

A.F.R.

Court No. - 4

Case :- WRIT - A No. - 66366 of 2011

Petitioner :- Rahul Kumar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Kshetresh Chandra Shukla, Rakesh Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Rakesh Kumar Mishra, learned counsel appearing for the petitioner and learned Standing Counsel appearing for the State respondents.
2. Petitioner before this Court is aggrieved by the decision taken by the State Government denying him compassionate appointment on the ground that since father of the petitioner had died in the year 1991 it was open for the wife of the deceased to have moved an application well within time and she having not done so, his son moved an application in the year 2008 only and hence such an application became a time barred application for being beyond the period of 5 years of the cause of action.
3. Thus, State Government refused to exercise its discretion under proviso of Rule 5(i) of The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, to grant exemption/ relaxation to the petitioner for the purposes of compassionate appointment.
4. Briefly stated facts of the case are that father of the petitioner late Shishupal Singh met an accidental death in a road accident on 21st November, 1991 and was survived by his wife Smt. Grisha

Devi, daughter Chitra Tomar, Ruchi Sisodia, Sapna and minor son Rahul Kumar. Smt. Grisha Devi immediately moved application on 8th October, 1992 seeking compassionate appointment and when no action was taken upon the same, she again made other application on 12th October, 1993 followed by the reminder letters dated 14th April, 1998, 14th February, 2002 and 19th April, 2006. Pleadings to this effect have been taken in paragraphs 6 & 7 of the writ petition.

5. In the meanwhile, since petitioner became major in the year 2008, he himself moved application seeking compassionate appointment on 15th September, 2008. Since the application made by the petitioner seeking compassionate appointment in the year 2008 was beyond a period of 5 years, so the matter was referred to the State Government vide covering letter dated 24th March, 2011 by Superintendent of Police, Establishment, U.P. Police Headquarter, Lucknow. This letter has been brought on record as Annexure -5 to the writ petition. However, the State Government refused to exercise its discretion in favour of the petitioner under proviso of Rule 5(i) of Rules terming the application beyond the period of 17 years and that too have been moved for the first time.

6. The ground for refusal under the order impugned by the State Government is that while father of the petitioner had died in the year 1991, wife of the deceased ought to have applied for compassionate appointment and she having failed to do so, no relaxation could be offered to the petitioner.

7. Assailing the aforesaid order it is argued by learned counsel for the petitioner that findings returned for rejecting the application by the State Government under the order impugned are absolutely perverse, inasmuch as pleadings raised in paragraphs 6, 7 & 8 of the writ petition having not been denied, the order has rendered

unsustainable. Paragraphs 6, 7 & 8 of the writ petition are reproduced hereunder:

“6. That after the death of Late Shishupal Singh, petitioner's mother namely Smt. Grisha Devi moved an application dated 8.10.1992 for providing employment on compassionate basis. The said application was duly receive by the office of respondent no.3 on same day. A true copy of application dated 8.10.1992 is being annexed herewith and marked as Annexure-2 to this writ petition.

7. That when nothing was done by the respondent no.3 on the application dated 8.10.1992 then she again submitted an application on 12.10.1993 followed by reminders dated 14.4.1998, 14.2.2002 and 19.4.2006 but no action was taken by the respondent no.3 on the said applications. True copies of applications dated 12.10.1993, 14.4.1998, 14.2.2002 and 19.4.2006 given by petitioner's mother before the concerned authorities are being collectively annexed herewith and marked as Annexure-3 to this writ petition.

8. That in the meantime, the petitioner became major, therefore, his mother allowed to him for submitting application for employment on compassionate basis on her place. Accordingly, the petitioner submitted an application dated 15.9.2008 before the respondent no.3 for providing employment on compassionate basis as per his qualification. A true copy of application dated 15.9.2008 given by petitioner before the respondent no.3 is being annexed herewith and marked as Annexure-4 to this writ petition.”

