

Court No. - 20

Case :- WRIT - A No. - 9483 of 2023

Petitioner :- Bandana

Respondent :- State Of U.P. Thru. Prin. Secy. Irrigation And Water Resources Deptt. Civil Sectt. Lko And Another

Counsel for Petitioner :- Om Prakash Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Under challenge is order dated 20.07.2023 whereby petitioner's application for compassionate appointment has been rejected only on the ground that it has been filed beyond a period of five years as prescribed under the U. P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974.
3. It has been submitted that while passing impugned order, concerned authority has completely lost sight of Rule 5 of the aforesaid Rules of 1974 which specifically prescribes that in case application is filed beyond a period of five years from the date of death of the employee, it is only the State Government which is authorized to grant relaxation in such delay and therefore the order having been passed by the Executing Engineer, is even otherwise beyond jurisdiction.
4. Learned State Counsel has not been provided any instructions in this matter.
5. However since the reasons for rejection of petitioner's application for compassionate appointment are self evident from the impugned order itself this petition is being adjudicated upon at the time of admission stage without calling for a counter affidavit.
6. Upon consideration of submissions advanced by learned counsel for petitioner and perusal of material available on record, it is evident that by means of impugned order, petitioner's application for compassionate appointment has been rejected only on the ground that it has been filed beyond a period of five years from the date of death of her father of petitioner namely Late Ram Saran Mishra. It is submitted that although petitioner is married daughter of the deceased employee but still is within the scope of zone of consideration as per judgment rendered by this Court in the case of

Smt.Vimla Srivastava versus ***State of U.P. & Another*** reported in ***(2016) 1 ADJ 21.***

7. A perusal of Rule 5 (iii) of the Rules of 1974 make it evident that where application for compassionate appointment has been filed beyond a period of five years from the date of death of employee, it is only the State Government which is authorized to grant relaxation in such delay.

8. Evidently, impugned order has not been passed by the State Government but by the Executive Engineer concerned and therefore in view of aforesaid Rules, the said order is clearly without jurisdiction and is therefore hereby quashed by issuance of a writ in the nature of certiorari.

9. Considering the aforesaid Rule 5 of Rules of 1974, the opposite party no.1 i.e. Principal Secretary, Irrigation and Water Resources Department, Government of U.P., Civil Secretariat, Lucknow is directed to take a decision with regard to grant of relaxation on the application for compassionate appointment preferred by petitioner vide letter dated 31.03.2023 within a period of six weeks from the date a certified copy of this order is produced before the concerned authority alongwith a copy of application for compassionate appointment.

10. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 16.12.2023
Subodh/-