BLOGS

Important Judgement For CLAT PG 2024-Suneel Kumar v. State of UP

Indrasish Majumder · 24 Jan 2023

Dated – 2nd August, 2022

Court – The Supreme Court of India

Bench – Justice K M Joseph and Justice Hrishikesh Roy

Facts of the case

1. The father of the appellant who was working as a Class-IV employee (Sweeper) at the Office of Vikas Khand Khutam, Jaunpur, U.P., passed away on 23.11.2016.
2. The appellant made an application to be appointed under Rule 5 of The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as 'the Rules of 1974').
3. The appellant is a graduate and has computer literacy. He was offered a post of Sweeper, the post which was held by his late father. However, the appellant being so advised rejected the offer and did not join and gave his representation by which he expressed his disinclination to join, which effectively means that he rejected the offer.
4. Thereafter, the appellant approached the Court which directed consideration of his representation. The respondents again rejected the request to accommodate the appellant in a Class-III post. It must be noted that the appellant specifically sought to be appointed as Gram Panchayat Officer, a post which is borne on the cadre of Class-III post
5. There is no dispute that the said post does not come within the purview of the Uttar Pradesh Public Service Commission contemplated under Rule 5. Therefore, the Rule in this regard was not an obstacle to the claim of the appellant.
6. However, the respondents rejected the representation in keeping with their understanding of the words "suitable employment" in Rule 5. This again generated another writ petition. It is the said writ petition which finally culminated in the High Court holding against the appellant.

Issues raised in the case

- Whether the appellant is entitled to be appointed as Gram Panchayat Officer?
- Whether the appellant is still entitled for the post of sweeper which was offered him and he rejected it?

Related Provisions

Rule 5 of The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974

Recruitment of a member of the family of the deceased. –

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant 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, 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 purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules, if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the government servant.

Appellant's Arguments

- Mr. Arijit Prasad, learned senior counsel appearing on behalf of the appellant would submit that the High Court essentially premised its judgment on the basis of the view taken by this Court reported in State of Uttar Pradesh And Others v. Premlata, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the 1974 Rules and in observing and holding that the "suitable post" under Rule 5 of the Dying-In-Harness Rules, 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to offered considering the educational qualification of the dependent.

- As observed herein-above, such an interpretation would defeat the object and purpose of appointment on compassionate ground.
- He further said that a perusal of the said Rules in Clause-2(d) thereof would reveal that an appointment on Class-III post should not be refused only on the ground that the deceased was a Class-III or a Class-IV employee. He would submit that had this Court been taken into confidence about the existence of this Rule, the view taken by this Court as already noticed may not have been taken.
- He further submitted that the question of suitability need not be decided with reference to the post which was held by the deceased employee. Rather in a case such as this, where the appellant is clearly entitled to be appointed as Gram Panchayat Officer with reference to the qualification which he has and what is more, bearing in mind that this is not a post which comes within the purview of the Public Service Commission, there is no legal hurdle in the appellant being accommodated. Alternatively, he also submitted that in case this Court is not inclined to accept his contention, the appellant may at least be vouchsafed the security of the employment as a Sweeper.

Respondents Arguments

- Ms. Ruchira Goel, learned counsel appearing on behalf of the respondent No.1-State of U.P. contested the matter and pointed out in the first place that the reference made to the so-called Rules by the learned senior counsel for the appellant may be misplaced. There are essentially orders passed by the Government on the basis of the view expressed by the High Court in W.P.(C) No.2228(SS) 2014, Prakash Agarwal Vs. Registrar General, High Court, Allahabad. She also submitted that on a proper understanding of the judgment of the High Court, the interpretation sought to be placed by the appellant may not emerge.
- She further referred the judgment of this Court in State of Himachal Pradesh and Another versus Shashi Kumar and contend at the appointment under the compassionate scheme is not meant to be a source of recruitment. In other words, the sudden passing away of a Government Servant creates a financial vacuum and it is to lend a helping hand to the genuinely needy members of the family that an appointment is provided. It is never meant to be a source of recruitment.
- She further contended that though appointment can be made in regard to Class-III and Class-IV posts, this cannot mean that when the employee who passed away was borne on the Class-IV cadre, the dependents can stake a claim to a Class-III appointment. As far as the alternate

submission is concerned, it is submitted that the appellant did not choose to accept the offer of appointment as Sweeper and what is more, he rejected it and there may not be a vacancy to accommodate the appellant.

Supreme Court's Observation

1. The Supreme Court observed that the death of the employee in this case took place not too far away, namely, it took place on 23.11.2016. Therefore, this is not a case where the link between the date of the death and the time for consideration of the matter by this Court has snapped. We must not be oblivious to the fact that the deceased employee was a Sweeper.
2. The Supreme Court observed that it is without doubt a post borne in Class-III. The father of the appellant was working as a Sweeper borne in Class-IV post. We have noticed the view taken by this Court in State of Uttar Pradesh And Others versus Premlata, (2022). In other words, the law as declared is to the effect that the words "suitable employment" in Rule 5 must be understood with reference to the post held by the deceased employee. The superior qualification held by a dependent cannot determine the scope of the words "suitable employment".
3. The Supreme Court said that we do not think we should be persuaded to take a different view as things stand. We cannot eclipse the dimension that the whole purport of the scheme of compassionate appointment is to reach immediate relief to the bereaved family. In such circumstances, the meaning placed on the words "suitable employment" bearing in mind the post held by the deceased employee cannot be said to be an unreasonable or incorrect view.
4. The Supreme Court further said that we must now consider the case of the appellant for appointment as a Sweeper at least. It may be true that the appellant may have been on the advice given persuaded to litigate the matter and persevere in his claim for a specific post. It may be true that there were rounds of litigation but as we have already noticed bearing in mind the date of the death of the employee, the claim of the appellant may not be said to be afflicted with such delay as should deprive him and the family of the deceased of relief of the appellant being appointed as a sweeper, a right which is given under the statutory Rule.

Judgement

The Supreme Court bench of Justice K M Joseph and Justice Hrishikesh Roy partially agreed with the appeal and said, "We set aside the disputed judgment and direct the respondent to appoint the appellant to the post of sweeper."

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