8. Upon perusal of the pleadings so raised it becomes explicit that wife of the deceased Smt. Grisha Devi had moved application seeking compassionate appointment on 8th October, 1992 itself and then in the year 1993 and she continued to make reminders in the year 1998, 2002 and 2006. When nothing happened, petitioner upon becoming major himself moved application on 15th September, 2008 which upon completion of formalities by the department stood forwarded to the State Government for the purposes of relaxation in the time limit prescribed under the rules. In the counter affidavit paragraphs 6, 7 & 8 of the writ petition have not been denied. Paragraph 7 of the counter affidavit is reproduced hereunder:

“7. That in reply to the contents of paragraphs 3 to 9 of the writ petition it is submitted that father of the petitioner Sri Shishupal Singh was died on 21.11.1991 on the post of Police Constable. At the time of death of Shishupal Singh, the petitioner was only 3 years old. However, after obtaining the age of majority the petitioner moved application claiming appointment under Dying-in-Harness Rules after expiry of the 17 years. Therefore, the matter has been referred to the State Government by the competent authority for appropriate decision.”

9. From the perusal of the aforesaid reply given in the counter affidavit sworn by Sanjay Kumar, presently posted as Deputy Superintendent of Police/ Circle Officer, Sadar, District - Shahjahanpur on behalf of the respondents including the State, it becomes clear that State has clearly ignored the *factum* of the application moved by wife of the deceased employee and mother of the petitioner in the year 1992 itself. The counter affidavit is absolutely silent as to why mother of the petitioner was not offered compassionate appointment when applications moved by her, were pending consideration. Thus, it is clear that it is for the casual approach and the negligence shown at the end of the respondents that the dependents of the deceased were not offered compassionate appointment well within time.

10. In the case of **Malaya Nanda Sethy v. State of Orissa and others, 2022 SCC OnLine SC 684** Supreme Court has very clearly held that considering the immediacy of the compassionate appointment to be offered to the family, that has suddenly landed in financial crisis, the application seeking compassionate appointment should not be kept pending consideration for a long time as delay defeats the very object for which the rules of compassionate appointment have been framed. Vide paragraphs 16, 17 & 18 of *Malaya Nanda Sethy (supra)* the Supreme Court held thus:

“16. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on

compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

17. We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

18. If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

11. The proviso 2 of Rule 5 of Rules, 1974 vests power with the State Government to take an objective consideration of the application moved beyond the period of five years to exercise its discretion. Rule 5 of the Rules, 1974 is reproduced hereunder:

“5. Recruitment of a member of the family of the deceased. (1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules, if such person

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.”

(Emphasis added)

12. Now for testing the order impugned upon the above provisions, it is necessary to reproduce the order impugned dated 28th July, 2011 itself. The said order runs as under:

"संख्या:947/6-पु०-10-11-1200(88)/2011

प्रेषक,

आर०पी० मिश्र,
विशेष सचिव,
उ०प्र० शासन

सेवा में,

पुलिस उपमहानिरीक्षक, स्थापना,
उ०प्र० पुलिस मुख्यालय,
इलाहाबाद।

गृह (पुलिस) अनुभाग-10

लखनऊ- दिनांक 28 जुलाई,

2011

विषय:- जनपद शाहजहाँपुर के स्व० कान्स० शिशुपाल सिंह के आश्रित पुत्र श्री राहुल कुमार को मृतक आश्रित के रूप में सेवायोजन प्रदान किये जाने हेतु समय सीमा में छूट प्रदान किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या : 18/ए-3(251)-2010, दिनांक 24 मार्च, 2011 के संदर्भ में मुझे यह कहने का निर्देश हुआ है कि पुलिस मुख्यालय की सूचनानुसार स्व० कान्स० शिशुपाल सिंह की डियूटी में मार्ग दुर्घटना के कारण दिनांक 21.11.1991 को मृत्यु हो गयी थी। मृतक आश्रित पुत्र श्री राहुल कुमार द्वारा मृतक आश्रित के रूप में सेवायोजन हेतु प्रथम बार प्रार्थनापत्र दिनांक 15.09.2008 को लगभग 17 वर्ष बाद दिया गया जो नियमानुसार कालबाधित है। मृतक की पत्नी द्वारा समय से सेवायोजन हेतु प्रार्थनापत्र प्रस्तुत नहीं किया गया।

