

Court No. - 18

Case :- WRIT - A No. - 3552 of 2021

Petitioner :- Vikram Singh

Respondent :- State Of U.P.Thru.Prin.Secy. Basic Education And Ors.

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Anamika Tiwari,Shashank Singh,Shrawan Kumar Verma,Uday Veer Singh,Vindhya Washini Kumar

Hon'ble Manish Mathur,J.

1. Heard Mr. G. C. Verma, learned counsel for petitioner, learned State Counsel for opposite parties no.1 & 2, Dr. Uday Veer Singh, learned counsel for opposite parties no.3 & 4 and Mr. Subodh Kumar Yadav, Advocate holding brief on behalf of Mr. S. K. Verma, learned counsel for opposite party no.5.

2. Under challenge is the order dated 28.02.2020 passed by the Basic Education Officer rejecting the claims of petitioner as well as opposite party no.5 for compassionate appointment.

3. It has been submitted that petitioner as well as opposite party no.5 are sons of Late Anand Kumar Singh who passed away in service on 15.04.2019. It is submitted that during his life time, the deceased had contracted three marriages, the petitioner is son of second wife while opposite party no.5 is son of first wife. It is submitted that upon demise of their father, opposite party no.5 sought compassionate appointment and thereafter filed Writ Petition No.27419 (S/S) of 2019 which was disposed of vide order dated 01.10.2019 directing the authority concerned to consider his claim for compassionate appointment.

4. It is submitted that subsequently petitioner also filed an application for compassionate appointment on 20.12.2019 and by means of impugned order, claims of both petitioner as well as opposite party no.5 has been rejected only on the ground that since both sons are claiming compassionate appointment, it would not be appropriate to grant such compassionate appointment.

5. It has also been submitted that in the counter affidavit filed on behalf of Basic Education Officer, a ground has been taken that since the deceased contracted marriage with petitioner's mother as his second marriage during the subsistence of first marriage, petitioner was not entitled for being considered for compassionate appointment, being an illegitimate child. To counter the same, he has placed reliance on judgment rendered by Coordinate Bench of this Court in the case of **Anand Tiwari**

6. It has also been submitted that in his application for compassionate appointment, petitioner had clearly indicated the fact that the mother of opposite party no.5 was employed as Anganwari Karykatri and therefore had adequate financial resources due to which the claim of opposite party no.5 was not required to be considered.

7. He has thereafter adverted to paragraph 6 of the counter affidavit filed by opposite party no.5 to indicate that such a fact has been admitted by opposite party no.5.

8. He has further submitted that in case where there are two or more claimants for compassionate appointment, it was the duty of authority concerned to have adverted to Rule 7 of The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, which having not been adhered to, the impugned order is vitiated. It has further submitted that the fact that there are two minor daughters of the deceased from his second wife is also a factor which has not been considered.

9. He has also placed reliance on the Circular dated 04.09.2000 indicating the factors required to be taken into consideration while deciding an application for compassionate appointment.

10. Learned counsel appearing for Basic Education Officer has refuted submissions advanced by learned counsel for petitioner on the basis of counter affidavit and submits that compassionate appointment is not a vested but only a statutory right and the mother of petitioner being the second wife of deceased, during his subsistence of first wife, the marriage itself being illegal, no right accrues to petitioner for compassionate appointment. He has placed reliance on judgment rendered by Hon'ble the Supreme Court in the case of Ram Kumar Shukla versus State of U.P. & Ors MANU/U.P./1536/2017. It has also been submitted that so far as employment of mother of opposite party no.5 is concerned, the post of Anganwadi Karykatri is not a regular post and she is in receipt of only an honorarium.

11. Learned counsel for opposite party no.5 on the basis of counter affidavit has also refuted submissions advanced by learned counsel for petitioner refuting his claim for compassionate appointment while admitting that his mother is working as an Anganwadi Karykatri.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is admitted that for the purposes of compassionate appointment,

the Rules of 1974 are applicable along with the circular dated 04.09.2000.

13. A perusal of the aforesaid Rules of 1974 clearly make it evident that in case there is more than one family member of the deceased employee claiming compassionate appointment, it is the procedure under Rule 7 which is required to be followed and is as follows:-

"7. Procedure when more than one member of the family seek employment.-If more than one member of the family of the deceased Government servant seek employment under these rules, the Head of Office shall decide about the suitability of the persons for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof."

