

Court No. - 7

Case :- WRIT - A No. - 31790 of 2017

Petitioner :- Anjani Kumar Mishra

Respondent :- State Of U.P. Thru.Secy.Dept.Of Agriculture
Edu. U.P. And Ors.

Counsel for Petitioner :- Ram Prakash Shukla,Birendra Narain
Shukla

Counsel for Respondent :- C.S.C.,Manik Sinha

Hon'ble Abdul Moin,J.

1. List revised.
2. None appears on behalf of the respondent nos.2 to 4 despite the name of Shri Manik Sinha being shown from the side of respondent. Accordingly, the Court proceeds to decide the matter finally.
3. Heard learned counsel for the petitioner and learned State counsel for the State-respondents.
4. The instant petition has been filed praying for a mandamus commanding the respondents to reconsider the case of the petitioner to adjust / promote him at class- III post as per his qualification.
5. The contention of learned counsel for the petitioner is that his father who was working on Class- IV post died in harness on 02.08.2011. Although the petitioner has been appointed on compassionate ground in September, 2012, yet his appointment has been made on a Class- IV post.
6. The contention is that the compassionate appointments in the respondent-University are governed by the rules namely The U.P. Recruitment of Dependent of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as Rules, 1974).

7. It is contended that as the petitioner is a graduate, consequently his appointment should have been made on a Class- III post which would be suitable post for him as per his qualification and not on a Class- IV post, hence the petition.

8. The matter in issue pertaining to a "suitable employment" is no longer res integra as it has already been settled by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Prem Lata (2022) (1) SCC 30** reiterated by the Hon'ble Supreme Court recently in the case of **Sunil Kumar Vs. State of U.P. and Other in Civil Appeal No. 5038 of 2022** decided on 02.08.2022. The Hon'ble Supreme Court after considering the provisions of the Rules, 1974 has held that a person appointed on compassionate grounds cannot get a better post than what was held by the deceased employee inasmuch as, in case the deceased employee was working on a Class- IV post, his dependent cannot stake his claim for appointment on a Class- III post inasmuch as the words "suitable employment" in Rule 5 of Rules, 1974 must be understood with reference to the post held by the deceased employee & superior qualification held by dependent cannot determine scope of the words "suitable employment".

9. Considering the aforesaid and as the father of the petitioner was working on a Class- IV and the petitioner has also been appointed on a Class- IV post, consequently there cannot be any occasion for this Court to issue a writ of mandamus commanding the respondents to appoint the petitioner on a Class- III post.

10. Keeping in view of the aforesaid, the writ petition is **dismissed**.

Order Date :- 30.11.2023/S. Shivhare