

Neutral Citation No. - 2025:AHC:80954

Reserved on 13.05.2025

Delivered on 16.05.2025

Court No. - 6

Case :- WRIT - A No. - 54354 of 2017

Petitioner :- Mamnoon Ahmad

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Harindra Prasad, Jai Singh Yadav, Sarfaraz Ahmad

Counsel for Respondent :- C.S.C., Mohd. Naushad Siddiqui

Hon'ble Saurabh Shyam Shamshery, J.

1. Petitioner's father, an Assistant Teacher at Madarsa Faizanul Uloom, Bahadurganj, Ghazipur, died-in-harness on 11.05.2012. Petitioner filed an application dated 15.07.2012 for compassionate appointment, however, despite repeated reminders and representations when no decision was taken by concerned respondent, petitioner was constrained to approach this Court by way of filing Writ-A No. 12043 of 2014 which was disposed of vide order dated 25.02.2014 with a direction to consider the case of petitioner.

2. Petitioner has filed a fresh representation, however, it was rejected vide order dated 23.04.2014 by Chief Secretary, Department of Minority Welfare and Wakf on ground that at the relevant time there was no scheme or rules to grant compassionate appointment in Madarsa and State was seized with making new rules.

3. Aforesaid order was never challenged at the behest of petitioner. It is the case of petitioner that Uttar Pradesh Ashashkiya Arabi Aur Farsi Madarsa Manyata, Prashasan Aur Sewa Viniyamavali, 2016 (*hereinafter referred to as "Regulations, 2016"*) was enforced from 22.07.2016 and its Regulation 10(2) provides that dependant of an employee, who died-in-harness, can file application for compassionate appointment within five years from the date of death.

4. Sri Harindra Prasad, learned counsel for petitioner, submitted that petitioner filed a writ petition before this Court bearing No. 7048 of 2017

with a prayer that his claim for compassionate appointment be considered under aforesaid Regulations, 2016.

5. Said writ petition was disposed of vide order dated 14.02.2017 with a direction that claim of petitioner be considered in terms of aforesaid Regulations, 2016.

6. In pursuance of above order, a fresh representation was filed by petitioner, however, by means of impugned order dated 28.09.2017 it was rejected on ground that petitioner's claim for appointment on compassionate basis was already rejected vide order dated 23.04.2014 which remained unchallenged and since petitioner's father died-in-harness before Regulations, 2016 came into force, which has no retrospective effect, therefore, claim of petitioner cannot be considered in view of Regulations, 2016. Relevant part of impugned order is reproduced hereinafter:

"पक्षों को सुना गया। प्रमुख सचिव उ०प्र० शासन अल्पसंख्यक कल्याण एवं वक्फ अनुभाग-3 के कार्यालय ज्ञाप दि० 23 अप्रैल, 2014 तथा उ०प्र० शासन अल्पसंख्यक कल्याण एवं वक्फ अनुभाग-3 के शासनादेश जो सचिव श्री प्रकाश सिंह अल्पसंख्यक कल्याण एवं वक्फ की आज्ञा से सरकारी गजट उ०प्र० में 22 जुलाई 2016 का गजट हुआ, का अवलोकन किया गया। यह गजट उ०प्र० अशासकीय अरबी एवं फारसी मदरसा मान्यता प्रशासन एवं सेवा विनियमावली 2016 है।

इस नियमावली की धारा-1 की (उपधारा-2) में यह कहा गया है कि यह गजट में प्रकाशित होने के दिनांक से प्रवृत्त होगी। उ०प्र० शासन के कार्यालय ज्ञाप 23 अप्रैल, 2014 के अनुसार मृतक आश्रित के रूप में सेवा योजित किया जाना सम्भव नहीं पाया गया है। तदनुसार मा० उच्च न्यायालय के आदेश दि० 25.02.2014 एवं ममनून अहमद का प्रत्यावेदन दि० 11.03.2014 पहले ही निस्तारित हो चुका है जिसके अनुसार सम्बन्धित रजिस्ट्रार द्वारा शासन को प्रस्ताव दिये जाने से ही न तो मृतक आश्रित की नियमावली न तो स्वतः लागू होती है और न ही इससे किसी व्यक्ति को मृतक आश्रित का लाभ प्राप्त करने का अधिकार स्वतः प्राप्त होता है। जब तक सम्बन्धित प्रस्ताव के अनुसार शासन द्वारा नियमावली लागू न हो जाये तब तक मृतक आश्रित का अधिकार नहीं बनता है। चूंकि सरकार गजट उ०प्र० में दि० 22 जुलाई 2016 को मृतक आश्रित के सम्बन्ध में विनियमावली 2016 आस्तित्व में आ गयी है और यह गजट में उल्लिखित तिथि 22 जुलाई 2016 से प्रभावी है। इसलिए याची ममनून अहमद को मृतक आश्रित के रूप में नियोजित

