

Court No. - 18

Case :- WRIT - A No. - 254 of 2024

Petitioner :- Amit Kumar Gautam

Respondent :- State Of U.P. Thru. Prin. Secy. Vigilance Deptt. Lko. U.P.
And 2 Others

Counsel for Petitioner :- Savita Kumari, Anushri Verma, Susheel Kumar

Counsel for Respondent :- C.S.C., Amarendra Pratap Singh

and

Case :- WRIT - A No. - 4473 of 2010

Petitioner :- Malti Devi

Respondent :- State Of U.P. Through The Principal Secy. Vigilance
Dept. And Ors

Counsel for Petitioner :- S.C. Yadav, Aklayya, Sarjoo Ram, Savita
Kumari, Susheel Kumar, Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

1. Heard.

2. Learned Counsel for the petitioners, learned Standing Counsel and Shri A.P. Singh, learned Senior Advocate assisted by Sri Amrendra Pratap Singh, learned counsel for the respondent nos. 2 and 3.

3. The issue involved in these writ petitions are common and interlinked, therefore, these petitions have been heard together and are being adjudicated by this common judgment.

4. Smt. Malti Devi has preferred the Writ A No. 4473 of 2010 with following main prayers:-

"i) A writ, order or direction in the nature of certiorari quashing the rejection of office order no. 4462/Lo. Aa-2009-9(3)/96, dated 30 December, 2009 passed by opposite party no. 2 and issued by opposite party no. 4 (Annexure No. 1) to the writ petition.

ii) A writ, order or direction in the nature of mandamus commanding the opposite parties to issue appointment letter to the petitioner under the provisions of Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974."

5. Whereas Shri Amit Kumar Gautam has preferred Writ A No.

254 of 2024 with following main prayer:-

"i) to issue writ, order or direction in the nature of mandamus commanding the respondents to appoint the petitioner in accordance with the provisions of the Uttar Pradesh Recruitment of Dependents of Government Servants dying in Harness Rules, 1974 on his father's (deceased) post, Class IV, Peon at Lok Ayukta Office, Lucknow. "

6. Learned counsel for the petitioners have submitted that the deceased employee namely Late Kishori Lal, who was the father and husband of petitioners namely Amit Kumar Gautam and Malti Devi respectively had expired on 07.10.2009 during his service tenure while working on the post of Peon in the office of Lok Ayukt, Lucknow.

7. It is further submitted that after the demise of the deceased employee, petitioner-Malti Devi preferred a representation for her appointment under the Rules, 1974 but her claim was rejected by impugned order dated 30.12.2009 on the ground that she has not passed Class V, which is minimum educational qualification required for appointment against the Class IV post. The said order has been challenged by filing present Writ A No. 4473 of 2010.

8. During the pendency of the writ petition filed by petitioner-Malti Devi her son namely Amit Kumar Gautam-petitioner in Writ A No. 254 of 2024 has become major in the year 2018 and thus, applied for considering his candidature for appointment under the Rules, 1974 on 21.10.2021.

9. It is further submitted that the wife of the deceased employee has passed Class V in the year 2012 itself thus she again moved an application for considering her candidature for giving compassionate appointment under the Rules, 1974, which is still pending.

10. On the other hand, Shri A.P. Singh, learned Senior Advocate assisted by Shri Amrendra Pratap Singh, learned counsel for the respondent nos. 2 and 3 has submitted that the son of the deceased employee i.e. Amit Kumar Gautam has applied for compassionate appointment after a period of 12 years of the demise of his father and as per Rule 5 of the Rules, 1974, the relaxation which is to be given at the most for a period of five years and not beyond that. He has applied after three years of attaining the age of majority. The Rule 5 of the Rules, 1974 provides that in case a government servant dies in harness after the commencement of these Rules and the spouse of the deceased Government Servant is not already employed under

the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family, who is not already employed on making application for the purposes, be given a suitable employment in Government Service. If such person fulfills, the educational qualification prescribed for the post, is otherwise qualified for the government service and makes an application for employment within five years from the death of the government servant and in the present case, the petitioner-Amit Kumar Gautam preferred an application for compassionate appointment under the Rules, 1974, which is not tenable in the eyes of law.

11. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the petitioner-Amit Kumar Gautam has applied for the first time on 21.10.2021 after about 12 years of the date of demise of deceased employee and three years after attaining the age of majority. Hon'ble Supreme Court in the cases of ***Umesh Kumar Nagpal Vs. State of Haryana and others*** with ***Anil Malik Vs. State of Haryana and others*** ***reported in (1994) 4 SCC 138*** has held that the employment cannot be granted after lapse of reasonable period which must be specified in the Rules, 1974 i.e. 5 years. Employment is not vested right which can be exercised at any time in future as the object is to enable the family to get over the financial crises which it faces at the time of death of the sole bread earner, the compassionate appointment cannot be demanded and offered whatever be the lapse of time and after the crisis is over.

12. As discussed above, the petitioner in Writ A No. 254 of 2024 has applied after twelve years from demise of his father and three years after attaining the age of majority. As per Rule 5 of the Rules, 1974 the relaxation could be given for a maximum period of five years from the date of death of the employee. Hence, the petitioner i.e. Amit Kumar Gautam is not entitled for compassionate appointment under the Rules, 1974.

13. As far as claim of Smt Malti Devi-wife of deceased employee is concerned, the only objection to the counsel for the respondent nos. 2 and 3 is that she was not qualified to be appointed on Class IV post at the time of death of her husband, but it may be noted that within a period of three years, she had passed the examination of Class V which is minimum required educational qualification and moved fresh application on 10.09.2012 for appointment i.e. within a period of three years from the date of demise of her husband though till date no decision has been taken on the same. It is noteworthy that as of now the impediment of educational qualification which was the

ground for rejection of her earlier representation is removed and no such impediment remains anymore.

14. At this stage, learned counsel for the petitioner has confined his prayer to the extent that a direction may be issued to the respondent no. 3-Secretary, Office of the Lok Ayukta, Uttar Pradesh, Lucknow to take a decision on the representation of the petitioner Malti Devi dated 10.09.2012 within a stipulated period as this Court may deem fit. It is also stated that the wife and son of the deceased employee are still facing financial hardship and it is difficult for them to meet both their ends.

15. Learned Counsel for the respondent nos. 2 and 3 has no objection to the prayer made by learned counsel for the petitioner.

16. On the request of learned counsel for the petitioner Malti Devi and without entering into the merit of the case, it is directed to the respondent no. 3 to consider and decide the representation of the petitioner Malti Devi in Writ A No. 4473 of 2010 in the light of the observations made in preceding paragraphs of this judgment, within a period two months from the date of certified copy of this order is served.

17. In view of the discussions made hereinabove, the Writ A No. 254 of 2024 is ***dismissed*** whereas Writ A No. 4473 of 2010 is finally ***disposed of***.

Order Date :- 23.2.2024

Ashish