

Court No. - 18

Case :- WRIT - A No. - 1706 of 2024

Petitioner :- Prachi Tripathi

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

Counsel for Petitioner :- Romit Seth

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. The present writ petition has been preferred for quashing of the impugned order dated 27.01.2024 passed by respondent no.2 rejecting the claim of the petitioner for Compassionate Appointment under Dying in Harness Rules, 1974 on the sole ground that in pursuance of a compliant received there seems to exist a dispute with regard to survivorship between the legal heirs of Late Kala Prasad Tripathi and the succession certificate was not given by the petitioner and with a further prayer to direct the respondent nos.2 and 3 to take appropriate action and appoint petitioner for compassionate appointment under suitable employee.

2. The learned counsel for the petitioner has submitted that the father of the petitioner i.e. Late Kala Prasad Tripathi had expired during his service tenure while working on the post of Revenue Inspector. After the demise of the father, the petitioner had applied for compassionate appointment under Dying in Harness Rules being dependent unmarried daughter of Late Kala Prasad Tripathi alongwith affidavits of other family members i.e. her mother, one brother and two sisters.

3. It is further submitted that in the service book of Late Kala Prasad Tripathi, the names of the petitioner alongwith her other family members is entered under the column of description of family.

4. It is further submitted that the District Magistrate has to decide the claim of the petitioner as per Rule 7 of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 in place of rejecting the claim on the ground that the petitioner has not submitted the succession certificate which is not at all required as per the judgment dated 12.10.2020 passed by this Court in **Writ-A No.7454 of 2020, 'Shakeel Khan Vs. State of U.P. and 3 Others'**. For convenience, the judgment is quoted here-in-below:-

"Heard Sri Mohd. Saleem Khan, learned counsel for the petitioner and learned standing counsel.

The petitioner is aggrieved by the order dated 12.6.2020 passed by the District Magistrate, Bareilly declining to consider the case for grant of appointment on compassionate grounds in the absence of succession certificate. The impugned order dated 12.6.2020 directs the petitioner to obtain the succession certificate from the competent Court for his claim to be processed.

The petitioner is not assailing the second part of the order in so far as it requires production of succession certificate issued by the competent Court for disbursement of various terminal benefits.

Sri Mohd. Saleem Khan, learned counsel for the petitioner contends that the only ground for not considering the claim of the petitioner in absence of succession certificate is that there is a dispute between two family members of the deceased employee.

Learned standing counsel contends that there is dispute between the legal heirs of the deceased employee as the deceased had two wives. Thus the need arose for the succession certificate.

The impugned order dated 12.6.2020 records that there are two claimants for the grant of appointment on compassionate grounds. At this stage it is necessary to extract the relevant provision, which governs the rights for appointment on compassionate ground. The controversy is covered by Rule 7 of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, which reads as under:

"7. Procedure when more than one member of the family seeks employment.- If more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof."

The rule is self speaking and does not permit any ambiguity. The

competent authority is vested with the power in law to determine the person/ claimant, who is suitable for grant of appointment on compassionate ground keeping in view the overall welfare of the entire family, particularly the widow and minor members. Since the fact of both the claimants being members of the family of the deceased employee are admitted, District Magistrate has to take out proceedings under Rule 7 of Rules, 1974. In these facts, there is no requirement for a succession certificate. The purpose of giving appointment on compassion ground is to grant immediate relief to the family, who is facing financial pecuniary on account of death of employee. The appointment cannot be delayed.

The petitioner was born in wedlock with the first wife. Admittedly, the deceased had two wives. The children of the employee born in wedlock with the second wife, are also liable to be considered as members of same family under dying-in-harness on the same footing as the petitioner in view of law laid down by the Hon'ble Supreme Court in the case of Union of India vs. V.R. Tripathi reported in (2019) 14 SCC 646. The dispute is between the children of both the wives. The Hon'ble Supreme Court considered the rights of the children born in wedlock from the second marriage of the deceased employee, and held as under:

"16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law,

the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination."

The order dated 12.6.2020 passed by respondent no.2 is hereby quashed in so far as it directs the petitioner to obtain succession certificate for consideration of his claim for appointment on compassionate grounds.

In view of the above, the matter is remitted to the respondent no.2/ District Magistrate, Bareilly. A writ in the nature of mandamus is issued extracting the following direction:

1. The respondent no.2/District Magistrate, Bareilly shall decide the competing claims of both the claimants for appointment on compassionate grounds, by a reasoned order without insisting on the succession certificate.

2. The claims shall be decided within a period of three months.

3. The District Magistrate shall ensure that the person, who is given such employment, gives an assurance that he will take care of the entire family, including both the widows and minor members of the family.

The writ petition is partly allowed. "

5. It is further submitted that the alleged first wife i.e. Smt. Saraswati Devi had never made any claim for compassionate appointment under Dying in Harness Rules. She had claimed for pension of Late Kala Prasad Tripathi i.e. father of the petitioner after his demise.

6. It is further submitted that the case of the petitioner is squarely covered by the judgment in the case of **Shakeel Khan** (*supra*) and the petitioner is entitled for the benefit of this case.

7. On the other hand, learned counsel for the State has submitted that the impugned order which reveals that there are two wives of Late Kala Prasad Tripathi i.e. father of the petitioner and the first wife Smt. Saraswati Devi had raised the claim for entitlement of pension against the petitioner and his family members but unable to distinguish the judgment of this

Court in the case of **Shakeel Khan** (*supra*).

8. The case of **Shakeel Khan** (*supra*) is different on facts from the present case except that it is relevant for the purposes of the law laid down that no succession certificate is required for giving compassionate appointment.

9. In view of the above, the present writ petition is **allowed** and the impugned order dated 27.01.2024 is hereby quashed.

10. So far dispute regarding between Smt. Saraswati Devi and Smt. Asha Tripathi as wives of Late Kala Prasad Tripathi is concerned, it has no bearing on the present claim of the petitioner for compassionate appointment. It is a separate matter. The dispute about the payment of pension between rival claimants may be decided as per according to law and it is understood that a separate writ petition is pending in this Court.

11. The District Magistrate, Amethi i.e. respondent no.2 is directed that he shall decide the claim of the petitioner for appointment on compassionate grounds without insisting on the succession certificate, noting the fact that there is no rival claimant of the petitioner for compassionate appointment which is clear from the impugned order itself. The claim shall be decided within a period of two months from the date of certified copy of this order is served.

Order Date :- 4.3.2024

Mohd. Sharif