

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

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Court : Allahabad

Decided On : Jul-02-2009

Reported in : 2009(4)AWC3427

Judge : Rakesh Tiwari, J.

Appellant : Neeraj Kumar

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the petitioner, standing counsel who has accepted notice on behalf of respondents No. 1 to 3 and perused the record.

2. Sri Samay Lal father of the petitioner was Constable in the Police Department. He died in Harness on 20.6.1994. U.P. Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 provides that in the event of any Government employee to whom the aforesaid rules apply died in harness then, one of dependants of the deceased may be considered for appointment to meet the indigent circumstances which the family may be facing due to death of bread earner.

3. At the time of death of the deceased, Samay Lal his wife did not apply for compassionate appointment on the ground that her elder son, the petitioner in the present writ petition, was minor at that time. Since the petitioner has passed High School examination in the year 2003 and Intermediate Examination in the year 2005. Thereafter on attaining majority, the petitioner filed an application for compassionate appointment on 8.12.2006. The Deputy Inspector General of Police, Lucknow vide his order dated 18.2.2009 rejected his application on the ground that the application of the petitioner for compassionate appointment suffered from inordinate delay (laches).

4. Counsel for the petitioner has relied upon the decision rendered in the case of Udit Sirohi v. State of U.P. and Ors. 2009 (3) ADJ 58, wherein the Court has observed that the objects and principles for compassionate appointment have to be kept in mind before passing any order for appointment on compassionate ground. The Court has further observed that to get appointment under Dying-in-Harness Rules is neither a vested nor heritable right nor alternate mode of appointment, as such appointments cannot be directed by Courts. The Court further observed that compassionate appointment has to be given for meeting immediate hardship or financial crisis which is faced by the family of the deceased Government-employee due to death of bread earner. The-basic principle for grant of compassionate appointment is-that the family of the deceased employee should be in need of immediate financial help and should be in distress and in indigent circumstances requiring compassionate appointment to one of the family members of deceased employee who died in harness leaving behind the family in penury without any means of livelihood. The compassionate appointment is granted only on pure humanitarian considerations. It is an exemption to normal mode of recruitment and not an alternate mode of recruitment in Government service. Therefore, the public authority has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provisions of the employment, the family will not be able to meet the crisis then only a job is to be offered to the eligible member of the family. The Court also observed that as compassionate appointment is not a vested right, it has to be granted under the relevant rules and in accordance with the object of the policy, which conforms to such appointment. Since it is to be offered to the dependant(s) of the family of the

deceased employee to tide over the immediate financial crisis. It cannot be granted after unreasonably long period as the vacancies should not be held up for long period of time. The family should not wait till the dependent attains the majority. The law is well-settled that such appointments should not be made, where the family has been able to survive for long.'

5. In that case, the Court was dealing with the case whether the dependant of the family of the deceased, who was Sub-Inspector in Police who had died in harness, could be offered the post of Constable but though he was eligible for the post of Inspector according to his qualifications.

6. It is in the aforesaid backdrop the Court held where a Sub-Inspector or an officer-working on any higher post dies in harness and the dependant applies for appointment, his employment on the post of Constable would certainly help the family to tide over the financial crisis. It was also held that it is always open for such dependant to apply for the post of Sub-Inspector, if there are vacancies and claim appointment on his own merit alongwith others as such the Police Establishment Board could not be said to have acted illegally in making such compassionate appointment of the dependant of the deceased Government servant on the post of Constable.

7. The Court In that case framed certain issues in the judgment to be referred to a larger Bench which are as under:

(i) whether the dependants of the deceased Government servant serving on the post of Sub-Inspector or any higher post are entitled to be appointed on compassionate ground, and to be considered for appointment under the U.P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974, if they are eligible, on the post of Sub-Inspectors or such post as the deceased employee was holding;

(ii) whether the policy decision taken by the respondents, to offer such appointment only on the post of constables, in the decision of the Deputy Inspector General of Police (Estt.) U.P. Police Headquarter, Allahabad dated 20.9.2003 and the decision taken by the Police/Provincial Armed Constabulary Recruitment

Boards dated 20.9.2006 and 25.6.2007 are violative of the U.P. Recruitment of Dependents of Government Servants Dying-in-Hamess Rules, 1974, and

(iii) whether the judgments in Raj Kumar Pundir (supra) and Mukesh Shukla (supra) lay down correct law.

8. It is apparent from the judgment that the facts of that case are different from the present case. In the instant case none of the family members of the family of the deceased applied for compassionate appointment though the death of the deceased occurred in the year 1994. The family waited till the elder son attained majority, therefore the application for compassionate appointment has admittedly been made after elder son attained majority. The fact that the family survived for 12 years even after the death of the bread earner and the mother educated the children shows that the family was not in indigent circumstances. Had it been so, the mother of the petitioner could have applied for appointment immediately after the death of her husband.

9. The application of the petitioner suffers from laches and has rightly been rejected by the authority. The questions referred to larger Bench also do not cover the case of the petitioner.

10. In view of what has been stated above, the writ petition has no force and is dismissed. No order as to costs.

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