

Court No. - 20

Case :- WRIT - A No. - 20904 of 2019

Petitioner :- Naveet Nigham

Respondent :- State Of U.P. Thru Prin.Secy. Home Lukcnaw And Ors.

Counsel for Petitioner :- Raj Kumar Singh,Akhilesh Kumar

Mishra,Pawan Kishor Mishra,Vijay Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Vijay Kumar learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 14th January, 2019 whereby petitioner's application for compassionate appointment has been rejected as being time barred with State Government also refusing to relax the time period required for such application.
3. It has been submitted that petitioner's father late Ram Veer Singh passed away on 7th November, 2002 while working on the post of Constable in the police department leaving behind his widow and three minors including petitioner. It is submitted that petitioner's father was sole bread earner of the family and after his demise, petitioner's mother filed an application for compassionate appointment in the year 2003 after completing all the formalities but the Senior Superintendent of Police thereafter issued letters dated 20th July, 2007 and 24th October, 2007 indicating certain discrepancy in her date of birth and requiring petitioner's mother to clarify the same. It is submitted that in pursuance of aforesaid letters, the discrepancy was sought to be explained by petitioner's mother by submitting transfer certificate pertaining to Class 8th in which her date of birth was indicated as 15th September, 1979 but was not in consonance with high school mark sheet in which her date of birth was indicated as 20th June, 1986. It is submitted that in view of aforesaid discrepancy, the application of petitioner's mother kept pending and in the meantime petitioner attained majority on 2nd September, 2013 whereafter petitioner's mother gave a fresh application on 13th September, 2014 for petitioner to be provided compassionate appointment in her place. The petitioner also gave a separate application on the same date regarding compassionate appointment. It is submitted that in pursuance thereof, the authority concerned by means of letter dated 7th June 2018 referred the case to the State Government for the purposes of relaxation in the period of five years as

required in terms of Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness. Rules, 1974.

4. It has been submitted by learned counsel for petitioner that a perusal of impugned order will make it evident that petitioner's application has been rejected primarily on the ground of delay of 11 years 10 months and 6 days in filing of application. It is submitted that the impugned order has incorrectly placed reliance on judgments indicated therein since the same were inapplicable in the present facts and circumstances of the case inasmuch as admittedly petitioner's mother had submitted her application for compassionate appointment within the prescribed time limit, which was also processed by the opposite parties themselves. Learned counsel has also drawn attention to the impugned order to submit that the same has been passed without application of mind to the fact that petitioner's mother had gave a separate application for compassionate appointment within prescribed time limit but the impugned order does not advert to same and has on the contrary held petitioner's application to be time barred only on the ground that his mother also could have submitted an application for compassionate appointment, which was not done. It is therefore submitted that impugned order has been passed without application of mind. He has also placed reliance on Full bench decision of this Court in the case of **Shiv Kumar Dubey versus State of U.P. and others** reported in A.I.R. 2015 Allahabad 47.

5. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that the impugned order has correctly placed reliance on judgments rendered by Hon'ble Supreme Court inasmuch as compassionate appointment can not be treated as a different mode of recruitment particularly when it is not a vested right once the prescribed time limit has expired. It is further submitted that primary object of providing compassionate appointment is to permit a family to tide over the immediate financial crisis and since in the present case, more than 11 years have passed since the demise the petitioner's father the very purpose of providing compassionate appointment has been lost. It is further submitted that the mother of petitioner herself did not complete all the requisite formalities nor did she make an endeavour to remove the discrepancy of her date of birth and therefore can not be permitted to take benefit of her own wrong particularly since numerous letters were issued by the authorities concerned to the petitioner's mother for removal of such discrepancies. It is therefore submitted that impugned order has correctly been passed on the ground of delay of more than 11 years in preferring the application.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that initially after demise of petitioner's father, his mother filed an application for compassionate appointment within the prescribed time frame. However it appears that there was certain discrepancy with regard to her date of birth for which purpose the opposite parties sought a clarification from her.

7. In paragraph 12 of the writ petition, it has been stated that in pursuance of aforesaid letters issued by the opposite parties, petitioner's mother submitted the transfer certificate of class 8th indicating her date of birth as 15th September, 1979. In paragraph 17 of the counter affidavit, the aforesaid averment has been denied and it has been stated that contradiction of date of birth in the high school certificate viz-a-viz the transfer certificate was not clarified by her due to which compassionate appointment could not be provided.

8. From the aforesaid fact, it is evident that in pursuance of letters issued by the opposite parties, an effort was made by petitioner's mother to clarify the discrepancy regarding her date of birth. However neither in the letters issued by opposite parties nor even in the counter affidavit has it been indicated as to what the discrepancy was with regard to date of birth of petitioner's mother particularly when her high school certificate clearly indicated her date of birth as 20th June, 1986. It is not a case of opposite parties that the said high school certificate was a forged or fabricated document.

