

Mohd. Musheer Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-16-2001

Reported in : 2001(2)AWC1196; [2001(89)FLR691]; (2001)2UPLBEC1113

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 - Rule 5; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 6664 of 2001

Appellant : Mohd. Musheer

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : H.M. Srivastava, Adv.

Judgement :

Sudhir Narain, J.

1. The petitioner seeks to quash the order of the State Government by which it declined to grant relaxation to the petitioner in respect of appointment under the Dying-in-Harness Rules.

2. Briefly stated the facts, are that the father of the petitioner was a police constable. He died on 31.5.1984 while he was in service. He died leaving behind him the petitioner and his widow. The widow was granted family pension. She did not apply for any Job on compassionate ground.

3. The petitioner has completed the age of 21 years in 2001. which is clear from the affidavit filed by him. He filed an application in 1997 before he attained the age of majority that he should be given appointment on compassionate ground. The matter was referred to the State Government, respondent No. 1. On 31.7.1999 respondent No. 1 rejected the prayer of the petitioner for relaxation of the period during which an application is to be filed and communicated his decision to the petitioner on 25.9.1999.

4. Sri H. M. Srivastava. learned counsel for the petitioner contended that the State Government is empowered to relax the period for submitting an application for appointment under the proviso to the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred as the Rules). Rule 5 of the Rules was amended by Fifth Amendment on 20.1.1999 which reads as under :

5 (I) 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 relation 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.

5. The Rule as it stands after amendment provides that the application for employment should be made within five years from the date of death of the Government servant. The proviso lays down 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.

6. The question is as to what should be the criteria to be considered by the State Government under Proviso to Rule 5 to dispense with or relax the requirement of submitting an application for appointment within the period of five years as provided under the Rules. An application under Rule 5 has to be made by a person who was, at that time, entitled to file application. A minor cannot file an application for appointment at the time of the death of the employee who died in-harness. In Haruansh Singh Srivastava v. State of U. P. and others. (1990) 1 UPLBEC 220. It was held that a person who was minor at the time of the death of an employee, is not entitled for appointment after he attains the age of majority with the following observations :

'The clear intention of the Rules is to provide assistance to the family of the deceased who was a Government servant and has died-in-harness. It is at that time that the help is required by the family. By no stretch of imagination it can be said that after more than 9 years of the death of the Government servant the dependents can seek benefit of the Rules. May be that in certain cases there may be no eligible member who can seek employment. Even the Rules provide that employment has not to be offered to every one. The dependents will have to fulfil certain qualifications so that they can discharge the duty assigned to them in case

the employment is offered to them. In view of the matter the mother of the petitioner could seek employment under the Rules. Employment has been offered to the widows of the deceased employees under the Rules by the State Government in case there are no children left by the deceased or the children are not qualified to seek employment under the Rules.'

7. There is nothing in the writ petition to show that the mother of the petitioner could not seek employment in the year 1984 when her husband died. She took family pension and did not seek any employment. Rule 5 provides that an application seeking employment can be filed within five years and the proviso is exception to the said Rule. If the State Government is satisfied that the time-limit for employment causes undue hardship. It may dispense with or relax the requirement in a just and equitable manner. The mere fact that a person was minor at the time of the death of the employee itself is not a ground for giving him employment on compassionate ground after he attains majority. The father of the petitioner died 16 years ago and according to him, he is aged about 21 years only in 2001. He has not explained as to why the mother of the petitioner did not seek employment. She preferred to accept the family pension and is alleged to have expired in the year 1992.

8. Learned counsel for the petitioner referred the decision *Mono Kumar Saxena u. District Magistrate, Bareilly and others*. (2000) 2 UPLBEC 1694. where the application was rejected on the ground of delay. The Court declined to interfere in the order but directed the petitioner to approach the State Government for relaxation of the period of submitting application. In the present case, the State Government has rejected the application of the petitioner and I do not find that it is a fit case for interference under Article 226 of the Constitution.

9. The writ petition is, accordingly, dismissed.