

Hira Man

Vs

State of U.P.

(S.C. Agarwal, G.T. Nanavati JJ)

08.08.1997

JUDGMENT

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NANAVATI, J.

1. Leave granted.

2. Heard learned Counsel for both the sides.

3. The appellant was employed as a Daftari (class IV employee) in Nehru Intermediate College, which is a recognised and Government aided college. He continued to work on that post till he was promoted as a clerk on 11.5.1990. In the said college, one Surya Narain Srivastava was working as an Assistant Teacher. He died on 11.5.1987 while in service. On 29.2.1989 his widow made a request to the Principal of the college for appointing her son, respondent No. 4, to a non-teaching post on compassionate grounds. In December, 1989 and February, 1990 Distt. Inspector of Schools, respondent No.2, also wrote to the Principal of the college to give suitable employment to respondent No. 4. on retirement of a Head Clerk on 30.6.1989 one clerk was promoted to that post and, therefore, one post of clerk became vacant. In April, 1990 the management decided to promote and appoint the appellant on that post as it belonged to the promotional quota. It also decided to promote one Ramdin, who was working as a peon, as a Daftari in the place of the appellant and appoint respondent No. 4 as a peon. It then sought approval of the District Inspector of Schools for the proposed promotions and appointment. It was granted on 11.5.1990. Pursuant thereto the appellant was promoted as a clerk on 11.5.1990 and respondent No. 4 was appointed as a peon on 12.5.1990. Respondent No. 4 represented to the management that as he was a graduate and possessed necessary qualifications for appointment as a clerk he ought to have been appointed as a clerk and not as a peon especially when a vacant post of clerk was available. The management did not accept his representation. Therefore he filed Civil Misc. Writ Petition No. 444 of 1991 in the Allahabad High Court challenging the appointment of the appellant as a clerk.

4. The petition was allowed by a learned single Judge of that Court as he was of the opinion that, in view of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, respondent No. 4 had become entitled to an immediate employment after 29.2.1989 and it was, therefore, not proper for the management to delay his appointment after a post of clerk had fallen vacant in June, 1989 and to promote the appellant on that post on 11.5.1990. He, therefore, quashed the promotion of the appellant as a clerk and that of respondent No. 4 as a peon and directed the management and the authorities to appoint respondent No. 4 on the said vacant post of clerk w.e.f. 12.5.1990.

5. As a result of this decision the appellant was demoted as a peon. The appellant challenged the decision of the learned Single Judge by filing Special Appeal No. 878 of 1993 in the High Court. The Division Bench of the High Court held that the Dying in Harness Rules over-ride all other recruitment rules in respect of posts not falling within the purview of the Uttar Pradesh Public Service Commission. It further held that in view of the educational qualifications of respondent No. 4 and the availability of a clear vacant post of a clerk respondent No. 4 ought to have been appointed as a clerk and not as a peon. It also held that the appellant who was a, class IV employee, ought not to have been promoted as a clerk, ignoring the claim of, respondent No. 4. It, therefore, upheld the decision of the learned Single Judge and dismissed the appeal.

6. The contention of the learned counsel for the appellant was that the Post of clerk, which had fallen vacant after June, 1989 was of the promotional quota and, therefore, it was not available for an outsider including respondent No. 4 and, therefore, the High Court committed a grave error in quashing the promotion of the appellant to that post and directing the college management and the authorities to appoint respondent No. 4 on that post. On the other hand, what the learned counsel for the respondent No.4 contended was that the Dying in Harness Rules over-ride all other provisions regarding the recruitment on posts which do not fall within the purview of the U.P. Public Service Commission and, therefore, even if the post of clerk which had fallen vacant belonged to the promotional quota, it was the legal duty of the college management and the authorities to appoint respondent No. 4 on that post.

7. The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 have been framed in exercise of the powers conferred by Article 309 of the Constitution of India. Rule 3 of the said Rules makes these Rules applicable to the recruitment of dependents of the deceased Government servants to public services and posts in connection with the affairs of State of Uttar Pradesh, except services and posts which are within the purview of the Uttar Pradesh Public Service Commission. Rule 4, on which heavy reliance has been placed by the learned counsel for respondent No. 4, gives an overriding effect to those rules by providing that they shall have the effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of those rules. It was contended that so far as recruitment of such dependents to public services and posts is concerned Dying in Harness Rules over- ride all other recruitment rules and that would necessarily imply that even if quota for Promotion and direct recruitment is fixed under those Rules, they will have to give way and the dependent of the deceased Government servant will have to be accommodated on the first available vacancy irrespective of whether it is to be filled up by promotion or by direct recruitment.

