

Court No. - 10

Case :- WRIT - A No. - 6119 of 2001

Petitioner :- Manoj Kumar

Respondent :- Ziladhikari Distt. Mainpuri And Another

Counsel for Petitioner :- Niraj Upadhyay, J.S. Baghel

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Sri J.S. Baghel, learned counsel for the petitioner and Sri I.P. Srivastava, learned Additional Chief Standing Counsel for the State-respondents.

2. Petitioner's father namely Munna Lal was working as a permanent Clerk in the office of respondent no.2 and he died in harness on 09.02.1990, whereafter a supernumerary post was created and the petitioner- Manoj Kumar was offered appointment on compassionate grounds on 27.09.1997. The petitioner started working on the post and after a period of three years, the order impugned was passed on 22.01.2000 observing that in view of UP Temporary Government Servants (Termination of Services) Rules, 1975, the services of the petitioner were no more required and the same accordingly, would be treated as terminated from the date of receipt of notice. It is the said order which is under challenge in the present writ petition.

3. Learned counsel for the petitioner submits that aforesaid service rules are not applicable to the petitioner's services, inasmuch as, it is well settled that a person who was appointed on compassionate ground, his appointment is substantive in nature and, therefore, petitioner could not be terminated as a temporary employee.

4. Learned Additional Chief Standing Counsel submits that in the letter of appointment itself, it was mentioned that petitioner's appointment is purely temporary which can be terminated without any prior intimation. He further submits that petitioner- Manoj Kumar has already expired and, therefore, the writ petition has rendered infructuous. Sri Srivastava, by referring to counter affidavit, further submits that petitioner- Manoj Kumar absented himself from duty without any prior information and despite

service of show cause notice upon him, he did not respond and, hence, the order impugned was passed.

5. Meeting the aforesaid submissions, learned counsel for the petitioner submits that operation of the impugned order was stayed by this Court on 19.02.2001 and the petitioner continued to work in the department until death which occurred on 23.12.2020. He submits that the writ petition was dismissed for want of prosecution in the year 2018, and has been restored in October, 2023 and because of no knowledge of the order of dismissal, either to the petitioner or to the respondents, the services of the petitioner Manoj Kumar were not disturbed till his death. He further submits that after petitioner's death, his widow, Smt. Manju Lata, one of the substituted heirs/legal representatives of the deceased petitioner, made her claim for compassionate appointment, however, Senior Treasury Officer, Mainpuri, by passing order dated 07.06.2021, annexed to the substitution application, has observed that on account of pendency of present petition, the financial condition of the claimant (Smt. Manju Lata) cannot be examined.

6. Having heard learned counsel for the respective parties, this Court is of the considered opinion that merely because the nature of appointment of the petitioner Manoj Kumar was described as "temporary" in the letter of appointment, the U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 being statutory Rules, nowhere provide that the compassionate appointment of an appointee is temporary in nature.

7. Regarding nature of services of compassionate appointee, a Division Bench of this Court in the case of **Ravi Karan Singh vs. State of UP & ors; 1999 (3) UPLBEC 2263**, by referring to earlier decisions in the case of **Budhhi Sagar Dubey v. DOIS; (1993) 1 UPLBEC 197; Gulab Yadav v. State of UP & ors; (1991) 2 UPLBEC 995** and **Dhirendra Pratap Singh v. DIOS & ors; (1991) 1 UPLBEC 427**, has held that the appointment under dying-in-harness rules is of permanent nature. Later on, another Division Bench approved the decision in the case of **Ravi Karan Singh (supra)** while deciding Special Appeal No.348 of 2002 by judgment dated 16.07.2002 in the case of **Sanjai Kumar v. Deputy Director General (NCC) Directorate, U.P. Lucknow & ors.**

8. For the aforesaid reasons, the view taken by the respondents in the order impugned terming the nature of appointment of a compassionate appointee as temporary in nature, cannot be approved and is held to be contrary to law.

9. In so far as stand taken in the counter affidavit regarding some proceedings against the petitioner, the Court is of the view that no such ground has been taken in the order impugned which has been passed only by relying upon Rules which are not applicable. The Apex Court in the case of *Mohinder Singh Gill & anr v. Chief Election Commissioner, New Delhi & ors; AIR 1978 SC 851*, has clearly laid down that the validity of the order impugned can be judged only on the basis of reasons assigned therein and such reasons cannot be supplemented by affidavits. Even otherwise, if the department proceeded to hold certain proceedings against Manoj Kumar, it would be presumed that the department was treating him as a regularly appointed person and not a temporary appointee.

10. In view of the above, the order impugned dated 22.01.2000 terminating the services of the petitioner- Manoj Kumar cannot be sustained in law and is hereby **quashed**.

11. The writ petition succeeds and is **allowed**.

12. The concerned authorities are directed to consider the claim of the petitioner's widow Smt. Manju Lata for compassionate appointment as per the statutory rules and after analysing financial condition of the family within a period of three months from the date a certified copy of this order is produced before them. They shall also consider the claim of the heirs of the deceased petitioner for release of financial benefits arising out of services of the deceased petitioner within the same period of time.

Order Date :- 4.12.2023

P Kesari