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SUNEEL KUMAR

V.

STATE OF U.P. & ORS.

(Civil Appeal No. 5038 of 2022)

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AUGUST 02, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

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

- C appointment – When superior qualification is held by the dependent – The father of the appellant was working as class-IV employee (sweeper) and passed away – Appellant, a graduate with computer literacy, was offered post of sweeper but he rejected the same and requested to be appointed as Gram Panchayat officer (Class-III post) with reference to the qualification he had – Respondent rejected
 - D the said request on their understanding of the words “suitable employmen” in Rule 5 – High Court rejected the writ petition of the appellant – Appellant approached the Supreme Court – Held: The words “suitable employment” in Rule 5 must be understood with reference to the post held by the deceased employee – The
 - E superior qualification held by a dependent cannot determine the scope of the words “suitable employment” – The alternate submission of the appellant to be appointed as sweeper was accepted as it is a right under the statutory rule.

Partly allowing the appeal, the Court

- F** HELD:1. The question relating to the entitlement as it were of the appellant to be considered to the post of Gram Panchayat Officer is concerned, 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. This court have noticed the view taken in the case of Premlata. 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". [Para 10][120-F-G]

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2. This court must 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. [Para 12][121-B-C]

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State of Uttar Pradesh And Others v. Premlata (2022) 1 SCC 30 : 2021 (10) JT 28 – relied on.

Prakash Agarwal v. Registrar General W.P.(C) No. 2228 (SS) 2014; State of Himachal Pradesh and Another v. Shashi Kumar (2019) 3 SCC 653 : [2019] 2 SCR 432 – referred to.

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Case Law Reference

[2019] 2 SCR 432

referred to

Para 8

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5038 of 2022.

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From the Judgment and Order dated 16.08.2021 of the High Court of Judicature at Allahabad in Special Appeal Defective No. 1131 of 2019.

Arijit Prasad, Sr. Adv., Pankaj Pandey, Girish Tripathi, Mrs. Pragya Baghel, Advs. for the Appellant.

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Ms. Ruchira Goel, Adit Jayeshbhai Shah, Advs. for the Respondents.

The following Judgment of the Court was delivered :

JUDGMENT

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1. Leave granted.

2. The father of the appellant who was working as Class-IV employee (Sweeper) at the Office of Vikas Khand Khutam, Jaunpur, U.P., passed away on 23.11.2016. An application came to be made by the appellant for being appointed under Rule 5 of The Uttar Pradesh

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- A Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as ‘the Rules of 1974’). Rule 5 reads as follows:-
- “[5. 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:
- E Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.
- F (2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]
- G [5A. Recruitment of member of the family of Police/P.A.C. Personnel who dies in May, 1973.- Notwithstanding anything contained to the contrary contained in Rule 5 or in any other rule, the provisions of these rules shall apply in the case of members of the family of twenty-two police or per Provincial Armed Constabulary personnel who died as a result of disturbances in May, 1973, as they apply in the case of a Government servant during dying in harness after the commencement of these rules.]

3. The appellant is a graduate and also got 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. 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. 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. 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.

4. We heard Mr. Arijit Prasad, learned senior counsel appearing on behalf of the appellant and Ms. Ruchira Goel, learned counsel appearing on behalf of the respondent No.1-State of U.P.

5. 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 versus Premlata, (2022) 1 SCC 30*. Therein, no doubt, this Court has inter alia held as follows:-

“11. In view of the above and for the reasons stated above, 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 be offered considering the educational qualification of the dependent. As observed hereinabove, such an interpretation would defeat the object and purpose of appointment on compassionate ground.”

6. He would submit that this view came to be formed by this Court without bearing in mind what he initially described as relevant

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- A Rules in this regard. What he referred to the Rules are to be found from Annexure P-1, which are, *inter alia*, produced as below:-
- “1. With a view to ameliorate the condition of dependents of Government servants who die during service, “U.P. Recruitment of dependents of deceased Government Servants Regulation 1974”
- B (Amended) were circulated. In these regulations, there is a system for appointment of the dependents of deceased outside U.P. Public Service Commission for filing up post in Group C and Group D posts. Up till now 11 amendments have been done in these regulations. The original regulations with 11 modifications are attached herewith.
- C 2. In connection with appointment of dependents of deceased employees, a WP (C) was filed vide No. 2228 (SS) 2014 Prakash Agarwal Vs. Registrar General, High Court, Allahabad in which Hon. High Court, Lucknow Bench passed order on 17.04.2014 whose para 49 makes the following observations.
- D a. Application should be disposed of within three months from the date dependent applies for a job. Under Rules, no time limit is prescribed but intent of the rule is to provide immediate relief to the bereaved family to meet immediate financial crisis (Shiv Kumar Dubey (*supra*]). In this background, Appropriate Authority is supposed to dispose of such applications within a shortest possible time. In any case, application should not be kept pending for more than three months.
- F b. Appointment under the Rules cannot be refused merely on the ground that financial status of the applicant is sound. Nor payment of retiral benefits at the time of death, furnishes any ground for refusal.
- G c. Non availability of posts is no ground to refuse appointment.
- H d. Appointment on Class III post cannot be refused merely on the ground that deceased was Class III/ IV employee.
- e. Appointment has to be offered according to qualification and suitability of candidate and the applicant should

be given an appointment commensurate therewith. If appointing authority does not give appointment on the post claimed by applicant because of non-suitability, reasons have to be recorded by the appointing authority. A

f. Dependent of deceased has no right to claim particular position or place and it is in the discretion of the appointing authority to pass appropriate order warranted in the facts and circumstances of the case.” B

3. In this connection, I am directed to say that in the context of appointment of the dependents of deceased employees, the guidelines, instructions issued by Hon’ble High Court are required to be complied with strictly.” C

7. In other words, he would submit 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 would submit 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 would also submit 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. D E F

8. Per-contra, Ms. Ruchira Goel, learned counsel appearing on behalf of the respondent No.1-State of U.P. would contest the matter and point 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 would further submit that on a proper understanding of the judgment of the High Court, the interpretation sought to be placed by the appellant G H

- A may not emerge. She would further bring to our notice the judgment of this Court in *State of Himachal Pradesh and Another versus Shashi Kumar, (2019) 3 SCC 653* and contend at the appointment under the compassionate scheme is not meant to be a source of recruitment. It is essentially to reach immediate succor to a bereaved family. 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. It is 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.
- D 9. This is a case where the father of the appellant was working as a Sweeper. Undoubtedly, the appellant is qualified (according to him) and in the said sense is suitable for being appointed as a Gram Panchayat Officer. 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.
- F 10. At the same time, as far as the question relating to the entitlement as it were of the appellant to be considered to the post of Gram Panchayat Officer is concerned, 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 *Premlata (supra)*. 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".
- H 11. It is clear that the Annexure P-1 does not represent statutory Rules. 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.

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12. Having so held, 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.

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13. In such circumstances, the appeal is partly allowed. We set aside the impugned judgment and we direct the respondent No.3-District Panchayat Raj Officer, District Jaunpur, U.P. to appoint the appellant to the post of Sweeper. The necessary order appointing the appellant shall be issued within a period of eight weeks from the date of production of the copy of this judgment. No doubt, we are passing this judgment in the peculiar facts of this case.

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The appeal is partly allowed.

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No order as to costs.

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Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeal partly allowed.