

Court No. - 29

Case :- SPECIAL APPEAL No. - 223 of 2021

Appellant :- State Of U.P. And Another

Respondent :- Madhavi Mishra And 2 Others

Counsel for Appellant :- Subhash Rathi

Counsel for Respondent :- Seemant Singh

Hon'ble Munishwar Nath Bhandari, Acting Chief Justice

Hon'ble Vivek Agarwal, J.

Ms. Subhash Rathi, learned Standing Counsel for the State and Sri Seemant Singh, learned counsel for the respondents.

This special appeal has been filed by the State being aggrieved of order dated 09.08.2021 passed by learned Single Judge in Writ-A No.7430 of 2021, whereby learned Single Judge has allowed the writ petition in regard to the claim of a married daughter i.e. petitioner for grant of compassionate appointment upon death of her father.

It is submitted by learned counsel for the State that deceased was an employee of Inter College and was working as Adhoc Principal. While in service he died on 25.05.2019. It is submitted that case of an employee of a Inter College is governed by the Provisions contained in 'Mritak Aashrit Vinayam 101, 103 and 107 as amended on 02.02.1995', which amended the regulation vide Notification No.300/15-7-2(1)/90, Shiksha Anubhag-7 dated 02.02.1995 in terms of the provisions contained in Section 21(1) of Uttar Pradesh Sadharan Khand Adhiniyam, 1904 read with Section 9(2) of Intermediate Shiksha Adhiniyam, 1921 in terms of the Government Notification issued by the Governor bearing No. 4001/15-7-2-(1)/90, dated 30.07.1992 as amended vide Government Notification No.A-1-5375/15/1692-58 dated 24.11.1959, wherein, as per the explanation below Regulation 103, only a

widow or widower, son, unmarried or widow daughter is entitled to grant of compassionate appointment. It is submitted that the learned Single Judge has wrongly invoked the provisions of Rule 2(C)(III) of Uttar Pradesh Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 (hereinafter referred as 'Rules of 1974').

Learned Standing Counsel also submits that there is no vacant post available for general category candidate and accordingly order dated 21.05.2021 as passed by District Inspector of Schools, Shahjahanpur, cannot be faulted with when he has categorically mentioned that besides non-availability of post, petitioner being not a dependent in terms of the provisions of the regulations, therefore, there was no justification in allowing the writ petition. It is further submitted that widow of the deceased is entitled to family pension. Thus, there is no question of grant of compassionate appointment.

Sri Seemant Singh, learned counsel for the respondents places reliance on the judgment of Division Bench of Allahabad High Court in case of Vimla Srivastava and Others vs. State of U.P. and Another, 2016 (1) ADJ 21, wherein it is held that when State has adopted Social Welfare Policy, which was grounded on dependency, then keeping away daughters from ambit of expression "Family" under Rule 2(C) of the Rules of 1947, on ground of marriage would constitute impermissible discrimination and same is in violation of Articles 14 and 15 of the Constitution, therefore, words 'unmarried' in Rule 2(C)(III) of Rules was struck down and petitions were allowed.

In para 3 of the judgment of a Co-ordinate Bench of this Court in case of Vimla Srivastava (supra), it is held that compassionate appointment is intended to provide immediate financial support to such a family by stipulating that upon the

death of its wage earner while in harness as a Government Servant, another member of the family would be granted appointment. It held that compassionate appointment is not a reservation of a post in public employment, but is in the nature of an enabling provision under which a member of the family of a deceased Government Servant, who has died while in harness, can seek appointment based on financial dependency and need.

After hearing learned counsel for the parties, it is no more in dispute that the law in regard to grant of compassionate appointment is dependent on three criteria, namely, eligibility prescribed under the relevant Rules, death of a bread earner in harness and appointment based on financial dependency and need. Rules of 1974 provides that it shall regulate the recruitment of the dependents of government servants dying-in-harness. Rule 3 provides that these Rules shall apply to recruitment of dependents of the deceased government servants to public services of post in connection with the affair of State of U.P., except services and posts which are within the purview of Uttar Pradesh Public Service Commission. But Sri Seemant Singh, learned counsel for the respondents is not in a position to answer that when there is a specific regulation dealing with the subject of grant of compassionate appointment in a recognized aided institution for an educational post, then how the provisions of the Rules of 1974 will apply?