14. The aforesaid Rule clearly prescribes that in case where more than one member of the family of deceased government servant seeks employment, it is incumbent upon the head of office to decide about the suitability of person for giving employment and over all interest and welfare of the entire family particularly widow and minor members thereof are also required to be considered.

15. In the present case, the claim of petitioner as well as opposite party No.5 has been rejected by means of impugned order solely on the ground that since two sons of the deceased are claiming compassionate appointment, it would be inappropriate to consider compassionate appointment.

16. The aforesaid reasoning given in the impugned order is clearly baseless and against specific provisions of Rule 7 of the Rules of 1974.

17. Once the petitioner as well as opposite party No.5, both claiming to be sons of deceased were claiming compassionate appointment, it was incumbent upon the authority to have proceeded in accordance with Rule 7 of Rules of 1974 and to have considered the suitability of person for purposes of compassionate appointment while also advertent to the over all interest of the family particularly the widow and minor children. Such a course of action having not been adhered to by the concerned authority, renders the impugned order vitiated.

18. It is also evident that a Co-ordinate Bench of this Court in the case of **Anand Tiwari** (supra) has considered the judgment rendered by Supreme Court in the case of **Rameshwari Devi versus State of Bihar and others, (2000) 2 SCC 431** which is as follows:-

"8. In the considered view of this Court, the decision taken by the respondents is clearly rendered unsustainable since even though a second marriage may be void in terms of Section 5 of the Hindu Marriage Act, the child borne out of such a void marriage is not illegitimate. This is clearly provided under Section 16 of the Act. Dealing with an identical controversy, the Supreme Court in *Rameshwari Devi v. State of Bihar and others*, (2000) 2 SCC 431, made the following pertinent observations:

"It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of Clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in Clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956) Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares alongwith that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which is governed by the relevant rules, it is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment. Rameshwari Devi has raised two principal objections: (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a Civil Court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no Civil Court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act. On that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAY High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S. N. Sinha, w/o Sri S. N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal."

9. From the above, it is evident that the petitioner cannot be viewed as an illegitimate child of the deceased Government servant. The validity or otherwise of the second marriage entered into by the deceased Government servant cannot result in the petitioner being deprived of his right of consideration."

19. In view thereof, it is quite evident that although the marriage between deceased and mother of petitioner may have been void or illegal but claim of petitioner was sustainable in view of the aforesaid judgment rendered in case of *Rameshwari Devi* (supra). The same has also been held in the case of

Mukesh Kumar & Anr. versus The Union of India & Ors arising out of the SLP (C) No.18571 of 2018. The relevant portion of the judgement is as follows:

"11. Given the above, we hold that the issue arising for consideration, in this case, is covered by the judgment of this Court in Union of India and Ors. v. V. K. Tripathi and consequently the judgment and order dated 18.01.2018 of the High Court of Judicature at Patna passed in CWJC No.18153 of 2017 is set aside. As we have held that appellant No.1, Shri Manish Kumar, cannot be denied consideration under the scheme of compassionate appointments only because he is the son of the second wife, there shall be a direction to consider his case as per the extant policy. The Authorities shall be entitled to scrutinize whether the application for compassionate appointment fulfils all other requirements in accordance with the law. The process of consideration of the application shall be completed within a period of three months from today."

20. In view thereof, the impugned order dated 28.02.2020 being unsustainable is hereby quashed by issuance of a writ in the nature of Certiorari. Further a writ in the nature of Mandamus is issued commanding the opposite party No.3 i.e. Zila Basic Shiksha Adhikari, District Gonda to consider the cases of petitioner as well as opposite party No.5 afresh for compassionate appointment in the light of Rule 7 of Rules of 1974 as well as the conditions indicated in Circular dated 04.09.2000 in the light of observations made hereinabove. Such a decision shall be taken within a period of eight weeks from the date a certified copy of this order is produced before the concerned authority.

21. Consequently, the petition stands ***allowed***. Parties to bear their own cost.

Order Date :- 6.8.2024

Subodh/-