

Court No. - 8

Case :- WRIT - A No. - 755 of 2022

Petitioner :- Sumit Kumar Verma

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Dept. Of Medical Edu.Govt. Of U.P.Civil Secr. Lko And Others

Counsel for Petitioner :- Ashish Kumar Pathak

Counsel for Respondent :- C.S.C.,Shubham Tripathi

Hon'ble Dinesh Kumar Singh,J.

1. The petitioner, who obtained employment on Class-IV post in King George's Medical University, Lucknow (for short "the University") under the provisions of The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short "the Rules, 1974) after death of his father on 13.11.2007, who was working on the post of fireman in Construction Division of the University, has filed this writ petition, impugning the order dated 19.06.2021 passed by the Registrar of the University, terminating his services with immediate effect and the order dated 13.12.2021 passed by the Vice-Chancellor of the University, dismissing appeal of the petitioner filed against the order of termination.

2. A complaint was made against one Mr. Anand Kumar Mishra, Head Assistant, that he had obtained appointment illegally, after concealing material fact and by misrepresentation; Mr. Anand Kumar Mishra was issued charge-sheet as required under rule-5 of The U.P. Recruitment of Dependents of Government Servants (Dying in Harness) (5th Amendment) Rules, 1999; Mr. Anand Kumar Mishra, in his reply to the charge-sheet, had mentioned that like him, other employees were also appointed illegally.

3. In view of the aforesaid allegation, the University decided to examine appointment made on compassionate ground after 2002 and Prof. A.A. Mehndi, Biochemistry Department, was appointed as inquiry officer. In the inquiry conducted by Mr. Mehndi it was found that at the time of appointment of the petitioner on compassionate ground

under the Rules, 1999, the petitioner's mother Smt. Kiran was employed as female sick attendant in Pediatric Department of the University. After receiving this report, the petitioner was issued charge-sheet on 05.10.2020 having been approved by the appointing authority

4. Mr. Ram Chandra, Administrative Officer, was nominated as inquiry officer. Thereafter, vide order dated 03.10.2020, Dr. Mhod Kalim Ahmad, Deputy Registrar was nominated as inquiry officer.

5. The petitioner filed his reply to the charge-sheet and, was given opportunity of hearing and the inquiry officer submitted his report on 04.03.2021. The petitioner was issued show-cause-notice along with inquiry report and, after considering his reply to the show-cause-notice, impugned order has been passed.

6. The petitioner admitted that he was appointed on compassionate ground after death of his father and, he did not give details of employment of his parents in the form submitted by him. The petitioner has also admitted that at the time of his appointment, his mother was working as female sick attendant in the Pediatric Department of the University. Along with the writ petition, the form submitted by the petitioner, has also been annexed as Annexure-11. In column-11, while giving details of the dependents of his deceased father, he has mentioned name of his mother Smt. Kiran, aged about 40 years, but he did not give details of occupation nor monthly income of his mother. The petitioner gave details of his two brothers, Amit and Manish without giving details of their occupation.

7. Under the Rules, 1999, which came into force, the appointment under dying in harness can be made only if wife or husband, as the case may be, is not employed in any Central or State Government or in any corporation/organization owned by the Central or State Government and, no member of the family is employed in Central or State Government or corporation/organization owned by Central or State Government. Thus, there is a

specific bar for giving appointment under the Rules, 1999, if wife or husband or any family member is employed in the Central or the State Government or in the corporation/organization owned/controlled by the Central/State Government. In the present case, the petitioner's mother was employed in the University itself as female sick attendant in Pediatric Department and, the petitioner deliberately concealed this fact in his application form and, thus, obtained the employment against rule-5 of the Rules, 1999.

8. Mrs. Bulbul Godiyal, learned Senior Advocate, assisted by Dr. Ashish Kumar Pathak, Advocate, representing the petitioner, has submitted that the petitioner has been working for 15 years from the date of his appointment. The petitioner's mother gave affidavit in favour of the petitioner. It has been further submitted that the petitioner did not conceal any fact and the Construction Division of the University itself recommended for giving appointment to the petitioner under the Dying in Harness Rules.

9. The recommendation of the Construction Division has been placed on record. However, in the recommendation of the Construction Division nowhere it is mentioned that the petitioner's mother is employed in the University inasmuch as neither in the affidavit nor in the form submitted by the petitioner, information regarding the employment of mother of the petitioner was given. If the recommendation had been made on the basis of incorrect and false facts given by the petitioner or recommendation was against law, employment obtained on the basis of the said recommendation would not come in the way of University for initiating disciplinary action against the petitioner, if he had secured appointment on the basis of misleading and incorrect information/facts given by him.

