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ALLAHABAD HIGH COURT

SINGLE BENCH

BABU RAM — Appellant

Vs.

STATE OF U.P. AND ANOTHER — Respondent

(Before : Narayan Shukla, J)

Writ Petition No. 8082 (SS) of 2003

Decided on : 14-12-2012

- Constitution of India, 1950 - Article 309

A. U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 — Rule 2(c) and Rule 3 — Compassionate Appointment — Definition of 'family' — Purposive construction — Grandson of deceased employee seeking compassionate appointment where deceased's son (petitioner's father) is permanently physically handicapped — Though grandson is not explicitly included in the definition of 'family' under Rule 2(c), the Rules are beneficial legislation aimed at supporting dependents — The peculiar circumstances, where the immediate dependent (Lahuri, son of deceased) is incapacitated, necessitates a liberal interpretation — Application of purposive construction allows compassionate appointment to a linear descendant who is genuinely dependent on the deceased and is the only person capable of supporting the family, even if not strictly within the narrow definition of 'family', to prevent destitution and fulfill the object of the Rules. (Paras 3, 5, 6, 7)

B. Constitution of India, 1950 — Article 309 — Interpretation of Statutes — Beneficial Legislation — Purposive Construction — Compassionate

appointment rules, being beneficial legislation framed under Article 309, should be interpreted broadly to achieve their objective of providing succor to the dependent family of a deceased government servant — Where a strict literal interpretation of the term 'family' would defeat the very purpose of the rules, especially in peculiar circumstances like the primary dependent being physically disabled, a purposive construction is necessary to extend the benefit to other genuine dependents (grandson) who are lineal descendants. (Paras 5, 6)

C. Administrative Law — Judicial Review — Challenge to administrative order — Quashing of order — Writ of mandamus — Order rejecting compassionate appointment on narrow interpretation of 'family' quashed — Direction issued to respondents to grant compassionate appointment to the petitioner. (Paras 1, 8)

Counsel for Appearing Parties

Prashansa Singh for S.K. Upadhyay, for the Appellant;

Final Result : Allowed

JUDGMENT

Narayan Shukla, J.—Heard Ms. Prashansa Singh, learned Advocate holding brief of Mr. S.K. Upadhyay, learned counsel for the petitioner as well as learned Standing counsel. The petitioner has challenged the order dated 25.1.2002, passed by the Executive Engineer, Construction Division No. 3, Public Works Department, Sultanpur.

2. The petitioner, on the demise of his grand-father, namely, Ram Dularey, who died while in service on the post of Mate on 19.8.2001, claimed compassionate appointment under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (in short 'Rules'). On the demise of his grand father, his father Lahuri moved an application before the authority concerned to extend the compassionate appointment in favour of the petitioner, who is his son as he is a permanent physically handicapped person. Thus, since the deceased's son Lahuri is not capable to discharge the duty and the deceased was only the bread earner of the family, he consented to extend the compassionate appointment in favour of the petitioner, being grand-son of the deceased. It is further stated that the deceased's son and grandson (petitioner) all were dependent for their livelihood upon the source of income of the deceased.

3. The learned counsel for the petitioner submits that except the petitioner no other person is there in the family to earn the bread for the family and thus after the death of Ram Dularey, the whole family is passing through the unsustainable position of starvation. The authority concerned has rejected the petitioner's claim on the ground that being grand son

of the deceased, he does not come within the term 'family' as is defined u/s 2(c) of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. Section 2(c) defines the term 'family' as under:

((c) "family" shall include the following relations of the deceased Government servant;

(i) wife or husband;

(ii) sons;

(iii) unmarried and widowed daughters;

(iv) if the deceased was unmarried Government servant, brother, unmarried sister and widowed mother dependent on the deceased Government servant;)

4. Admittedly, the petitioner being grand son of the deceased, does not come within the term of 'family', but upon perusal of the Rules, I find that Rule 3 provides that these Rules shall apply to 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.

5. The statement of aims and objects of the Rules also provides that in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Uttar Pradesh is pleased to make the following special rules regulating the recruitment of the dependents of Government servants dying in harness. Thus, the Rules have been framed to the benefit of the dependents of the deceased and it is a beneficial legislation. There may be occasion that on the demise of the bread earner of the family, there may be some other persons being alive in the family, who were completely dependent upon the bread earner, like the petitioner, but are not covered under the definition of "family". If the construction of word 'dependent' is given the narrow meaning by confining it to the term 'family', then the purpose of framing of the Rules is bound to be defeated as it has been framed for the benefit of the dependents of the deceased, who may not come under the term 'family'.

6. The position of the case at hand is very peculiar as the son of the deceased is permanently physically handicapped person and is unable to do any job, even after extension of benefit of the compassionate appointment, therefore, the grand son necessarily has to come forward and step to lead the family for survival of other members, who come within the term 'family'. Therefore, in such a situation, I am of the view that he would be only the eligible and competent person to get the employment for survival of the family. In such a situation, I am of the view that the dependents, who are placed even beyond the term of 'family', are definitely entitled to get the appointment under the Rules, otherwise the purpose of framing the Rules definitely shall be defeated, therefore, I am of the view that the purposive construction of the Rules would be to extend the benefit of compassionate appointment particularly in such an extra ordinary situation to other

members of the family also who are dependent of the deceased being in the lineal descendant.

7. In the case at hand, the petitioner's father is a permanent physically handicapped person and the petitioner is not a stranger to the family, rather he is lineal descendant of the deceased, therefore, it is the petitioner only who can be held to be entitled to get the appointment.

8. Under the circumstances, I hereby quash the order impugned dated 25.1.2002, passed by the Executive Engineer, Construction Division No. 3, Public Works Department, Sultanpur and issue a writ of mandamus to the respondents to extend the benefit of compassionate appointment in favour of the petitioner within one month after receipt of a certified copy of this order. In the aforesaid terms, the writ petition is allowed.