

Court No. - 8

Case :- WRIT - A No. - 3071 of 2014

Petitioner :- Dipanker Shipley

Respondent :- State Of U.P. Thru Secy.State Planning Civil Sectt.Lko.And Ors

Counsel for Petitioner :- U.S. Sahai,Joohi,K K Sharma,Kaustubh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed seeking quashing of the order dated 14.12.2011 passed by the Administrative Officer in the office of Director General (State Planning), State Planning Institute, 5th Floor, Planning House, Lucknow whereby claim of the petitioner for appointment on Class III post under The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as 'Rules, 1974'), as amended from time to time, has been rejected as mother of the petitioner has been working on the post of Teacher in Lal Bagh Girls Intermediate College.

3. Deceased-father of the petitioner, Late Dilip Shipley, who was working as Senior Assistant in the State Planning Institute, Lucknow died on 05.09.2008 in harness. The deceased has left behind his widow and his two sons. It was also said that the mother of the petitioner had got all the retiral dues of the father of the petitioner including death cum gratuity and she was also receiving pension of her deceased husband.

4. Only submission, which has been advanced on behalf of Sri K.K. Sharma, learned counsel appearing for the petitioner is that Rule 5A of Rules, 1974 does not bar appointment of a person whose mother, father, wife or husband is employed in a institution run by the Society. He further submits that mother of the petitioner is employed in the Institution which is run by the Society, therefore, ground taken in the impugned order rejecting the claim of the petitioner for giving him appointment on compassionate ground is unsustainable and is not supported by reading of the Rule.

5. On the other hand, Sri Anirudh Singh, learned Standing Counsel submits

that mother of the petitioner is employed in institution which is fully funded by the Government. It receives grant in aid. Mother of the petitioner is getting salary from the Government exchequer and in all respect, she is a government servant. Nature of employment of the mother of the petitioner would not get changed merely for the fact that the management of the school, where she is employed, is in the hands of a Society. He, therefore, submits that the petitioner cannot be given appointment on compassionate ground.

6. I have considered the submissions advanced on behalf of the petitioner and learned Standing Counsel.

7. Rule 5 as amended reads as under:-

"5. Recruitment of a member of the family of the deceased. - (1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules, if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]

5A. Recruitment of member of the family of Police/P.A.C. Personnel who dies in May, 1973. - Notwithstanding anything contained to the contrary contained in Rule 5 or in any other rule, the provisions of these rules shall apply in the case of members of the family of twenty-two police or per Provincial Armed Constabulary

personnel who died as a result of disturbances in May, 1973, as they apply in the case of a Government servant during dying in harness after the commencement of these rules.] **6. Contents of application for employment.** - An application for appointment under these rules shall be addressed to the appointing authority in respect of the post for which appointment is sought but it shall be sent to the Head of Office where the deceased Government servant was serving prior to his death. The application shall, *inter alia*, contain the following information :

(a) the date of the death of the deceased Government servant; the department in which he was working and the post which he was holding prior to his death;

(b) names, age and other details pertaining to all the members of the family of the deceased, particularly about their marriage, employment and income;

(c) details of the financial condition of the family; and

(d) the educational and other qualifications, if any, of the applicant."

8. Purpose of giving compassionate appointment is to tide over the financial difficulty of the family of the deceased employee. If a family is having sufficient means or mother, father, husband or wife is fully employed gainfully and receiving salary from the Government, in my view dependent of such deceased-employee is not entitled for compassionate appointment. It is not in dispute that the petitioner's mother is getting salary from the Government exchequer on the post of Teacher and she has received of death cum retiral dues and pension of the husband.

9. In view of the aforesaid, the writ petition is dismissed.

(Dinesh Kumar Singh, J.)

Order Date :- 7.7.2023
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