

Court No. - 4

AFR'

Case :- WRIT - A No. - 15804 of 2024

Petitioner :- Smt. Puja Yadav @ Pooja Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Om Prakash Yadava, Suresh Chandra Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri Pankaj Kushwaha, learned Advocate holding brief of Sri S.C.Kushwaha, learned counsel for the petitioner and learned Additional Chief Standing Counsel.

Petitioner before this Court is aggrieved by decision taken by the Secretary, Madhyamik Shiksha Parishad/ respondent no. 2 dated 25th July, 2024 rejecting application of the petitioner for compassionate appointment only on the ground that after sixteen years of death of deceased employee, compassionate appointment cannot be offered as the emergent situation and financial crisis that had arisen on the death of employee no more existed due to lapse of time.

Submission advanced by learned counsel for the petitioner is that petitioner was not responsible for any delay in the matter of claim to be set up for compassionate appointment as she pursued the matter and when no progress took place, she approached this Court by filing a writ petition being Writ A No. 59286 of 2016, which came to be dismissed vide order dated 23rd December, 2016 holding that dependency of applicant upon deceased employee could not be established for the reason petitioner was a married women.

Upon appeal being preferred vide Special Appeal No. 61 of 2017 against the judgment of learned Single Judge, the Court directed for disposal of pending application if the petitioner filed a fresh before Deputy Director of Education, Prayagraj, Region Prayagraj, the authority shall be passing order in accordance with

law after considering all the aspects of the case within three months. The operative portion of the order of the division bench dated 14th February, 2023 is reproduced hereunder:

"Hon'ble Pritinker Diwaker, Acting Chief Justice

Hon'ble Saumitra Dayal Singh, J.

Sri S.C. Kushwaha, counsel for the appellant and learned Standing Counsel for the State.

The appellant, Smt. Puja Yadav, is a married daughter of late Ranjit Yadav, who died in harness on 01.01.2008. From the pleadings, it appears that when the appellant was not given compassionate appointment, she made representation to the competent authority but nothing was done and ultimately, she was compelled to file writ petition before this Court. In the writ court, no counter was filed by the State. However, vide impugned judgement dated 23.12.2016, the writ petition was dismissed on the ground that the appellant is a married daughter and does not fall in any of the category as provided by the Government in its notification.

In this appeal, the order of learned Single Judge has been challenged on the ground that even married daughters are entitled to compassionate appointment.

Counsel for the State fairly submits that till date the case of the appellant has not been considered on merits and the same would be considered if the appellant files appropriate application within three weeks from today.

In view of the fair statement made by State counsel, without further entering into the merits of the case, the appeal is disposed off directing the appellant to file fresh application before the Deputy Director of Education, Prayagraj Region, Prayagraj and the said authority shall pass appropriate orders in accordance with law after considering all the aspects of the case as expeditiously as possible preferably within a period of three months.

It is made clear that this Court has observed nothing on the merits of the case and the competent authority is at liberty to pass order in accordance with law. "

The said order came to be corrected and though permitted the petitioner to make fresh compliance within a period of two weeks. The order of this Court dated 13.3.2024 is reproduced hereunder:

"Hon'ble Saumitra Dayal Singh, J.

Hon'ble Surendra Singh-I, J.

Re: C.M. Application (Correction) No. 7 of 2023

1. In view of the facts stated in affidavit in support of the Correction Application including the communication dated 8.8.2023 issued by Deputy Director of Education (Intermediate), Prayagraj Mandal, Prayagraj, let the description of the authority - "Deputy Director of Education, Prayagraj Region, Prayagraj" appearing in third line of the fifth paragraph of the order dated 14.2.2023 is treated to be deleted and replaced with Secretary, Board of High School and Intermediate, Uttar Pradesh, Prayagraj.

