
(2010) 04 AHC CK 0329
In the Allahabad High Court
Case No : C.M.W.P. No. 17864 of 2010

Vivek Kumar Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Citation : (2010) 126 FLR 688

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : R.P. Pandey, for the Appellant; K.C. Tripathi, Ashok Khare, S.K. Chaubey and K.S. Kushwaha, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri R.P. Pandey, learned Counsel for the petitioner, Sri Ashok Khare, learned Senior Advocate, assisted by Sri K.C. Tripathi, learned Counsel for respondent No. 7, Sri S.K. Chaubey, learned Counsel for respondent No. 6 and Sri K.S. Kushwaha, learned Standing Counsel for State-respondents.

2. Affidavits have been exchanged between the parties. The present writ petition is being finally disposed of with the consent of the parties.

3. Petitioner before this Court seeks quashing of the order passed by the Director of Education (Basic), U.P. Lucknow dated 29th October, 2009, whereby he has held that respondent No. 7, namely, Manish Kumar Rai, was entitled to compassionate appointment, and accordingly he directed payment of his salary through State exchequer. The impugned order records that the father of respondent No. 7, namely, Vinod Kumar Rai was employed as Assistant Teacher in a recognised junior high school, he expired during harnesses on 16th July, 2005. At the time of death of Vinod Kumar Rai, the institution, namely, Netaji Lghu, Madhyamik Vidyalaya, Khukhundava, Kopaganj, Mau was an unaided institution. The Director of Basic Education has held that he was entitled for such compassionate appointment in an aided institution in terms of the Government

Order dated 4th September, 2000 and salary from the State funds.

4. In order to keep the records straight, it may be noticed that the controversy involved in the present writ petition had travelled to the Director of Education (Basic) under order of the Writ Court dated 25th August, 2009 passed in Civil Misc. Writ Petition No. 44403 of 2009, Manish Kumar Rai v. State of U.P. and others. The order challenged in the said writ petition was dated 9th April, 2009, whereby the Management of the institution had terminated the services of respondent No. 7 in response to the letters of the District Basic Education Officer, Mau dated 21st March, 2009, dated 8th April, 2009 and dated 6th May, 2009, wherein it was recorded that compassionate appointment cannot be offered to a dependent of an employee, who had expired while working in an institution, which was unaided. Reference was made to the Government Order dated 4th September, 2000 for the purpose. The Writ Court vide order dated 25th August, 2009 required the Director of Education (Basic) to examine the grievance of Manish Kumar Rai.

5. The Director of Education (Basic) under the impugned order deliberately did not examine the issue as to whether Manish Kumar Rai could be offered compassionate appointment in an aided junior high school or not. He has only held that since on the date of death of father of respondent No. 7, the mother was employed in an institution, which was not receiving aid from the State Government, proviso to Government Order dated 4th September, 2000 was not attracted and therefore, it has been held by the Director of Education (Basic) that appointment of respondent No. 7 on compassionate ground was in accordance with the Government Orders and the order of the Management dated 18th June 2009 terminating his employment was illegal.

6. This Court while entertaining the present writ petition on 2nd April, 2010 passed following order:

"Standing Counsel accepts notice on behalf of respondent Nos. 1 to 5.

Issue notice to respondent Nos. 6 and 7 fixing 15th April, 2010 as the date.

Petitioner to take steps by speed post by 5.4.2010. All the respondents may file counter-affidavit by the next date fixed.

List on the date fixed.

Let Director of Education (Basic) appear before this Court along with his personal affidavit on 15.4.2010 for explaining that even after noticing in the impugned order that on the date the father of respondent No. 7 expired during harness, the institution was not on grant-in-aid list of the Government and despite the Government Order being categorical that compassionate appointment can be offered, to the dependent of an employee of aided institution only, he has proceeded to hold that respondent No. 7 is entitled for compassionate appointment.

The Court is surprised that the Director, who is the highest officer of the department, has acted in such flagrant violation of the provisions of the Government Order.

In the facts and circumstances of the case, this Court feels that the Director must be put to terms and therefore it is provided that the salary to respondent No. 7 shall be paid from the personal account of the Director and for the purpose he shall transmit every month the requisite money by way of bank draft representing the salary of respondent No. 7.

