
(2013) 03 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 62977 of 2006

Zarina Begum

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 4 ALJ 226 : (2013) 3 AWC 2828 : (2013) 137 FLR 780 :
(2013) 3 LLJ 406 : (2013) 2 UPLBEC 1055

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : C.S. Srivastava, Sudhanshu Srivastava and R.P. Singh, for the Appellant; U.P. Singh, Sunil Kumar and Prakash Padia, for the Respondent

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—By means of this writ petition, the petitioner is seeking a direction in the nature of mandamus to give her appointment on compassionate ground on a class-IV post. Briefly stated the case of the petitioner is that her husband Late Sri Sarafat Khan was appointed in the Chandra Shekhar Azad University of Agriculture and Technology, Kanpur (hereinafter referred to as "the University") on 1.2.1985 on the post of Chaukidar in the Security Department. He is stated to have completed 20 years of service. Late Sarafat Khan died on 21.12.2005 while still in service. Hence the claim for compassionate appointment as the widow of Late Sarafat Khan.

2. According to the petitioner Late Sarafat Khan was also granted minimum pay scale of Rs. 2550-3200/- with dearness allowance as admissible to other regular employees in class-IV in terms of the judgment of this Court dated 24.4.2000 passed in writ petition No. 7942 of 1994 copy filed as Annexure-3 to the writ petition.

3. I have heard Sri Sudhanshu Srivastava, learned Counsel for the petitioner and Sri Sunil Kumar, learned Counsel for the respondent No. 2.

4. Sri Sudhanshu Srivastava has submitted that the provision for appointment on compassionate ground is contained in Chapter XIII-1 (d) of the Statutes of the University in terms thereof the petitioner is entitled for grant of appointment on compassionate ground.

5. The relevant provision of Chapter XIII-1-d of the Statutes of the University read as follows:

That it also has been provided in the statute of Chandra Shekhar Azad, University of Agriculture and Technology, chapter XIII-1-d provided as under:

A dependent (wife of husband, son, unmarried daughter and widow daughter) of an employee of the University who meets with untimely death or gets permanent disability during the service period may be appointed on any non teaching post for which he/she is suitable and fulfils the minimum qualifications without selection procedure.

6. The submission of the learned Counsel is that the term "employee" includes a daily wager.

7. In support of his contention Sri Sudhanshu Srivastava has relied upon two decisions of this Court. In Meena Devi Chaudhary (Smt.) Vs. Chief Engineer, U.P. Public Works Department and Others, the learned Single Judge of this Court while interpreting the provisions of Rule 5 of the U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974 has held that the employee in the said case was appointed as a daily wager on 9.7.1992 and his service records show that the Superintendent Engineer by his letter dated 8.5.1999 has fixed the salary of the said employee w.e.f. 1.4.1988 and had also granted him the benefit of annual increments for the period from 1.4.1988 to 1.4.1999. A further finding has been recorded that the employee was also fixed in the regular pay scale. On these findings the Court has held that the daily wager employee was regularised and treated as such and therefore, the stand of the respondents that the employee was a temporary employee/daily wager cannot be appreciated.

8. In the second judgment referred which is (Laxmi Narain v. State of U.P. and others), (2006) 2 UPLBEC 1662 this Court again while interpreting the provisions of Rule (5) of the Dying in Harness Rules, 1974 has placed reliance upon the earlier judgment of this Court in the case of Meena Devi Chaudhari (supra), and has held that the deceased employee was appointed as Beldar and died in service, therefore, the benefit of compassionate appointment cannot be denied to his son. The petitioner is entitled to appointment on compassionate grounds even though the special privilege granted to the dependants of Beldar in terms of the G.O. dated 16.9.2002 had been withdrawn by a subsequent G.O. dated 26.9.2000.

