

(2013) 09 AHC CK 0185

Allahabad High Court (Lucknow Bench)

Case No: Service Single No. 1527 of 2012

Virendra Pal Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 11, 2013

Citation: (2014) 3 ALJ 319

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Anil Kumar, J.

Heard Sri. Mayankar Singh, learned counsel for the petitioner, Sri. A.N. Trivedi, and Sri Amitabh Rai, learned State Counsel, and perused the record. Undisputed facts of the present case are that one Sri. Shishu Pal Singh was working on the post of Constable/Driver posted under O.P. No. 4/Superintendent of Police, District-Bijnore, died on 30.10.1995 due to injury suffered by him in a terrorist attack.

2. The petitioner/Sri Virendra Pal Singh was minor at the time of death of Sri. Shishu Pal Singh, after attaining the age of majority on 19.03.2008 he immediately submitted an application for considering his case for compassionate appointment, the same has been forwarded by the Deputy Superintendent of Police (Establishment), P.H.Q., Allahabad by letter dated 13.04.2009 (Annexure No. 7) recommending the case of the petitioner for giving compassionate appointment to the State Government after giving relaxation/prescribed period as provided for submitting an application for compassionate appointment under the rules known as the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules, 1974).

3. In spite of the said facts, the case of the petitioner for compassionate appointment has not been considered by the opposite party No. 1, so he filed a Writ

Petition No. 41862 of 2010 before this Court sitting at Allahabad, disposed of by order dated 21.07.2010 with the following direction:--

Father of the petitioner died in the year 1995 and the application was made in the year 2008 as provided under the Rules. The limitation for filing an application is five years and according to regulation 5 only the State Government can relax the period but no decision has been taken by the competent authority in spite of the recommendation dated 13.4.2009.

In such circumstances I am of the opinion that this writ petition is disposed of finally with the direction to respondent No. 1 to take appropriate decision on the basis of the recommendation within a period of two months by speaking and reasoned order for relaxation of the period for providing appointment under the Dying-in-Harness Rules to the petitioner.

The writ petition is finally disposed of accordingly.

4. In pursuance of the said direction, the case of the petitioner for compassionate appointment has been considered and rejected as time barred by order dated 17.01.2012 (Annexure No. 1 to the writ petition) passed by opposite party No. 1, on the ground that the petitioner submitted application for compassionate appointment at a belated stage after 13 years from the date of death of his father. Aggrieved by the said order, the present writ petition has been filed challenging the order dated 17 January, 2012 (Annexure No. 1) passed by opposite party No. 1 on the ground that the impugned action on the part of O.P. No. 1 thereby rejecting the case of the petitioner on the ground of delay only is contrary to the mandate/provisions as provided under Rule 1974 for giving compassionate appointment. Moreso, in the present case, when an application moved by the petitioner for giving compassionate appointment immediately after attaining the age of majority on 19.03.2008 duly recommended and forwarded by the O.P. No. 3 by letter dated 13.04.2009 inter alia stating therein that the deceased family is getting only Rs. 3600/- per month as family pension and there is no other source to earn the livelihood, so the case of the petitioner may be considered for compassionate appointment after giving relaxation to the period provided for making application for compassionate appointment under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. So, on the said financial condition of the family of the deceased opposite party No. 1 should have condoned the delay and considered the case of the petitioner on merit for giving compassionate appointment. As the said exercise has not been done in the present case, so the impugned order dated dated 17.01.2012 thereby rejecting the case of the petitioner's compassionate appointment only on the ground of delay is contrary to the provisions as provided under Dying in Harness Rules as well as principles of natural justice, liable to be set aside. In support of his contention, learned counsel for the petitioner placed reliance on the following judgments:-

1. (2010) ILR 2 654 ,
2. [Ajay Kumar Sonkar Vs. State of U.P.,](#),
3. [Bhoopendra Kumar Vs. State of U.P. and Others,](#) .

5. Learned State Counsel on the basis of material on record/counter affidavit very fairly submit that while considering the case of the petitioner for giving compassionate appointment as per the provisions of Rule 1974, the O.P. No. 1 rejected the same on the ground of delay coupled with the fact that at the time of death of Sri Shishu Pal Singh, his widow is an educated lady should have applied for getting compassionate appointment instead of waiting that his son will become major and thereafter he will be able to get the compassionate appointment.

