

Court No. - 20

Case :- WRIT - A No. - 102 of 2022

Petitioner :- Rohit Saroj

Respondent :- State Of U.P. Thru Prin Secy Home And 3 Others

Counsel for Petitioner :- Rajeev Narayan Pandey, Vineet Kumar Verma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Rajeev Narayan Pandey, learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Under challenge is order dated 16.12.2021 passed by opposite party no.3 whereby petitioner's application for compassionate appointment in terms of U. P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 has been rejected.
3. It has been submitted that petitioner had claimed compassionate appointment in view of the fact that his elder sister namely Renu Devi was employed with the Police Department as a Constable and passed away on 05.06.2019 while in service. It is submitted that petitioner claimed to be the unmarried brother dependent on deceased and would therefore come within the definition of 'family' as defined under Section 2(c) of aforesaid Rules of 1974. It is further submitted that the appointing authority thereafter called for report on the application submitted by petitioner whereafter report dated 21.03.2021 was furnished indicating status of family alongwith number of persons of family. The report also stated that petitioner was eligible for compassionate appointment.
4. Learned counsel has adverted to the impugned order to submit that petitioner's application has thereafter been rejected only on the ground that petitioner's father Jagram Saroj was earlier in employment with the Police Department and is thereafter in receipt of pension after superannuation. It is submitted that impugned order has been passed primarily on an assumption that during the life time of a father, his son would be deemed to be dependent upon the father and not upon an unmarried sister. It has further been submitted that there is absolutely no basis for such an assumption to be made by opposite parties, which even otherwise is not supported by any custom or law and is therefore required to be set aside.

5. Learned State counsel on the basis of counter affidavit filed has refuted submissions advanced by learned counsel for petitioner with the submission that as would be evident from report dated 21.03.2021 and the undisputed fact that petitioner's father was alive as on the date of filing of application and was also in receipt of pensionary benefits from the Police Department, it cannot be said that petitioner was dependent upon the deceased who was his unmarried sister and would not be dependent upon his father. It is thus submitted that there is no error in the impugned order which could require any interference by this Court.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it is admitted that deceased Renu Devi was the unmarried elder sister of petitioner and passed away while in service as a Constable with the Police Department. It is also not disputed that petitioner would be coming within definition of 'family' as defined under Section 2(c) of the Rules of 1974. The opposite parties have also not raised any dispute regarding petitioner being covered under the aforesaid Rules despite exceptions indicated in Rule 5 of the Rules of 1974, which do not apply upon petitioner.

7. The only dispute raised in impugned order is with regard to the fact as to whether petitioner can be said to be dependent upon his father or upon deceased.

8. A perusal of report dated 21.03.2021 indicates the fact that there are six family members apart from deceased with none of them being in Government Service as on the date of filing of application. It is only petitioner's father who is Government beneficiary by way of pensionary benefits. The report also indicates the fact that certain other family members such as Ram Sagar and Girja Shankar are living separately with their own families and petitioner was living with other son Kripa Shankar, his spouse and deceased. The report also indicates the Family Register.

9. From a perusal of aforesaid report dated 21.03.2021, it is evident that petitioner was found eligible for compassionate appointment in view of large number of family members with only father being in receipt of pension from the Government. Two other brothers of petitioner are said to be living separately with their families.

10. A perusal of impugned order will make it evident that aforesaid aspects pertaining to large numbers of family and the fact that petitioner was living separately with another brother

and the deceased have not been adverted to at all. The impugned order also does not advert to the fact as to pension which is being received by petitioner's father and whether it would suffice for a dignified existence for all the family members. On the contrary, impugned order has been passed assuming petitioner to be dependent upon his father only because it would be deemed that a son would be dependent upon his father and not upon his sister. The impugned order does not refer to any provision of law or custom for arriving at such a conclusion.

11. The report dated 21.03.2021 is clearly indicative of large number of family members and it cannot be said that all of them could have been dependent only upon pensionary benefits of the father. The report also clearly indicates the fact that petitioner was living with deceased alongwith another brother. The said fact has not been refuted in the impugned order and in such circumstances, it was quite safe to deduce that petitioner would in fact be dependent upon his sister and not upon his father.

12. In view of aforesaid facts, in the considered opinion of this Court, the authority concerned has clearly fell in error in denying compassionate appointment to petitioner without adverting to the circumstances indicated in report dated 21.03.2021. The impugned order also being based only on assumptions is clearly vitiated.

13. Considering the aforesaid discussion, impugned order dated 16.12.2021 passed by opposite party no.3 i.e. Superintendent of Police (Karmik) U.P. Police Head Quarter, Lucknow is quashed by issuance of a writ in the nature of certiorari. A further writ in the nature of Mandamus is issued commanding the said opposite party to offer appointment to petitioner for compassionate appointment as per his eligibility.

14. Such an offer of appointment shall be made to petitioner within a period of six weeks from the date a certified copy of this order is produced before the said authority.

15. Resultantly, petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 17.10.2023

Subodh/-