7. In compliance of the said order of this Court, the Director of Education (Basic) filed his counter-affidavit and in paragraphs 10 and 11, it has been stated that there are three Government Orders on the subject dated 25th September, 1991, dated 31st January, 1997 and last dated 22nd July, 2000. The Government Orders mention that compassionate appointment is to be offered to a dependent of teacher/employee, who expired while working in non-Government aided institution, but Clause 1 of Government Order dated 31st January, 1997 provides that on death of an employee/teacher of recognised institution during harness, one of his family member shall be entitled for compassionate appointment. This Government Order was modified/explained by a subsequent Government Order dated 22nd July, 2000. It has been stated that while deciding the matter, he has taken note of the Government Order dated 4th September, 2000 only. In paragraph 9 of counter-affidavit, it has been stated as follows:

9. That since the sole ground of termination of services of the respondent No. 7 was that his appointment was made in violation of Government order dated 4.9.2000 and the objection submitted by the management was also to the same effect. The direction issued by this Hon"ble Court was also that the applicability of said Government Order can appropriately be examined by the Director of Education (Basic) therefore, while deciding the representation of the respondent No. 7, the deponent has basically gone through the applicability of government order dated 4.9.2000 and decided the issue to that extent.

8. The Director of Education (Basic), for the reasons best known to him except for referring to the Government Order dated 4th September, 2000, has not taken any stand as to whether under the Government Order dated 22nd July, 2000, compassionate appointment could be offered to the dependent of an employee/teacher expiring during harness while working in a recognised unaided Institution or not. The reasons is obvious. The Director of Education (Basic) does not want to commit himself to any stand despite being Highest Officer of the Department and it being his duty to explain as to what is the exact intention of the Government Order dated 22nd July, 2000.

9. Not being satisfied with the affidavit filed by the Director of Education (Basic), this Court on 15th April, 2010 passed following order requiring the Secretary, Basic Education, U.P. Lucknow to appear and explain the stand of the Government through his affidavit, before the Court:

This Court on 2.4.2010 passed the following order:

Standing Counsel accepts notice on behalf of respondent Nos. 1 to 5.

Issue notice to respondent Nos. 6 and 7 fixing 15th April, 2010 as the date. Petitioner to take steps by speed post by 5.4.2010. All the respondents may file counter-affidavit by the next date fixed.

List on the date fixed.

Let Director of Education (Basic) appear before this Court along with his personal affidavit on 15.4.2010 for explaining that even after noticing in the impugned order that on the date the father of respondent No. 7 expired during harness, the institution was not on grant-in-aid list of the Government and despite the Government Order being categorical that compassionate appointment can be offered to the dependent of an employee of aided institution only, he has proceeded to hold that respondent No. 7 is entitled for compassionate appointment.

The Court is surprised that the Director, who is the highest officer to the department, has acted in such flagrant violation of the provisions of the Government Order.

In the facts and circumstances of the case, this Court feels that the Director must be put to terms and therefore it is provided that the salary to respondent No. 7 shall be paid from the personal account of the Director and for the purpose he shall transmit every month the requisite money by way of bank draft representing the salary of respondent No. 7.

Today Shri K.S. Kushwaha, Standing Counsel has put in appearance on behalf of the Director who is present in the Court. It is stated that although as per the "subject" of the first Government Order dated 25.9.1991 only teacher/employee of aided and recognized colleges were covered, yet under Clause II of the Government Order dated 25.9.1991 the word "aided" is not there. Therefore, compassionate appointment can be offered to the dependents of their employees also who were working in recognized institutions but which were not aided. Similarly in respect of other Government Orders dated 31.3.1997 and dated 22.7.2000, despite there being specific condition that compassionate appointment can be offered to dependents of employees working in aided and recognized institution dying during harness, it is submitted that compassionate appointment can be offered to employees of unaided recognised institution also. The stand taken prima facie appears to be an attempt to mislead the Court. From the language of the Government Orders dated 25.9.1991, 31.3.1997 and 22.7.2000, it is simply clear that facility of compassionate appointment has been provided only to the teachers and employees of aided and recognized institutions only.

It will not be out of place to record that the Government Order dated 31.1.1997 was clarified under the Government Order dated 22.7.2000 and anomaly with

regard to the word "aided" being not there, was rectified by- adding the word Anudanit.

The Court feels that the Director through his Counsel is only making an attempt to justify his illegal action which is under consideration in the writ petition.

The issue must be settled once and for all. This Court directs that the Secretary, Secondary Education U.P. must appear before this Court along with his personal affidavit taking a categorical stand as to whether under the Government Orders dated 25.9.1991, 31.3.1997 and 22.7.2000, compassionate appointment can be offered to the dependents of an employee who was working in unaided recognized institution.

Put up on 22.4.2010.

10. The Secretary, Basic Education, U.P. at Lucknow has filed his personal affidavit in compliance to the order dated 15th April, 2010 and has taken a positive stand in paragraphs 5 and 6 of the affidavit, which read as follows:

5. That after the perusal of the Government Orders mentioned above, it is clear that the Government Orders mentioned above provides for compassionate appointment of dependent of deceased employee working in an aided institution.

