

Court No. - 20

Case :- WRIT - A No. - 5325 of 2021

Petitioner :- Smt. Shikha Mishra

Respondent :- State Of U.P. Thru. Addl.Chief Secy.State Tax
Deptt.Lko.Andors

Counsel for Petitioner :- Varun Pandey,Atul Kumar Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Atul Kumar Dwivedi, learned counsel for petitioner and learned State Counsel appearing on behalf of the opposite parties.

2. Petition has been filed seeking a direction to opposite parties to consider her case for compassionate appointment in lieu of services rendered by her father late Hari Shankar Mishra who is said to have passed away on 24.12.2008 while in harness. It is submitted that at the time of demise, the deceased employee was succeeded by his widow, Smt. Rajni Mishra, his mother and two daughters including petitioner who was married. Due to said demise, widow of the deceased employee filed an Application dated 21.01.2009 indicating aforesaid facts and seeking compassionate appointment of petitioner due to fact that other daughter was mentally handicapped as well as blind while the applicant herself was suffering from severe arthritis. It is submitted that said application was kept pending without any decision thereupon whereafter the widow filed another application on 25.09.2013 seeking consideration of herself for compassionate appointment. It has been submitted that aforesaid application was also kept pending without any final decision thereupon.

3. It is submitted that in the meantime a Division Bench of this Court in **Smt. Vimla Srivastava v. State of U.P. & another**

reported in (2016) 1 ADJ 21 held that married daughters of a deceased employee dying in harness would also come within definition of 'family' as per Rule 2(c) of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as Rules of 1974). It is submitted that since earlier two applications for compassionate appointment were still pending without any final orders being passed thereupon, petitioner thereafter filed Application dated 18.12.2015 reiterating her mother's earlier application for petitioner's compassionate appointment. It is submitted that aforesaid application was also kept pending without any final decision thereupon.

4. Learned counsel for petitioner has also drawn attention to the fact that petitioner had earlier also filed Writ Petition No.5023(S/S) of 2016 seeking compassionate appointment which had at that time been declined on 30.01.2016. In the said petition, this Court vide order dated 10.03.2016 noticed the judgment rendered in **Smt. Vimla Srivastava**(supra) and directed learned State Counsel to seek instruction in the case and in pursuance thereof, vide order dated 14.03.2016, the said petition was disposed of in view of statement made by the then learned Chief Standing Counsel on the basis of instructions that impugned order would be withdrawn and petitioner's case would be considered in light of the Division Bench judgment.

5. It is submitted that despite specific assurance given to this Court by the opposite parties, petitioner's case for compassionate appointment is yet pending consideration for which directions are required to be issued.

6. Learned State Counsel appearing on behalf of opposite parties does not dispute the aspect that as of now married daughters are also included in definition of 'family' under Rule

2(c) of Rules of 1974. However, he submits that since there is considerable delay in the matter, it is only the State Government which has power to condone the delay in terms of Rule 5 of Rules of 1974. As such, the matter be referred to State Government for taking a decision.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is undisputed that petitioner's father passed away in harness on 24.12.2008. It is also admitted by opposite parties that due to aforesaid death, petitioner's mother gave an application for compassionate appointment of petitioner on 21.01.2009. No decision on aforesaid application was taken by authorities and thereafter the widow filed another Application dated 25.09.2013 seeking compassionate appointment for herself, it was also kept pending without any final orders being passed thereupon.

8. It is noticeable that both the applications had been filed within five years of date of death of the employee but despite passing of more than ten years, the said applications have not been decided by opposite parties. It is also admitted that in the meantime, in view of judgment rendered by Division Bench of this Court in **Smt. Vimla Srivastava**(supra), married daughters such as petitioner has also been included in definition of 'family' as per Rule 2 (c) of Rules of 1974 whereafter petitioner also filed an application for compassionate appointment on 18.12.2015. The said application was rejected vide order dated 30.01.2016 which was challenged as indicated herein above in Writ Petition No.5023(S/S) of 2016.

9. The said writ petition was disposed of vide order 14.03.2016 only on assurance given by learned Chief Standing Counsel on the basis of instructions that the order would be withdrawn and petitioner's case would be considered in light of Division Bench

judgment in **Smt. Vimla Srivastava**(supra).

10. It is also admitted that despite such assurance being given to this Court due to which the said petition was disposed of, no final decision has been taken by opposite parties till date, which also indicates continuing cause of action in favour of petitioner.

11. In view of aforesaid discussion, it is quite evident that there is no delay on part of petitioner or her mother in seeking compassionate appointment and therefore this Court does not find any occasion to refer the aspect of delay to State Government in terms of Rule 5 of Rules of 1974.

12. In view of admitted fact and law that petitioner is the married daughter of deceased employee who had sought compassionate appointment for herself with no-objection of her mother within prescribed time limit, and comes within definition of 'family' as held in **Smt. Vimla Srivastava**(supra), opposite party no.3 i.e. Chairman, Commercial Tax Tribunal, Uttar Pradesh, Lucknow is directed to consider petitioner's case for compassionate appointment ignoring any alleged delay in the matter. Such a decision shall be taken within a period of six weeks from date a certified copy of this order is produced before authority concerned keeping in view of financial distress being faced by petitioner and her family which shall be set out in representation to be filed by petitioner along with a copy of this order.

13. Consequently, the petition succeeds and is allowed. The parties to bear their own costs.

Order Date :- 22.11.2023

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