9. The Supreme Court, however, in the case in State of Haryana and Others Vs. Rani Devi and Another, while interpreting the provisions of the G.O. dated

31.10.1985 issued by the Government of Haryana which extends the benefit of appointment to one of the dependants of the "deceased employee" has held that the expression "employee" does not conceive casual or purely ad hoc employee or those who are working as apprentices. Para 8 of the said judgment reads as follows:

8. According to us, when the aforesaid Government Order dated 31.10.1985 extends the benefit of appointment to one of the dependants of the "deceased employee" the expression "employee" does not conceive casual or purely ad hoc employee or those who are working as apprentices. Accordingly, the appeals are allowed and the impugned orders on the two writ petitions, filed on behalf of the respondents are set aside. In the facts and "Circumstances of the case, there shall be no order as to costs.

10. In *State of Manipur Vs. Thingujam Brojen Meetei*, while interpreting the provisions of the Dying in Harness Scheme the Supreme Court has held that a work-charged employee even though after confirmation does not cease to be a work-charged employee and continues to be a work-charged employee and therefore, even though the Scheme provided certain benefits and even though Rule 6 of the Terminal Benefit Rules provided certain benefits including pension and gratuity but a dependant of such confirmed work charged employee cannot claim the benefit of appointment on compassionate ground on the basis of the Scheme. Para 9 of the judgment reads as follows:

9. As noticed earlier, in the Scheme, as initially framed by OM dated 2.5.1984, there was a provision in paragraph (3) for appointment of dependants of work-charged employees who died in harness. But by corrigendum dated 8.5.1984, the office memorandum dated 2.5.1984 was amended and paragraph (3) was substituted and in the amended provision it was provided that the Scheme shall be applicable to regular government employees in the vacancy available in the department in which the deceased employee worked. The matter was further clarified beyond doubt in the revised scheme issued by OM dated 31.8.1992 wherein it is expressly stated that the Scheme will not be applicable to ad hoc/officiating/work-charged/casual/muster roll appointees. We are unable to agree with the view of the High Court in *N. Arun Kumar Singh v. State of Manipur*, that a change comes about in the character of a work-charged employee after confirmation and the Scheme is applicable to him, In our view the only change that is brought about as a result of confirmation of a work-charged employee is that, by virtue of the Terminal Benefits Rules, a confirmed work-charged employee is entitled to certain benefits including pension and gratuity under Rule 6 of the Terminal Benefits Rules which benefits he would otherwise have not been entitled to. But a work-charged employee after confirmation does not cease to be a work-charged employee. The bar regarding applicability of the scheme to work charged employee would, therefore, continue to be applicable and the dependants of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme.

11. The Supreme Court in another case in State Bank of India and Another Vs. Raj Kumar, has held that the Government may frame a Scheme granting certain benefits such as compassionate appointment to a dependant of a deceased employee but such benefit will flow only under the Scheme and it is open for the Government to withdraw the Scheme. Para 8 of the said judgment reads as follows:

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

12. In the present case the admitted position is that late Sarafat Khan husband of the petitioner was working as casual Chaukidar though subsequently he was granted minimum pay scale of. Rs. 2550-3200 by the judgment of this Court dated 24.4.2000. The averments made in para 5 of the writ petition are revealing that the husband of the petitioner in pursuance of judgment & Order dated 24.4.2000 was working as "equivalent" to a regular employee in the service of the respondent university and was drawing minimum pay scale of Rs. 2550-3200 with the dearness allowance as admissible to other regular employees in the class-IV. A true copy of letter No. 655 of 2002 dated 10.7.2002 granting the pay scale of regular employee has been filed as Annexure No. 2 to this writ petition.

13. Chapter-XIII-1(d) of the statutes of the University, however, provides that the dependent of an employee of the University who meets with untimely death or gets permanent disability during the service period may be appointed on any non-teaching posts for which he/she may be found suitable.

14. The submission of the learned Counsel for the petitioner that the word "employee" also includes a daily wager/casual employee cannot be countenanced particularly in view of the observations of the Supreme Court in the judgment referred to hereinabove and the word "employee" cannot be stretched to include a daily wager or a casual or an ad hoc or work charged employee. Therefore, in view of the above facts and circumstances of the case and the law laid down by

the Supreme Court the present writ petition lacks merit and is accordingly dismissed.