2. Correction application stands allowed.

3. In view of the correction made today, petitioner may make fresh compliance of the order dated 14.2.2023 within a period of two weeks

from today. Subject to such compliance made by the petitioner, the order dated 14.2.2023 may be complied with by the said authority. "

Now respondents passed the order this time holding that the application for compassionate appointment could not be granted after 16 years of the date of death of deceased employee.

Learned Additional Chief Standing Counsel sought to defend the order on the ground that petitioner's dependency was to be determined in the light of fact that she was already married on the date of death of the employee and in the event married daughter was unmarried on the date of death of the employee, the claim was not liable to be considered at *par* with other dependents of the family. Learned Standing Counsel has further submitted that amendment in the Dying in Harness Rules, 1974 having been brought in the year 2021, the same would not be applicable retrospectively and hence petitioner's claim was rightly rejected.

In support of above submission, learned Chief Standing Counsel has relied upon the judgment in the case of **Udham Singh Nagar District Cooperative Bank Ltd. & Another v. Anjula Singh Others, 2019 0 Supreme (UK) 153** and has relied upon paragraph 65 of the judgment, which is reproduced hereunder:

"65. Any person, who is a part of the "family" of the deceased Government servant, would also be included within the said definition. Consequently, a "married daughter" would also fall within the definition of a "family" both in Rule 2(c) of the 1974 Rules, and under the note below Regulation 104 of the 1975 Regulations. Needless to state that the members of the "family" of the deceased Government servant in Clauses (i) to (iii) of Rule 2(c) of the 1974 Rules, and the note below Regulation 104 of the 1975 Regulations, which would include a "married daughter", would be entitled to be considered for compassionate appointment only if they were dependent on the Government servant at the time of his death, and satisfy all the other conditions stipulated in the 1974 Rules and the 1975 Regulations."

Learned Additional Chief Standing Counsel has further relied upon the judgment in the case of Secretary to **Government Department of Education (Primary) & Others v. Beemesh @ Bheemappa, 2022 AIR (SC) 402** and has relied upon paragraph 19 of the judgment which is reproduced hereunder:

"19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two

dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor. "

Learned Additional Chief Standing Counsel has also relied upon the judgment in the case of State of **Madhya Pradesh and Others v. Ashish Awasthi being Civil Appeal No. 6903 of 2021 decided on 18th November, 2021**. He has placed reliance upon paragraph 4 of the judgment, which runs as under:

"4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3- 12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy. "

Having heard learned counsel for the respective parties and having perused the records, in order to appreciate the legal principles argued before me by learned counsel for the respective parties, it is necessary to go into the reasons assigned in order impugned first: operative portion of the impugned order, in which five reasons have come to be assigned are reproduced hereunder:

“उक्त वर्णित स्थिति के आलोक में माननीय उच्च न्यायालय, इलाहाबाद के विशेष अपील संख्या-61/2017 में पारित निर्णय दिनांक 14.02.2023 यथा संशोधित 13.02.2024 के अनुपालन में प्रकरण का अभिलेखीय परीक्षण किया गया जिसमें निम्नवत स्थिति पायी गयी:-

