

eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (*supra*) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in *Devendra Kumar v. State of Uttaranchal*. In paragraph 25 thereof it was observed –

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (*Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].*) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

(Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is restored. The Respondent- employees were rightly dismissed from service by the Appellant-employer."

20. From the above, it is well established that in case, the employment has

been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

21. So far as the judgment in the case of *Smt. Parmi Maurya (supra)* relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is *ex facie* clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated. "

8. The case at hand is squarely covered by the law laid down in **Punita (supra)**.

9. In the wake of preceding discussion, there is no infirmity in the procedure adopted by the respondents while passing the impugned order and the impugned order is lawful and just. The writ petition is liable to be dismissed and is **dismissed**.

(2024) 11 ILRA 48

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 20.11.2024

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 24901 of 2021

Km. Farha

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Yogesh Chandra Srivastava

Counsel for the Respondents:

C.S.C., Puneet Chandra

A. Service Law -Constitution of India,1950-Article 226-UP Recruitment of Dependents of Government Servants Dying in Harness Rules,1974-The petitioner challenged the rejection of her claim for compassionate appointment after her brother died in harness-the claim was based on Rules 1974 as amended in 2011, which allows an unmarried sister of a deceased government servant to seek compassionate appointment-The Allahabad High Court clarified that a "divorced" individual qualifies as "unmarried" for the purpose of compassionate appointment under Rules 1974-The court held that a divorce being legal dissolution of marriage, renders a person unmarried in status unless they remarry-A non-speaking rejection order, lacking application of mind or reasoning, violates principles of natural justice and is liable to be quashed-The court directed the competent authority to reconsider the claim within a stipulated period, ensuring compliance with the law and fair application of the Rules.(Para 1 to 16)

The writ petition is allowed. (E-6)

List of Cases cited:

Mohinder Singh Gill & anr. Vs the Chief Election Commr. New Delhi & anr.(1978) AIR 851 AIR

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for respondent no. 1 and Shri Puneet Chandra, learned counsel for respondents no. 2 and 3.

2. Under challenge is the order dated 02.03.2020, a copy of which is annexure 5 to the writ petition, passed by respondent

no. 3 wherein the claim of the petitioner for compassionate appointment has been rejected. Further prayer is for a writ of mandamus commanding the respondents to grant employment to the petitioner under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules 1974) as amended in the year 2011.

3. Bereft of unnecessary details the facts of the case are that the petitioner's brother namely Shri Nihal Ahmad who was working under respondent no. 3 died in harness on 13.08.2019. As Shri Nihal Ahmad was a divorcee consequently the petitioner in the capacity of being unmarried sister staked her claim for being appointed on compassionate grounds. Admittedly the respondent no. 1 has adopted the Rules 1974 with certain amendments as per office order dated 29.09.2012, a copy of which is annexure 9 to the writ petition, per which it is apparent that an unmarried sister of a deceased government servant who was unmarried would also be eligible for being appointed on compassionate grounds.

4. Learned counsel for the petitioner contends that Shri Nihal Ahmad had given divorce to his wife in April 2006. The competent court namely the Principal Judge, Family Court, Lucknow in Regular Suit No. 702 of 2006 in re: Shri Nihal Ahmad vs Smt Shahiba vide order dated 25.01.2012, a copy of which is annexure 1 to the rejoinder affidavit, has accepted the compromise between the parties per which both the parties i.e. Shri Nihal Ahmad and his wife have agreed about divorce as entered into between them in April 2006.

5. The contention of learned counsel for the petitioner is that once the divorce

took place in April 2006 and was duly recognized by the competent court of law vide its order dated 25.01.2012 as such on the date of death of Shri Nihal Ahmad on 13.08.2019 he would fall within the ambit of being unmarried and thus the petitioner was perfectly eligible for being considered for compassionate appointment which claim has been rejected vide order impugned dated 02.03.2020 with patent non application of mind by simply indicating that after consideration of the Rules it has not been found feasible to appoint the petitioner on compassionate grounds.