10. On the other hand, Mr. Shubham Tripathi, learned counsel for the respondents-University, has submitted that the petitioner's appointment on Class-IV post was against rule-5 of the Rules, 1999; the petitioner had obtained his

appointment by giving misleading and incorrect facts and, concealing material fact regarding employment of his mother in the University itself. It has been further submitted that the petitioner's appointment was void *ab initio* and, thus, even if the petitioner has worked for a long time, the petitioner is not entitled for any relief on the ground of sympathy and sentiments inasmuch as he has no legal right to continue in service inasmuch as he had no any legal right to get appointed at the first place and, he secured his appointment by playing fraud. The petitioner had secured appointment by giving false and incorrect information and by misleading the University.

11. The facts are not in dispute inasmuch as when father of the petitioner died on 13.11.2017, he was working on the post of Fireman, his wife, the mother of the petitioner, was employed as sick attendant in the Pediatric Department of the University. The petitioner did not give information regarding the employment of his mother in the application submitted by him, seeking employment under the Dying in Harness Rules after death of his father. If the petitioner would have disclosed true and correct information regarding employment of his mother, he could not have secured the employment. The petitioner did not have any legal right of his appointment on compassionate ground under the Dying in Harness Rules inasmuch as rule-5 of the Rules, 1999 puts a specific bar for appointing a person on compassionate ground, if any family member is employed in Central/State Government or in corporation/organization owned by the Central/State Government. Thus, the appointment, obtained by the petitioner, was void *ab initio*. The Supreme Court in **(2009) 15 SCC 436 (Shesh Mani Shukla Vs. District Inspector of Schools, Deoria and others)** in paragraph-19 has held as under:-

"19. *It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only*

because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See Food Corpn. of India v. Ashis Kumar Ganguly [(2009) 7 SCC 734 : (2009) 2 SCC (L&S) 413 : (2009) 8 Scale 218] .) Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See State of M.P. v. Sanjay Kumar Pathak)."

12. The claim of the petitioner to be appointed on compassionate ground has been found untenable inasmuch his mother was employed when he sought appointment on compassionate ground after death of his father and, he gave false and incorrect information regarding unemployment of his mother. It would not be correct to say that the petitioner did not have any dishonest intention for securing the employment as contended by the learned Senior Advocate, appearing on behalf of the petitioner. Service, under the Union and the States, or for that matter under the instrumentality of the State, subserves a public purpose. These services are instruments of governance. The State, while offering public employment, has to adhere to the mandate of Articles 14 and 16 of the Constitution and, to ensure equal opportunity to the people. Selection of an ineligible person by the State or its instrumentality would be detrimental and deleterious to good governance.

13. The Supreme Court, while dealing with a case of employment having been secured on the basis of false caste certificate in **(2017) 8 SCC 670 (Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others)** in paragraph-56 has held as under:-

"56. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16

to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence, the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved category passes off as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the Constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act 23 of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in *Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117]* spoke on 28-11-2000. The State law has been enforced from 18-10-2001. Judicial directions must be consistent with law. Several decisions of two-Judge Benches noticed earlier, failed to take note of Maharashtra Act 23 of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. *Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265]* noted the statute but misconstrued it."

14. If a person obtains appointment illegally, against the statutory prescription, his long continuation in service (in the present case 15 years) would not justify this Court to uphold his appointment. The Supreme Court in **(2010) 10 SCC 63 (M.S. Patil (Dr.) Vs. Gulbarga University and others)**, where a person continued on the post of Reader

(17 years), has held that in service law there is no place for concepts of adverse possession or holding over. Paragraphs-16 and 17 of the said judgment read as under:-

"16. *But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr Patil, learned Senior Counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as Lecturer and from where he had resigned to join to this post.*

17. *We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour."*

15. The case relied on by the petitioner **(2016) 12 SCC 342 (Md Zamil Ahmed Vs. State of Bihar and others)** is distinguishable inasmuch in the said case the Supreme Court did not find that the appellant had committed any fraud for securing appointment. Paragraph-15 of the said judgment, which has been relied on by the petitioner, reads as under:-

"15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the

case of the State."

16. In the present case, from perusal of petitioner's application, it is evident that the petitioner has suppressed the material fact and played fraud for securing public employment and, therefore, his long continuation (15 years) would not be of any help to him to continue to hold his post inasmuch as his appointment was void *ab initio*.

17. In view of aforesaid discussions, this Court does not find that the impugned order suffers from any illegality or from gross inaccuracy and, therefore, this writ petition fails and is, accordingly, **dismissed** at this stage itself.

Order Date :- 15.2.2022

MVS/-