6. I have heard the learned counsel for the parties and gone through the record.

7. Employment in public service, as a rule, can be made strictly based on open competition and merit. Any other basis will defeat the Articles 14 and 16 of the Constitution and is fraught with chances of malpractice and nepotism. However, to this general rule there have been exceptions in order to meet the necessity of confirming to larger ideals of the State. Incorporating appropriate provisions in the Constitution has advanced some of these ideals, yet some have to be carved out by executive instructions. One such ideal is discernible in the rules/executive orders providing for a scheme for compassionate appointments for wards of deceased or disabled public servants, where death occurs in harness or disability arises during service.

8. The object of the Dying-in-Harness Rule is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness thereby leaving his family in penury and without means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to hold it to get over the emergency.

9. In order to give a compassionate appointment, the State of U.P. had framed a rule known as U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. The relevant Rule 1974 which are necessary for considering the controversy involved in the present case are quoted hereinbelow:-

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 a 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) fulfils the educational 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.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government servant who are incapable for their own maintenance and were dependant of the above said deceased Government servant immediately before his death.

8. Relaxation from age and other requirements.--(1) The candidate seeking appointment under these rules must not be less than 18 years at the time of appointment.

(2) The procedural requirements for selection; such as written test or interview by a selection committee or any other authority, shall be dispensed with, but it shall be open to the appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standards work and efficiency expected on the post.

(3) An appointment under these rules shall be made against an existing vacancy only.

10. By Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Seventh Amendment) Rules, 2006 after the provision exists in Rule 5(1), another proviso has been added which read as under:-

Provided further that for the purpose of the aforesaid proviso, the person concerned shall explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry the time limit fixed for making the application for employment along with the necessary documents/proof in support of such delay and the Government shall, after taking into consideration all the facts leading to such delay take the appropriate decision.

11. A Division Bench of this Court in the case of Vivek Yadav (supra), after taking into consideration the Rule 1974 in read to giving compassionate appointment held as under:--

Para No. 4--A perusal of Rule 5 would show that an application for employment on compassionate basis is to be made within five years from the date of death of the deceased Government servant. There is a proviso conferring power upon the Government for relaxing the time-limit fixed for making such application, where the Government is of the opinion that it causes undue hardship and for dealing with the case in a just and equitable manner. Reading of this rule would demonstrate that the application must be by a competent person, who is competent to make it. A minor, therefore, could not have made application. The time-limit for an application contemplated by the rule, therefore, could only be read to mean "by a competent person", in other words, who has attained the age of majority. In a case, where the applicant is minor, it would not be possible for the minor to make an application for various reasons including that he is minor and as such he cannot be appointed to a post in the Government. Rule 5, therefore, will have to be read in such manner that it gives effect to the policy of the Government, which is to provide employment to a member of the family of a Government employee, who dies in harness, so as to mitigate the hardship. The issue whether the family of the deceased over long passage of time continues to face the hardship, would be examined on the merits of the claim. Rule 8 of the Rules, 1974 itself contemplates that a candidate seeking appointment under the Rules must not be less than 18 years of age at the time of appointment. In the instant case, as averred by the appellant, his mother was uneducated or illiterate, he was a minor though the elder son and there were elder sisters. Therefore, in such cases, considering the object of the Rules, the proviso to Rule 5 must normally be exercised, as for the purpose of dealing with the cases in a just and equitable manner. In exercising such discretion, no doubt, the authority exercising the discretion will examine the record before him.

Para No. 7--This Court in several decisions has taken note of the fact of an application being made by a member of the family on attaining majority. In Manoj Kumar Saxena Vs. District Magistrate and Others, the learned Judge of this Court considered the various other judgments holding that when an application is being moved for appointment on compassionate basis of a member of the family on attaining majority, because he was minor at the time of the death of his father, it cannot be said that there was delay in moving the said application by the petitioner for consideration.

In our opinion, that really may not be a correct reading of the rule as that would contemplate that the rule would stand suspended till such time a minor attains majority and thereafter the minor within 5 years on attaining majority could make application. No provision whether it be primary or sub-ordinate legislation must be read even if it be a beneficial piece of legislation which has the effect of adding

words against the expression of language of the provision. The proviso, in our opinion, which confers power to relax the delay in making an application within five years, also must be read to include consideration of an application even after expiry of 5 years if the applicant was a minor at the time of death of the deceased employee and makes an application within reasonable time of attaining majority.

Para No. 8--The power to relax itself contemplates that in a particular case, the matter has to be dealt with in a just and equitable manner. In other words, the test to be applied is, does the family of the deceased continue to suffer financial distress and hardship occasioned by the death of the breadwinner so as to relax the period within which the application could be made. These are matters of fact, which the competent authority would have to consider. In the instant case, what we find is that the application was rejected merely because it was beyond the time prescribed.

