

AFR

RESERVED ON 26.07.2021

DELIVERED ON: 21.10.2021

Case :- WRIT - A No. - 5064 of 2021

Petitioner :- Sachin Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kailash Singh Kushwaha, Sanjay Kumar Singh Kushwaha

Counsel for Respondent :- C.S.C., Sanjay Kumar Srivastava

Hon'ble Saral Srivastava, J.

1. Heard Sri Kailash Singh Kushwaha, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondent no.1, and Sri Sanjay Kumar Srivastava, learned counsel appearing for respondents no.2,3 and 4.

2. The petitioner, through this writ petition, has prayed for the following reliefs:

"(i) Issue a writ, order or direction in the nature of Mandamus commanding the respondent no.3 to provide compassionate appointment to the petitioner without any further delay.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the respondent no.2 either to take appropriate and necessary decision on the reference made by respondent no.3 by letter dated 27.12.2011 followed by reminder dated 30.04.2013 and 04.03.2021 for providing compassionate appointment or to refer the matter to the State Government through proper channel forthwith.

(iii) Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

(iv) Award the costs of the petition in favour of the petitioner."

3. The case of the petitioner is that the father of the petitioner Late Satya Pal Singh was an Assistant Teacher in Primary School Jagra, Block Nidhauri Kala, District Etah, who unfortunately died on 16.3.2006. After his death, the mother of the petitioner applied for compassionate appointment on 3.1.2011. The application of the mother of the petitioner was processed, she

was asked to submit an application in the prescribed format. Thereafter, respondent no.4 forwarded the application of the mother of the petitioner along with its recommendation for compassionate appointment to respondent no.3 on 27.12.2011. Since the mother of the petitioner applied after five years from the date of death of his father, therefore, the respondent no.3 referred the application of the mother of the petitioner vide letter dated 27.12.2011 to respondent no.2 for grant of relaxation in time for the delay in submitting the application.

4. It appears that no decision was taken on the application of the mother of the petitioner for the compassionate appointment.

5. It further transpires from the record that when no decision was taken on the application of the mother of the petitioner, she withdrew her application and requested the appointment of her son Sachin Yadav in her place. The District Basic Education Officer, Etah vide letter dated 4.3.2021 forwarded the application of the petitioner for compassionate appointment to the Secretary, U.P. Basic Shiksha Parishad, Prayagraj, for grant of relaxation in time as the petitioner has submitted the application after five years from the date of death of his father. In the aforesaid backdrop, the petitioner has prayed for the relief extracted above.

6. Learned counsel for the petitioner submitted that Para-8 of the Government Order dated 4.9.2000 provides for seeking necessary approval of the State Government where the application for the compassionate appointment has been submitted after five years from the date of death of the deceased employee, and the State Government is under obligation to consider the application of the petitioner for grant of relaxation for the delay in submitting the said application. Accordingly, he submits that the action of the respondents in not considering the application of the petitioner is illegal. He further contends that whatever delay has occurred, the same has occurred on account of inaction on the part of the respondents in not considering the application of compassionate appointment of his mother in time, therefore, the petitioner is entitled to relaxation in limitation for grant of appointment on compassionate ground.

7. In support of the contention, he has placed reliance upon two judgments of this Court in the cases of *Madhav Prasad Shakya Vs. State of*

U.P. and others reported in ***2018(11) ADJ 198 and Vishal Saini Vs. State of U.P. and others*** reported in ***2021 (3) ADJ 74 (LB)***.

8. Per contra, learned Standing Counsel contended that the father of the petitioner had died on 16.3.2006 and more than 15 years have passed since the date of death of the father of the petitioner. Accordingly, he contends that a sufficiently long time has elapsed since the death of the father of the petitioner, and the family has survived, therefore, the relief prayed for cannot be granted at this stage since the object of compassionate appointment is to provide immediate relief to the bereaved family.

