

**Court No. - 18**

**Case :-** WRIT - A No. - 20327 of 2017

**Petitioner :-** Km. Vindu

**Respondent :-** State Of U.P. Thru Secy.Deptt.Of Home Civil Sectt.Lko.And Ors.

**Counsel for Petitioner :-** Suresh Chandra Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Kumar,J.**

1. The present petition has been preferred by the petitioner for quashing the impugned order dated 25.05.2017 passed by respondent no.2 whereby application of the petitioner was rejected for appointment under U.P. Recruitment of Dependents of Government Servants Dying-In-Harness Rules, 1974 (hereinafter referred to as 'Rules, 1974').

2. Learned counsel for petitioner has submitted that father of the petitioner had expired on 11.02.2006 while in service. At that time, the petitioner was minor and had attained the age of 18 years in the year 2012. After attaining the age of 18 years, the petitioner immediately had made representation for considering her candidature for appointment on compassionate ground on 28.02.2012. The claim of the petitioner was rejected by the authority as it was made after six years instead of five years from the date of the death as prescribed under the Rules, 1974.

3. Against the said order the petitioner had approached this Court by filing writ petition no. 1659 (S/S) of 2015 which was allowed vide judgment and order dated 15.09.2016 with the direction to the authorities to consider and decide the application of the petitioner in light of the law laid down by Full Bench in the case of **Shiv Kumar Dubey vs. State of U.P. and others**, reported in **2014 (2) ADJ 312 (FB)**.

4. It is further submitted that in pursuance of the order dated 15.09.2016, the petitioner had made representation on 22.09.2016 which has been rejected by passing the impugned order 25.05.2017 in a most arbitrary and unreasonable manner.

5. It is further submitted that as per Full Bench decision in the case of Shiv Kumar Dubey (supra), the State Government is empowered to relax/condone the delay under Rule 5 of Rules, 1974 even if the application has been moved beyond five years

period prescribed under Rule 5.

6. It is further submitted that mother of the petitioner remarried immediately after death of her father, elder sisters were already married and after death of her grand mother, the petitioner is facing hardship living alone and managing all the affairs.

7. On the other hand learned Standing Counsel has drawn attention of this Court to the representation made by the petitioner on 22.09.2016 wherein she has not given single reason for approaching the authority with delay of one year and seventeen days. Hence, there is no illegality in the impugned order passed by the respondents and the writ petition is liable to be dismissed.

8. The claim of the petitioner for considering her candidature for appointment under Rules, 1974 has been rejected by the respondent-authority by the impugned order dated 25.05.2017 on frivolous grounds by giving finding in the impugned order if the family of the petitioner was in a great hardship after the demise of her father then two married elder sisters of the petitioner could have applied for appointment. Rule 2 (c) defines the dependents of the deceased and for convenience of the same is quoted hereinbelow:-

*"(c) 'family shall include the following relations of the deceased Government servant:*

*(i) wife of husband;*

*(ii) Sons/adopted sons;*

*(iii) Unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughter-in-law;*

*(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;*

*(v) aforementioned relations of such missing Government servant who has been declared as 'dead' by the competent court;*

*Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word 'family' shall also include the grandsons and the unmarried grand daughters of the deceased*

*Government servant dependent on him."*

9. From perusal of the Rule 2 (c) of the Rules 1974, it is clear that married daughters are not covered and they cannot apply.

10. Rule 2 (c) of Rules, 1974 has been amended in the year 2021 with prospective effect and the married daughters have been included but at the time of passing the impugned order dated 25.05.2017 married daughters were not come within the purview of Rule 2 (c) i.e. the definition of 'family'.

11. The claim of the petitioner has also been rejected on the ground that the petitioner is getting a yearly pension of Rs.93900/- which cannot be a ground for denying the claim of the petitioner as per law laid down in the case of Virendra Pal Singh vs. State of U.P. and others, decided on 11.09.2013 in Writ Petition No.1527 (S/S) of 2012.

12. The representation of the petitioner was firstly rejected by authorities on the ground that it was made after lapse of five years, so it was beyond the time as per the Rules. In this connection this Court by order dated 15.09.2016 had required the authorities to consider the question of relaxation in period in giving the representation as according to the Full Bench decision of this Court in the case of Shiv Kumar Dubey (supra), the government has power to give such relaxation.

13. The authority however, rejected the claim of the petitioner on new and different grounds as discussed in preceding paragraphs. The question of relaxation in filing the representation has not been adverted to by the concerned authority. The circumstance that the petitioner was minor when her father died in the year 2006 and attained majority i.e. 18 years of age in the year 2012, whereafter she had immediately made the representation. Such circumstance which is apparent on the face of it could not be totally ignored. Even if the fact as stated by learned State counsel that the petitioner had not mentioned any claim explaining the delay in her representation, it may be considered as mere slip on her part considering the fact that though she had attained majority but she was wholly inexperienced and not much matured to single handily handle this matter involving rules and regulations etc. there is none left in the family. In these circumstances it would better serve the ends of justice that the petitioner is given a chance to approach the concerned authority with yet an another representation explaining the reason of delay in filing the initial representation in the year 2012.

14. The order dated 25.05.2017 passed by the respondent no.2

has already discussed in earlier paragraphs is not sustainable and is liable to be set-aside.

15. Accordingly, the writ petition is **allowed** and the impugned order dated 25.05.2017 is hereby quashed. Liberty is given to the petitioner to approach the respondent no.1 by making a detailed representation giving reasons explaining the delay if any within a period of two weeks from today and the same shall be decided by the respondent no.2 within next six weeks sympathetically and as per law laid down by Full Bench in the case of *Shiv Kumar Dubey (supra)* as required by judgment dated 15.09.2016 passed in earlier Writ Petition No.1659 (S/S) of 2015 filed by the petitioner as well as the observations made in the present judgment.

**Order Date :- 4.1.2024**

Renu/-