नहीं किया जा सकता है। क्योंकि वर्ष 2016 की विनियमावली से पूर्व का यह केस है। मा० उच्च न्यायालय के आदेश दि० 14.02.2017 व आदेश दि० 17.08.2017 के समादर में प्रबन्धक मदरसा फैजानुलउलूम, बहादुरगंज, जिला-गाजीपुर से आख्या मांगी गयी जिसके क्रम में उन्होंने अपनी आख्या / निरस्तीकरण आदेश दिनांक 14.04.2017 प्रस्तुत किया।

चूंकि नियमावली प्राधिकारी प्रबन्धक/प्रबन्धकारिणी समिति होती है व नियमावली 22 जुलाई 2016, याची के प्रकरण में आक्षादित नहीं होगा (Retrospective effect) से लागू नहीं है क्योंकि इस नियमावली का नियम-1 की उपधारा-2 में स्पष्ट प्रावधान है कि नियमावली के लागू होने के दिनांक 22 जुलाई 2016 के उपरान्त मृतक आश्रित का लाभ देने की व्यवस्था है। इससे पूर्व भी प्रार्थी का प्रकरण शासन के आदेश दि० 23 अप्रैल 2014 द्वारा निरस्त किया जा चुका है।

अतः प्रार्थी का प्रत्यावेदन पोषणीय व नियमावली के अनुरूप न होने के कारण प्रार्थना पत्र दिनांक 20.02.2017 निरस्त व निस्तारित किया जाता है।"

7. Learned counsel for petitioner submitted that petitioner's father died-in-harness on 11.05.2012 and according to above referred provision of Regulations, 2016, a dependant can file application for compassionate appointment within five years, i.e., in the present case till 11.05.2017. Therefore, as soon as Regulations, 2016 came into force w.e.f. 22.07.2016 petitioner immediately filed a representation dated 11.01.2017, i.e., within five years of death of his father. However, when it was not considered, petitioner has approached this Court by way of filing Writ-A No. 7048 of 2017 wherein a direction was passed to consider the case of petitioner. Therefore, claim of petitioner cannot be non-suited.

8. Learned counsel for petitioner further submitted that the controversy with regard to retrospective effect of Regulations, 2016 was considered by a Coordinate Bench of this Court at Lucknow in **Mohd. Ayza Ahmad vs. State of U.P. and others, 2018(4) ADJ 243** wherein it was held that a person whose parents expired within a period of five years can apply under Regulation 10 of Regulations, 2016, despite such a death might have happened before 22.07.2016. Learned counsel submitted that petitioner's case can still be considered despite his father died-in-harness about 15 years ago as petitioner

was always agitating his right before concerned respondents and has also approached this Court on earlier two occasions.

9. Learned Standing Counsel appearing for State-Respondents and Sri Mohd. Naushad Siddiqui, Advocate appearing for Respondent-4, have not disputed the above referred position of law as held in **Mohd. Ayza Ahmad (supra)**. However, they submitted that after such a long time the object of compassionate appointment does not survive. They referred para 6 of counter affidavit that petitioner and his family are not in financial crisis. For reference para 6 of counter affidavit is reproduced hereinafter:

“6. That the contents of paragraph No. 5 of the writ petition being matter of record, need no comment, it is further submitted that the mother of petitioner got due amount of petitioner’s father and also receiving family pension and petitioner is living with her mother in a joint family and his elder brother Akramullah is doing job in Saudi Arabia another brother Nurullah having business in Bhadurganj and petitioner having well furnished house in which A.C. and other equipments are installed and in the one portion of house two power-loom has run by petitioner and one brother, so from these means at-least more than 1,30,000/- per month income of petitioner joint family.”

10. Learned counsel for respondents further submitted that since claim of petitioner was already rejected vide order dated 23.04.2014, it cannot be renewed only on basis of subsequent enactment of Regulations, 2016.

11. In rejoinder, learned counsel for petitioner submitted that aforesaid facts are disputed though by referring para 4 of rejoinder affidavit he fairly submitted that so far as claim that petitioner and his family are not under financial constraint, it has not been specifically denied. For reference para 4 of rejoinder affidavit is reproduced hereinafter:

“4- That in reply to the contents of paragraph no. 5,6,7,8,9,10,11,12,13,14 and 15 of the counter affidavit it is stated by the deponent that the petitioner is fully entitled for appointment under dying-in-harness rules because the father of the petitioner has died during his service period. It is further important to state here that the present controversy is squarely covered by the judgment and order dated 29.01.2018 passed by Hon’ble Lucknow Bench of this

Hon'ble Court rendered in Civil Misc. Writ Petition (S/S) No. 1227 of 2018, Mohd. Ayza Ahmad Vs. State of U.P. and others as such the petitioner is also entitled for the similar relief because the death of father of the petitioner took place within 5 years prior to coming into force of "Uttar Pradesh Ashashkiya Arabi Aur Farashi Madarsa Manyata, Prashashan Aur Sewa Viniyamavali, 2016" by notification dated 22.07.2016. The date of death of the father of the petitioner is 11.05.2012 which happen within 5 years from the commencement of the said rules.