9. He submits that the mother of the petitioner had submitted an application on 27.11.2011 after about five years from the date of death of the father of the petitioner, and as the limitation prescribed under the Rules for considering the application for the compassionate appointment has expired, therefore, the application of the mother of the petitioner had to be referred to the competent authority for seeking extension of time for considering her claim for compassionate appointment.

10. He submits that though the mother of the petitioner was entitled to the compassionate appointment, she did not pursue her claim, and on 4.11.2019 she withdrew her application with the request to grant compassionate appointment to her son. Accordingly, he submits that there is an inordinate delay in submitting the application for the compassionate appointment, and the relief claimed can not be allowed at this stage. Thus, he submits that the writ petition is devoid of merit and deserves to be dismissed.

11. I have heard learned counsel for the petitioner and the learned Standing Counsel.

12. Indisputably, the father of the petitioner died on 16.3.2006. The mother of the petitioner submitted an application seeking the compassionate appointment on 3.1.2011. Since the application of the mother of the petitioner was not in the proper format, therefore, she was asked to submit an application in proper format by respondent no.4. She, thereafter, submitted an application on 27.12.2011 in the proper format. Since the mother of the petitioner submitted the application after five years, therefore, respondent no.3 referred the matter to the State Government seeking the

extension of time in respect to the compassionate appointment of the mother of the petitioner.

13. The matter was referred to the State Government but it appears that the State Government did not act upon the application nor the mother of the petitioner pursued her claim for appointment on compassionate ground. Later on, the mother of the petitioner withdrew her application for the grant of compassionate appointment and requested the appointment of her son on compassionate ground.

14. Accordingly, the petitioner at the age of 24 years applied for the compassionate appointment on 4.11.2019. Under Rule 6 of the Uttar Pradesh Recognized Basic Schools (Junior High Schools)(Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees), Rules, 1984 (in Short the Rules), the minimum age for recruitment on Class-III Posts is 18 years. The petitioner did not submit any application as soon as he became eligible for consideration for appointment on the compassionate ground rather he applied after six years after he became eligible for appointment on compassionate ground.

15. The father of the petitioner had died in the year 2006 and the mother of the petitioner withdrew her application after 13 years and requested for grant of compassionate appointment to her son. At this stage, it is worth noticing that the object of compassionate appointment is to provide immediate relief to the bereaved family so that the bereaved family may get over the financial hardship suffered by them on account of the untimely death of the sole bread earner of the family. It is settled in law that the compassionate appointment is an exception to the general rule and no aspirant has a right to the compassionate appointment.

16. Thus, the petitioner cannot claim an appointment on compassionate grounds as a matter of right, and it can be given to the petitioner if he fulfills the norms prescribed for the grant of compassionate appointment.

17. In the case in hand, the mother of the petitioner applied for the compassionate appointment in the proper format in December 2011. Since the application was submitted beyond the period of limitation i.e. five years prescribed for submitting the application for compassionate appointment,

therefore, the matter was referred to the State Government, but the State Government did not take any decision on the application of the mother of the petitioner. His mother also did not pursue her claim, and after about 13 years from the date of death of petitioner's father, she withdrew her application and requested for the appointment of her son in her place on compassionate ground. The petitioner thereafter submitted an application on 4.11.2019.

18. The family of the petitioner survived for more than 15 years. The mother of the petitioner was entitled to claim the compassionate appointment which she did not pursue, and surrendered her claim after nine years of submission of her application with a request for the appointment of her son in her place. Under the Scheme for compassionate appointment under U.P. Recruitment of Dependents of Government Servants Dying-in-Harness, Rules, 1974 (in short the Rules), the Rule does not envisage any such contingency where the widow of the deceased employee submitted an application for consideration of appointment on compassionate ground, and thereafter, she sat idle and did not take any legal recourse to assert her claim for appointment on compassionate ground, rather she waited for her son to become eligible for compassionate appointment, thereafter, she withdrew her application and requested for the appointment of her son in her place. If such a practice is permitted, that would frustrate the object of the Scheme of compassionate appointment which is to provide immediate succor to the bereaved family and to help out the family from the rigors of financial hardship being faced by the family due to the death of sole bread earner of the family and also against the settled norms prescribed for grant of compassionate appointment. Since the family has survived for about 15 years, therefore, this Court believes that the relief claimed by the petitioner cannot be granted.

