

Ram Narain Vs. State of U.P. and ors.

Ram Narain Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/486704

Court : Allahabad

Decided On : Sep-16-2003

Reported in : 2004(2)AWC1036

Judge : N.K. Mehrotra, J.

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

Appeal No. : Writ Petition No. 5377 (S/S) of 2003

Appellant : Ram Narain

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : P.K. Tripathi, Adv.

Judgement :

N.K. Mehrotra, J.

1. Heard the learned counsel for the petitioner and the learned standing counsel for the opposite parties.
2. This is a writ petition under Article 226 of the Constitution of India for issuing a writ in the nature of mandamus commanding the opposite parties to consider the

appointment of the petitioner on the post of peon or any other Fourth Class post under Dying in Harness Rules.

3. The father of the petitioner was working as a Principal in the Primary Vidyalaya, Pipra and he died during service on 25.3.1977. The petitioner was minor at the time of death of his father. He applied for appointment on compassionate ground on 11.2.1998. It is alleged that the mother of the petitioner has also died and there is no source of income in the family. He further moved a representation on 19.5.2003 but was of no effect. The learned counsel for the petitioner has referred U.P. Government Servant Dying-in-Harness Rules, 1974 as amended by Vth Amendment Rules, 1999. Rule 5 of these Rules provides that only the family member of the deceased employee shall be given appointment under the Dying-in-Harness Rules who applied for appointment within a period of five years from the date of death of the Government employee. The Government has the power to relax this Rule. Sub-rule (3) has been added in Rule 5 by amendment in the year 2001. A condition has been imposed for the appointment. It has been provided that the compassionate appointment will be subject to the condition that the family member getting employment will maintain other family members of the deceased. The learned counsel for the petitioner has referred a circular of Basic Shiksha Parishad/Mratak Ashrit/1380-573/2000-2001, dated 8,11.2000. It has been provided by this notification that in such cases all the applications shall be forwarded to the Basic Shiksha Parishad for taking decision. The rules imposed a restriction for entertaining an application after five years of the death of the Government employee for giving appointment under the Dying-in-Harness Rules. Therefore, the petitioner has no right to claim the appointment under the Dying-in-Harness Rules after a lapse of a period of 26 years from the date of death of his father.

4. The learned counsel for the petitioner referred a Division Bench judgment of this Court in Pushpendra Singh v. Regional Manager, 2000 (1) AWC 442 : 2000 (1) HVD 531. In this case the Division Bench of this Court has referred Umesh Kumar Nagpal v. State of Haryana and Anr., 1994 (4) SCC 138 ; Jagdish Prasad v. State of Haryana, 1996 (1) SLR 7 and Haryana State Electricity Board v. Naresh Anwar, 1996 (2) SLR 11. In this case, the Division Bench was hearing the appeal against

the judgment of Hon'ble single Judge wherein the writ petition was dismissed for directing for appointment after a period of five years. The Division Bench of this Court held that the appeal is bereft of merits after referring the aforesaid decisions of the Supreme Court but at the same time the appeal was disposed of with the observation that in case the application is moved, the respondents may reckon with the feasibility of a temporary appointment if the family is still reeling under financial straits.

5. I find that the Division Bench has not laid down any law and instead has followed the three decisions of the Supreme Court in which it has been held that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. Therefore, no relief of issuing a writ in the nature of mandamus can be granted in this writ petition but at the same time in view of the decisions referred to by the petitioner, it can be observed that the matter should be referred to the Basic Shiksha Parishad who will take decision in the light of the rules applicable.

6. In view of the above, the writ petition is disposed of finally at admission stage by refusing the relief of mandamus and with the direction to the opposite party No. 2 to forward the application of the petitioner to Basic Shiksha Parishad for taking decision in accordance with law expeditiously.