

Court No. - 18

Case :- WRIT - A No. - 437 of 2021

Petitioner :- Moti Singh

Respondent :- Milk Commissioner/Registrar Dairy Devlp. Lko. And Ors.

Counsel for Petitioner :- Ravi Shanker Singh, Yogendra Kumar Tiwari

Counsel for Respondent :- Ajai Pratap Singh Chauhan

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and Mr. Ajai Pratap Singh Chauhan learned counsel for opposite parties 2 and 3.
2. Vide order dated 21st October, 2021, notice had been issued to opposite party No.1 and for submission of service report regarding tracking of the notice. As per office report dated 8th November, 2021, the delivery of notice upon opposite party No.1 has been indicated and service of notice was deemed sufficient. Despite the same, no one has put in appearance on behalf of opposite party No.1 and therefore the petition is being decided in absence thereof.
3. Petition has been filed challenging order dated 18th December, 2019 passed by General Manager, Lucknow Producers Cooperative Milk Union Limited as well as the order dated 19th September, 2019 passed by Milk commissioner/Registrar so far as it relates to rejecting petitioner's application for compassionate appointment. Further prayer for creation of supernumerary post for appointment of petitioner on compassionate ground has also been sought.
4. It has been submitted that petitioner's father late Munish Singh was an employee of the Milk Union and passed away in harness on 21st October, 2011 leaving behind his wife and two sons namely Anuj Kumar Singh Tomar and petitioner, Garun Kumar Singh Tomar.
5. It is submitted that petitioner had filed an application for compassionate appointment with no objection certificate having been given by his other two brothers. The said claim was rejected on the ground that management had taken a decision since the milk union was in financial trouble and running in losses, no compassionate appointment could be made.

6. The aforesaid decision was thereafter challenged by petitioner in Writ Petition No. 4892 (S/S) of 2013 and was allowed vide judgment and order dated 25th October, 2016 placing reliance on another judgment rendered in the case of Garun Kumar Singh Tomar versus Milk Commissioner, State and others, writ petition No. 4891 (S/S) of 2013.

7. It is submitted that in the aforesaid judgment, the plea of financial constraint was specifically rejected by the Co-ordinate Bench and appeal thereagainst was also dismissed. It is therefore submitted that once plea of financial condition of the Milk Union has already been rejected, the impugned order having been passed on the same reasoning again, stand vitiated.

8. Learned counsel appearing for opposite parties 2 and 3 on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with submission that the application of petitioner for compassionate appointment has been rightly rejected at this stage in view of miserable financial condition of the Milk Union. It is submitted that as soon as the union is in a position of profit, petitioner would be considered for employment in seniority.

9. Upon consideration of submissions advanced by learned counsel for petitioner and learned counsel for opposite parties as well as upon perusal of material on record, it is quite evident that earlier petitioner's application for compassionate appointment was rejected primarily on the ground of poor financial condition of the Milk Union. The said order was challenged by petitioner before this Court and was quashed with writ petition being allowed primarily on the ground that the Lucknow Producers Cooperative Milk Union had framed a Karmchari Sewa Niyamawali under the provisions of U.p. Cooperative Societies Act 1965 which therefore had statutory force and there was no such condition indicated in the Rule 103 thereof whereby compassionate appointment could be denied on the ground of poor financial condition of the Union. Rule 103 is as follows:-

"मिल्क यूनियन के किसी ऐसे कर्मचारी की स्थिति में जो या तो अपनी नियुक्ति में स्थायी है या यदि अस्थायी है तो उत्तर प्रदेश सहकारी समिति कर्मचारी सेवा निनियमावली 1975 के उपबन्धों के अनुसार भर्ती किया गया है और न्यूनतम तीन वर्ष

की निरंतर अवधि से अपना पद धारण किया हुआ है इस सेवा नियमावली के प्रारंभ के पश्चात काम करते हुए मर जाता है, तो उसके परिवार के एक सदस्य को जो पहले से केन्द्रीय सरकार या किसी राज्य सरकार के स्वामित्व में या नियंत्रणाधीन किसी निगम या उपक्रम में सेवायोजित नहीं है. इस प्रयोजन के लिए आवेदन पत्र देने पर मिल्क यूनियन के अधीन उपयुक्त सेवायोजन दिया जाएगा, वशर्ते ऐसा सदस्य पद के लिए वहित न्यूनतम शैक्षिक अर्हताये रखता हो और उस पर नियुक्ति के लिए अन्यथा उपयुक्त हो। उक्त सदस्य को मिल्क यूनियन में ऐसा सेवायोजन अविलम्ब दिया जायेगा।"

10. The aforesaid aspect has already been considered by Coordinate Bench of this Court in the case of Garun Kumar Singh Tomar (supra) which also negated such a plea by means of judgment and order dated 25th October, 2016. Special appeal (defective) No. 48 of 2017 was also dismissed vide order dated 10th February, 2017 granting liberty to union to file a review. In pursuance of such directions, the review application was filed and has also been dismissed as infructuous vide order dated 26th July, 2019.

11. In such circumstances, it is quite evident that judgment and order rendered by Coordinate Bench of this Court in Writ Petition No. 4891 (S/S) of 2013 has attained finality.

12. A perusal of the aforesaid judgment also makes it evident that Coordinate Bench of this Court after considering Rule 103 of the Karmchari Sewa Niyamawali has held as follows:-

"From perusal of the Rule it is also evident that stand taken by the respondents that since the second respondent is incurring huge loss, therefore, no appointment shall be made, cannot stand to reason in view of the fact that rule does not contemplate any such eventuality. In addition to above the General Manager has issued necessary direction that whatever ban is imposed for their appointment in the cooperative society that would not be made applicable in the case of the appointment on compassionate ground."

13. It is thus evident that the ground taken by opposite parties of the Union being in dire financial condition and incurring huge loss, was negated since the rule did not contemplate any such eventuality.

14. It was in these circumstances that the order impugned therein rejecting petitioner's application for compassionate appointment was quashed. However the impugned orders have again been passed rejecting petitioner's application for

compassionate appointment on the same analogy has already been quashed by Coordinate Bench of this Court.

15. In considered opinion of this Court, the ground of denial of compassionate appointment to petitioner having been negated by this Court, could not be the basis of rejecting petitioner's claim again without taking away the basis of the earlier judgment, which had attained finality.

16. It is also evident from a perusal of the orders dated 19th September, 2019 passed by Milk Commissioner that petitioner has otherwise been found entitled for compassionate appointment.

17. In view of aforesaid, the impugned order dated 18th December, 2019 passed by General Manager, Lucknow Producers Cooperative Milk Union Limited as well as the order dated 19th September, 2019 passed by Milk commissioner/Registrar are hereby quashed by issuance of writ in the nature of Certiorari. Further writ in the nature of Mandamus is issued commanding the opposite parties 2 and 3 to offer petitioner compassionate appointment within a period of three months from the date a certified copy of this order is served upon aforesaid opposite party.

18. Consequently the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 13.8.2024

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