

Court No. - 20

Case :- WRIT - A No. - 17957 of 2016

Petitioner :- Mani Ram

Respondent :- State Of U.P. Thru. Secy. P.W.D. Govt. Of U.P. And Ors.

Counsel for Petitioner :- Rishabh Tripathi, Pankaj Kumar

Counsel for Respondent :- C.S.C, Ganga Prasad Srivastava

Hon'ble Manish Mathur, J.

1. Heard Mr. Pankaj Kumar, learned counsel for petitioner, learned State Counsel for opposite parties 1 to 4 and Mr. Ganga Prasad Srivastava, learned counsel for opposite party no.5.

2. Petition has been filed challenging order dated 10.06.2014 whereby petitioner's earlier appointment has been cancelled. Also under challenge is order dated 12.04.2016 rejecting petitioner's representation for compassionate appointment.

3. It has been submitted that petitioner as well as opposite party no.5 are the sons of late Ram Moorat who passed away on 10.10.2013 while employed on the post of Beldar. Petitioner apparently earlier filed Writ Petition no.271(S/S) of 2014 during the pendency of which petitioner was granted compassionate appointment vide order dated 21.05.2014. The said appointment order was thereafter cancelled vide order dated 10.06.2014 on ground that petitioner obtained the same by concealment of material facts and in connivance with Establishment Clerk.

4. Aforesaid order was thereafter challenged in Writ Petition No.3178 (S/S) of 2014 which was disposed of vide order dated 04.12.2015. This Court noticed the fact that petitioner as well as his brother Mauj Ram were both rival claimants for compassionate appointment. Said judgment and order dated 04.12.2015 did not find any infirmity or illegality with order dated 10.06.2014 but directed the competent authority to make

fresh enquiry to consider claim of petitioner as well as his brother Mauj Ram for compassionate appointment and to pass fresh orders in accordance with law. The said order attained finality and in pursuance thereof, impugned order dated 12.04.2016 has been passed whereby neither of the two persons have been granted compassionate appointment.

5. Learned counsel for petitioner submits that opposite parties were required to follow the provisions of Rule 7 of U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974(hereinafter referred to as the Rules of 1974) since there was more than one claimant for compassionate appointment. It is submitted that impugned order has been passed only on the basis that other family members of petitioner did not furnish any no objection certificate in his favour. It is submitted that there is no provision under the Rules of 1974 for grant of appointment being based solely on no-objection certificates to be issued by other family members. It is further submitted that even otherwise the family members had given their no-objection certificates in favour of petitioner as have already been brought on record as Annexure-7 to the petition but have not been adverted to at all while passing impugned order. It has also been submitted that impugned order even otherwise does not indicate any material on record whereby satisfaction has been recorded that petitioner is gainfully employed.

6. Learned State Counsel has however refuted submissions advanced by learned counsel for petitioner with submission that so far as order dated 10.06.2014 is concerned, the same cannot be challenged in present writ petition inasmuch as it has already been upheld by means of judgment and order dated 04.12.2015 passed in Writ Petition No.3178 (S/S) of 2014, which was

earlier filed by petitioner and so far as order dated 12.04.2016 is concerned, it has been submitted that since there was rival claims for compassionate appointment, the authority has rightly called for no-objection certificates to be furnished by other family members which would have gone to show as to which of brothers was competent to take care of the family. It has been further submitted that impugned order has also rightly recorded the fact that petitioner is gainfully employed and therefore there is no occasion for grant of compassionate appointment particularly in view of family owning agricultural property from which they can derive sustenance.

7. Learned counsel for opposite party no.5 has also refuted submissions advanced by learned counsel for petitioner with submission that the conduct of petitioner as recorded in impugned orders clearly dis-entitles him for compassionate appointment in view of fact that earlier also he has obtained compassionate appointment on the basis of concealment, in connivance with Establishment Clerk of the department. It has been submitted that in fact enquiry is required to be instituted against petitioner for obtaining appointment on the basis of forged and fabricated documents.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is quite evident that earlier petitioner was granted compassionate appointment vide order dated 21.05.2014 during pendency of writ petition filed by him. The said order was cancelled by means of order dated 10.06.2014 which was challenged by him in Writ Petition No.3178 (S/S) of 2014. The said writ petition has been disposed of as indicated herein above while upholding order dated 10.06.2014 but at the same time directing the authority concerned to make fresh enquiry to consider claim of

petitioner as well as opposite party no.5 for purpose of grant of compassionate appointment.

9. It is in pursuance of direction of this Court that impugned order dated 12.04.2016 has been passed rejecting applications for compassionate appointment of both the brothers.

10. Rule 7 of Rules of 1974 contemplates a situation where more than one member of family of the deceased Government servant seeks employment under the said rules. Procedure requiring the Head of Office to take a decision thereupon has also been indicated. Rule 7 of Rules of 1974 is as follows:-

" 7. Procedure when more than one member of the family seeks employment. - If more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof."

11. Aforesaid Rule 7 of Rules of 1974 therefore is clearly applicable in the present facts and circumstance of the case where more than one claimant has filed Application seeking compassionate appointment. The rule contemplates that decision by the Head of Office has to be taken in view of overall interest of the welfare of the entire family particularly the widow and minor members thereof.

12. The aspects which are required to be considered for grant of compassionate appointment have already been indicated by Supreme Court in **General Manager (D & PB) and others v. Kunti Tiwari and another** reported in (2004) 7 Supreme Court Cases 271. The aforesaid judgment in turn places reliance on another judgment of Supreme Court in **Umesh Kumar Nagpal v. State of Haryana** reported in (1994) 4 SCC 138. The aspects indicated therein are as follows:-

"(a) Family pension.

(b) Gratuity amount received.

(c) Employee's/employer's contribution to provident fund.

- (d) Any compensation paid by the Bank or its Welfare Fund.
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) Income of family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc."

13. Although, the said factors have been considered in light of circulars of banks but in the considered opinion of this Court would also have relevance with regard to compassionate appointment of dependents of Government servants as well.

14. Upon applicability of Rule 7 of Rules of 1974 as well as aforesaid judgment of Hon'ble the Supreme Court, it is quite evident from a reading of impugned order that factors required to be taken into consideration for considering applications for compassionate appointment have not been kept in mind by authority concerned while passing the order impugned, which has been passed primarily on ground that other family members of the deceased did not submit any no-objection certificates/affidavits in favour of either of the brothers. The finding recorded in impugned order that all major persons of the family are earning their livelihood also does not appear to be based on any material on record.

15. In such circumstances, the impugned order dated 12.04.2016 is clearly vitiated and is therefore quashed by issuance of a writ in nature of Certiorari. A further writ in nature of Mandamus is issued commanding opposite party no.3 i.e. Superintending Engineer, Construction Division-I, Public Works Department, Gonda to revisit the aspect of compassionate appointment considering rival claims of petitioner as well as opposite party no.5 strictly in accordance with Rule 7 of Rules of 1974 as well as the criteria enunciated

by Hon'ble the Supreme Court as indicated herein above.

16. The said opposite party shall pass a reasoned and speaking order within a period of three months from the date a certified copy of this order is produced before authority concerned.

17. Resultantly, the petition succeeds and is **allowed** to aforesaid extent. The parties to bear their own costs.

Order Date :- 31.10.2023

kvg/-