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**(2002) 01 AHC CK 0118**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 52065 of 2002

Santosh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 14, 2002

**Acts Referred:**

- Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness) Rules, 1974 - Rule 5(1)(3)

**Hon'ble Judges:** Anjani Kumar, J

**Final Decision:** Dismissed

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### **Judgement**

Anjani Kumar, J.

The petitioner, Santosh Kumar, approached this Court prior to the filing of the present writ petition by means of Civil Misc. Writ Petition No. 51615 of 2000, Santosh Kumar v. State of U.P. and others, which has been finally disposed of by this Court vide order dated 5th December, 2000, a copy of which has been annexed as Annexure "6" to the writ petition, wherein direction has been issued by this Court directing the respondents to decide the petitioner's representation regarding appointment under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

2. Learned Counsel for the petitioner had filed the earlier writ petition relying upon the decision reported in 2000 (1) LBESR 953 (All) : (2000) 1 UPLBEC 415, Pushpendra Singh v. Regional Manager, U.P. State Road Transport Corporation, Aligarh and another and 2000(2) LBESR 46 (All) : (2000) 2 UPLBEC 1694, Manoj Kumar Saxena v. District Magistrate, Bareilly and others. This Court disposed of the aforesaid writ petition with the following direction :

½The writ petition is finally disposed of with the direction that the concerned departmental authorities shall decide the pending application of the petitioner for appointment and shall pass appropriate speaking orders on the pending application of the petitioner under the Rules aforesaid taking into consideration the decisions aforesaid. A

copy of the decisions aforesaid shall be supplied by the petitioner's Counsel alongwith a certified copy of this order to the concerned respondent.

It is made clear that this Court has not judged or viewed the controversy on merits and the respondent concerned shall be at liberty to take his own view in the matter. 1/2

3. The facts leading to the filing of the aforesaid writ petition are that the petitioner's father was employed as Cook with the respondents who died due to illness on 16th November, 1989 while he was in service leaving behind his widow and five minor children, including the petitioner. At the time of death of the petitioner's father, the age of the petitioner was 13 years and he was minor. On attaining the age of majority, he applied for appointment as Class IV employee under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 on 31st December, 1994 i.e. after more than five years after the death of his father. It is this application which, according to the petitioner's allegations in the earlier writ petition, remain pending which as stated, was directed to be decided by this Court in the earlier Civil Misc. Writ Petition No. 51615 of 2000.

4. The respondents have now decided the aforesaid application of the petitioner by the order dated 19th February, 2002 which is an order passed by the Joint Secretary of the Government of Uttar Pradesh, whereby the petitioner's application for appointment under the Dying in Harness Rules was rejected on the ground that according to Rule 5(1)(3) of U.P. Recruitment of Dependant of Government Servants Dying in Harness Rules, the application for appointment must be made within a period of five years from the date of death of the concerned employee though according to the aforesaid Rules, power of relaxation is also there, but the petitioner's application was rejected as the same was filed beyond the period of five years from the date of death of his father and no case has been made out for relaxation and therefore, the application of the petitioner was rejected.

5. This direction as stated above was passed by the Joint Secretary addressed to the Deputy Inspector General of Police (Establishment) U.P. Allahabad and the Commandant 34 PAC Battalion, Varanasi and the consequential order was passed by the Commandant 34 PAC Battalion, Varanasi on 5th October, 2002 rejecting the petitioner's application for appointment under the Dying in Harness Rules.

6. Learned Standing Counsel has relied upon the decision of the learned single Judge of this Court passed in Civil Misc. Writ Petition No. 6560 of 2000 decided on 26th March, 2001, Parvati Devi w/o late Sri Nandu Ram v. State of U.P. and others, which petition was filed by the wife of the deceased employee which was ultimately dismissed by this Court as not pressed in view of the statement made by the learned Counsel for the petitioner at Bar. Learned Standing Counsel has further relied upon the decision reported in AIR 2000 Supreme Court 2782, Sanjay Kumar v. State of Bihar and others. Paragraph 3 of the said judgment of the apex Court is relevant which is being quoted below:

¶½We are unable to agree with the submissions of the learned senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the decision employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 26/1/1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.¶½

7. In view of what has been said by the apex Court with regard to appointment under U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules and in view of the reasons given in the impugned order rejecting the petitioner's application for compassionate appointment the order impugned in the present writ petition does not warrant any interference by this Court in exercise of its power under Article 226 of the Constitution of India.

8. This writ petition, therefore, being devoid of merits deserves to be dismissed and is hereby dismissed. There is no order as to costs.