6. The contention of learned counsel for the petitioner is that although in the order impugned no reasons emerges as to why the claim of the petitioner for compassionate appointment has been rejected yet in the counter affidavit which has been filed by the respondents it has simply been averred that the divorce of Shri Nihal Ahmad, the brother of the petitioner, is null and void in the eyes of law and it is not duly executed and the status of Shri Nihal Ahmad remains married.

7. It is contended that the aforesaid reasons as indicated by the respondents in the counter affidavit cannot be considered to be a reasonable or valid ground for rejection of claim of the petitioner for compassionate appointment as no such ground has been taken in the order impugned dated 02.03.2020 and as such the said reason is not liable to be considered keeping in view the law laid down by Hon'ble Supreme Court in the case of **Mohinder Singh Gill and another vs the Chief Election Commissioner, New Delhi and another, AIR 1978 AIR 851.**

8. Apart from it, it is contended that once the order impugned does not indicate

any reason consequently the order impugned is a non speaking order which merits to be quashed.

9. On the other hand, Shri Punit Chandra, learned counsel for the respondents no. 2 and 3 has tried to justify the order impugned by indicating the fact that even though there might have been divorce entered into between Shri Nihal Ahmad and his wife in the year 2006 yet he would not fall within the ambit of being unmarried in the capacity of being a 'divorcee' at the time of his death and consequently there is no error in the order impugned.

10. Having heard learned counsel for the parties and having perused the record it emerges that the petitioner's brother Shri Nihal Ahmad died in harness on 13.08.2019. Shri Nihal Ahmad is said to have divorced his wife in April 2006. The competent court vide its order dated 25.01.2012 has also recognised the divorce in terms of the compromise entered into between the parties meaning thereby that at the time of death i.e on 13.08.2019 Shri Nihal Ahmad cannot be said to be married thus the ground as had been taken by the respondents in the counter affidavit that Shri Nihal Ahmad was married at the time of death is patently misconceived in as much as a divorced person cannot be said to be married by any stretch of imagination.

11. In this regard, the Court may see the definition of "divorce" "divorcee" and "divorced" as finds place in Cambridge Advanced Learner's Dictionary, 3rd Edition which defines "divorce" "divorcee" and "divorced" as follows:

"Divorce: When a marriage is ended by an official or legal process.

Divorcee: someone who is divorced and who has not married again.

Divorced: married in the past but not now married."

12. The Black's Law Dictionary, 9th Edition defines "divorce" as follows:

"The legal dissolution of a marriage by a court."

12. From perusal of aforesaid definitions as given in Cambridge Advanced Learner's Dictionary as well as Black's Law Dictionary it clearly emerges that divorce is marriage ended by official or legal process or a legal dissolution of marriage, divorcee is a person who is divorced and has not married again and divorced is married in the past but not now married. Thus once a person has not married again he would obviously fall within the ambit of being unmarried though he may be a divorcee.

13. Accordingly, when the grounds as taken in the counter affidavit filed by the respondents are seen vis a vis the definitions as indicated above it clearly emerges that the contention on the part of the respondents that as the deceased brother of the petitioner was a divorcee consequently he would fall within the ambit of being married is patently misconceived and consequently the said ground is rejected.

14. The further aspect is that a perusal of the order impugned dated 02.03.2020 would indicate that no reasons emerge as to why the claim of the petitioner for compassionate appointment has been rejected. It is settled position of law that every order should be a speaking order in as much as reasons should emerge

reflecting application of mind by the competent authority on the disputes which arrive before him.

15. As already indicated above, the order impugned dated 02.03.2020 does not indicate as to why the claim of the petitioner for compassionate appointment has been rejected and thus it is apparent that the order impugned is patently non-speaking.

16. Keeping in view the aforesaid discussion, the writ petition is **allowed**.

17. The order impugned dated 02.03.2020, a copy of which is annexure 1 to the writ petition, is quashed.

18. The competent authority i.e. respondent no. 3 is directed to pass a fresh order on the claim of the petitioner for compassionate appointment keeping in view the aforesaid discussion.

19. Let such an order be passed within six weeks from the date of receipt of a certified copy of this order.

(2024) 11 ILRA 51
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.11.2024

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ A No. 31358 of 2021

Dr. Prabhanshu Srivastava ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sachin Upadhyay, Shivendra S Singh
Rathore, Shivendra Shivam Singh Ra