

**Amol Singh Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Jul-06-2000

**Reported in :** 2000(3)AWC2571; [2000(86)FLR768]; (2000)3UPLBEC2282

**Judge :** D.K. Seth, J.

**Appeal No. :** C.M.W.P. No. 27971 of 2000

**Appellant :** Amol Singh

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** I.N. Singh and ;Ajay Yadav, Advs.

**Judgement :**

**D. K. Seth, J.**

1. The father of the petitioner died on August 13. 1991. Mr. I. N. Singh. learned counsel for the petitioner contends that at that point of time, the petitioner was minor and aged about 11 years. He attained majority in 1998. Upon attainment of majority, he applied for appointment under the Dying-in-Harness Rules. The Dying-in-Harness Rules has been provided for saving a family of a deceased from immediate destitution. Such a position cannot be expected to continue till for 10 years. In such circumstances, the petitioner cannot claim any relief.

2. Mr. I. N. Singh relied upon the decision in the case of Manoj Kumar Saxena v. District Magistrate, Bareilly and others. 2000 (2) ESC 967 (All), in which the delay of 12 years was overlooked relying on the decision cited therein. One of the decisions that was cited was that of Pushpendra Singh v. Regional Manager, UPSRTC. Aligarh. 2000 (1) ESC 448 (All). But it appears that in the case of Pushpendra Singh (supra), the Division Bench in the appeal did not entertain the claim since the claim was made after 10 years of death. However, if any application is moved, the respondent may consider the same if the family was still reeling under the financial strait. Thus the decision in the case of Pushpendra Singh (supra) does not seem to have been correctly applied or followed in the decision of Manoj Kumar Saxena(supra). Then again, the relief that was granted in the case of Pushpendra Singh (supra) was not a ratio decided but on a sympathetic consideration. The Division Bench had relied upon the decision in the case of Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138, wherein U was held that compassionate appointment cannot be granted after the lapse of reasonable period which must be specified in the rules. The consideration of 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 bread winner. The compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The decision in the case of Jagdish Prasad i. State of Haryana, 1996 (1) SLR 7, wherein the Apex Court had observed that the very object of appointment of a dependent of the deceased employee who dies in-harness is to relieve unexpected immediate hardship arid distress caused to the family but sudden demise of the earning member of the family. Since the death occurred way back in 1971. in which year, the appellant was four years old. it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted. it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged de hors the recruitment rules.

3. The reasoning of the Apex Court can be supported also by another reason, namely, that the right to appointment is not a heritable right which can pass on to the successor and await attainment of majority of such succession.

4. The rules have prescribed 5 years period as the limit within which such appointment can be asked for. In view of the Apex Court decisions as well as the Appeal Court, it is not possible for me to agree with the ratio decided in the case of Manoj Kumar Saxena (supra). Since in respect of the view. I have taken are supported by the decisions of the Apex Court as well as that of the Division Bench as observed here-in-before. I am not inclined to interfere in the matter.

5. The writ petition, therefore, falls and is accordingly, dismissed. However, there will be no order as to costs.

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