1. याची श्रीमती पूजा यादव के पिता स्व० रणजीत सिंह माध्यमिक शिक्षा परिषद्, उत्तर प्रदेश के मुख्य कार्यालय, प्रयागराज में वरिष्ठ सहायक के पद पर कार्यरत थे जिनका सेवाकाल में आकस्मिक निधन दिनांक 01.01.2008 को हुआ था।
2. स्व० रणजीत सिंह, वरिष्ठ सहायक के निधन के उपरान्त उनके आश्रितों द्वारा उत्तर प्रदेश शासन की अधिसूचना संख्या:- 6/12/1973 नियुक्ति-4 दिनांक 07.10.1974 द्वारा प्रख्यापित "उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती नियमावली-1974" यथा अद्यतन संशोधित के अधीन अनुकम्पा नियुक्ति प्रदान किये जाने के आशय से समयान्तर्गत प्रार्थना पत्र प्रस्तुत नहीं किया गया।
3. वर्ष 2008 में विवाहित पुत्रियों को मृतक आश्रित के अन्तर्गत अनुकम्पा नियुक्ति प्रदान किये जाने का कोई प्राविधान संगत नियमावलियों में नहीं था, अपितु उत्तर प्रदेश शासन द्वारा निर्गत अधिसूचना संख्या:-6/12/73-का-2/2021 टी० सी० IV दिनांक 12 नवम्बर, 2021 में विवाहित पुत्रियों को मृतक सरकारी कर्मचारी के कुटुम्ब के अन्तर्गत माना गया है। उक्त नियमावली निर्गमन की तिथि 12 नवम्बर, 2021 से प्रभावी है न कि पूर्ववर्ती तिथि से प्रभावी है।
4. उत्तर प्रदेश शासन की अधिसूचना संख्या:-6/12/1973/ नियुक्ति-4 दिनांक 07.10.1974 द्वारा प्रख्यापित "उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती नियमावली- 1974" में मृत कर्मचारी के परिवार को तात्कालिक राहत देने के आशय से अनुकम्पा नियुक्ति दिये जाने के प्राविधान है।

5. याची श्रीमती पूजा यादव द्वारा अपने पिता स्व० रणजीत सिंह के दिनांक 01.01.2008 को निधन होने के लगभग 16 वर्षों के उपरान्त अनुकम्पा नियुक्ति प्रदान किये जाने हेतु प्रार्थना पत्र प्रस्तुत किया गया है।

सूच्य है कि मृतक आश्रित सेवायोजन की व्यवस्था मृतक कार्मिक की मृत्यु के बाद, परिवार पर अचानक उत्पन्न आर्थिक संकट को दूर करने हेतु की गयी है, ताकि वे अपनी बुनियादी आवश्यकता की पूर्ति कर सकें तथा सामाजिक सम्मान व सुरक्षा बनी रही। प्रस्तुत प्रकरण में 16 वर्ष बाद दिये गये आवेदन केवल रोजगार पाने के उद्देश्य से दिया गया प्रतीत होता है जो औचित्यपूर्ण नहीं है।”

From a bare reading of the aforesaid quoted part of the impugned order, I find that first reason for rejecting application assigned is that the provision to include married daughter within the definition of family was not available in the year order 2008 and since it has been brought by way of amendment on 12th November, 2021, it cannot be given retrospect effect.

The second reason assigned is that Dying-in-Harness Rules have been framed to offer appointment to the dependents of the deceased to immediately provide succour to the family, which was not case of the petitioner which petitioner.

The third reason assigned is that petitioner moved an application for compassionate appointment after sixteen years and hence application deserved to be rejected.

Now two points arise for consideration of this Court:

(a). whether petitioner's application seeking compassionate appointment deserved to be rejected as time bared under 1974 Rules and whether petitioner herself to be blamed for such delayed application for compassionate appointment; and

(b). whether amendments made in the definition of family vide notification dated 12th November, 2021 under 1974 Rules would invalidate claim of such applicants who had already moved application prayer to said notification made by the State Government on the principle of prospective operation of law.

In so far as first point is concerned, I find that petitioner had already moved an application seeking compassionate appointment and the said application was not considered and matter continued to be lingered on and hence she was forced to file writ petition being Writ A No. 52986 of 2016. The Court in that case refused to grant writ of mandamus on the ground that petitioner was not able to establish dependency and reason assigned was that she was married daughter and married daughters normally move out of their house of the parents, and therefore, they cannot be taken to have remained dependent financially upon the parents. The Court held that maintenance of wife rests upon her husband. The said judgment stood superseded by the judgment of division bench, which I have quoted hereinabove and in which petitioner was directed to move application afresh and authority was directed to consider the same. Thus there arose no point to hold that petitioner moved an application belatedly in the year 2016 to dis-entitled her for claim of compassionate appointment. Whatever application petitioner had previously moved remained undisposed of and since division bench ordered petitioner to move application afresh in 2016, petitioner came to move the said application in 2016 and hence respondents were not justified in rejecting her claim on the ground that she could move application for compassionate appointment in the year 2016 only whereas earning member of the family had died in the year 2008. Petitioner's application, therefore, was liable to be considered on merits instead of rejecting the same on the point of delay.

