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Court No. - 36

Case :- WRIT - A No. - 67805 of 2015

Petitioner :- Vivek Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Prem Narayan Tiwari, Amit Singh, Ashish Kumar Srivastava, Ashutosh Kumar Yadav, Shiva Kant Srivastava, Suresh Chandra Yadav

Counsel for Respondent :- C.S.C., Mrigraj Singh

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Amit Singh, learned counsel for petitioner, learned Standing Counsel for State and Sri Tej Bhan Singh, learned counsel for respondents.
2. The petitioner is claiming appointment on compassionate ground. Petitioner's mother was appointed as Assistant Teacher in a primary school at Sherpur Khuthan, District Jaunpur on 14.12.1999. Unfortunately, she expired on 15.05.2014 in harness.
3. The petitioner thereafter has approached Basic Shiksha Adhikari, Jaunpur, with an application for appointment under dying-in-harness rules. The petitioner's application was not considered, therefore, he approached this Court by way of filing a Writ Petition bearing No. 1985 of 2015, which was disposed of by an order dated 27.02.2015 passed by this Court with a direction to Basic Shiksha Adhikari, Jaunpur, to consider claim of petitioner and to take a reasoned decision.

4. In pursuance of above referred order, claim of petitioner was considered, however, it was rejected by impugned order dated 23.11.2015 on ground that one Ashish Kumar Gupta has submitted documents that petitioner's mother had got appointment on basis of forged educational documents and since the petitioner has not able to produce genuine educational documents of his mother, his claim was rejected. The relevant part of impugned order is reproduced hereinafter:-

“समीक्षा/निर्णय

स्व० मधु गुप्ता स०अ० प्राथमिक विद्यालय उर्दू बारादरी, विकास क्षेत्र शाहगंज, जौनपुर के शैक्षिक अभिलेख जो फर्जी थे के आधार पर तत्समय नियुक्ति प्राप्त की गयी थी, की जानकारी श्री आशीष कुमार गुप्ता निवासी मुख्य मार्ग कोतवाली शाहगंज, जौनपुर द्वारा वर्ष 2008 से ही प्रमुखता से कई स्थानों पर उठाया गया था। उदय प्रताप स्वायत्तशासी कालेज, वाराणसी द्वारा शिकायतकर्ता श्री आशीष कुमार गुप्ता को पत्रांक 232/जनसूचना/2009-10 दिनांक 24.08.2008 द्वारा 1985 की बी०एड० परीक्षा की सारणीयन पंजिका में उक्त सन्दर्भित पत्र में आप द्वारा अंकित अनुक्रमांक 183121 एवं 183122 मौजूद न होने की बात लिखी गयी है। जिससे स्पष्ट है कि स्व० मधु गुप्ता को यह संज्ञानित था कि उनके द्वारा प्रस्तुत अभिलेख फर्जी/कूटरचित थे। जिसकी जानकारी अन्य को होने पर स्व० मधु गुप्ता द्वारा चिकित्सा अवकाश लिया गया था। चिकित्सा अवकाश के दौरान ही उनकी मृत्यु हो गयी। स्व० मधु गुप्ता के आश्रित विवेक कुमार द्वारा अपनी माँ से सम्बन्धित कोई भी शैक्षिक अभिलेख प्रस्तुत नहीं किया गया, जो यह परिलक्षित करता है कि स्व० मधु गुप्ता के अभिलेख (स्नातक एवं बी०एड०) फर्जी/कूटरचित तैयार कर लिये गये थे।

श्री विवेक कुमार पुत्र स्व० मधु गुप्ता पुत्र श्री शिव कुमार गुप्ता द्वारा जान बूझकर मूल अभिलेखों को मांग किये जानें पर भी प्रस्तुत नहीं किया जा रहा है। इससे स्पष्ट है कि उनकी माँ स्व० श्रीमती मधु गुप्ता की नियुक्ति फर्जी/कूटरचित अभिलेखों तथा तथ्य संगोपित कर प्राप्त कर ली गयी थी जो नियमों के विपरीत है। ऐसी स्थिति में श्री विवेक कुमार को मृतक आश्रित कोटे के अन्तर्गत किसी प्रकार का लाभ दिया जाना नियम संगत नहीं है। मा० उच्च न्यायालय, के पारित आदेश दिनांक 27.02.2015 के समादर में एतद द्वारा निर्णित/निस्तारित किया जाता है।”

(Emphasis Supplied)

5. Learned counsel for petitioner has submitted that his mother has served for almost 15 years without any complaint.

No dispute arose during her long period service tenure, even today there is no adverse order against his mother as well as till date there was no order that services of his mother were found *void ab initio*.

6. Learned counsel further submitted that documents placed by one Ashish Kumar Gupta were never verified by concerned respondent during lifetime of his mother and even thereafter also.

