies. The use of the words "few exceptions" and "to meet certain contingencies", in the above decisions, makes it clear that the exceptions to the general rule (that employment should be by open invitation and on merit) by way of compassionate appointment is not restricted to only one contingency of death-in-harness.

24. The decisions make it clear that exceptions to the rule, may relate to several contingencies, one of which is employee dying-in-harness. There can be exceptions in other extreme cases of sudden deprivation of means of livelihood. If the intention was to restrict compassionate appointments only to cases of death-in -harness, these two decisions would have obviously used the words "exception" and "contingency" instead of "exceptions" and "contingencies". Further in Yogendra Pal Singh, this Court made it clear that while appointment only on the criterion of descent would be unconstitutional, appointment of a dependant is permissible both when the government servant dies in service or is incapacitated while rendering service.

25. We may also notice that this Court dealt with provisions relating to compassionate appointments on medical invalidation in several cases, but did not hold that such appointments were violative of Article 16. Reference may be made

to W.B.SEB v. Samir K. Sarkar and Food Corporation of India v. Ram Kesh Yadav. Be that as it may. The assumption by the High Court, that this Court had held that compassionate appointments can be only in death-in-harness cases and not in retirement on medical invalidation cases, is not sound.

26. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is compassionate appointment in case of medical invalidation cannot be equated with death-in-harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical invalidation is not as serious as death-in-harness, exception can be made only in cases of employees dying-in-harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences for his family, may be much more serious than the consequences of an employee dying-in-harness.

27. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact for more than the consequences of death in harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc".

7. This Court while delivering the judgment dated 12.07.2016 has only referred to the discussions made by Hon"ble Supreme Court in the case of V. Sivamurthy(supra) and has, thus, required the State-authorities to consider the entire matter keeping in view the observations made thereunder.

8. It is true that the scheme embodied in the U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 does not envisage any compassionate appointment on the ground of medical invalidation, however, the Court being conscious of rule position, in the order dated 12.07.2016 has referred to the provision contained in Rule 10 which runs as under:

"10. Power to remove difficulties.- The State Government may, for the purpose of removing any difficult (of the existence of which it shall be the sole judge) in the

implementation of any provision of these rules, make any general or special order as it may consider necessary or expedient in the interest of fair dealing or in the public interest."

9. Accordingly, in terms of the afore-quoted Rule-10 of 1974 Rules, the State Government is fully empowered to remove any difficulty and make any general or special order as may be considered necessary and expedient in the interest of fair dealing or in the public interest. The Court while passing the order dated 12.07.2016 has emphasized on the occurrence of phrase "in the interest of fair dealing" in Rule 10 of 1974 Rules.

10. What all has been required and mandated by this Court in its judgment and order dated 12.07.2016 is only consideration of the entire matter keeping in view the observations made by Hon"ble Supreme Court in the case of V. Sivamurthy(supra). There is no mandate in the said order dated 12.07.2016 that the State-authorities are under any legal obligation to necessarily grant compassionate appointment to the petitioners. However, while observing this, I may also reiterate that despite there being no provision for compassionate appointment, in a case where government employee becomes medically invalid, consideration of such claim appears to be desirable in view of the observations and discussions made by Hon"ble Supreme Court in the case of V. Sivamurthy (supra).

11. For the reasons given above, I do not find it fit to review the judgment and order dated 12.07.2016.

12. The review petition/application is, thus, dismissed.