

Court No. - 18

Case :- WRIT - A No. - 1201 of 2024

Petitioner :- Akash Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Police, Lucknow And Others

Counsel for Petitioner :- Deepak Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and Ms. Deepshikha, learned Chief Standing Counsel assisted by Mr. Sandeep Sharma, learned Standing Counsel for the opposite parties/respondents.

2. The present writ petition has been preferred for quashing of the impugned order dated 27.04.2022 passed by respondent no.1 and the impugned order dated 06.05.2022 passed by the Senior Superintendent of Police, Etah whereby the claim of the petitioner for compassionate appointment under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred as 'Rules of 1974') has been rejected.

3. Learned counsel for the petitioner has submitted that the father of the petitioner had expired on 23.10.2004 while he was working on the post of Constable (Civil Police). After the demise of the father of the petitioner, the mother of the petitioner i.e. Smt. Usha Yadav, wife of the deceased, had moved an application for compassionate appointment on 26.08.2006, which was rejected by the Senior Superintendent of Police, Etah by its order dated 12.05.2009.

4. It is further submitted that thereafter the petitioner, after

attaining the age of majority, had moved an application on 15.09.2016 for compassionate appointment but the authorities without considering the case of the petitioner regarding the hardship had rejected the application arbitrarily.

5. It is further submitted that the candidature of the petitioner for compassionate appointment has been rejected by the State Government by passing the impugned order dated 27.04.2022 and the consequential order has been passed by the Senior Superintendent of Police, Etah by impugned consequential order dated 06.05.2022 i.e. after more than about 5 years from the date of moving an application by the petitioner which is not permissible. Such a delay on the part of the respondents in taking decision, makes the decision bad in the eyes of law and in support of his submission the learned counsel for the petitioner has relied upon the judgment dated 20.05.2022 of the Hon'ble Apex Court in the case of ***Malaya Nanda Sethy Vs. State of Orissa and Others***, passed in ***Civil Appeal No.4103 of 2022***.

6. It is further submitted that the delay of more than 11 years cannot be a ground for rejection of the claim of the petitioner and in support of his submission learned counsel for the petitioner has relied upon the judgment of this Court in the case of ***Anit Kumar Yadav Vs. State of U.P. and Others, Service Single No.6439 of 2021***, where the application was preferred after more than 8 years of the demise of father of the petitioner in the said writ petition.

7. On the other hand, learned counsel for the State has submitted that the petitioner after attaining the age of majority on 02.07.2014 had applied after more than 2 years for compassionate appointment by moving an application on 15.09.2016.

8. It is further submitted that the impugned order dated 27.04.2022 has been passed in the light of the judgments of the Hon'ble Supreme Court hence there is no illegality in the impugned orders which are under challenge in the present writ petition.

9. After hearing the learned counsel for the parties and going through the record of the case and the judgments relied by the learned counsel for the parties, the position which emerges out in the present case is that earlier the mother of the petitioner had applied after 1 year 10 months and 3 days of the demise of her husband i.e. father of the petitioner. Her claim was rejected vide order dated 12.05.2009. The said rejection order was never challenged by the mother of the petitioner/ wife of the deceased.

10. The learned counsel for the petitioner has very fairly admitted this fact that the petitioner had attained the age of majority on 02.07.2014 i.e. after about 11 years of the demise of his father and moved the application after more than 2 years 2 months from the date of attaining majority as he was pursuing the intermediate course so he could apply against the post of Constable.

11. In totality, the representation made by the petitioner after the expiry of more than 11 years and 10 months from the date of demise of his father and Rule 5 of the Rules of 1974 empowers the State Government to relax the period of 5 years from the date of demise of the deceased employee.

12. The judgment in the case of ***Malaya Nanda Sethy (supra)*** relied by the learned counsel for the petitioner is not applicable on the facts of the present case as the said judgment is on the point that the rules which were existing at the time of the demise of the deceased employee would be applicable or by

subsequent amended Rules and it has been held by the Hon'ble Supreme Court that the candidature would be considered as per the rule which were in existence at the time of the demise of the deceased employee not the rules amended during the pendency of the application moved by any family member of the deceased employee. It is further held that the delay which was taken into consideration by the Hon'ble Apex Court in taking decision on the application of the petitioner is to be read with the issue i.e. applicability of the rules.

13. The judgment relied by the learned counsel for the petitioner dated 02.12.2021 passed in **Anit Kumar Yadav (supra)** is also not applicable in the present case. As in the case of **Anit Kumar Yadav (supra)**, after the demise of the father of Anit Kumar on 03.04.2008, he had left behind his widow, 2 minor sons and minor daughters, due to which the mother of the petitioner went into depression and was unable to apply for compassionate appointment.

14. The petitioner i.e. Mr. Anit Kumar after attaining the age of majority on 10.07.2016 had immediately moved an application on 22.07.2016 i.e. within 12 days after attaining majority whereas the petitioner of the present writ petition had waited for more than 2 years just to get the appointment on the post of his choice.

15. The judgment relied by the learned counsel for the State which has been mentioned in the impugned order in the case 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**, wherein the Hon'ble Supreme Court has held that the employment cannot be granted after lapse of reasonable period which must be specified in the rules and in the Rules of 1974 that period has been provided as 5 years.

16. The another judgment relied by the learned counsel for the State which has been mentioned in the impugned order in the case of *Sanjay Kumar Vs. State of Bihar and Others*, reported in *2000 SCC (L&S) 895*, wherein it has been held that the compassionate appointment is intended to enable the family of the deceased employee to tied over the sudden crisis. The petitioner was minor and was not eligible for appointment and there cannot be any reservation of vacancy till such as petitioner becomes a major after number of years, unless there are some specific provisions.

17. It has further been held by the Hon'ble Supreme Court that employment is not a vested right which can be exercised at any time in future as the object is to enable the family to get over the financial crisis 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. In the present case, the petitioner moved an application after more than 11 years and 10 months and more than 2 years after attaining the age of majority, meaning-hereby, he had unduly waited for a very long time. On attaining the age of majority the petitioner was eligible to be appointed on Class-IV post but he chose not to apply at the appropriate time and took more than 2 years thereafter to better qualify himself educationally to procure a job of his choice, which is not aim and purpose of Rules of 1974.

18. In view of the discussion made here-in-above, the present writ petition is devoid of merit and hence, no interference is required. Therefore, the writ petition is **dismissed**.

Order Date :- 19.2.2024

Mohd. Sharif