The photocopy of the judgment and order dated 29.01.2018 passed by Hon'ble Lucknow Bench of this Hon'ble Court in Civil Misc. Writ Petition (S/S)No. 1227 of 2018 is being filed herewith as ANNEXURE NO. R.A.-1 to this affidavit."

12. I have heard learned counsel for parties and perused the material available on record.

13. In the present case, petitioner was active towards his right for consideration of his application for compassionate appointment and not only he has repeatedly approached the concerned respondents but has approached this Court earlier also. At one stage petitioner was satisfied when his application was rejected by concerned respondent on 23.04.2014, however, when Regulations, 2016 came into force and petitioner finds that Regulation 10 of aforesaid Regulations provides that a claim can be considered under the said regulations, if any application is filed within five years from the death of employee concerned, he immediately approached the concerned respondent and when it was not decided, he approached this Court, however, his claim was rejected by concerned respondent by way of impugned order dated 28.09.2017 on two grounds, firstly that his claim was already rejected vide order dated 23.04.2014 and secondly Regulations, 2016 have no retrospective effect.

14. So far as issue of retrospective effect is concerned, petitioner has a good case since Coordinate Bench of this Court at Lucknow in **Mohd. Ayza Ahmad (supra)** has dealt with the issue and held that if death occurs within five years before Regulations, 2016 came into force, the claim for compassionate appointment can be considered.

15. So far as finality of rejection of claim in terms of order dated 23.04.2014 is concerned, since subsequently Regulations, 2016 came into force and in case petitioner's case falls within the four corners of said Regulations, it is a new cause of action and order dated 23.04.2014 cannot be considered as a bar of res judicata.

16. In aforesaid circumstances, the Court is of the view that both grounds mentioned in impugned order do not survive. However, so far as the last submission of learned counsel for respondents that since petitioner's father died-in-harness about 15 years ago, the object of compassionate appointment to tide over the immediate financial crisis may not be available, is concerned, the Court takes note of a recent judgment passed by Supreme Court in **Canara Bank vs. Ajithkumar G.K.** 2025 INSC 184 wherein the issue of delay especially when litigation was before the Court of Law and its effect on consideration of application for compassionate appointment, was considered and relevant paragraphs of judgment are reproduced hereinafter:

"25. The first sub-issue is in relation to the lapse of time since the respondent's father passed away. It has been in excess of two decades. It does not require anyone to put on a magnifying glass here to assess the time that has been taken for the application of the respondent for compassionate appointment to be finally decided. The parties have reached the third tier in the second round. One of the foremost factors for appointment on compassionate ground is that the same should be offered at the earliest. Unless appointment is made soon after the need to mitigate hardship arises, tiding over the immediate financial crisis owing to (i) sudden premature and untimely death of the deceased employee or (ii) medical incapacitation resulting in the employee's unfitness to continue in service, - for which benevolence is shown by offering an appointment - may not exist and thereby the very object of such appointment could stand frustrated.

26. More often than not, spurned claims for compassionate appointment reach the high courts or even this Court after consuming substantial time. The ordinary rule of litigation is that right to relief should be decided by reference to the date on which the suitor entered the portals of the court. The relief that the suitor is entitled in law could still be denied in equity on account of subsequent and intervening events, i.e., events between the date of

commencement of the litigation and the date of the decision; however, law is well-settled that such relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum for no fault of the suitor [see : Beg Raj Singh v. State of U.P.50]. It would, therefore, not be prudent or wise to reject a claim only because of the time taken by the court(s) to decide the issue before it.

27. Lapse of time could, however, be a major factor for denying compassionate appointment where the claim is lodged belatedly. A presumption is legitimately drawn in cases of claims lodged belatedly that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. However, what would be a reasonable time would largely depend on the policy/scheme for compassionate appointment under consideration. If any time limit has been prescribed for making an application and the claimant applies within such period, lapse of time cannot be assigned as a ground for rejection.”

17. In aforesaid circumstances, since petitioner was before this Court earlier also, therefore, delay cannot be a sole ground to rejected his claim. However the issue, whether petitioner and his family are presently in financial crisis or not, can still be looked into by the concerned respondent.

18. In view of above, impugned order dated 28.09.2017 is hereby set aside and matter is remitted to concerned authority with a direction to reconsider the case of petitioner for compassionate appointment in the light of observations made hereinabove.

19. The writ petition is accordingly disposed of.

Order Date :- 16.05.2025

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