

Court No. - 35

Case :- WRIT - A No. - 14529 of 2023

Petitioner :- Rimika Vishwakarma

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Raghvendra Shankar Srivastava

Counsel for Respondent :- CSC, Tanisha Jahangir Monir

Hon'ble Vikas Budhwar, J.

1. Heard Sri Raghvendra Shankar Srivastava, learned counsel for the writ petitioner, Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel who appears for respondent no. 1, Ms. Tanisha J. Monir for respondents no. 2 to 4.

2. The case of the writ petitioner is that her father namely Santhosh Kumar Sharma was posted as driver in the respondent-Nagar Nigam, Ghazipur, who died in harness on 23.7.2005. As per the writ petitioner, he being one of the legal heirs preferred an application seeking compassionate appointment on 14.12.2017 which has been rejected by the respondent no. 3, on two grounds, firstly, the case of the writ petitioner cannot be processed as it is beyond five years and, secondly, the writ petitioner does not possess the eligibility.

3. This court questioning the order dated 24.3.2023 negating the claim of the writ petitioner for compassionate appointment, the writ petitioner has filed the present petition.

4. This court entertained the writ petition on 6.10.2023 while passing the following orders:-

"1. The contention of the learned counsel for the writ petitioner is that owing to the death of her father on 23.07.2005, the mother of the writ petitioner, namely, Smt. Vimla Devi applied for compassionate appointment on 09.09.2010, however the same did not finalized, as she was not having adequate qualifications. Post attaining majority, the writ petitioner preferred application. Now, the same has been rejected on ground that the same is after twelve years, four months and twenty one days.

2. It has come in the impugned order that on 11.07.2003, a Government Order was issued, whereby compassionate appointment was forbidden in the corporation, however on the request of the corporation, certain relaxations have been made.

3. A pointed query was made to the learned counsel for the writ petitioner as well as Sri Himanshu Kumar (AOR A/H 0290/2022), learned counsel, holding brief of Ms. Tanisha Jahangir Monir, learned counsel for the respondent, as to whether there exist any provision akin to the U.P. Government Servant, Dying-in-Harness Rules, 1974 for according relaxation or not in respect to respondent-corporation or not.

4. To such a query, the learned counsel for the parties seek time to reply to the same.

5. On their request, put up this case on 12.10.2023, as fresh, in the top of the list."

5. Today, when the matter has been taken up Ms. Monir, who appears for the Corporation has invited the attention of the court towards Rule 5(3) of 1981 Rules containing the proviso so as to contend that an application for compassionate appointment is to be filed within a period of five years and in case the same is beyond period of five years, then looking into the personal hardship of the dependent, the State Government as the case may be is empowered to dispense with or relax the requirement in that regard. She, thus, submits that writ petitioner may approach the competent authority in this regard. In case, the writ petitioner approaches the competent authority the same may be decided with most expedition.

6. Learned Additional Chief Standing Counsel adopts the submission of Ms. Munir.

7. To such a submission learned counsel for writ petitioner has no objection and he gracefully accepts the same.

7. Considering the submission of the rival parties as well as stand taken by them liberty is accorded to the writ petitioner to prefer a proper application seeking relaxation in terms of the Rules 1974 before the competent authority.

8. This court has no reason to disbelieve that the same will not be considered as per law and, if maintainable strictly in accordance with law, within a period of three months from the date of production of the certified copy of this order.

9. With the aforesaid observation, the writ petition consigned to record.

Order Date :- 12.10.2023

S.A.