In so far as dependency part is concerned, I find that in the impugned order, there is no discussion as to what led that authority to arrive at a conclusion that financial need for survival did not exist any more. The findings returned to the effect that an application after sixteen years would mean that there was no need for the family to offer compassionate appointment is absolutely based on surmises and conjectures. The question whether offer of appointment was given after 16 years as application was not moved

as per Rule 1974 cannot itself be ground to reject a claim in the light of directions issued by the division bench of this Court, which had made it binding for the authority to pass order on merits. Thus, authority was required to enquire into the facts as to status of the applicant and then to arrive at a finding whether petitioner did not deserve compassion any more as family survived and hence there was no financial crisis any more existing. The order, therefore, on this count cannot be sustained and point no. 1 stands decided in favour of the petitioner.

In so far as second point is concerned regarding retrospective effect of the amendment, I find that division bench of this Court in the case of Smt. Vimla Srivastava v. State of U.P and Another being Writ C No. 6081 of 2013 and connected matter, had in a very categorical terms held that exclusion of married daughters from the ambit of expression family in Rule 2(c) of Dying-in-Harness Rules, 1974, was illegal and unconstitutional being violative of Article 14-15 of the Constitution and accordingly it struck down the word married in Rule 2(c) of the Rules. The relevant portion of the order of the division bench is reproduced hereunder:

"In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule (c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

We, accordingly, strike down the word 'unmarried' in Rule 2 (c) (iii) of the Dying-in-Harness Rules."

From perusal of the above, it is clear that the Court struck down the word 'unmarried'. Striking down a particular provision or the word and expression in statute or statutory rule and holding it to be unconstitutional means that such words and expression never existed on statute and therefore, it can be safely concluded that there was no issue of attaching retrospectivity to the amendment in its application rather, this was taken by the Court to be always there and by amendment brought in the year 2021, the State only statutorily recognized it. Against the aforesaid judgment of division bench special leave petition was filed before Supreme Court in the matter of State of U.P. and Another v. Neha Srivastava being Special

Leave to Appeal (C)No. 22646 of 2016, which came to be dismissed on 23rd July, 2019. A common law judgment has the same force as any statutory Act or Rule.

In view of above therefore, the order impugned can not be sustained in law. Thus, judgment cited by the learned Additional Chief Standing Counsel in the matter of application of rule are held to be distinguishable on facts and hence not attracted. It is by an act of Court that provision was held to be unconstitutional and hence it is not a case where statutory amendment was brought by State legislature on its own introducing a new legal right. Thus second point also stands answered in favour of the petitioner.

Thus, impugned order passed by Secretary, State of U.P. dated 25th July, 2024 is held unsustainable and is accordingly quashed. The matter is remitted to the authority to decide afresh. However, this time, when the matter is remitted to the authority to decide afresh, the authority will look into afresh the claim of the petitioner and decide the same after getting the petitioner's status being dependent upon deceased employee duly verified. The authority will also examine and will also get the petitioner filed requisite papers about financial status of her husband and other documents in the event petitioner's husband is having revenue sources and the same shall be also examined accordingly. The authority before arriving at any conclusion must decide whether financial crisis in the family does continue as on date so that she may be offered compassionate appointment. It is made clear that application of the petitioner this time will not be rejected on the ground that it was belatedly filed. The bar of 5 years as prescribed under Rules will not be applicable in the instant case in its special facts and circumstances. The appropriate decision shall be taken by the authority within a period of three months from the date of presentation of certified copy of this order.

With the aforesaid observations and directions, this petition stands allowed with no order as to cost.

Order Date :- 9.4.2025/Sanjeev