

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 205 of 2020

Appellant :- Durga Prasad Verma

Respondent :- State Of U.P.Throu.Secy.Secondary Education
Lko.And Ors.

Counsel for Appellant :- Ram Raj Ojha

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the appellant and the learned standing counsel for the State-respondents.
2. The instant special appeal is also accompanied by an application seeking condonation of delay as the appeal is barred by 280 days. Even though the Court has considered the said application but find that the ground is not sufficient, however, taking a lenient view of the matter to examine the issue on merit, the delay is being condoned.
3. In the instant intra-Court appeal, a challenge has been raised to a decision rendered by the learned Single Judge dated 26.09.2019 in Writ Petition No.7370 (S/S) of 2010 whereby the claim of the appellant for seeking compassionate appointment did not find favour with the writ Court, consequently, the writ petition has been dismissed.
4. The submission of the learned counsel for the appellant is that the writ Court has not appropriately considered the case of the appellant seeking compassionate appointment. It is further urged that the father of the appellant had died on 12.08.1994 while he was working as a Class-IV employee in Government Girl Inter College, Ambedkar Nagar. It is further submitted that earlier the appellant had moved an application on 25.03.2009 for seeking compassionate appointment, however, no action was taken and thus the appellant was compelled to file a Writ Petition No.5306 (S/S) of 2009 which was disposed of by this Court directing the competent authority to decide the appellant's representation.
5. It is further urged that in furtherance of the directions, the case of the appellant was not appropriately considered and the representation has been rejected by means of the order dated 16.11.2009 which was impugned in the writ petition.

6. It is further urged that while rejecting the claim, the Principal of the concerned School did not consider the financial capacity and status of the appellant and thus the basic premise for grant of compassionate appointment which is dire financial condition has not been noticed which has vitiated the impugned order coupled with the fact that even the writ Court only on the ground of delay has dismissed the writ petition.

7. Learned standing counsel submitted that the law regarding compassionate appointment has been well settled and it is not to be taken as an alternative avenue for employment rather only in few and deserving cases where the family of a deceased employee is put to sudden financial distress on account of death of a bread winner of the family and such cases may be considered and each case has to be seen on case to case basis.

8. It is further submitted that in the instant case, the father of the writ petitioner died on 12.08.1994 and when the writ petitioner attained majority, he moved an application on 23.03.2009 i.e. after about 15 years. Even noticing the fact that the writ petitioner had stated that he had moved an application after he had attained majority but the fact remains that as per the admitted case of the writ petitioner, his date of birth was 15.11.1987 and in this context, he would have attained majority in the year 2005. However, the writ petitioner moved an application in the year 2009 whereafter he filed a writ petition before this Court seeking directions and taking an overall view, the competent authority rejected the claim of the writ petitioner on the ground that the application ought to have been made within a period of 5 years. Moreover, the mother of the writ petitioner was also granted certain financial/terminal benefits and in this view of the matter, it cannot be said that the writ petitioner suffered from great finance difficulties and may be granted compassionate appointment.

9. Having heard the learned counsel for the parties and from the perusal of the material on record, it could not be disputed by the learned counsel for the appellant that the writ petitioner moved an application only in the year 2009 while he had attained majority in the year 2005. He also could not dispute that upon the death of the father of the writ petitioner, terminal benefits were received by his mother and he remained dependent on his mother.

10. It is now well settled that the grant of compassionate appointment is an exception to the Rule and only in deserving case for compassionate may be instituted. This aspect of the matter has been considered in detail by the Apex Court in **State of Himachal Pradesh and another v. Shashi Kumar, (2019) 3**

SCC 653, where it has been held that approaching the Court with delay evidently looses the immediacy of the situation. In such circumstances, no benefit can be extended to such parties. The Apex Court has also reviewed the earlier decision holding the field and has finally held that even if one person in the family was major he could have moved application and it is not always necessary that unless each category of person certain employment attains majority, an application can be moved.

11. Viewing it in context with the dictum of the Apex Court in **Shashi Kumar** (supra) and noticing the decision passed by the learned Single Judge, this Court does not find that there is any error in the impugned order dated 26.09.2019 whereby the claim for compassionate appointment was rejected. Accordingly, the special appeal is dismissed. The judgment passed by the learned Single Judge dated 29.06.2016 is affirmed.

Order Date :- 28.10.2023

Rakesh/-

[Jaspreet Singh, J.] [Pritinker Diwaker, CJ.]