

Court No. - 18

Case :- WRIT - A No. - 33562 of 2018

Petitioner :- Amit Kumar Kashyap

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

Counsel for Petitioner :- S.P. Singh Somvanshi

Counsel for Respondent :- C.S.C

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. The present writ petition has been filed for quashing of the impugned order dated 30.06.2015 passed by the respondent no. 4 i.e. Executive Engineer, Lucknow Division Sharda Nahar, Irrigation Department, Lucknow by which the claim of the petitioner for compassionate appointment under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as 'the Rules, 1974') has been rejected.

3. Learned counsel for the petitioner has submitted that father of the petitioner was initially appointed on the post of Helper in the year 1998 on work charge basis. Father of the petitioner had expired on 26.06.2006. Thereafter, the petitioner had made a representation for considering his candidature for compassionate appointment.

4. It is further submitted that the claim of the petitioner for compassionate appointment was rejected by order dated 15.07.2006 on the ground that in view of the G.O. dated 01.06.1995, the petitioner being dependent of work charge employee, who died in harness, is not entitled for appointment on compassionate ground.

5. It is further submitted that the said order was challenged by the petitioner by filing a W.P. No. 7650 (SS) of 2006 and placed reliance upon the judgment in the case of Santosh Kumar Mishra vs. State of U.P. and Ors. [(2002) 1 UPLBEC 337] and the case of State of U.P. vs. Smt. Malti Devi [(2006) 1 ESC 316 (All)(DB)], wherein it was held that the dependent of work charge employee is also entitled to claim compassionate appointment. The writ petition preferred by the petitioner was allowed vide judgment and order dated 17.12.2007 and the order dated 15.07.2006 was quashed. A writ of mandamus was also issued, directing the respondents to consider the petitioner case for appointment on compassionate ground in the light of law settled by this Court in the case of Santosh Kumar Mishra (supra).

6. It is further submitted that the respondents again rejected the claim of the petitioner reiterating the same ground, which was taken earlier when the claim of the petitioner was rejected vide order dated 15.07.2006. The said reasons are nothing but passing the impugned order in the teeth of earlier judgment of this Court dated 17.12.2007 passed in favour of the petitioner.

7. It is further submitted that the persons junior to the father of the petitioner were regularized in the year 2006 itself and subsequently in the year 2016. It is further submitted that the case of petitioner is covered by the judgment of this court in the case of ***V.C. Narendra Deo University of Agriculture and Technology, Ayodhya and others Vs. Ashok Kumar and another decided on 12.07.2021 in Special Appeal (D) No. 225 of 2021.***

8. On the other hand learned Standing counsel has submitted that a Special Appeal No. 126 (S/B) of 2002 (State of U.P. and another Vs. Santosh Kumar Mishra) was preferred by the State against the judgment in the case of Santosh Kumar Mishra (supra) which was relied by the petitioner while filing the W.P. No. 7650 (S/S) of 2006 on the basis of which directions were issued to decide the claim of the petitioner afresh. During pendency of said Special Appeal, the judgment dated 22.09.2010 was delivered by the full bench of this court in the case of Pawan Kumar Yadav Vs. State of U.P. and others (Civil Misc. writ Petition No. 15505 of 2005) wherein it has been held that giving the benefit of compassionate appointment to the dependents of daily wage or work charge employee have not been correctly decided and in the light of the same, the Special Appeal preferred by the State against the judgment of Santosh Kumar Mishra (supra) was allowed by the judgment and order dated 21.10.2010.

9. At this stage, learned counsel for the petitioner has submitted that after the Full Bench decision the Hon'ble Supreme Court has passed the judgment and order dated 03.08.2021 in Special Appeal No. 4575 of 2021 arising out of S.L.P. (C) No 20650/2019 (State of U.P. and others Vs. Uttam Singh) dismissing the S.L.P. preferred by the State Government and upheld the division bench judgment of this Court by which the Hon'ble Court had directed to consider the claim of dependents of the deceased daily wage Tube Well Operator for compassionate appointment under the Rules, 1974.

10. After hearing learned counsel for the parties, going through the record of the case and judgment relied by both the parties, the position which emerges out is that father of the petitioner was a work charge employee at the time of his demise working

under the respondents. The petitioner is not entitled to be given appointment as per Rule 2 of the Rules, 1974 as he does not fall under any of the category as mentioned in Rule 2 of the Rules, 1974.

11. This Court while deciding the first writ petition preferred by the petitioner by its judgment and order dated 17.12.2007 in Writ Petition No. 7650 (S/S) of 2006 had quashed the impugned rejection order dated 15.07.2006 and directed the respondents to decide the claim of the petitioner in the light of the judgment in the case of Santosh Kumar Mishra (supra). Against the said judgment, a special appeal was preferred by the State Government bearing No. 126 of 2002 and during pendency of the said special appeal, a Full Bench of this Court had held that giving benefit of compassionate appointment to the dependents of daily wage and work charge employee have not been correctly decided and the judgment of the learned Single Judge was quashed. The operative portion of the said judgment is quoted hereinbelow:-

"25. In General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi (Supra) the Supreme Court considered and interpreted the expression 'regular vacancy' in respect of same Rules namely U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974. The judgement of the Apex Court interpreting the same Rules and deciding the questions posed before us squarely covers question No.1, in favour of the State and is binding on the High Court.

26. On the aforesaid discussion, and in view of the law laid down in General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi (Supra), we answer the questions posed as follows:-

"1. A daily wager and workcharge employee employed in connection with the affairs of the Uttar Pradesh, who is not holding any post, whether substantive or temporary, and is not appointed in any regular vacancy, even if he was working for more than 3 years, is not a 'Government servant' within the meaning of Rule 2 (a) of U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974, and thus his dependants on his death in harness are not entitled to compassionate appointment under these Rules.

