
(2013) 04 AHC CK 0009
In the Allahabad High Court
Case No : C.M.W.P. No. 39809 of 2007

Bhoopendra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2013) 98 ALR 484 : (2013) 4 AWC 4179 : (2013) 138 FLR 1007 :
(2013) 2 UPLBEC 1126

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : B.L. Shukla and Udai Chandani, for the Appellant;

Judgement

Tarun Agarwala, J.—The petitioner's father died in harness in the year 1994. At that time, the petitioner was a minor. Upon reaching the age of majority, the petitioner moved an application in the year 2001 for appointment on compassionate grounds. This application was rejected by the Competent Authority by an order dated 12th February, 2003, which was intimated to the petitioner by an order dated 7th March, 2007. The petitioner, being aggrieved by the said order, has filed the present writ petition. The impugned order indicates that the Competent Authority has rejected the application by taking recourse to the Government order dated 30th May, 2001 holding that there was no special reason for condoning the delay.

2. 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.

3. It transpires that the State Government issued a Government order dated

30th May, 2001 directing the department that applications given by a dependent of the deceased after five years from the date of the death should only be forwarded to the State Government where there is an exceptional case for condoning the delay otherwise the application should not be sent.

4. In the light of the Government order, the application was not forwarded by the Competent Authority to the State Government and was rejected by the Competent Authority indicating that there was "no exceptional reason for condoning the delay or to forward the matter to the State Government.

5. Having heard the learned counsel for the parties, the Court is of the opinion that the Government order has transgressed the Rules framed under Article 309 of the Constitution of India. The Rules clearly provide that if an application is made for employment after five years and if it is shown that the delay had caused undue hardship, in which case if the State Government was satisfied, the State Government may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner. The Rules provides a latitude to the State Government to relax the period of five years and this power cannot be sub-delegated to the Competent Authority. Further, nothing has been indicated in the Government order dated 30th May, 2001 as to what is that exceptional circumstance, which would allow the Competent Authority to forward the matter to the State Government. Such wide discretion given to the Competent Authority is wholly discriminatory and arbitrary nor can such power be sub-delegated to the Competent Authority. If there is a delay, the Competent Authority is bound to refer the matter to the State Government to relax the period.

6. 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 cannot be sustained and is quashed. For the reasons stated aforesaid, the impugned order dated 12th February, 2003 Is also quashed. The writ petition is allowed and the matter is remitted to the Competent Authority to forward the application to the State Government immediately. The State Government is required to consider the application and pass appropriate orders on it in accordance with law within six weeks from the date of production of a certified copy of the order.