7. Per contra, learned counsel for respondents has submitted that said Ashish Kumar Gupta has submitted information received under Right to Information Act from the concerned college that roll number mentioned in educational document of petitioner's mother was never issued, therefore, as such her appointment was based on forged documents. Though counsel for respondents has fairly submitted that no adverse order was passed against petitioner's mother during her lifetime.

8. Heard counsel for parties and perused the record.

9. There is no dispute that petitioner's mother has served for about 15 years as Assistant Teacher as well as that no adverse order was passed against her in regard to her service during her lifetime. During argument, a specific query was raised by this Court to counsel for respondents that whether the concerned respondent has taken any endeavour to verify the information submitted by one Ashish Kumar Gupta independently from college, however, the answer to query remains in negative.

10. In a case where fraud is alleged, it is a legal obligation upon the respondents to verify it by their own means and to

confront it with delinquent employee, however, in present case, admittedly information supplied by one Ashish Kumar Gupta was not verified by their own means as well as that during lifetime of employee, she was never confronted with any allegation of fraud, even no notice was issued to her, therefore, the allegations against deceased employee remain unverified, therefore, no adverse order could be passed. In these circumstances, respondents have committed an illegality by rejecting claim of petitioner on frivolous ground, therefore, impugned order could not survive and accordingly set aside.

11. At this stage, during argument, the Court has asked the counsel for petitioner that under which legal provision this Court may pass an order for consideration for compassionate appointment after a period of more than 10 years as his mother died-in-harness on 15.05.2014. In this regard learned counsel has placed reliance on a judgment passed by Supreme Court in the case of **Ganesh Shankar Shukla Vs. State of U.P., through Secretary, Basic Education, Lucknow & another, Special Leave Petition © No. 3528 of 2022**, wherein an order passed by co-ordinate Bench and a Division Bench of this Court, declining the claim of petitioner therein to consider the claim for compassionate appointment on ground of lapse of about 13 years was set aside. Relevant part thereof is mentioned hereinafter:-

“ The appellant applied for compassionate appointment on 17.02.2020, which request was declined. The learned counsel for the respondent- State argued that the compassionate appointment is not the source of recruitment and is to be offered to meet the emergent financial distress suffered by the family. Since the appellant has survived for 17 years after the death of his mother, therefore, the appellant has lost the right to claim compassionate

appointment. The learned counsel for the State also relies upon Rule 5 of U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974, which contemplates the time of five years to make an application to seek compassionate appointment, though there is a provision for relaxation of such time limit.

In fact, both the children of Geeta Devi continued to be minor even after five years. Therefore, the rigour of Rule 5 cannot be extended in the case of the present appellant who was minor at the time of death of his mother, the father having died earlier.

In these circumstances, even when the appellant had survived on account of the financial support of the maternal grandparents, the respondent is not justified in raising a technical plea of delay in seeking appointment on compassionate grounds in the facts of the present appeal.

Some of the Judgments have been referred to by the learned counsel for the respondent-State, but it is the facts of each case, which are relevant. The facts of the present case show total inhumane approach in dealing with two minor children of the deceased. The delay was on account of the fact that they had no money, except the bare survival provided by the grandparents.

Consequently, the present appeal is allowed in view of the peculiar hard facts of the case. The appellant to apply for compassionate appointment to the State, giving his educational qualifications within one week. Considering the said application, the respondent-State will make appointment within next two months.

Pending interlocutory application(s), if any, is/are disposed of.”

12. Learned counsel for petitioner has also placed reliance on an order passed by co-ordinate Bench in **Km. Renu Vs. State of U.P. and others, Writ-A No.-7725 of 2012** decided on **03.01.2020**, wherein it was held that:-

“6. This Court in the case of Shiv Kumar Dubey (supra) had an occasion to examine the above provision and the guiding principles for invoking jurisdiction under the proviso has been outlined in the judgment itself. It is for the State Government to examine as to whether financial stringency caused on account of untimely death of Government servant

continues to subsist or not? It is only after such aspects are examined that a valid decision can be taken, whether or not to exempt the five years limitation in filing of application. In the facts of the present case, it is more than apparent that petitioner had none to support her at the time of death of her father. Petitioners' mother had pre-deceased her father. Facts of the present case clearly required empathy on part of the competent authority of the State while examining the issue as to whether limitation was required to be condoned in making of the application or not. Such sympathetic consideration is clearly found to be lacking in the decision taken by the State. Neither the financial condition of petitioner has been examined nor the State has taken note of the fact that there was none else in the family, who could have been considered for compassionate appointment. The extreme financial stringency for the petitioner continues to subsist despite the expiry of five years term. It is otherwise on record that petitioner made an application even before she attained the age of 18 years and the authorities themselves directed the petitioner to make an application after she attained the age of 18 years. A timely application moved by petitioner soon after she attained the age of majority has been rejected by a cryptic order without adverting to relevant aspects that were required to be gone into while exercising jurisdiction under the proviso to Rule 5. In that view of the matter, the decision taken by the State Government, as communicated by the Settlement Officer Consolidation in its letter dated 8.9.2011, cannot be sustained and is quashed.

