

Court No. - 36

Case :- WRIT - A No. - 18042 of 2023

Petitioner :- Smt. Nimisha Tiwari

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- C.S.C.,Devesh Vikram

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1, 2 & 4 as well as Sri Devesh Vikram, learned counsel appearing for the Respondents No. 3 and 5.

2. In view of the proposed order, notice to Respondent No. 6 is dispensed with.

3. Petitioner has filed this writ petition inter-alia praying therein for the following reliefs:

"(a) a writ, order or direction in the nature of Quo Warranto terminating the appointment of the respondent No. 6 under the respondent department as Assistant Teacher on compassionate ground after directing the respondents to bring on record the copy of the appointment letter.

(b) any other writ, order or direction, as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case: and

(c) award cost of the writ petition throughout in favour of the petitioner."

4. Petitioner in her writ petition has stated that father of Respondent No. 6 who was working as Assistant Teacher in Primary School, Kailashpuri, Meerut died in harness and in his place, Respondent No. 6 has been given compassionate appointment as Assistant Teacher in the year 1995. Petitioner in her writ petition has further stated that at time time of appointment of Respondent No. 6, his mother was working as Assistant Teacher in Primary School, Kailashpuri, Meerut and, therefore, Respondent No. 6 could not have been offered compassionate appointment in place of his deceased father.

5. Learned counsel appearing for the petitioner has submitted that there is a categorical prohibition under Rule 5 of the The Uttar

Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "Rules of 1974") wherein it is provided that if surviving spouse of the deceased teacher is in government service then the dependent of such deceased teacher shall not be given compassionate appointment, therefore, since mother of the Respondent No. 6 was working as Assistant Teacher in a primary school, as such, compassionate appointment of Respondent No. 6 is contrary to Rule 5 of the Rules of 1974.

6. Per-contra, Sri Devesh Vikram, learned counsel appearing for Respondents No. 3 & 5 has submitted that this writ petition on behalf of petitioner is not maintainable as petitioner is not at all aggrieved person in the matter.

7. Sri Devesh Vikram, learned counsel appearing for Respondents No. 3 & 5 has further submitted that even otherwise the prohibition that if surviving spouse of deceased teacher is in government service then his dependent will not be entitled for compassionate appointment, was for the first time brought into existence by The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Fifth amendment) Rules, 1999 and since appointment of Respondent No. 6 was made in the year 1995, therefore, there is no illegality in his compassionate appointment.

8. Sri Devesh Vikram has also argued that Rules of 1974 are not applicable over the teachers working in the Primary Schools run by the Uttar Pradesh Basic Education Board and there are different set of Government Orders issued for the purpose of providing compassionate appointment to the dependents of teachers.

9. I have considered the rival submissions advanced by the learned counsels appearing for the parties. I find that besides the other arguments raised by learned counsel appearing for Respondents No. 3 & 5, the basic ground taken by the petitioner in her writ petition is also not sustainable in the eyes of law as Respondent No. 6 was appointed on the post of Assistant Teacher in the year 1995 and at that point of time even under the Rules of 1974, there was no such prohibition that if the surviving spouse of the deceased teacher is working on the post of teacher then the dependent shall not be entitled for compassionate appointment.

10. From bare perusal of Rules of 1974, it becomes crystal clear that prior to 20.01.1999 under Rule 5, only this much was provided that if a government servant dies in harness then his

dependent shall be entitled for compassionate appointment if he is already not employed, either under the State Government or the Central Government or the Corporations. On 20.01.1999, the aforesaid Rules of 1974 were amended and thereby Rule 5(1) was also amended and prohibition was imposed that if surviving spouse of the government servant is in government service then his dependent shall not be entitled for compassionate appointment.

11. Since appointment of Respondent No. 6 was made much prior to that of amendment made in the Rules of 1974 i.e. on 20.01.1999, therefore, the ground taken by the petitioner for challenging the compassionate appointment of the Respondent No. 6 is absolutely misconceived and unsustainable in the eyes of law.

12. In view of the aforesaid, this writ petition lacks merit and is accordingly ***dismissed***.

13. It is made clear this court has not made any adjudication in respect of the locus of the petitioner as well as the applicability of the Rules of 1974 over the matters of compassionate appointment in the Primary Schools run by U.P. Basic Education Board, Prayagraj.

Order Date :- 16.11.2023

A. Mandhani