

Court No. - 32

Case :- WRIT - A No. - 5030 of 2022

Petitioner :- Deepika Sharma

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sandeep Kumar

Counsel for Respondent :- C.S.C., Pranesh Dutt Tripathi

Hon'ble Siddharth,J.

Heard learned counsel for the petitioner; learned Standing Counsel appearing on behalf of respondent no.1 and Sri Pranesh Dutt Tripathi, learned counsel for respondent no.2.

This writ petition has been filed praying for direction to the respondent no.2, i.e., District Basic Education Officer, Kushinagar, to grant compassionate appointment to the petitioner on any suitable post as per her educational qualification on account of death of her husband, Late Yantish Dev Jha, within some fixed period of time.

The brief facts of the petition are that the husband of the petitioner was appointed as Assistant Teacher in the Basic School run under the Uttar Pradesh Basic Education Board, Allahabad at Primary School, Rohuaa Macharigava, Block Motichak, District Kushinagar. The husband of the petitioner was appointed by the order of District Basic Education Officer, Kushinagar, dated 21.9.2015 and he died on 23.9.2021 in harness. The petitioner is widow of the deceased having one year old daughter, Gyanvi Jha. She made an application dated 30.11.2021 before the respondent no.2 to grant compassionate appointment to her duly supported by documents. An objection was raised by the District Basic Education Officer, Kushinagar, regarding some documents not being annexed with the application for compassionate appointment made by the petitioner. The petitioner, thereafter, provided the certificate issued by Sub Divisional Magistrate, Sadar, District

Bareilly giving details of the members of the family of the deceased. In the certificate, the petitioner, her minor daughter and father of the deceased, namely, Har Prasad Sharma, were mentioned as legal heirs of the deceased.

The petitioner has qualification of B.Sc., B.Ed., and C.T.E.T. and is entitled to get appointment on compassionate basis as per her qualification. She has no source of income and after the death of her husband, she has reached the stage of starvation alongwith her one year old child.

A counter affidavit has been filed on the behalf of the District Basic Education Officer, Kushinagar, wherein it has been admitted that petitioner's husband, Yantish Dev Jha, died in harness on 23.9.2021 while working as Assistant Teacher in the School of Basic Education Board. The petitioner made an incomplete application and therefore, District Basic Education Officer, Kushinagar, sent a letter dated 14.12.2021 to supply the essential documents. In the meantime, her father-in-law, Har Prasad Sharma, sent a registered letter dated 10.01.2022 to the Block Education Officer, Moti Chak, Kushinagar, by forwarding a copy to District Magistrate, Kushinagar. Her father-in-law alleged in the letter that the petitioner was harassing his son due to which he became ill and later died on 23.9.2021. He further stated that on account of cruelty meted out by the petitioner to his son, he had died. Thereafter, brother-in-law of the petitioner, namely, Jhadev Sharma, lodged the F.I.R. against the petitioner and her brother and sisters alleging that his brother was appointed as Assistant Teacher in the primary school at Kushinagar in the year 2015 and the petitioner was married to him on 26.8.2018. The behaviour of the petitioner with her husband was not good and she used to humiliate him. By hatching conspiracy she got her younger sister married to the informant. Both the sisters started misbehaving with

the family members of her matrimonial home. On 22.8.2021, she alongwith her sister have broken household goods and abused the family members. When the police came, the situation came under control. The petitioner had threatened her brother-in-law of slitting his neck on phone. Number of other wild allegations have made in the F.I.R. lodged against the petitioner by her brother-in-law aforesaid.

Father of the deceased has also sent a Will dated 29.8.2021 of his son, Yantish Jha, executed in his favour to the District Basic Education Officer, Kushinagar and he has in turn forwarded the same to Block Education Officer, Moti Chak, Kushinagar, to verify the same. On account of the aforesaid facts, the compassionate appointment of the petitioner is pending.

After hearing the rival submissions and before proceeding with the facts of this case, it would be relevant to consider the relevant provisions of the U.P. Recruitment of Dependents of Government Servants Dying in Harness, Rules 1974. Rule 2 (c) defines "family" of the deceased Government servant, as including "wife or husband, sons and unmarried and widowed daughters". Rule 6 specifies the contents of the application for seeking compassionate appointment and following informations are required from the persons applying for the same:-

- (a) the date of the death of the deceased Government servant; the department in which he was working and the post which he was holding prior to his death;
- (b) names, age and other details pertaining to all the members of the family of the deceased, particularly about their marriage, employment and income;
- (c) details of the financial condition of the family; and

(d) the educational and other qualifications, if any, of the applicant.

As per Rule 8, a candidate seeking appointment must not be less than 18 years at the time of appointment.

In the present case, the application of the petitioner made for compassionate appointment dated 30.11.2021 clearly states the name of the deceased employee, his place of working, and the post he was holding, the name of the dependent, and her relationship with the deceased. She has also filed her affidavit in support of application alongwith the photographs of her daughter. In the affidavit she has clearly stated that apart from the petitioner and her minor daughter, Gyanvi Jha, deceased has not left behind any member of his family. She has also stated that after the death of her husband, her financial condition is pitiable and she is not employed in any government, non-government or semi government organization. Father of the deceased is aged about 72 years and not entitled to grant compassionate appointment. She has clearly stated her education qualification as B.Sc., B.Ed. C.T.E.T. and her date of birth as 06.6.1990. She has also given undertaking that in case she is granted compassionate appointment, she will look after her family. She has supplied copies of her educational certificates, marks-sheets etc., alongwith the application and certified them as correct.