Para No. 10-- In our opinion, therefore, the application moved by the appellant was maintainable. No purpose at this stage will be served by remitting the matter back to the authority for re-consideration. The record would show that the appellant had made out a case for invocation of the power in the authority to waive the time for moving the application. That, however, does not mean that the appellant, as a matter of course, should be entitled for being considered for employment under the Rules. The competent authority will have to be satisfied on the basis of the materials before it that the appellant's case is a fit one for compassionate appointment, which would include consideration of the financial status of the family of the appellant since the time of death of his father till date and whether they continue to exist in penury or financial distress.

12. In the case of Ajay Kumar Sonkar Vs. State of U.P., this Court after placing reliance on the earlier judgment given on the point in issue [Subhash Yadav v. State of U.P. and others, Vivek Yadav v. State of U.P. and others ((2010) 4 UPLBEC 2776) held that an application for compassionate appointment if moved at a belated stage i.e. after expiry of the period as provided under Rule 5 of Rule 1974, the same cannot be rejected simply on the ground of delay and the competent authority has to give reasons for rejecting the same on merit that why the incumbent who is claiming compassionate appointment under Rule 1974 is not entitled to get and if no reason has been given while rejecting the application for compassionate appointment, rejected simply on the ground of delay then order so passed will be contrary to the aims and objects to give compassionate appointment, liable to be set aside.

13. In the case of Bhoopendra Kumar Vs. State of U.P. and Others, this Court has held as under:--

Para No. 3--Under Rule 5(1)(iii) of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules of 1974) an application for employment is required to be made within 5 years from the date

of the death of the Government servant. The proviso, however, indicates that where the State Government is satisfied that the time limit fixed for making an application for employment has caused undue hardship, it could dispense or relax the time period.

Para No. 7-- In the light of the aforesaid, the Government order dated 30th May, 2001 is wholly arbitrary and against the proviso to Rule 5(1)(iii) of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules of 1974) and can not be sustained and is quashed.

14. In the case of Parvesh Kumar Singh v. State of U.P. and others, 2013 (31) LCD 674, after considering the provisions of Rule 5 of the Rule 1974, held as under:--

As is evident from the aforesaid Rules, I find that the power to condone the delay in moving the application for compassionate appointment is vested with the State Government, therefore, I am of the view that instead of rejecting the petitioner's application, on the ground of delay, it should have been referred to the State Government for its decision, therefore, I hereby quash the order impugned and direct the Deputy Collector, Hasanganj, Unnao to refer the matter to the State Government to consider the question of condonation of delay in moving the application for compassionate appointment.

15. Keeping in view the above said facts and taking into consideration that compassion is a feeling that is generated by sympathy and when enacted, is merciful, primarily meant to alleviate suffering. This emanates usually on somebody's affliction and the heart becomes clement. It flows out of kindness and benevolence. A compassionate act obliges, someone, who needs sympathy. The act itself shares somebody else's sufferings. It is generous and charitable.

16. Compassion in law is mercy or clemency. A provision for compassionate appointment under law obliges the executive to show compassion when an employee dies in harness. This obligation is to be discharged to help the members of the breadwinner's family to tide away with immediate difficulties. It is for this reason that our judicial interpretation has kept out such appointments from the scope of challenge under Article 16 of the Constitution of India. It is an affirmative act allowed by law within permissible limits and saved from being struck down by the force of the equality clause enshrined under Article 14 of the Constitution. This is however subject to some limitations that have been laid down as a matter of law by the Apex Court and the High Courts of our country. A compassionate claim is thus to be entertained within the precincts of law. It is protected under law but is subject to law. It is not a wish or a grant that loses legal significance merely because it arises out of compassion. The authority while exercising any statutory power has to act within the parameters defined for exercise of such powers. The authority is not presiding over a prize-distribution ceremony nor is it offering a gift. It is acting lawfully for a noble cause with a judicious discretion. It is not a free distribution of

State largesse. It is a conscious conferment for a legally recognized purpose.

17. The exercise of such power has to be guided and bridled by a policy broadly spelling out the basics according to which such power has to be exercised. The action should be in conformity with the same and should not appear to be a piped-vision narrow minded transaction for some ulterior gain like a commercial advertisement "Buy one, get one free". Compassionate appointments should not be offered in a manner that it appears to be the death wish or last wish of an employee. It is to be offered when death is sudden and it comes as a shock. It is a stage of some helplessness when source is needed and deserves to be provided. It should not be undeserving nor should it spillover the opulence of the family. It should not appear like overeating and give a feeling of vomit or indigestion to others. The action should relieve distress and not create a counter-productive atmosphere (as held by this Court in the case of Smt. Seema Devi v. State of U.P. and others (2013 (98) ALR 184)).