19. This view is supported by the judgment of the Apex Court in ***Civil Appeal No. 897 of 2021, Central Coalfields Limited through its Chairman and Managing Director & Ors. Vs. Smt. Parden Oreon*** decided on 9th April 2021 wherein the Apex Court refused to grant the compassionate appointment to the son of the respondent who submitted the application for the compassionate appointment more than ten years after the respondent's

husband has gone missing. Paragraph 9 of the judgment is reproduced herein-below:

“9. We are in agreement with the High Court that the reasons given by the employer for denying compassionate appointment to the Respondent’s son are not justified. There is no bar in the National Coal Wage Agreement for appointment of the son of an employee who has suffered civil death. In addition, merely because the respondent is working, her son cannot be denied compassionate appointment as per the relevant clauses of the National Coal Wage Agreement. However, the Respondent’s husband is missing since 2002. Two sons of the Respondent who are the dependents of her husband as per the records, are also shown as dependents of the Respondent. It cannot be said that there there was any financial crisis created immediately after Respondent’s husband went missing in view of the employment of the Respondent. Though the reasons given by the employer to deny the relief sought by the Respondent are not sustainable, we are convinced that the Respondent’s son cannot be given compassionate appointment at this point of time. The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent’s husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the Respondent’s son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.”

20. It is true that the Rule, 1974 provides that if the application for compassionate appointment is submitted after five years, the competent authority is obliged to forward it to the State Government to consider the claim of compassionate appointment who is under obligation to consider the same, but the application has to be submitted within a reasonable time after the expiry of the period prescribed for submitting such application specifying the reasons for the delay in submitting the application. If the state government in a given case is satisfied, that the delay in filing the application is bonafide, it may consider the application and accord consideration for compassionate appointment subject to fulfillment of other eligibility criteria prescribed for compassionate appointment. The said provision does not confer an indefeasible right upon the aspirant of the compassionate appointment for consideration of his application even though it has been submitted with inordinate delay without any proper and bonafide explanation for the delay in submitting the said application.

21. In the instant case, no such condition exists inasmuch as the petitioner has not explained the reason for the delay in submitting the application rather the facts stated above reveals that the mother of the petitioner was dormant in pursuing her claim. Thus, the argument of the petitioner's counsel

that once the application for compassionate appointment is submitted after the period prescribed for submitting the application, the competent authority is bound to forward the same to the state government who is under obligation to consider the same is misconceived and not sustainable.

22. In the opinion of the Court, Judgments relied upon by the counsel for the petitioner are not applicable in the present case. In the case of ***Madhav Prasad Shakya (supra)***, the petitioner submitted a representation immediately after attaining the age of majority, which application was rejected by the State Government on the ground that the application has been filed after the expiry of five years. In that circumstances, the Court held that the application has wrongly been rejected. The factual situation in the case of ***Madhav Prasad Shakya (supra)*** in which this Court allowed the writ petition is different from the facts of the present case, hence, the law enunciated in the said judgment is not attracted in the present case.

23. In the case of ***Vishal Saini (supra)***, it has been held that at the time of death of petitioner's father, he was minor. The mother of the petitioner was given the compassionate appointment, who also died on 31.1.2012 during the service period. At the time of death of his mother, the petitioner was minor, and as soon as, he became major, he submitted an application for appointment on compassionate ground on 11.10.2019 which was rejected by the authority concerned on the ground of limitation. In such a factual backdrop, the Court held that the claim of the petitioner has wrongly been rejected on the ground of limitation. The facts of the present case are not akin to the facts of the case of ***Vishal Saini (supra)***, therefore, the judgement of ***Vishal Saini (supra)*** does not help the cause of the petitioner.

24. Thus, for the reasons given above, the writ petition lacks merit and is, accordingly, ***dismissed***. However, there shall be no order as to costs.

Order Date :- 21.10.2021

SKM