

Court No. - 8

Case :- WRIT - A No. - 3233 of 2023

Petitioner :- Rahul Nanda

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

Counsel for Petitioner :- Ganga Prasad Mishra, Abhinav Mishra

Counsel for Respondent :- C.S.C., Kushagra Dikshit

Hon'ble Dinesh Kumar Singh, J.

1. List has been revised, none has put in appearance on behalf of the petitioner, though Mr. S.B. Pande, learned Senior Advocate/Deputy Solicitor General of India, assisted by Mr. Varun Pande, Advocate is present for respondents.

2. The present petition under Article 226 of the Constitution of India has been filed for a direction to the respondent nos. 2 to 4 to decide petitioner's representations dated 02.03.2023 and 22.03.2023 for giving him appointment on compassionate ground under the relevant dying-in-harness rules.

3. Petitioner's late father, Pradeep Kumar Nanda was working on the post of Administrative Officer, Income Tax Office, Ashok Marg, Lucknow; he died in harness on 29.04.2021; the petitioner moved application/representations dated 02.03.2023 and 22.03.2023 for giving him appointment under the relevant dying-in-harness rules, however, no action has been taken on the said application/representations and, therefore, the petitioner has approached this Court by filing the present petition.

4. Mr. S.B. Pande, learned Deputy Solicitor General of India has tendered an affidavit on behalf of respondent nos. 2 to 4, which is taken on record. Mr. Pande submits that this writ petition is otherwise not maintainable inasmuch as the petitioner has not impleaded Union of India as party, and even under Section 14 of The Administrative Tribunals Act, 1985 (for short "Act, 1985") the matter is cognizable by the Central Administrative Tribunal (for short "CAT"). It is, therefore, submitted that the writ petition is liable to be dismissed for non joinder of necessary party as well as alternative statutory remedy of filing original application under Section 14 of the Act, 1985 before the CAT.

5. On merit, it is stated that for offering appointment on

compassionate ground, the Government has formulated a Scheme dated 02.08.2022 named as "Compassionate Appointment under Central Government". The object of the Scheme, as spell out in the Scheme itself, is to grant appointment on compassionate grounds to a dependent family member of a Central Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergent financial crises caused because of demise of the bread-earner. It is further stated that under the said Scheme, appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available. It is further provided that compassionate appointment can be made upto maximum of 5% of the vacancies falling under direct recruitment quota in any Group-C post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily/wage/ad-hoc/contract basis against regular vacancies, there is no bar to consider him for such appointment, if he is eligible as per the normal rules/orders governing such appointments.

6. Mr. S.B. Pande, learned Senior Advocate appearing for the respondents, further submits that approximately 150 candidates have applied for their appointments on compassionate grounds under the said Scheme and their cases shall be considered against 5% vacancies falling under direct recruitment quota in any Group-C post. The petitioner's case shall also be considered by the said Committee as per the provisions of Scheme, as mentioned above. The Committee has been directed to submit its report by 15.06.2023.

7. Considering the aforesaid fact that the matter is being considered at an appropriate level, this Court does not find any ground to issue a writ of Mandamus for consideration of the petitioner's application for compassionate appointment inasmuch as the Committee, constituted under the Scheme for considering such appointment, is considering the matter, and it is required to submit its report by 15.06.2023. The petitioner's matter has also been referred to the Compassionate Appointment Committee, which was constituted on 30.09.2022 by the Pr. Chief Commissioner of Income Tax, U.P. (East)

Lucknow for considering several applications received for appointment on compassionate grounds for the Recruitment Year 2021 and 2022. The application of the petitioner, along with several applications, is being considered by the Committee, and the final report has been prepared to be submitted by 15.06.2023.

8. In view of the aforesaid stand and the order dated 18.05.2023 passed by the Joint Commissioner of Income Tax (Hq.) (Admin.) on behalf of the Pr. Chief Commissioner of Income Tax, U.P. (East), Lucknow noting survives in this petition. However, it is directed that result of consideration of petitioner's application be communicated to the petitioner, after his case is examined by the Compassionate Appointment Committee, which has been constituted on 30.09.2022 by the Pr. Chief Commissioner of Income Tax, U.P. (East), Lucknow.

9. With the aforesaid observation, this petition stands **disposed of**.

[D.K. SINGH, J.]

Order Date :- 25.5.2023

MVS/-