The regulations specifically provide for definition of family and in the definition of family, married daughter has not been included.

This issue of eligibility of a married daughter has been recently settled by the Hon'ble Supreme Court in case of ***Director of Treasuries in Karnataka and Another vs. V. Somyashree, 2021 SCC OnLine SC 704*** decided on 10.09.2021, wherein it is held

that:-

(i) that the compassionate appointment is an exception to the general rule:

(ii) that no aspirant has a right to compassionate appointment:

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Article 14 and 16 of the Constitution of India:

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as the per policy:

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

It is further held that otherwise as a married daughter, she was not entitled to the appointment on compassionate ground, will have more persuasive and binding value than a decision of a coordinate Division Bench. Even otherwise decision of a coordinate Bench turns on its own facts and the petitioner seeking compassionate appointment was required to bring on record that the widow of the deceased was neither entitled to grant of any pension and was not granted any pension leading to penury.

Learned Standing Counsel, on the other hand, submits that as per the Rules widow is entitled to family pension.

Perusal of Rule 5(3) of the Rules of 1974 clearly provides that every appointment made under Sub-Rule (1) shall be subject to the condition that person appointed under Sub-Rule (1) shall maintain other members of the family of the deceased government servant, who were dependent on the deceased government servant immediately before his death and are able to maintain themselves. Thus, another important

condition apart from eligibility is that the dependent of the deceased government servant should be unable to maintain themselves.

In the present case, there is no evidence to this effect and in the application, which was moved by the petitioner on 25.05.2021, annexure 12 of the writ petition, only makes a mention of the fact that her father died on 25.05.2019. She is the only and married daughter and nobody else is alive except her mother. During his service time, her father had married her to one Sri Anuj Tiwari, who is unemployed, therefore, there is no source of income in the family, as a result, she sought appointment on compassionate basis.

Nowhere, in her application, she has disclosed a fact about admissibility of her mother to family pension and also a fact that how she is dependent of her father after marriage.

It is settled principle of law that the object of the scheme is not to provide employment to the unemployed among the dependent relatives of the employee, who died in harness, but to enable one of the dependents to get some employment so as to eke out a livelihood for the members of the family of the deceased. The intention of the scheme can only be to provide immediate relief to the family of the deceased employee for their sustenance. A married daughter is excluded from that category and the exclusion is not without reason that married daughter goes out of the family and is dependent on her husband for her necessities. The father could render financial assistance to his married daughter, if he is in position to give assistance, but that is not reason to hold that married daughter still continues to be dependent on her father specially when law enjoins a duty on the husband to maintain his wife and enables her to claim alimony in case he refuses to pay. Therefore, the

dependency on the father ceases the moment the daughter is given in carriage and that is the justification for excluding married daughter from the category of dependents and to include only unmarried daughters. This aspect has been considered by the High Court of Kerala in minutest details in case of **V. Sunithakumari vs. K.S.E.B. and Others, , 1992 SCC OnLine Ker 145.**

Thus, in the light of the law laid down by Hon'ble Supreme Court in case of Director of Treasuries in Karnataka and Another (supra) and Kerala High Court in case of V. Sunithakumari (supra), we are of the opinion that petitioner is not entitled to compassionate appointment firstly on the ground that a married daughter is not included in the definition of a family under the Regulations of 1995 and secondly petitioner cannot claim compassionate appointment as a matter of right specially when she has deliberately omitted to mention eligibility of her mother to get family pension, thus not leaving her in penury and also not making her dependent on the present applicant and thirdly because both as per the law and the tradition, a married daughter is dependent on her husband and not on her father.

Thus, appeal is ***allowed*** and the impugned order dated 09.08.2021 is set aside.

Order Date :- 23.9.2021

Ravi/-

(Vivek Agarwal, J.) (Munishwar Nath Bhandari, A.C.J.)