The District Basic Education Officer, Kushinagar, by his letter dated 14.12.2021 has only objected that the application is defective and the required documents/certificates are not annexed. Nothing has been stated as to what is required by District Basic Education Officer, Kushinagar, from the petitioner. However, the petitioner has applied again by means of application dated 14.02.2022 before the District Basic Education Officer, Kushinagar, giving required details again alongwith the her educational certificates and certificate from

the office of Sub Divisional Officer, Sadar, Bareilly, certifying the legal heirs of her deceased husband, which includes her father-in-law and minor daughter alongwith the petitioner.

It is notable that prior to the death of the deceased neither the father-in-law of the petitioner nor her brother-in-law had raised any grievance against the petitioner. Only after the death of her husband, father-in-law, Har Prasad Sharma, had produced unregistered Will of his son in his favour before the District Basic Education Officer, Kushinagar and her brother-in-law, Jhadev, lodged the F.I.R. under Sections 427, 506, 504, 323 I.P.C. against the petitioner and her brother and sister.

Obviously, the father and brother of the deceased do not want that the petitioner may be given compassionate appointment. Their conduct is not uncommon since the majority of the parents, whose son dies untimely, blame his widow for his death and want to get rid of her by resorting to all means, fair and foul, to deprive her of the estate of her husband. This is one such case where after the death of husband of petitioner, her father-in-law and brother-in-law are bent upon depriving her from appointment on compassionate basis on account of untimely death of her husband in harness. Their conduct shows that they will not accept her and her minor daughter as their family members any more. In such a situation the petitioner is absolutely helpless.

There is nothing in the counter affidavit, which may indicate that the petitioner is gainfully employed anywhere or has any other means of survival. She has responsibility of caring and rearing a minor daughter aged about one year left behind by her husband and in case she is not provided employment, it would be difficult for her to survive and bring up on her minor daughter. Section 2 (c) of the Rules mentioned above does not includes father-in-law or

brother-in-law within the definition of family. Admittedly, father-in-law has at least one more son to look after him. Therefore, it is clear that the petitioner and her minor daughter are the only members of the family of the deceased government servant and petitioner is entitled to compassionate appointment under the Dying in Harness Rules. The objection being raised by her father-in-law and brother-in-law are not to be considered as grounds of her depriving the petitioner of her right to get compassionate appointment. Her implication in criminal case has only been sought to be made by the brother-in-law of the petitioner so as to deprive her of the benefits of compassionate appointment. Even otherwise the offences alleged in the F.I.R. are minor in nature and from reading of the F.I.R., it appears to be *prima facie* concocted and false at this stage. It has not been stated in the counter affidavit about the fate of the investigation in the aforesaid F.I.R. lodged by the brother-in-law of the petitioner and its outcome.

The unregistered Will dated 29.8.2021 of the deceased annexed as Annexure CA-4 of the counter affidavit is absurd so far the recital therein that after death of testator, his father should be given compassionate appointment. The father of the deceased is aged about 72 years and cannot be appointed in government job. Even otherwise, unless the Will is proved before the competent court, since it would never be acceptable to petitioner and her minor child, no benefit of the same, regarding other benefits willed by the deceased in favour of his father, can accrue to the beneficiary of Will, the father of the deceased. The District Basic Education Officer has sent the Will to the Block Education Officer for verification, which is an absurd defence. The Block Education Officer cannot certify a Will at all. Only civil court can grant decree regarding genuineness of a Will.

On the overall consideration of the facts and circumstances of the case and the conduct of the respondent no.2, District Basic Education Officer, of keeping decision of appointment of the petitioner on compassionate basis pending on account of grounds which are not in accordance with law this Court is of the firm view that positive mandamus should be issued to the respondent no.2 in this case. The Apex Court in the case of **Destruction of Public and Private Properties Act Vs. State of A.P. and others, AIR 2009 SC 2266** has relied upon para 20 of the judgement in the case of **Comptroller And Auditor General Vs. K.S. Jagannathan & Anr, (1986) SCR 17**. In the aforesaid judgement, the Apex Court has laid down the contingencies where positive mandamus can be issued by the High Court in exercise of its power under Article 226 of the Constitution as follows:-

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have

passed or given had it properly and lawfully exercised its discretion."

In the present case the respondent no.2 is delaying the relief due to petitioner on account of irrelevant considerations and is frustrating the object of the Rule of 1974. The rule was framed to provide immediate relief by way of appointment of one member of the family of deceased so that the family may not be pushed towards starvation after loss of sole bread winner. In this case, about seven months have passed and respondent no.2 is lingering the decision because of frivolous objections from the persons who are not member of the family of deceased as per the Rule and who cannot get compassionate appointment at all on account of death of the husband of the petitioner.

Hence District Basic Education Officer, Kushinagar, respondent no.2, is directed to grant compassionate appointment to the petitioner on any suitable post, within 12 weeks from today. In case no post is available then by creating a supernumerary post after requesting for due sanction of a post, within 10 days from competent authority, who shall also be bound by the time frame fixed in this order.

This writ petition is allowed.

Order Date :- 29.4.2022

Ruchi Agrahari