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Gyanendra Kumar Vs State of U.P. and Others

Civil Miscellaneous Writ Petition No. 18093 of 2003

Court: Allahabad High Court

Date of Decision: July 8, 2003

Citation: (2003) 6 AWC 5340 : (2003) 3 UPLBEC 1979

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: Shashi Nandan and J.K. Tiwari, for the Appellant; Amit Kumar and P.M.N. Singh, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Srivastava, J.
Present petition has its genesis in the order dated 23.10.2001 passed by the Uttar Pradesh Sahkari Ganna Samiti

Sangh Limited, Lucknow whereby application of the petitioner for appointment under Recruitment of Dependents of Government Servants Dying-

in-Harness Rules, 1974 wrecked on disapproval on the ground of it being time-barred under Recruitment of Dependents of Governments Servants

Dying-in-Harness (Third Amendment) Rules, 1993.

2. Thumbnail sketch of the necessary facts is that one Anang Pal Singh father of the petitioner who was serving as Seasonal Clerk in Sahkari

Ganna Samiti Sangh Limited, Durala, District Meerut and had put in 19 years of service, breathed his last on 28.9.1981 and application for

compassionate appointment was preferred on 30.3.2001 i.e., after an interregnum of more than 19 years. The explicatory plea of the petitioner is

that at the time of death of his father, he was minor and having passed High School Examination in the year 1998, he applied for appointment by

means of the application aforestated. From a perusal of the record, it would appear that on receipt of the application, the respondent No. 4

marked the application for onward transmission to the respondent No. 3 who in turn dispatched the same to respondent No. 2. By means of letter

dated 19.5.2001, the respondent No. 3 sought guidance from respondent No. 2 in the matter relating to compassionate appointment and by

means of the order dated 23.10.2001, the application of the petitioner was turned down as being time-barred. It is this order the validity of which

has been canvassed in the instant petition.

3. I have heard Sri Shashi Nandan for the petitioner and Sri Amit Kumar holding brief of Sri. P.M.N. Singh, learned Counsel for the Opp. Parties

2 and 4.

4. Before dwelling on the respective merits of the submission made across the bar, relevant Rule i.e., U.P. Recruitments of Dependents of

Governments Servants Dying-in-Harness (Vth Amendment) Rules, 1999 as germane to the controversy involved in this petition may be excerpted

below.

5. Recruitment of a member of the family of the deceased.-(1) 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 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 relaxation of the normal recruitment Rules if such person:-

(i) fulfills the education 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. From a perusal of the aforestated Rules, it brooks no dispute that the application should have been preferred within a span of five years and in

any particular case where the State Government is satisfied that the time limit fixed for making the application for employment results in any undue

hardship it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner. In the

case in hand, the claim for compassionate appointment is grounded in the fact that he was minor at the time of the death of his father and further

that the application may be treated as having been made within the time-limit. No plausible reason has been assigned for acceptance of his claim,

which suffers from delay spanning over 19 years. It appears from the record that the respondent No. 3 referred the matter for guidance to the

respondent No. 2 who upon consideration of the entire matter rejected the claim for compassionate appointment as being inordinately belated and

time-barred. It thus follows that the respondent No. 2 having considered the matter in all its pros and cons, declined to consider the case as being

highly belated and time-barred. Now I revert back to the facts of the case. It is discernible from the entire conspectus that the widow of the

deceased preferred not to seek compassionate employment and her conduct was that of quiet acquiescence and rather waited for his son to grow

up to attain majority and claim compassionate appointment after a lapse of more than 19 yeas. It is settled position flowing from various decision of

the Apex Court that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis and to relieve the

family of the financial destitution and to help it get over the emergency. None of the decisions of the Apex Court justify compassionate employment

either as a matter of course and the only ground which can justify compassionate employment is the penurious condition of the deceased"s family.

In Umesh Kumar Nagpal Vs. State of Haryana and Others, the quintessence of what has been observed by the Apex Court is excerpted below :

For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the

Rules. The consideration for 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 land offered whatever the lapse of time and after the crisis is over.

6. Reasonable time has been signified to mean such length of time as may fairly, and properly, and reasonably be allowed or required, having

regard to the nature of the act or duty and to the attending circumstances. In the instant case, it does not appear from the conspectus of the facts

that the petitioner was justified in making application after a lapse of 19 years. As a matter of fact, he was ineligible for consideration and according

to his own showing, after he attained majority he applied for compassionate appointment. By this reckoning, there was no rational basis to relax the

rigorous of time-limit as envisaged in the rule aforestated. Yet another aspect is the absence of penurious condition of the family. The petitioner

does not claim that the family is still trapped into penury. Besides "the death of a person dying-in-harness cannot be exploited by the deceased

family to its advantage to claim compassionate appointment at any point of time in future. The Court must decry it as immoral to convert such crisis

into an opportunity and it cannot be approved that the heirs of the deceased should be at liberty to claim compassionate appointment, which would

virtually amount to a kind of reservation in favour of dependents of the deceased employee. As stated supra, compassionate appointment is an

exception carved out in the interest of justice to enable the family to tide over the sudden crisis and such exception cannot be stretched and

magnified beyond all proportions to be applied in all circumstances and in all cases of dying-in-harness. In the above conspectus, I converge to the

view that the impugned order does not suffer from any taint and it was rightly passed in accordance with law.

7. In the above conspectus, the petition fails and is dismissed. In the peculiar facts and circumstances, there shall be no order as to costs.