

A STATE OF UTTAR PRADESH AND ORS.

v.

RAM SUKHI DEVI

OCTOBER 5, 2004

B [ARJIT PASAYAT AND C.K. THAKKER, JJ.]

Constitution of India, 1950:

C *Article 226—Interim relief in writ petition—Scope of—Writ petition by wife of deceased a part-time employee seeking appointment on compassionate ground—High Court while issuing notice directing the authority concerned to consider her claim ignoring the G.O. that Scheme not applicable to part time employees—Division Bench directing to appoint her within stipulated period—Held, final relief sought for should not be granted at interim stage—Position worsened when direction issued with stipulation that applicable Government order be ignored—Orders of High Court set aside—U.P. Recruitment of Dependent of Government Servants Dying-in-Harness Rules, 1974—U.P. Government Order dated 26.10.1998—Uttar Pradesh Sinchai Vibhag Mein Nalkoop Chalakon Ke Padon Par Anshkalik Nalkoop Chalakon Ke Viniyamatikaran Niyamawali, 1996—Service Law—Appointment on compassionate ground—Claim by wife of deceased part-time employee.*

D
E
F
G
Respondent's husband was a part-time Tubewell Operator. On his death the respondent moved an application for her appointment under the U.P. Recruitment of Dependent of Government Servants Dying-in-Harness Rules, 1974. Her request was declined on the ground that in view of the Government Order dated 26.10.1998 benefits under the 1974 Rules could not be given to the dependents of part-time employees. However, in the writ petition filed by her, Single Judge of the High Court while issuing notice directed the competent authority to consider her claim under the 1974 Rules within the stipulated period ignoring the G.O. dated 26.10.1998. The Division Bench of the High Court, disposing of the special appeal, directed that the respondent should be given appointment on a class IV post within the stipulated period.

H In the appeal filed by the State Government it was contended that the direction as given by the Single Judge and affirmed by the Division

Bench of the High Court ran counter to the specific provision operative in the Government Order and as such was unsustainable. A

Allowing the appeal, the Court

HELD: Approach of the Single Judge and the Division Bench of the High Court is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by the Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief has to be adjudicated at the time of final disposal of the writ petition. It is reiterated that the final relief sought for should not be granted at an interim stage. The position is worsened when the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. The order passed by the Single Judge as affirmed by the Division Bench of the High Court is set aside without expressing any opinion on the merits of the case. The Court has interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. [70-D, E; 78-B] B C D

Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd., [1985] 1 SCC 260; State of Rajasthan v. M/s Swaika Properties, [1985] 3 SCC 217; State of U.P. and Ors v. Visheshwar, [1995] Suppl. 3 SCC 590; Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors., [1995] Suppl. 2 SCC 593; Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr., [1995] Suppl. 2 SCC 726 and Commissioner/Secretary to Govt. Health and Medical Education Department Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli, [1995] Suppl. 4 SCC 214, relied on. E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6510 of 2004.

From the Judgment and Order dated 16.10.2003 of the Allahabad High Court in S.A.No. 225 of 2002.

Javed M. Rao, Rajeev Kumar Dubey, Ms. Rashmi Singh and Kamleendra Mishra for the Appellants. G

Vinayh Arora and Sanjay Jain for the Respondent.

The Judgment of the Court was delivered by H

A **ARIJIT PASAYAT, J.** Leave granted.

B The State of U.P. calls in question legality of the judgment passed by a Division Bench of the Allahabad High Court dismissing the Special Appeal filed by the present appellants. The Division Bench upheld the interim order passed by learned Single Judge dated 24.6.2002 in Writ Petition No.3334/2002 (SS).

Background facts as projected by the appellants in a nutshell are as follows:

C Respondent's husband was appointed as a part-time tubewell operator on 14.6.1989. While Uttar Pradesh Recruitment of Dependents of Government Servant Dying-in-Harness Rules, 1974 (in short the '1974 Rules') were in operation, in compliance with the judgment passed by this Court in some cases on 16.12.1996 Uttar Pradesh Sinchai Vibhag Mein Nalkoop Chalakon Ke Pado Par Anshalik Nalkoop Chalakon Ke Viniyamitikan Niyamawali, **D** 1996 (hereinafter referred to as the '1996 Rules') was notified and same was made applicable with effect from the date of notification. Under Sub-rule (1) of Rule 4 of the said Rules, the cut off date was fixed to be 1.10.1986. On 26.10.1998 a Government order was issued by the State Government clarifying that under the 1974 Rules benefit could not be given to the dependents of the part-time employees.

E On 15.11.2001 husband of the respondent died leaving behind the respondent and four children. On 3.4.2002 respondent submitted an application before the Executive Engineer, Tubewell Division-I, Sitapur (appellant No.4 herein) seeking appointment under the 1974 Rules. Her request was turned **F** out on the ground that she was not eligible for such appointment under the 1974 Rules. Writ Petition No.3334/2002 (SS) was filed by the respondent, *inter alia*, seeking for a direction to the present appellants to appoint the writ petitioner in any suitable Class IV post under the Dying-in-Harness Rules. Learned Single Judge while issuing notice directed that the competent authorities shall consider the writ petitioner's claim of giving compassionate **G** appointment under the Dying-in-Harness Rules ignoring the Government Order dated 26.10.1998 within the stipulated period. Legality of the order was challenged before the Division Bench by filing a Special Leave. The same has been dismissed by the impugned judgment.

H The High Court disposed of the appeal directing that the present respondent should be given a Class IV appointment within the stipulated

time. It was observed that on the facts of the case without going into the legal merits on a humanitarian consideration, compassionate appointment should be made. A

In support of the appeal, learned counsel for the appellants submitted that the direction given by the learned Single Judge that the appointment should be made during the pendency of the writ application ignoring the Government Order dated 26.10.1998 is clearly unsustainable. Division Bench of the High Court did not consider legality of the order and without going into the merits straightaway disposed of the appeal on purportedly humanitarian ground. It was submitted that the direction as given by the learned Single Judge and affirmed by the Division Bench run counter to the specific provision in the operative Government Order. B C

Per contra, learned counsel for the respondent submitted that both the learned Single Judge and the Division Bench have acted on humanitarian grounds and this Court should not interfere with any interim order passed by learned Single Judge which has been upheld by the Division Bench. D

To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See *Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd.*, [1985] 1 SCC 260 at p. 265, *State of Rajasthan v. M/s Swaika Properties*, [1985] 3 SCC 217 at p.224, *State of U.P. and Ors. v. Visheshwar*, [1995] Supp 3 SCC 590, *Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors.*, [1995] Supp 2 SCC 593, *Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr.*, [1995] Supp 2 SCC 726 and *Commissioner/Secretary to Govt. Health and Medical Education Department* E F G G

A *Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli*, [1995] Supp 4 SCC 214. No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a *prima facie* case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment.

C The appeal is allowed with no order as to costs.

R.P.

Appeal allowed.