

Court No. - 7

Case :- WRIT - A No. - 2449 of 2022

Petitioner :- Monty Kumar

Respondent :- Secy. Cane Commissioner State Sugar Cane Services Auth. Lko.
And Others

Counsel for Petitioner :- Daya Shankar Yadav

Counsel for Respondent :- Paramanand Asthana,C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the State-respondents and Sri Parmanand Asthana, learned counsel appearing on behalf of the other contesting respondents.

2. Instant writ petition has been filed praying for quashing of the order dated 27.08.2021, a copy of which is annexure 10 to the writ petition passed by the respondent no. 3. A further prayer is for a mandamus commanding the respondents to consider the case of the petitioner for appointment on compassionate ground under rules.

3. Bereft of unnecessary details, the facts of the case as set forth by the learned counsel for the petitioner are that the petitioner's father namely Sri Narendra Singh was working as Seasonal Clerk under the respondents who died in harness on 07.01.2014. It is claimed that at the time of death of his father, the petitioner was a minor. The petitioner's mother applied to the respondents for compassionate appointment for the petitioner and indicated that the petitioner is a minor and that he should be appointed when he attains majority. It is contended that the petitioner attained majority in the year 2021 and thereafter applied for compassionate appointment vide his application of July, 2021 a copy of which is annexure 8 to the writ petition. However, the claim of the petitioner has been rejected vide impugned order dated 27.08.2021, a copy of which is annexure 10 to the writ petition on the ground that as per the Government order dated 16.04.1993 and the amendment made in the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as "Rules, 1974"), a persons should apply for compassionate

appointment within a period of five years from the death of the Government servant and as the petitioner has not applied within the specified time consequently, his claim is time barred and hence rejected.

4. The contention is that the petitioner had applied for compassionate appointment immediately on attaining majority i.e in the year 2021 through his application made in July, 2021 and the petitioner was earlier ineligible to apply for compassionate appointment as he was a minor as such, the respondents should have considered the claim of the petitioner for compassionate appointment taking into consideration the aforesaid facts and circumstances but the same has not been done by them and the claim of the petitioner for compassionate appointment has been rejected in a casual manner.

5. On the other hand, learned Standing counsel as well as Sri Parmanand Asthana, Advocate on the basis of averments contained in the counter affidavit have justified the order impugned and also contended that the mother of the petitioner had never applied for compassionate appointment of the petitioner in the year 2014 as has been submitted by the petitioner. It was for the first time that she had applied on 21.04.2021 but the claim of the petitioner has been rejected.

6. Sri Parmanand Asthana, learned counsel for the respondents has also passed an copy of a notification dated 31.03.2010, which is taken on record which pertains to an amendment in the regulations. He contends that the amended Regulation 93 (d) of the Uttar Pradesh Cane Service Regulations, 1971 provides for appointment on compassionate grounds of a dependent of a seasonal staff and that the appointment shall be given in the cadre of seasonal staff itself. Reliance has also been placed on Note 2 of the said notification to contend that in case a period of five years has lapsed from the date of the death then all such matters for compassionate appointment are to be considered by the State Cane Service Authority on merits and thus once a period of more seven years have lapsed since the death of Sri Narendra Singh when the application for compassionate appointment was made consequently, there is no infirmity in the order by which the claim of the petitioner for compassionate appointment has

been rejected as being beyond a period of five years.

7. Having heard the learned counsels appearing on behalf of the contesting parties and having perused the records what emerges is that the father of the petitioner namely Sri Narendra Singh died in harness while working as Seasonal Clerk on 07.01.2014. The claim of the petitioner for compassionate appointment has been rejected vide order dated 27.08.2021 on the ground of being beyond five years as per rule 5 of the Rules, 1974. Admittedly, at the time of death of the father of the petitioner, the petitioner was a minor and has only attained majority in the year 2021. As per the respondents, the petitioner's mother has applied for compassionate appointment of the petitioner through her application made in July, 2021 which has been rejected by the order impugned.

8. As per the notification dated 31.03.2010, a dependent of a seasonal staff is also entitled for being appointed on compassionate grounds but in the cadre of seasonal staff itself. Note 2 of the said notification provides that in case a period of five years has lapsed from the date of death then all such cases would be considered on merits. Perusal of the order impugned dated 27.08.2021 indicates that the merits of the claim of the petitioner for compassionate appointment have not been considered rather the respondents have rejected the claim of the petitioner in a pedantic manner simply on the ground that a period of five years have lapsed. Perusal of the order impugned does not indicate any application of mind as per notification dated 31.03.2010 i.e the claim of the petitioner to have been considered on merits.

9. Keeping in view the aforesaid discussion, the order impugned dated 27.08.2021 cannot be said to be legally sustainable in the eyes of law and would also run contrary to the notification dated 31.03.2010. Accordingly, the writ petition is allowed. The order dated 27.08.2021, a copy of which is annexure 10 to the writ petition is quashed.

10. The respondent no. 1 i.e Secretary/Cane Commissioner, State Sugar Cane Services Authority, Uttar Pradesh, Mall Avenue, Lucknow is required to consider the claim of the petitioner on merits. For this purpose, it would be open

for the petitioner to submit a detailed application indicating the facts and circumstances in which the claim for compassionate appointment has been made subsequent to five years from the date of death of his father. The said application would be filed within a period of two weeks from today. In case, the said application is filed then the respondent no. 1 apart from considering the claim of the petitioner would also consider the grounds which prevailed upon the petitioner in not filing an application for compassionate appointment within the aforesaid period of time.

11. Let an order in this regard be passed within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 18.11.2023

Pachhere/-