
(2011) 10 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61707 of 2011

Dinesh Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 5

Citation : (2011) 10 AHC CK 0087

Hon'ble Judges : Rajes Kumar, J

Judgement

Rajes Kumar,J.

1. Heard learned counsel for the parties.
2. The petitioner's father was Constable in Civil Police, who died in harness on 5.2.1990. The petitioner applied for the compassionate appointment on 27.11.2004. The claim of compassionate appointment has been rejected on the ground that the Special Secretary, U.P., Home Police vide his order dated 13.5.2003 has informed that the delay of five years can be condoned only in those cases where the police personnel died while on duty dealing with natural calamity, encounter, riot, etc.
3. The contention of the petitioner is that the rejection of the claim on the aforesaid ground is absolutely illegal.
4. Learned Standing Counsel is called upon to justify the impugned order. Learned Standing Counsel very fairly submitted that under proviso to Rule 5 of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as 'Dying in Harness Rules, 1974') the power to condone the delay is not confined to the cases mentioned in the order. It applies to the other situations also in case if the petitioner is able to explain the delay.
5. I have heard the rival submissions.

6. With the consent of the parties the writ petition is being disposed of.

7. Rule 5 of the Dying in Harness Rules, 1974 is referred herein below:

5. Recruitment of a member of the family of the deceased. (1) In case of 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) fulfills 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.

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 of the time limit fixed for making the application for employment along with 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.

(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) Every appointment made under subrule (1) shall be subject to the condition that the person appointed under subrule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under subrule (1) neglects or refuses to maintain a person to whom he is liable to maintain under subrule (3), his services may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time.?

8. The proviso to Rule 5 of the Dying in Harness Rules, 1974 is not confined to the cases mentioned in the order. It is applicable to the other situations also in case if the petitioner gives proper explanation to the satisfaction of the authority about the delay. Therefore, the impugned order is not sustainable and the matter is remanded back to respondent no. 1 to reconsider the claim of the petitioner for the condonation of delay under the proviso to Rule 5 of the Dying in Harness Rules, 1974.

9. In the result, the writ petition is allowed. The order dated 16.4.2011 is set aside and the matter is remanded back to the respondent no. 1 to decide the matter expeditiously preferably within a period of three months from the date of presentation of certified copy of this order in accordance to law.