2. The judgements in Smt. Pushpa Lata Dixit Vs. Madhyamik Shiksha Parishad and others, 1991 (18) ALR 591; Smt. Maya Devi Vs. State of U.P. (Writ Petition No.24231 of 1998 decided on 2.3.1998); State of U.P. Vs. Maya Devi (Special Appeal No.409 of 1998); Santosh Kumar Misra Vs. State of U.P. & Ors., 2001 (4) ESC (Alld) 1615; and Anju Misra Vs. General Manager, Kanpur Jal Sansthan (2004) 1 UPLBEC 201 giving benefit of compassionate appointment to the dependants of daily wage and workcharge employee have not been correctly decided."

27. All the writ petitions are consequently dismissed. The delay in filing the Special Appeal Nos.845 (D) of 2009; 595 (D) of 2002; 610 (D) of 2003 and 1170 (D) of 2007 has been sufficiently explained and is

accordingly condoned. The Special Appeal Nos.845 (D) of 2009; 595 (D) of 2002; 610 (D) of 2003; 1284 of 2010; 1849 of 2009; 1170 (D) of 2007; 85 of 2004 and 567 of 2008 are allowed. The judgements of learned Single Judge challenging these appeals are set aside and the writ petitions are dismissed."

12. In pursuance of the Full Bench decision, a Special Appeal preferred by the State against the judgment in the case of Santosh Kumar Mishra (supra) was allowed by judgment and order dated 21.10.2010. The relevant portion of the said judgment is being reproduced hereunder for ready reference :-

"We may note that the impugned judgment was considered by a Full Bench of this Court in Civil Misc. Writ Petition No. 15505 of 2005, Pawan Kumar Yadav Vs. State of U.P. & Ors., decided on 22.09.2010, wherein the learned Bench has held that the impugned judgment does not lay down the correct law. Once that be the case, the appeal of the State will have to be allowed.

However, in the instant case, we find that the learned Single Judge has also noted that had the case of the respondent's father been considered, his services would have been regularized but the same was not done. The respondent herein, pursuant to impugned judgment, was appointed by letter dated 19.03.2002 and has been working for a long period, and considering the judgment of the Supreme Court in Union of India & Ors. Vs. K.P. Tiwari, (2003) 9 SCC 129, in our opinion, his appointment need not be interfered with."

13. The judgment relied by the learned counsel for the petitioner by changing the stand in the present petition that now the case of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court in the case of ***State of U.P. and others Vs. Uttam Singh (Civil Appeal No. 4575 of 2021 arising out of S.L.P. (C) No. 20650 of 2019.***

14. The judgment in the case of Uttam Singh (supra) is on the peculiar facts and circumstances which are quoted hereinbelow:-

".....

6. We may note an interesting aspect pointed out by the learned counsel for the respondent, inter alia, in his synopsis (as usual the appellants did not consider it appropriate to assist this Court by filing a synopsis as had been directed vide the last order, apart from the note on the cause list!). The respondent has stated that during the period of 13 years of the employment of the father of the respondent, he was transferred from the Irrigation Department to Panchayati Raj Department as 'Gram Panchayat Vikas Adhikari' and vice versa, i.e, he was transferred 2 or 3 times by the appellants and was even appointed as a polling officer by State Election Commission on 15.10.2015, 26.11.2015 and 03.12.2015. It is thus the submission that there could not have been such inter-departmental transfers and re-transfers if the father of the respondent was not being considered as a regular employee. Not only that, it is contended

that there would possibly be no case where a person is deployed under the Representation of People Act, 1951, who is not a Government employee. This is apart from the fact that the respondent's father was the operator of 2 Government tubewells which was stated to be equivalent to the job of a regular tubewell operator i.e., a 9 a.m. to 5. P.m., which some times ran over more than 8 hours, subject to the demand of farmers

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10. We have also taken note of the fact that during his 13 long years of employment and before that having battled the appellants for the period of 6 years to get his dues, the father of the respondent was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment. The most significant aspect is that had the father of the respondent not been considered a regular appointee, there would be no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which could have been done only by a Government employee, as is specified under Section 159 of the Representation of the People Act, 1950 ("Staff of certain authorities to be made available for election work")

11. The present case is thus one which is peculiar in its given factual scenario which we have discussed above and thus for all practical purposes, it is a case of an appointment against a regular vacancy. The respondent's father was treated as a regular employee by the aforesaid conduct of the appellants even though he was labelled as a Part Time tubewell operator."

15. The said judgment is not applicable as peculiar facts and circumstances of Uttam Singh's case, as mentioned, is not there in the present case. In the present case, petitioner has nowhere pleaded either in the writ petition or in supplementary affidavit that his father was inter-departmentally transferred and he was sent for election duties as in the case of Uttam Singh (supra) by reason of which the employee was treated to be regular in Uttam Singh's case (supra).

16. The case of State as per the counter affidavit and the supplementary counter affidavit that the name of the father of the petitioner was never forwarded for consideration for regularization under the Rules, 2006 as was the case in some other matter.

17. In view of the discussions made hereinabove and taking into consideration the Full Bench decision in the case of Pawan Kumar Yadav (supra), there is no illegality in the impugned order dated 30.06.2015 passed by the respondent no. 4.

18. Writ petition is devoid of merit hence, dismissed.

Order Date :- 23.1.2024/Ashish