

Court No. - 1

Case :- SPECIAL APPEAL No. - 47 of 2019

Appellant :- Arvind Kumar

Respondent :- State Of U.P.Throu.Prin.Secy.Home Govt.Of U.P.Lko.And Anr.

Counsel for Appellant :- Sanjay Misra, Anil Kumar Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

Heard Sri Sanjay Misra, learned counsel for the appellant and learned Standing Counsel for the State.

This intra-court appeal filed under Chapter VIII Rules 5 of the Allahabad High Court Rules, 1952 has assailed the judgement dated 17.01.2019 passed by the writ court in Writ Petition No.930(S/S) of 2019.

The learned writ court dismissed the writ petition relating to the claim of the appellant for appointment under Dying-in- Harness Rules, 1974. It is to be noted that the father of the appellant died while in service on 09.07.1991. At the time of death of his father, the appellant was a minor and was thus not eligible for appointment under the said rules. There is no disclosure in the writ petition as to whether the appellant's mother was not extended the benefit of family pension on account of which the financial condition of the family continued to be pathetic.

In absence of any such pleading available on record, it cannot be deciphered that the financial condition of the appellant's family continued to be poor. The application for appointment under the Dying-in-Harness Rules was made in the year 2010 but no relaxation for making such an application was accorded by the state until filing of the writ petition before this Court in the year 2019.

Thus, the maintainability of the application firstly

within the period of limitation i.e.5 years remains questionable and secondly in the absence of any relaxation granted by the competent authority for filing such an application, the question as to the right of appellant's consideration for appointment under Dying-in-Harness Rules came to be disputed by the respondent on the strength of delay.

This Court having regard to the factum of delay and law applicable in that behalf has also opined that the delay for the reasons more than one do not entitle the appellant to claim the benefit of Dying-in- Harness Rules particularly when the cause has been agitated before this Court with heavy laches.

The view expressed by the writ court in our humble consideration does not suffer from any error which may call for a different view in exercise of appellate jurisdiction.

The appeal bereft of any merit is accordingly *rejected*.

Order Date :- 18.10.2023

Shahnaz