

Court No. - 6

Case :- WRIT - A No. - 12602 of 2024

Petitioner :- Akhtar Ali

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Petitioner :- Maneesh Kumar Singh, Navita Sharma, Pradeep Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Maneesh Kumar Singh, learned counsel for the petitioner and the Standing counsel on behalf of the respondents.

2. Both the parties have been heard at length and accordingly the petition is being disposed of at the admission stage itself.

3. It has been submitted by learned counsel for the petitioner that father of the petitioner, namely, Asgar Ali was working on the post of Constable in U.P. Police who unfortunately died in a road accident on 15.3.1996. At the time of his death there were five members in family, namely, mother of the petitioner, two sisters and one brother. At the time of death of his father the petitioner was only two years' old as his date of birth is 5.6.1994. The petitioner on attaining the age of 18 years moved application on 24.9.2012 before Senior Superintendent of Police, Lucknow (now Commissioner of Police, Lucknow). the said application has been rejected by means of order dated 26.8.2017 by the State Government on the ground of delay of 12 years' and two months' from the date of filing the said application.

4. Learned counsel for the petitioner submits that without applying its due mind to the facts of the case the application of the petitioner has been rejected. He submits that Rule 5 of Uttar Pradesh Government Servants Dying in Harness Rules, 1974 provides for relaxation in limitation for consideration of the candidature of the petitioner for compassionate appointment and the respondents should have adequately considered the case of the petitioner, especially the fact that he was minor at the time of death of his father and immediately on attaining the age of majority he has moved application for compassionate appointment and accordingly though the delay of 12 years was caused but the said delay has not been looked into in peculiar facts and circumstances of the case. He submits that this aspect of the matter was duly considered by a Division Bench of this Court in the case of ***State of U.P. and others Vs. Vs. Virendra***

Pal Singh, passed in Special Appeal No.346 of 2021 reported in **2022 (4) LCD 2529** where in the said case the petitioner therein was also a minor at the time of death of his father and had moved the application for compassionate appointment on attaining majority. It is in aforesaid facts and circumstances that the Court in paragraph 13, 14 and 15 has observed as under while allowing the claim of the petitioner therein:-

13. 1974 Rules have been framed under Article 309 of the Constitution of India. The purpose, of course, is to provide the family of deceased employee instant support which may be needed on account of the fact that family in such a situation loses its bread earner. However, the Rules also require that the prayer/application seeking compassionate appointment on the death of an employee is to be made within 5 years. Rule 5 of 1974 Rules, as amended vide Notification dated 16.04.1993, empowers the State Government for condoning the delay. The purpose of empowering the State Government to relax the limitation of 5 years for making the application seeking compassionate appointment is that in an appropriate case where the family of the deceased has not been able to sail through the difficult times which occurred on account of death of the bread earner, the State Government can relax the limitation. There may be various exigencies and situations where the State Government may be justified to relax the Rules in a case where the application within 5 years of the death of employee is not made. One such a situation, in our considered opinion, may arise where the person claiming compassionate appointment is minor at the time of death of the bread earner of the family and he makes the application once he becomes major. It will be a situation where State Government ought to exercise its discretion for relaxing the Rules relating to requirement of making application within 5 years, of course taking into account other relevant factors as well.

14. So far as the facts of the present case are concerned, there is no denial of the fact that the date of birth of the respondent-petitioner is 01.07.1989 who became major only on 01.07.2007. At the time of death of his father, he was merely 6 years of age and once he became major he made application seeking compassionate appointment on 19.03.2008. The State authorities were not considering his prayer/application made for compassionate appointment which compelled him to institute Writ Petition No. 41862(SS) of 2010 after a period of more than 2 years from the date he had made the application. The said writ petition was finally disposed of on 21.07.2010 and the State Government was directed to consider the claim of the respondent-petitioner, however, his claim was rejected on 17.01.2012. The said order dated 17.01.2012 became the

subject matter of challenge in Writ Petition No.1527(SS) of 2012 filed by the respondent-petitioner which was allowed on 11.09.2013. The judgment and order dated 11.09.2013 passed by the learned Single Judge in the said writ petition was affirmed by a Division Bench of this Court, vide order dated 02.08.2014 in Special Appeal Defective No. 411 of 2014.

15. What we find in this case is that the appellants-State authorities themselves have taken much more time than required for considering the claim of the respondent-petitioner even after passing of the orders by this Court. Now the claim for compassionate appointment of the respondent-petitioner was denied by the State Government, vide order dated 06.08.2014 only on the reason that he made the application after 13 years from the date of death of his father. The reason for delayed application made by the respondent-petitioner can be understood by any person of common prudence. The respondent-petitioner at the time of death of his father was admittedly 6 years of age who became major only on 01.07.2007 and immediately after attaining the age of majority he made application on 19.03.2008. Thus, delay in making application, if any, can be attributed not to any negligence; rather to the minority of the respondent-petitioner."

5. Considering the present case and in light of the aforesaid judgment we find that the case of the petitioner is also on similar footing in as much as on 15.3.1996 which is the date of death of his father the petitioner was merely two years' old and in 2012 when he attained majority he had moved the application for appointment on compassionate grounds. Clearly, there was no delay in moving the said application as the same was moved immediately on attaining the age of majority and, hence, the delay, if any, was condoned in exercise of the powers under Rule 5 of the Rules of 1974.

6. In view of the above, we are of the considered opinion that the respondents have rejected the claim of the petitioner without adequately considering the case of the petitioner nor considered the fact that this aspect of the matter has already been considered by a the Division Bench of this Court.

7. In light of the above, the writ petition is **allowed**. Orders dated 26.8.2017 and 25.5.2015 are set aside.

8. The respondents are directed to consider the case of the petitioner for compassionate appointment under Dying in Rules, 1974 on merits considering the fact that the delay in moving the said application was condonable and the order rejecting the application has been wrongly passed.

9. The respondents are directed to pass necessary orders for appointment of the petitioner, expeditiously, say within a period of two months from the date a certified copy of this order is placed before the authority concerned.

(Alok Mathur, J.)

Order Date :- 20.12.2024
RKM.