

Court No. - 19

Case :- WRIT - A No. - 9285 of 2023

Petitioner :- Mohd. Ataul Hasan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Lko And 3 Others

Counsel for Petitioner :- Pawan Kumar Sharma

Counsel for Respondent :- C.S.C.,Kumar Ayush,Ran Vijay Singh

Hon'ble Jaspreet Singh,J.

Heard Sri Pawan Kumar Sharma, learned counsel for the petitioner. Notice on behalf of respondent no. 1 has been accepted by the office of the learned Additional Chief Standing Counsel. Sri Ranvijay Singh, learned counsel appearing for the respondent no. 3 and Sri Kumar Ayush, learned counsel for the respondent no. 9.

By means of the instant petition, the petitioner has prayed for the following reliefs which reads as under:-

"(i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order vide letter No. 15026-35/2023-24 dated 09.09.2023, and vide letter No. 11246-53/2023-24 dated 12.07.2023 passed by opposite party no. 4 as Annexure No. 1 & 2 of this writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus to reconsider the appointment of the petitioner on the post of assistant Teacher/Clerk in the office of the opposite party."

The submission of the learned counsel for the petitioner is that Mohd. Husain who was the father of the petitioner was working as a Headmaster in Madhyamik Vidyalaya Siswara, Vikas Khand Balha, Tahsil-Nanpara, District Bahraich who died during his service tenure on 11.01.2017.

The petitioner at the relevant time had not completed his graduation, however, after completing his graduation on 19.07.2020 had applied for his compassionate appointment with the respondent no.4.

In furtherance thereof, the District Basic Education Officer, Bahraich by means of a letter dated 02.11.2022 had offered the petitioner to join, however, the petitioner did not join on the aforesaid post. It is only after having completed his future studies, the petitioner once again applied for compassionate

appointment and since the same was not been considered, the petitioner approached this Court in Writ-A No. 5390 of 2023 wherein this Court had directed that in case if the petitioner made a fresh representation within a period of two weeks, the same shall be decided by the Authority concerned within a period of six weeks thereafter.

It is further urged that in furtherance of the order passed by this Court on 27.07.2023, the petitioner filed a representation which has been rejected by means of order dated 09.09.2023 which is under challenge before this Court.

It is urged that the sole ground upon which the representation of the petitioner has been rejected is that he had applied for the said post after five years and in such cases in terms of Government Order dated 04.09.2000, the consideration for compassionate appointment can be done only by the State. It is in the aforesaid backdrop that the petitioner assails the impugned order and further submits that it would be appropriate for the respondent no. 4 to forward the case of the petitioner to the State for its consideration.

Sri Ranvijay Singh and Sri Kumar Ayush as well as the learned Standing Counsel have primarily made the same submissions that the aforesaid provision is not applicable to the petitioner as that the period of five years is to be reckoned from the first application.

It is urged that it is no applicable in the instant case for the reason that the petitioner had earlier in the year 2020 had applied and in pursuance thereof an offer was made which was not accepted by the petitioner and therefore the said Government Order does not permit the petitioner to take another chance.

Having noticed the aforesaid submissions and considering the fact that the issue of compassionate appointment is to be considered by the employer and in case in terms of the Government Order dated 04.09.2000, if it is to be considered by the State Government then a decision has to be taken whether the same is applicable to the petitioner or not.

In view of the aforesaid facts and circumstances, this Court is of the opinion that no gainful purpose will be served in keeping the aforesaid petition pending rather ends of justice can be served by directing the respondent no. 4 to forward the case of the petitioner to the State Government and it will be open for the Government to take a decision in case of the petitioner within a period of eight weeks from the date, a certified copy of

this order is placed before the Authority concerned.

It is made clear that the Court has not examined the case of either of the parties on merits and the authority concerned shall be free to decide the matter strictly in accordance with law.

With the aforesaid, the petition is **disposed of**.

Order Date :- 7.12.2023

Asheesh