9. Rule 9 of the U.P. Government Servants Dying-in-Harness Rules 1974 clearly prescribes modes of satisfaction of appointing authority as regards general qualifications and indicates that before a candidate is appointed, the appointing authority shall satisfy itself that the candidate is eligible for being granted compassionate appointment for which purpose the character, good mental and bodily health and freedom from any physical defect likely to interfere in efficient performance of his duties is required to be seen. The conditions also indicate that in case of male candidate, he should not have more than one wife living and in case of female candidate she has not married a person already having a wife living.

10. The aforesaid provision of Rules of 1974 clearly indicate the aspects which are required to be addressed by the appointing authority at the time of consideration of application for compassionate appointment. The aspect of any discrepancy in the date of birth of a candidate clearly was not an aspect to be considered by the opposite parties while considering the

application of petitioner's mother but nonetheless such an aspect was resorted to by the opposite parties and her application was kept pending for more than 11 years without advertng to the provisions of Rules of 1974.

11. It has been admitted by opposite parties in the impugned order as well as in the counter affidavit that at the time of demise of petitioner's father, the petitioner was minor and attained majority only in the year 2013 whereafter the application was filed on 13th September, 2014. A perusal of impugned order also indicates the fact that the authority concerned has passed the order without application of mind and without advertng to records to the fact that the petitioner's mother had also filed an application for compassionate appointment within the prescribed time frame but the impugned order on the contrary has rejected application of petitioner primarily on the ground that even in case petitioner's mother was uneducated, she should have filed an application within the prescribed time limit but did not do so.

12. The aforesaid fact clearly indicates that the concerned authority was unaware of the aspect that petitioner's mother had already submitted an application for compassionate appointment within the prescribed time limit and therefore the ground taken for rejection of petitioner's application as time barred therefore clearly becomes baseless.

13. The impugned order as well as counter affidavit have adverted primarily to the aspect that petitioner's application was beyond time limit prescribed and is thus the sole ground of rejection of petitioner's application. Impugned order has also placed reliance on judgments rendered by Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal versus State of Haryana and others** reported in 1994 (4) SCC 138 as well as **Sanjay Kumar versus State of Bihar and others** reported in 2000 Supp (2) SCR 710 to deny the petitioner's claim. However it is evident that aforesaid judgments have been rendered on the aspect that compassionate appointment has to be provided as a immediate succour to tide over the financial crisis faced at the time of death of sole bread winner and there can not be reservation of vacancy till such time the applicant becomes major after a number of years unless there is some specific provision or reason for entertaining such a belated application.

14. In the considered opinion of this Court the aforesaid judgments would have no relevance or applicability in the present facts and circumstances of the case where petitioner's mother admittedly filed an application for compassionate appointment within prescribed time limit and also completed all

the relevant and required formalities and for which a fitness certificate was also issued by the Chief Medical Superintendent District Hospital, Aligarh. As has been indicated herein above, the application of petitioner's mother was unduly kept pending by the opposite parties on a fact which was not relevant as per Rules of 1974. Since her application was not processed and petitioner at that time was minor, it is but evident that upon attaining majority, he filed separate application for compassionate appointment.

15. With regard to aforesaid aspect, the Full Bench of this Court in the case of Shiv Kumar Dubey (supra) has placed reliance on Division Bench judgment of this Court in the case of **Vivek Yadav versus State of U.P.** (2010) 5 ALJ 325 in the following manner:-

" 30. As regards the judgment of the Division Bench in Vivek Yadav (supra), the first part of the judgment of the Division Bench in Vivek Yadav's case (2010 (5) ALJ 325) holds in paragraph 4 that since Rule 5 contemplates an application by a competent person, in a case where the applicant is a minor, it will not be possible for a minor to make an application during the period of his minority. Therefore, considering the object of the Rules, it was held that the proviso to Rule 5 must normally be exercised in such cases. This observation, with respect, requiring that the proviso to Rule 5 must normally be exercised for the purpose of dealing with a case in a just and equitable manner would not be reflective of the correct position in law. The subsequent decision in Subhash Yadav (supra) only holds that the Government cannot fust an application which has been moved after five years blindfolded but has to apply its mind rationally to all the facts and circumstances of the case. In this regard, we clarify that the second proviso to Rule 5 requires an applicant, who invokes the power of dispensation or relaxation under the first proviso of the time limit of five years, to make out a case of undue hardship by elucidating, in writing, with necessary documentary evidence and proof, the reasons and justification for the delay. The Government may, in an appropriate case, when it is satisfied on the basis of the material that a case of undue hardship is made out, exercise the power which is conferred upon it under the first proviso to Rule 5 of the Rules but this power has to be exercised where a demonstrated case of undue hardship is made out to the satisfaction of the State Government. We answer the reference accordingly in the aforesaid terms."

16. A perusal of aforesaid paragraph of the judgment clearly indicates that the government can not dismiss an application filed after five years in a blindfolded manner but has to apply its

mind rationally to all facts and circumstances of the case. For the said purpose, it is incumbent upon the authority concerned to advert to undue hardship and reasons indicated as justification for the delay.

17. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that the aforesaid judgment has not been adhered to while passing the impugned order. The authority concerned has not at all adverted to the reasons for belated application of the petitioner particularly in view of the fact that petitioner's mother's application was still pending consideration at the time when petitioner filed his application and since her application filed earlier has not been rejected till date.

18. With regard to belated applications being filed by persons who were minor at the time of demise of the sole bread earner, Division Bench of this Court in the case of Sudhir Kumar Mishra versus state of U.P. and others passed in Special appeal No. 175 of 2016 has held as follows:-

"21. In the instant case, the petitioner submitted that when his father died he was only 4 years old and his mother informed the department that she would make application in prescribed form only when he attained majority. The department negatived the representation in this matter taking stand that the application was not made within prescribed period. However, the petitioner's request for compassionate appointment was made soon after appellant attained majority. Under Rule 5 the time limit within which the dependant of the deceased employee is to be accommodated is fixed as five year. This period can be extended under proviso to Rule 5 where burden of proving the fact that compassionate circumstances continued to exist even till date was on the petitioner himself which he has successfully discharged in this case. There is sufficient evidence of the petitioner having aged and ailing mother, two unmarried sisters, the family having pension as the only source of livelihood, the agricultural land being barren causing nugatory income of about 9000/- per year, which appeared quite insufficient to enable the family to get over the financial crisis which is being faced by the family after the death of his father.

22. On the basis of objective considerations founded on the disclosures made by the petitioner in this case for compassionate appointment and having considered the reasons for the delay, we are of the opinion that undue hardship within the meaning of the first proviso to Rule 5 of the Rules would be caused to the petitioner and his family by the application of the time limit of five years. The expression 'undue hardship' has not

been defined in the Rules. Undue hardship would necessarily postulate a consideration of relevant facts and circumstances of the case. In view the income of the family, its financial condition, the extent of dependency and marital status of its members, its liabilities, the terminal benefits received by the family; the age, together with the nugatory income from any other sources in this case, we are of the view that the family continues to suffer financial distress and hardship occasioned by the death of the bread winner. Considering the penurious condition of the family, it appears to be one of the rarest of rare cases where due to exceptional circumstances the family needs the extraordinary remedy to elate the condition of family. It would be appropriate to deal with the case of the petitioner in a just and equitable manner."

19. Although a perusal of impugned order will make it evident that petitioner's application for compassionate appointment has been rejected only as a consequence of relaxation not being provided to petitioner but such an application is also required to be seen in the light of financial distress being suffered by the family viz-a-viz their modes of income.

20. For the said fact, it would be relevant to advert to paragraph 4 of the impugned order in which it has been indicated that the family is in receipt of a sum of Rs. 21600/- as monthly family pension and apart from above, the deceased was an ownership of agricultural property admeasuring one bigha. Paragraph 5 of the impugned order indicates the dependants of deceased as his widow and three minor children including the daughter.

21. The aforesaid facts quite clearly evidence that the deceased left behind four dependants, three of whom were minor including the daughter with only Rs.21600/- as monthly income. The order does not advert to the fact whether deceased was sole owner of the agricultural property or was co-owner of same. Even otherwise there is no indication with regard to any income being derived by the family from the aforesaid agricultural property.

22. It is a relevant aspect to be seen that as per government notification dated 28.1.2014 minimum wages which has been fixed for the State of U.P. are 10275 per month for unskilled and 12661 per month for skilled. It is quite evident and admitted by the opposite parties therefore that the four dependants are in receipt of only Rs. 21600/- per month which in the considered opinion of this court can not be said to be an adequate income for a family who sole bread earner passed away while on the post of Constable with U.P. Police since income received by family is barely above the minimum wages.

23. From the aforesaid paragraph of the impugned order itself, it is quite evident that family is facing financial distress. Although this Court is aware of the fact that since impugned order has been passed rejecting only a relaxation in the time period prescribed for filing an application for compassionate appointment and should have ordinarily remitted the matter to the authority concerned for a finding with regard to financial distress but in view of the fact that more than 20 years have passed since demise of the sole bread earner with dependants' application being kept pending for the past 20 years and also in view of the admitted financial receipts of the family of deceased as indicated herein above, this Court does not find it expedient in the interest of justice to remit the matter again for reconsideration of the authorities concerned to record a finding thereupon once such a fact has already been indicated in the impugned order itself.

24. From an elucidation of the aforesaid aspects, it is quite evident that opposite parties have clearly erred in terming petitioner's application for compassionate appointment to be belated. The impugned order dated 14th January, 2019 has clearly been passed without application of mind and without adhering to the law enunciated by Full Bench of this Court in the Case of Shiv Kumar Dubey (supra). The impugned order dated 14th January, 2019 thus being against the provisions of law is hereby quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the concerned authority to offer compassionate appointment to the petitioner within a period of two months from the date a certified copy of this order is produced before the concerned authority.

25. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 27.10.2023
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