

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 68 of 2024

Appellant :- Rinki Bhaskar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Guard ,
Civil Sectt. Govt. Of U.P. Lko. And Another

Counsel for Appellant :- Ajey Singh

Counsel for Respondent :- V.P. Nag, S.C.

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. This appeal is directed against order dated 04.03.2024 passed by learned Single Judge in Writ A No. 1573 of 2024 whereby the writ petition filed by the appellant against order dated 20.11.2023 passed by respondent no. 2 putting an end to her services as Home Guard Volunteer, has been dismissed.

2. Father of the appellant while working as Home Guard died on 16.08.2016. In terms of Government Order dated 27.09.2012 providing for compassionate appointment, appellant's brother applied for compassionate appointment, however as his height was less than the minimum required height for a Home Guard, he was not found eligible. Whereafter, appellant's mother nominated appellant for appointment on compassionate basis. At the relevant time, the unmarried daughter was eligible for appointment. In the affidavit filed by the appellant dated 03.03.2020, along with the application, she indicated that she was unmarried and was fully dependent on her parents and, therefore, eligible to be appointed on compassionate basis, on which she was accorded appointment on 30.09.2020.

3. A complaint was made regarding the marital status of the appellant at the time of seeking appointment indicating that she had sought appointment based on forged documents. Complaint was forwarded to the appellant and she was directed to produce evidence on the said aspect. Her statement was recorded on 29.08.2023 wherein she indicated that she got married to one Manish Kumar resident of Husainpur in the year 2013, there was divorce between them on

30.12.2015, she had two children who were born after 30.12.2015, whose father is Manish Kumar, who after divorce lives with him and that there is no document evidencing the divorce between her and Manish Kumar. Based on the statement recorded, when it was found that the appellant had obtained appointment by suppressing her matrimonial status and claiming herself as unmarried, she was issued a show cause notice on 01.09.2023 for making representation/clarification.

4. In response to the said show cause notice, on 26.09.2023, she reiterated the same plea regarding divorce in the year 2015 and that post the date of divorce, she has two children from her erstwhile husband and that they continue to live together. Based on the said plea, it was found that the appointment was sought by suppressing of facts pertaining to the eligibility and consequently her engagement as Home Guard Volunteer was put to an end. Feeling aggrieved the writ petition was filed.

5. Before the learned Single Judge reliance was placed on judgement in **Neelam Devi vs. State of U.P. and Ors. : Writ A No. 18566 of 2021** decided on 17.07.2023 and **Manjul Srivastava vs. State of U.P. and 2 Ors.: Writ A No. 10928 of 2020** decided on 15.12.2020 with the submissions that as the married daughters have been included in the definition under Rule 2(c)(iii) of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (in short 'the Rules, 1974'), the respondents were not justified in terminating the engagement of the appellant as Home Guard Volunteer.

6. Learned Single Judge after hearing the parties came to the conclusion that the amendment in the Rules, 1974 took place in December 2021 which was subsequent to the application dated 03.03.2020 and that there was suppression on the part of the appellant by claiming her status as unmarried and consequently dismissed the writ petition.

7. Learned counsel for the appellant made vehement submission that the learned Single Judge was not justified in dismissing the writ petition inasmuch as the action of the respondents in terminating the engagement of the appellant as Home Guard Volunteer is not justified only on account of the fact that she was purportedly married on the date of filing the application seeking compassionate appointment. Submissions have been made that this Court in the case of **Neelam Devi (supra)** and **Manjul Srivastava (supra)** based on the amendment made in the year 2021, has granted relief to married daughters and therefore, the determination made in this regard deserves to be set aside.

8. Submissions were also sought to be made that though the divorce between the appellant and her husband is not evidenced by any court document, but she was a divorcee as claimed, she would be treated as unmarried daughter and merely because she was staying with her erstwhile husband in live-in-relationship and have children post divorce, the same would not affect her status on the date she had applied for appointment and, therefore, the order impugned deserves to be set aside.

9. Learned counsel for the respondent supported the order impugned. It was submitted that the marriage between the appellant and her husband in the year 2013 is not disputed and once there is no admissible document evidencing divorce between them, appellant being married on the date she applied was clearly ineligible and having suppressed the material fact, her services have been rightly terminated.

10. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

11. The record reveals that father of the appellant died in harness on 16.08.2016, her brother applied for compassionate appointment, which on account of physical disqualification was denied and after about four years of death of her father, she applied seeking compassionate appointment by claiming her status as unmarried,

which appointment was duly accorded to her. On complaint, about her marital status, she took a stand that though she was married in the year 2013, divorce took place on 30.12.2015, however, she has two children from her erstwhile husband, who continues to live with her. The fact of divorce was not evidenced by any admissible evidence inasmuch as it is settled that a marriage once solemnized can only be dissolved by a decree of competent court and not otherwise.

12. Besides the above, the fact regarding having two children post the date of alleged divorce and that the appellant continues to live with the same person whom she claims to have been divorced, apparently belies the fact of divorce.

13. So far as the plea raised pertaining to the fact that the word ‘unmarried’ in the Rules, 1974 had been declared ultra vires by this Court in **Vimla Srivastava Vs. State of U.P. and Another : ILR (2016) 1 All 115** and that the Rules of 1974 have subsequently been amended in the year 2021 is concerned, in case the appellant had indicated her status as married and on that count her application seeking compassionate appointment was rejected, the same would have given her cause of action to rely on the judgement in the case of **Vimla Srivastava (supra)**, however, she instead chose to claim her status as unmarried, which fact has been found to be incorrect/false and, therefore, the respondents on account of suppression of material fact at the time of seeking engagement as Home Guard Volunteer were justified in putting an end to her engagement, which action in the circumstances of the present case, cannot be faulted.

14. In view of above discussion, no case for interference is made out. The appeal has no substance and the same is, therefore, **dismissed.**

Order Date :- 19.12.2024

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(Jaspreet Singh, J) (Arun Bhansali, CJ)