6. That after perusal of all the three Government Orders, the deponent came to the conclusion that there is certain anomaly/inconsistency in the Government Orders particularly in Government Order dated 22.7.2000. In the amended Government Order dated 22.7.2000 due to typographical mistake the words temporary/permanent were used and accordingly the State Government issued clarification by Government Order dated 20.4.2010. However, again an amendment/corrigendum was issued by the State Government on 21.4.2010 whereby it has been provided that the words temporary/permanent from the Government Order dated 22.7.2000 may deemed to have been deleted and after the word Ashaskiya, Sahayta Prapt/Anudanit may be read. A copy of the clarification issued by the Government Order dated 20.4.2010 and corrigendum issued on 21.4.2010 is being annexed as Annexure No. 1 to this affidavit collectively.

11. This Court after hearing the learned Counsels for the parties and after examining the Government Orders applicable is satisfied that there is no anomaly in the three Government Orders dated 25th September, 1991, dated 31st January, 1997 and dated 22nd July, 2000, they categorically provide for compassionate appointment being provided to Defendants of employees, who expire during harness while working in aided recognized institution only. The latest Government Order dated 21st April, 2010 issued by the State Government is only a camouflage to suggest that the Director was under a bona fide doubt about the applicability of the Government Orders. The Secretary in Paragraph 5 of his affidavit has admitted in simple words that on reading of Government Orders dated 25th September, 1991, dated 31st January, 1997 and dated 22nd

July, 2000, compassionate appointment can be offered to the dependent of employee working in an aided institution only, yet he in the next para-6 refers to some imaginary anomaly and the issuance of the corrigendum.

12. The Court may not leave the issue, on the stand, which is being taken by the State alone, inasmuch as the Director is non-committally, while the Secretary, even after taking a stand that the Government Orders provided for compassionate appointment of dependent of employee working in an aided institution only, has chosen to issue further clarification, which, in the opinion of the Court, is superfluous and uncalled for. This Court shall, therefore, examine as to what is the real intention of the Government Orders dated 25th September, 1991, dated 31st January, 1997 and dated 22nd July, 2000.

13. Government Orders dated 25th September, 1991, dated 31st January, 1997 and dated 22nd July, 2000 have been brought on record along with affidavit of the Director of Education (Basic).

14. Government Order dated 25th September, 1991, for the first time, made provision for compassionate appointment of dependants of employees expiring during harness, while working in recognized and aided junior high schools. Relevant portion whereof reads as follows:

15. Second Government Order dated 31st 1997 mentions the subject as follows:

"

16. This Government Order was issued only to remove the difficulties that had arisen in the implementation of the Government Order dated 25th September, 1991, reference opening para of the letter, which read as follows:

" "

17. Reference may also be had to the first paragraph of the Government Order, which reads as follows:

" "

18. Although the word is not mentioned in Clause-1 of the Government Order but the subsequent clauses of the same Government Order, namely, clauses 5, 8 and 9 leave no room to doubt that such benefit is to be conferred only to an employee working in aided and recognised institution. Clauses 5, 8 and 9 read as follows:

" "

19. Last Government Order dated 22nd July, 2000 further explained the position, as per the opening sentence of the Government Order, which reads as follows:

" "

20. The Secretary in guarded language, while the Director as well as respondent

No. 7 have made an attempt to submit before this Court that the Government Order admits of two interpretations, namely, if the institution is recognised alone whether temporary/permanent, dependent of employee/teacher working in such an institution would be entitled to compassionate appointment as a stroke is there before the word " ". They submit that it is not necessary that the institution must necessary be aided also. Interpretations so placed defeats the very purpose of the Government Orders dated 25th September, 1991 and dated 31st January, 1997, as was explained under the Government Order dated 22nd July, 2000. It was never the intention of the State to expand the applicability of the provisions of compassionate appointment to the Defendant of teacher/employee working in unaided recognised institution. The Government Orders are to be read as a whole and on examination of the same, specifically the portion quoted above, the Court is of a firm opinion that it was never intended under the said Government Orders that a dependent of an employee working in an unaided recognised institution would be offered compassionate appointment in an aided recognised institution, so as to draw salary from State exchequer.

21. The argument of the respondent is that because of stroke placed after the words " and " in the Government Order dated 22nd July, 2000, three categories of institutions are referred and covered for the purposes of compassionate appointment i.e., (a) Private Junior High Schools having temporary recognition, (b) Private Junior High Schools having permanent recognition, and (c) Private Junior High Schools, which are aided. These three categories do not overlap and are independent of each other. It is not necessary that recognised (temporary or permanent) institutions must be aided for the applicability of the Government Order.