2. इस नियमावली के अन्तर्गत मृतक के परिवार के किसी एक अर्ह सदस्य को तत्काल सेवायोजन प्रदान कर मृतक के परिवार को आसन्न आर्थिक संकट से बचाने की भावना निहित है। इस नियमावली का यह उद्देश्य कदापि नहीं है कि सेवायोजन के अधिकार को लम्बे समय तक सुरक्षित रखकर स्वेच्छा एवं सुविधानुसार सेवायोजन प्राप्त किया जाय। मृतक की पत्नी आर्थिक कठिनाईयों के दृष्टिगत सेवायोजन का ससमय प्रयास कर सकती थीं किन्तु उनके द्वारा ऐसा नहीं किया गया तथा पुत्र के बालिग होने की प्रतीक्षा की गयी और तब तक नियमों में अनुमत पांच वर्ष की समय-सीमा व्यतीत हो चुकी थी।

3. उपरोक्त परिस्थितियों के आधार पर श्री राहुल कुमार को मृतक आश्रित के रूप में सेवायोजन हेतु आवेदन करने के लिए समय-सीमा में छूट प्रदान करने का औचित्य नहीं है।

कृप्या नियमावली की व्यवस्था का उल्लेख करते हुए तदनुसार प्रार्थी को विलम्बतम 15 दिनों में पृथक से सूचित करने का कष्ट करें।

भवदीय
ह०अ०
(आर०पी० मिश्र)
विशेष सचिव ।"

(Emphasis added)

13. Upon going through the recitals contained in the order, I find that sole consideration for rejecting the application has been that wife of the deceased ought to have moved application within time and she having failed to do so, the application moved by the son of the deceased after 17 years for compassionate appointment could not be granted. The reason assigned in the order, therefore, I find to be absolutely contrary to the averments made in paragraph 6 & 7 of the writ petition which have not been denied in the counter affidavit.

14. Since discretion has been refused by the State Government to grant relaxation in the matter of compassionate appointment to the petitioner for he having moved application in the year 2008 for the first time even though his father had died in the year 1991, this could not have been a justified reason to reject the application as the petitioner's mother Smt. Grisha Devi had been pursuing her claim for compassionate appointment since 8th October, 1992 soon-after the death of her husband on 21st November, 1991.

15. It is true that more than 30 years have passed since the death of bread earner of the family but it is a case that has remained pending since 2011 and the delay in disposal of the matter by the high court, cannot be itself a ground to deny the relief when court has find out order passed by the State Government on 28th July, 2011 was bad in 2011 itself. Still further, the family of deceased

suffered only for casual approach by the concerned respondent in not considering application moved by wife of deceased in 1992 despite repeated reminders. It is indeed a hard case that despite statutory rules framed, family of deceased employee was made to suffer for long three decades for no fault on their part.

16. In my considered view, wherever rules provide for State Government or authority to exercise discretion in a matter of beneficial legislation the Government must first take up the matter with a positive frame of mind and should examine papers placed objectively. The Rule of discretion with a subjective satisfaction cannot be divorced from objective consideration of the materials placed, keeping the laudable object behind the beneficial legislation. All this I find to be lacking in the exercise of power by the State Government under the order impugned.

17. In the circumstances, therefore, I find merit in the submissions of learned counsel for the petitioner that the order has rendered bad for perverse findings of fact and the order passed by the State Government impugned in this petition deserves to be quashed.

18. Thus, writ petition succeeds and is allowed and the order dated 28th July, 2011 is hereby quashed.

19. The State Government is directed to exercise due discretion in favour of the petitioner to offer him compassionate appointment granting requisite relaxation exercising its power under proviso to Rule 5 of Rules, 1974.

20. Appropriate order shall be passed by the State Government within a period of one month from the date of production of certified copy of this order.

Order Date :- 7.8.2025

Atmesh