18. Compassionate appointment is to save the family from financial destitution. It thus brings upon a duty on the appointing authority to enquire about the financial strength of the family seeking employment assistance. Unless the appointing authority is satisfied about the financial position of the family and comes to a conscious decision that the family need the assistance, no such appointment could be offered.

19. Accordingly, it can be summarized that the authority competent to consider applications for compassionate appointment cannot deny compassionate only on the ground of delay in view of the provisions as provided in the Rules, 1974 as amended till date is considered on the pecuniary circumstances shall be objective and it requires proper evaluation of financial circumstances of the family to deny compassionate appointment. Pecuniary circumstances that barely meet animal existence cannot be taken to be enough so as to deny compassionate appointment if the ward of the deceased employee is otherwise within the zone of consideration.

20. Further from the perusal of the Rule 5(1) of Rules, 1974 and the Second Proviso to the said rule which has been brought in the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, there is no quarrel with the proposition that the above said rule give the scope of relaxation of the period of 5 years subject to the condition as mentioned therein. Thus, it cannot be rejected merely on the basis of the fact that the application was beyond the prescribed period specially when the said Rules provides the power to relax itself contemplates that in a particular case the matter has to be dealt with in just equitable manner.

21. In other words, the test for this sufficient reason should be, as to whether family of deceased Government Servant still continues to be suffering financial distress perpetually, if hardship and financial distress still continues application for appointment deserves consideration, and an application for compassionate

appointment be relaxed by the competent authority, keeping in view the particular facts of each case and should not rejected the application merely on the ground that the same has been submitted beyond the period of limitation.

22. Thus, if an application for compassionate appointment has been moved by a person claiming the same after the statutory period of limitation as provided under Rule 5 of Rule 1974 satisfying the conditions for condonation of delay in moving the same a per the provisions of Rule 5 of Rule 1974 with second proviso to Rule 5 which is introduced in the said rule by U.P. Recruitment of Dependents of Government Servants Dying in Harness (Seventh Amendment) Rules, 2006 for giving compassionate appointment, the authority concerned/competent authority while considering the said application for giving compassionate appointment should not reject the same merely on the ground of delay alone but should consider the each and every case on merit applying his own mind taking into consideration the facts which are mentioned hereinbelow:--

- (a) The financial condition of the deceased family which is prevailing at the time when the application is to be considered and decided.
- (b) For the purpose of the same, the competent authority shall consider the source of income of the deceased family at the time of considering the said application i.e. family pension which family of the deceased is getting, I other post retiral dues paid to the deceased J family, other source of income.
- (c) The liability and other social responsibilities which is to be discharged by the deceased employee, the same is to be now discharged by the person who is claiming compassionate appointment, for example, the liability of the education/marriage etc. of the sons and daughters of the deceased.
- (d) The other conditions which is to be required in respect to which the information is to be given by the person who is claiming compassionate appointment as per the provisions as provided under Rule 6 of U.P. Dying-in-Harness Rules, 1974

23. In the instant case, admittedly, at the time of death of his father, the petitioner is a minor and immediately after the attaining the age of majority he moved an application for compassionate appointment, forwarded by O.P. No. 3 by letter dated 13.04.2009 indicating that the family of the deceased is getting a family pension of Rs. 3600/- per month and there is no other source of livelihood, and in the said recommendation/letter 20 points were mentioned on the basis of which the recommendation has been made to give the compassionate appointment to the petitioner by relaxing the time period even though without considering the same, the action on the part of O.P. No. 1 rejecting the same by the impugned order dated 17.01.2012 (Annexure No. 1) on the ground that the same has been moved by the petitioner after a period of 13 years from the death of Sri Shishu Pal Singh to get the compassionate appointment, and the wife of the deceased Sri Shishu Pal Singh is an educated lady should have made an application for compassionate appointment

instead of wait for attaining the age of majority of his son to move an application for compassionate appointment is contrary to the aims and object rather mandate of the legislature while framing the Dying in Harness Rules, 1974 in order to give the compassionate appointment to a deceased family who is in harness, thus, the impugned order being contrary to law, liable to be set aside.

24. For the foregoing reasons, the impugned order dated 17.01.2012 (Annexure No. 1 to the writ petition) passed by opposite party No. 1 is set aside and the matter is remanded to the O.P. No. 1/Principal Secretary, Home Department, U.P., Lucknow with a direction to reconsider the matter in respect to compassionate appointment of the petitioner afresh in the light of observations made hereinabove.

25. The said exercise shall be done by the O.P. No. 1 expeditiously, say, with a period of six weeks from the date of receiving certified copy of this order. With the above observations, writ petition is allowed.