

Court No. - 20

Case :- WRIT - A No. - 32734 of 2018

Petitioner :- Smt Nirmala Tiwari

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

Counsel for Petitioner :- Sanandan Kumar Misra,Bina Kumari Bajpai

Counsel for Respondent :- C.S.C

Hon'ble Manish Mathur,J.

1. Supplementary affidavit filed on behalf of the petitioner is taken on record.
2. Heard learned counsel for the petitioner as well as learned State Counsel appearing for opposite parties.
3. Petition has been filed challenging order dated 08.02.2018 whereby petitioner's application for appointment in lieu of service rendered by her husband, namely, Ramakant Tiwari, who died in harness, has been rejected.
4. It has been submitted that petitioner's husband had been employed as a home-guard with the opposite parties and passed away on 30.06.2012 while in harness and deployed in election duty. Upon his demise, petitioner gave an application dated 20.01.2016 for compassionate appointment but her name was not included in the list since at that time her educational qualification was only 8th pass. Thereafter, petitioner completed her High School and submitted a fresh application on 25.05.2016 but petitioner's name was again not included in the list of compassionate appointees dated 22.05.2017 on the ground that applicants belonging to rural areas cannot be granted compassionate appointment in urban areas and therefore directions were sought from the competent authority.
5. It is submitted that thereafter vide order dated 02.06.2017, such directions were received whereafter petitioner's case was required to be considered on 30.06.2017 but has been rejected on the ground that at the time of death of petitioner's husband on 30.06.2012 there was no provision for compassionate appointment

which was notified only subsequently on 27.09.2012.

6. It is submitted that the opposite parties have completely lost sight of the fact that although at the time of death of petitioner's husband on 30.06.2012, there was no provision for compassionate appointment of 'heirs' of home-guards but such a provision has also been notified vide Government Order dated 27.09.2012 and was in force when the petitioner first made her application on 20.01.2016.

7. It has also been submitted that subsequently vide notification dated 07.02.2013 issued by the Home-guards Headquarters, Lucknow, considering difficulties being faced and on issue of prospective implementation of order dated 27.09.2012 was addressed and it was directed that the aforesaid beneficial provision would apply to the heirs of those home-guards also who had passed away in service 5 years prior to the issuance of Government Order dated 27.09.2012. It is submitted that since order dated 07.02.2013 was also in place when the petitioner made her application, the opposite parties were required to consider in that perspective.

8. Learned State Counsel has, however, refuted the submissions advanced by learned counsel for the petitioner with the submission that at the time of demise of petitioner's husband, there was no provision for compassionate appointment being provided to heirs of deceased home-guards and such a provision was notified only subsequently on 27.09.2012. It is further submitted that the aforesaid Government Order would operate only prospectively. So far as the circular/ order dated 07.02.2013 is concerned, learned State Counsel has adverted to a subsequent order dated 05.05.2017 issued by the State Government whereby it has been directed that no relaxation is permissible for applicability of the Government Order dated 27.09.2012.

9. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, particularly the impugned order dated 08.02.2018, it is evident as per the narration made therein that petitioner's husband was in fact employed as a home-guard and admittedly passed away in harness on 13.06.2012 while being deployed on election duty. It is also admittedly on record that petitioner made her first application for compassionate appointment on 28.01.2016 but her name was not included in the list of eligible

candidates since her educational qualification at that time was only 8th pass. It is also on record that after completing her high school in the year 2016, petitioner submitted second application on 25.05.2016 for compassionate appointment which was again kept pending while seeking direction from the competent authorities who thereafter issued the same on 02.06.2017.

10. The order dated 08.02.2018 clearly admits the fact that upon issuance of the order dated 02.06.2017, petitioner was to be included in the list of eligible candidates for compassionate appointment but was left out. The impugned order thereafter refers to an order dated 02.02.2018 to effect that the opposite parties did not find petitioner eligible for compassionate appointment. Petitioner's application for compassionate appointment has thereafter been rejected primarily on the ground that the Government Order dated 27.09.2012 would operate prospectively and not retrospectively as on the date of death of petitioner's husband.

11. A reading of the aforesaid impugned order also makes it evident that there is no consideration of the circular/order dated 07.02.2013 whereby relaxation was granted to heirs of deceased home-guards and the aforesaid scheme was made applicable to include all such applications for compassionate appointment 5 years prior to death of a home-guard concerned.

12. The aforesaid fact makes it evident that although as on 30.06.2012, there was no scheme for compassionate appointment but such a scheme was introduced within 3 months on 16.09.2012 and vide circular dated 07.02.2013, the home-guard headquarters, has extended benefits of the aforesaid schemes to all such cases where death has occasioned within 5 years prior to the issuance of Government Order dated 27.09.2012.

13. It is also on record that admittedly petitioner filed her first application for compassionate appointment on 20.01.2016. The impugned order indicates that petitioner's application was not processed only on the ground that her educational qualification at that time was only 8th pass.

14. A perusal of the Government Order dated 27.09.2012, however, makes it evident that there is no such prohibition in appointment on compassionate basis whose

educational qualification is 8th pass since no such minimum educational limit has been indicated in the aforesaid Government Order.

15. Even otherwise, after completing her high school in the year 2016, petitioner made a fresh application on 25.05.2016 which was also kept pending by the opposite parties while seeking direction from the competent authority which even otherwise was provided on 02.06.2017. The impugned order indicates that upon such qualification having been acquired, petitioner should have been included in the list of eligible candidates but was not so included.

16. The aforesaid narration is clearly indicative of the unnecessary harassment being faced by petitioner ever since the date of her first application. Although admittedly there was no scheme for compassionate appointment as on the date of death of petitioner's husband but at the time of petitioner's initial application dated 20.06.2016, the circular/ order dated 17.02.2013 was very much in existence whereby petitioner was clearly eligible for being considered for compassionate appointment. However, her application was kept pending on irrelevant grounds and in the meantime the order dated 05.05.2017 was issued by the State Government impliedly withdrawing the relaxation granted vide order dated 07.02.2013, the order dated 05.05.2017 also indicates that the earlier order issued on 07.02.2013 has neither been withdrawn/canceled or rescinded specifically but only impliedly.

17. If it is the case of opposite parties that all the government orders and circulars would have only prospective operation, then the same aspect would be applicable to the Government Order dated 05.05.2017 as well and therefore such a withdrawal of relaxation would also be applicable only with effect from 05.05.2017 and not prior thereto. In such circumstances, it is quite evident that as on 20.01.2016 when petitioner first filed her application for compassionate appointment, she was very much included in the scheme for compassionate appointment and was also actively considered by the opposite parties for the same.

18. In view of the aforesaid discussions, it is evident that the ground of rejection as indicated in the impugned order does not stand to reason.

19. In view of the aforesaid observations, the impugned order dated 08.02.2018 is hereby **quashed** by issuing a Writ in the nature of Certiorari, a further Writ in the nature of Mandamus, commanding the opposite parties to consider petitioner's case for compassionate appointment keeping in view her applications dated 20.06.2016 and 25.05.2016. Decision with regard to the same shall be taken within a period of six weeks from the date certified copy of this order is produced before the authority concerned.

20. Resultantly, the petition succeeds and is **allowed** accordingly.

21. Parties to bear their own costs.

Order Date :- 23.11.2023

Manoj K.