7. Writ petition, consequently, succeeds and is allowed. The State Government is directed to re-visit the issue, keeping in view the observations made above, by passing a fresh order, within a period of six weeks from the date of presentation of certified copy of this order. Consequential order would be passed by the competent authority, within a further period of four weeks, thereafter. ”

13. Learned counsel for petitioner has also referred a judgment passed by Division Bench of this Court in **Shiv Kumar Dubey Vs. State of U.P. and others, (2014) 2 ADJ 312 (ALL)**, wherein it was held that:-

“29. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five

years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

30. As regards the judgment of the Division Bench in Vivek Yadav (supra), the first part of the judgment of the Division Bench in Vivek Yadav's case holds in paragraph 4 that since Rule 5 contemplates an application by a competent person, in a case where the applicant is a minor, it will not be possible for a minor to make an application during the period of his minority. Therefore, considering the object of the Rules, it was held that the proviso to Rule 5 must normally be exercised in such cases. This observation, with respect, requiring that the proviso to Rule 5 must normally be exercised for the purpose of dealing with a case in a just and equitable manner would not be reflective of the correct position in law. The subsequent decision in Subhash Yadav (supra) only holds that the Government cannot dismiss an application which has been moved after five years

blindfolded but has to apply its mind rationally to all the facts and circumstances of the case. In this regard, we clarify that the second proviso to Rule 5 requires an applicant, who invokes the power of dispensation or relaxation under the first proviso of the time limit of five years, to make out a case of undue hardship by elucidating, in writing, with necessary documentary evidence and proof, the reasons and justification for the delay. The Government may, in an appropriate case, when it is satisfied on the basis of the material that a case of undue hardship is made out, exercise the power which is conferred upon it under the first proviso to Rule 5 of the Rules but this power has to be exercised where a demonstrated case of undue hardship is made out to the satisfaction of the State Government. We answer the reference accordingly in the aforesaid terms.”

14. As referred above, this Court has already set aside the impugned order. Now the question left whether case of petitioner could be considered for compassionate appointment even after lapse of more than 10 years. In this regard, some paragraphs of few judgments passed by the Supreme Court on issue, being relevant and are mentioned hereinafter:-

“1. State of West Bengal Vs. Debabrata Tiwari and Others, 2023 SCC OnLine SC 219:-

32. *On consideration of the aforesaid decisions of this Court, the following principles emerge:*

- i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e.,*

to enable the family of the deceased to get over the sudden financial crisis.

- ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*
- iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.*

42. *It may be apposite at this juncture to refer to the following observations of this Court in **Malaya Nanda Sethy v. State of Orissa, AIR 2022 SC 2836**, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:*

“9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a

deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the

frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

2. Government Of India and another Vs. P. Venkatesh, 2019 SCC OnLine SC 325:-

7. The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this : compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3-1-1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then reconsider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13-11-2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of the Tribunal for reconsideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate

appointment over a decade after the death of the deceased employee.”

15. It is not under dispute that in present case, petitioner's mother died on 15.05.2014 in harness and immediately after her death, the petitioner has filed an application for compassionate appointment and when it was not decided, he immediately approached this Court by way of a Writ- A No. 1985 of 2015 which was disposed of by an order dated 27.02.2015 with a direction to consider his claim.

16. Later on petitioner's claim was considered but rejected by impugned order dated 23.11.2015 and immediately thereafter present petition was filed on 14.12.2015, therefore, it could be said that petitioner's attempt was bonafide and prompt. Unfortunately, this writ petition remains pending before this Court for almost 10 years due to one or another reason.

17. In given circumstances, this Court is of considered opinion that long pendency of a petition before this Court may not be considered to be adverse for petitioner's claim, therefore, a legitimate claim of petitioner for compassionate appointment cannot be denied only on ground that this writ petition remains pending before this Court for almost 9 years.

18. The outcome of aforesaid observation is that petitioner's claim may still be considered for compassionate appointment. The petitioner has taken prompt endeavour to approach this Court. There is no delay on part of petitioner, therefore, this writ petition is **disposed of** with an observation that in peculiar circumstances, petitioner's case still be considered for compassionate appointment in accordance with relevant rules

and provisions and shall not be rejected only on ground of delay, however, petitioner has to place material about his hardship as held in **Debabrata Tiwari and Others (supra)**.

Order Date : 22.03.2024

P. Pandey

[SAURABH SHYAM SHAMSHERY, J]