

Brijesh Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-26-2004

Reported in : 2004(2)AWC1639; (2004)2UPLBEC1870

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 - Rule 5

Appeal No. : C.M.W.P. No. 7981 of 2004

Appellant : Brijesh Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mohd. Asif Khan, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. Petitioner Brijesh Kumar, who is related as son to deceased Constable Ram Kumar, has instituted the present petition for the relief of issuing a writ of mandamus to the respondents for appointing him on some suitable post.

2. The facts draped in brevity are that Ram Kumar father of the petitioner, who was employed as Constable in Police Department, died in harness on 2.8.1989. According to the petitioner, he was, at that time, a minor aged about 5 years. The first representation is stated to have been made on 9.9.2003 followed by yet another representation dated 5.1.2004 seeking appointment on compassionate ground, which it is further, averred in the writ petition, is still mired in indecision at the end of the authorities concerned.

3. Learned counsel for the petitioner referring to U. P. Government Servant (Dying-in-Harness) Rules, canvassed that since the petitioner was minor at that time, he could seek compassionate appointment only after attaining majority. He further submitted that immediately on attaining majority, the petitioner made the first representation on 9.9.2003 and when it elicited no response, the petitioner made yet another representation dated 5.1.2004, which too did not yield any response from the authority concerned. Per contra, learned standing counsel premised his contention by contending that limitation prescribed for filing application for compassionate appointment is five years and time limit could be relaxed only in exceptional cases. He lastly submitted that the petitioner has not been able to make out any case for relaxation and therefore the petition is not sustainable and is liable to be dismissed.

4. Before dealing with the respective contentions of the learned counsel for the parties, I would acquaint myself with the precise provisions of Dying-in-Harness Rules in its essentials. Rule 5 of the aforesaid Rules being germane to the controversy involved in this petition is excerpted below for ready reference :

'5. Recruitment of a member of the family of the deceased.--In case a Government servant dies in harness after the commencement of these rules, 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 purpose, be given a suitable employment in Government service which is not within the purview of the State Public Service Commission in relaxation of the normal recruitment rules, provided such member fulfils the educational qualifications prescribed for the post

and is also otherwise qualified for Government service. Such employment should be given without delay and, as far as possible, in the same department in which the deceased Government servant was employed prior to his death.'

5. Learned counsel for the petitioner, in the course of argument pointed out that earlier, there was no limitation prescribed. No doubt, there was no limitation prescribed prior to third amendment in the Rules. By way of third amendment, the rules was suitably amended and limitation was introduced as a sequel thereto, application for appointment on compassionate ground could be made and entertained within five years of the death of the Government servant dying in harness. In connection with this proposition, reference may also be made to various pronouncements of the Apex Court in which the Apex Court as also this Court have been of consistent view that such applications ought to be made within some reasonable period, considering various factors including the aspects that the provision was more prone to misuse, in case the application is allowed and entertained beyond reasonable period. It is not repudiated in the instant case that the father of the petitioner died in harness as far back as in the year 2.8.1989 and concededly, at the time of death of his father, the petitioner was aged only 5 years and therefore, the application made on attaining majority by the petitioner is highly belated. The Apex Court in *Umesh Kumar Nagpal v. State of Haryana and Ors.*, JT 1994 (3) SC 525, was seized of one such question and in consequence, observed as under :

'For these very reason, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right, which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.'

6. In *Harbans Sahai Srivastava v. State of U. P. and Ors.*, 1990 AWC 383, A Division Bench of this Court consisting of Hon'ble V.K. Khanna and Hon'ble M. L. Bhatt, JJ. held that after more than nine years of death of the Government servant

the dependants cannot seek benefit of the Rules. If there is no other eligible member in the family, qualified to seek employment under the Rules, the widow of the deceased employee can apply and get suitable employment.

7. The inherent object of granting compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis owing to death of the bread earner and to save it from penury and destitution. It also bears no repudiation that the Rules 1974 have been enacted as a special provision by way of departure from the general provisions, which envisages appointment on compassionate ground by following a particular procedure. By this reckoning it is an exception to the general provisions and has to be invoked in aid for compassionate appointment with circumspection and due caution. It is settled position in law that an exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. The Apex Court was seized of one such aspect in *Director of Education (Secondary) v. Pushpendra Kumar*. 1998 (3) AWC 1772 (SC) : 1998 ALJ 1525, and observed that 'care has, therefore, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee.' In this very decision, the Apex Court also observed that 'It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course' and further that 'The only ground which can justify compassionate employment is the penurious condition of the deceased's family.' From a consideration of various decisions rendered by the Apex Court, the position is well-nigh settled that the object of compassionate appointment is to relieve the family of the financial destitution and to help it get over the emergency and to see the family through the economic calamity and compassionate employment is justified considering the penurious condition of the deceased's family.

8. I have been taken through the two representations annexed to the petition as Annexures-1 to 3. The quintessence of the ground urged in the first representation dated. 9.9.2003, is that the petitioner had attained the age of 18 years, that he has passed his intermediate examination and is still unemployed and further that he has been unable to maintain himself as a result of which he is suffering from mental anxiety. In the subsequent representation dated 5.1.2004 too, the self same grounds have been spelt out save saying that the applicant is unable to maintain his family. The petitioner has not cited anything about the members in the family, about the financial/penurious condition of family or about any financial embarrassment. The compassionate employment is an exception to general provisions and it must be extended to the needy family to redeem and to relieve it of the financial destitution and to help it get over the emergency on account of sudden departure of the, only bread earner and it is not permissible to allow it to degenerate into a sort of reservation for every dependent of the deceased dying in harness. The limit of five years for making application has been prescribed in the Rules 1974 and exception has to be made in exceptional cases. The expression 'exceptional cases' cannot be stretched and construed to mean so long a period as involved in the instant case. It should not be lost sight of the fact that the Rules. 1974 have been framed with good intent and purpose and intention of the Legislature while prescribing period of five years is too patent considering that compassionate appointment is need based and not a vested right. The Courts cannot confer any benediction simply on sympathetic consideration and are called upon to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law and the relevant rules. If case family has survived for five years without any external financial aid, it shall be deemed that the family has been able to tide over the crisis and there subsists no financial crisis in the family. Again reverting to the factual aspect of the case, the petitioner being aged 5 years at the time of death of his father, there is nothing on the record to show that widow or any other member of the family came forward to claim appointment on compassionate ground. Even in the representation made after a lapse of about 13 years no ground about financial embarrassment or penurious condition has been stated save vague and generalised averments that the petitioner was unable to eke out livelihood for himself. In the circumstances, no

case is made out to warrant direction for compassionate appointment of the petitioner.

9. The petition being bereft of merit, is accordingly dismissed in limine.

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