22. The plea has only been raised to be rejected for following two reasons:

(a) The stroke placed before the word " " cannot be read to mean a separate category of institution inasmuch as unless an institution is recognised (permanent or temporary), it cannot be provided aid by the Government nor the provisions of (Payment of Salaries of Teachers and Other Employees) Act, 1978 (hereinafter referred to as the "Act, 1978") are attracted. Reference section 2 (e) of Act, 1978, which reads as follows:

2....(e) "Institution" means a recognised Junior High School for the time being receiving maintenance grant from the State Government.

Therefore, the word " " within its ambit includes only those category of institutions for which financial aid is provided by the Government, it may have a permanent or temporary recognition.

(b) The last three lines of the clause of the Government Order dated 22nd July, 2000 underlined by the Court above, permit compassionate appointment in same category of the institution only, for example, if the deceased employee was working in a Junior High School, which had temporary recognition, compassionate appointment can be granted in a institution having temporary

recognition only. Therefore, if aided Junior High School constitutes a separate category, as suggested by the learned Counsel for the respondents, vis-a-vis non-aided Junior High School then dependent of an employee dying during harness while working in an non-aided Junior High School cannot be offered compassionate appointment in an aided Junior High School.

23. It is to be kept in mind that the right to be offered compassionate appointment was created for the first time under the Government Order dated 25th September, 1991, in respect of dependent of an employee expiring during harness while working in a recognised and aided Junior High School. Subsequent Government Orders dated 31st January, 1997 and dated 22nd July, 2000 have only been issued to remove the difficulties, which were being faced for enforcing the aforesaid right. Therefore the subsequent Government Orders being in aid for implementing the basic decision for providing compassionate appointment to the dependent of an employee/teacher, dying-during-harness while working in aided institution cannot be read in any manner to expand the scope of the original Government Order, or the purpose for which the right was issued. All three Government Orders are to be read together and to be harmonized, so as to achieve the purpose of the First Government Order dated 25th September, 1991.

24. In pursuance to the order of this Court dated 22.4.2010 Sri K.S. Kushwaha, after obtaining instructions from the Secretary, Basic Education, U.P. Government, Lucknow and the Director of Education (Basic) U.P., Lucknow has informed the Court that information has been received from 45 districts of the State of Uttar Pradesh and in none of the district of the State any compassionate appointment has been offered to the dependents of a teacher/employee, who has expired during harness while working in an unaided recognized institution.

25. From the statement made today before the Court, it is further apparently clear that since 1991, when the first Government Order was issued, all the educational authorities have interpreted the same in one and the same manner i.e. no compassionate appointment is to be offered to any dependent of an employee working in an unaided recognized institution.

26. It is, thus, clear that the Director of Education (Basic) and respondent No. 7 have made an attempt to confuse the real issue and, the Director, for the reasons best known to him, has deliberately not considered as to whether respondent No. 7 could infact be offered compassionate appointment in an aided Junior High School or not being a dependent of an employee, who expired during harness, while working in an unaided institution. He has deliberately brushed aside the real issue and proceeded to deal with the issue as to whether the mother of respondent No. 7 was getting salary from the State Exchequer on the date of death of her husband or not. Such approach of the Director and explanation furnished by him in his affidavit before this Court are only an attempt to justify his illegal orders and to confer uncalled for benefit on the chosen one.

27. The Director of Education (Basic) being the Highest Officer of the State is expected to know the intent of the Government Orders.

28. The Director did not have the courage to take a stand in the matter and has very conveniently stated on oath that the Government Orders are on record and he has examined the matter only with reference to the Government Order dated 4th September, 2000, i.e., as to whether the Committee of Management rightly terminated the appointment of respondent No. 7 because of employment of the mother in another recognised institution. Such deliberate omission on the part of the Director not to consider the entitlement of respondent No. 7 for compassionate appointment, at the first instance, only results in fraudulent withdrawal of money from the public exchequer. Such approach of the Highest Officer of the Education Department cannot be approved he has to be put to terms.

29. Accordingly, the order passed by the Director of Education (Basic) dated 29th October, 2009 is quashed. The present writ petition is allowed with cost of Rs. 50,000/- to be paid by the Director of Education (Basic) to the petitioner and further a like amount to be paid to respondent No. 7, who, because of illegal order of the Director was led to believe that he has been validly appointed on compassionate ground and did not seek employment elsewhere. This amount of Rs. 50,000/- each shall be paid by the Director to the petitioner and respondent No. 7 within one month from today by way of bank draft drawn from salary account, failing which the Secretary shall recover the same from the salary account of the Director and shall transmit the same to the petitioner and respondent No. 7 immediately thereafter.