8. On the reading of the Rules as a whole, we do not think that rule 4 of the said Rules that effect. Rules 4, 5 and 8 read as under:

"4. Overriding effect of these rules - These rules and any orders issued thereunder shall, have effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of these rules.

5. Recruitment of a member of the family of the deceased - in case a Government servant dies in harness after the commencement of these rules, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service which is not within the purview of the

State Public Service Commission in relaxation of the normal recruitment rules, provided such member fulfills the educational qualifications prescribed for the post and is also otherwise qualified for Government service. Such employment should be given without delay and, as far as possible, in the same department in which the deceased Government servant was employed prior to his death. Relaxation from age and other requirements - (1) The candidate seeking appointment under these rules must not be less than 18 years at the time of appointment. (2) The procedural requirements for selection, such as Written test or interview by a selection committee or any other authority, shall be dispensed with, but it shall be open to the appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standards of work and efficiency expected on the post.

(3) An appointment under these rules shall be made against an existing vacancy only." Rule 5 imposes an obligation on the State Government to give suitable employment to the dependent of the deceased Government servant in the State Government service or on a post which is not within the purview of the State Public Service Commission provided that he is not already employed under the Central Government or a State Government or a Corporation owned by the Central Government or a State Government. It further provides that such employment is to be given in relaxation of the normal recruitment rules, provided such member fulfills the educational qualifications prescribed for the post and is also otherwise qualified for Government service. Such employment has to be given without delay. Obviously this provision has been made with a view to achieve the object of the rules, viz., to provide immediate succor to family of the deceased Government servant when it is put in a difficult financial situation as a result of his death. If the dependent of the deceased Government servant is made to wait till the vacancy is to be filled up by following the prescribed procedure under the normal recruitment rules and to compete with others, the object of the rules would get frustrated. Therefore, such appointment has to be made in relaxation of the normal procedure prescribed by the relevant recruitment rules. For that reason Rule 5 contemplates giving of a suitable employment to such dependent in relaxation of the normal procedure prescribed by the relevant recruitment rules and that becomes clear when we read this rule along with Rule 8. The rule making authority after providing generally in Rule 4 that Dying in Harness Rules and any orders issued thereunder shall have effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of the rules has thereafter in rules 5 and 8 specifically, provided what is to be relaxed and to what extent it is to be relaxed. If the intention of the rule making authority was to give the Dying in Harness Rules an overriding effect over all other recruitment rules or regulations in all respects, then it would have been unnecessary for it to provide for relaxation of the normal recruitment rules in rule 5 and relaxation of age and the procedural requirements for selection in rule 8. Sub rule (1) of rule 8 makes relaxation in the matter of age of the candidate seeking appointment under the said rules. Sub rule (2) dispenses with the requirements of selection such as written test or interview by selection committee or any other authority. Rule 5 speaks of relaxation and Rule 8 indicates the extent of relaxation contemplated by the said rules. Thus if we read rules 4, 5 and 8 together, it becomes clear that overriding effect which is given to the said rules is with respect to the age and the procedure for selection for appointment on a post for which the dependent

makes an application. The rule making authority has taken care to emphasise, even while making such relaxation, that employment is to be given only if other eligibility conditions are satisfied by providing that such dependent member must fulfill the educational qualifications prescribed for the post and must also otherwise be qualified for Government service. While dispensing with the procedural requirements for selection it is provided that it shall be open to the appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standard of work and efficiency expected on the post. If the rules are construed in this manner and so we do, the contention raised on behalf of the respondents that notwithstanding the fact that the post of clerk which had fallen vacant, belonged to the promotional quota, the respondent No. 4 should have been appointed on that post, and not the appellant, has to be, rejected.

9. It is also pertinent to note that the Dying in Harness Rules are made under Article 309 of the Constitution. Article 309 empowers the appropriate legislatures to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or the State. The proviso to that Article empowers the President in the case of the services and posts in connection with the affairs of the Union and the Governor of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature under that Article. The rules made in exercise of this power have the effect subject to the provisions of any such act passed by the appropriate legislature. We assume that in the State of Uttar Pradesh there are other rules regulating the recruitment and condition of service of persons appointed in U.P. Government service and on posts under that Government, made by or under Acts of U.P. legislature. Obviously, the rule making authority, while making the Dying in Harness Rules, could not have intended to over-ride such statutory provisions. For this reason also we cannot construe rule 4 of the Dying in Harness Rules in the manner suggested by the respondent.

10. For the reasons stated above we are of the opinion that the contrary view taken by the High Court is wrong. We, therefore, allow this appeal, set aside the judgment and order dated 10.12.1993 passed by the Allahabad High Court in Special Appeal No. 878 of 1993 and dismiss the Civil Misc. Writ Petition No. 444 of 1991, filed by respondent No-4. There shall be no order as to costs.