

(2019) 04 UK CK 0155

In the Uttarakhand High Court

Case No : Special Appeal No. 546 Of 2018

Managing Director, Uttarakhand Parivahan Nigam

APPELLANT

Vs

Sumit Kumar Katiyar

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Citation : (2019) 04 UK CK 0155

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Lalit Samant, Anjali Bhargava

Final Decision : Allowed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in WPSS No. 1670 of 2013 dated 18.4.2018. The respondent-writ petitioner invoked the jurisdiction of this Court seeking a writ of certiorari to quash the order dated 26.7.2013 passed by the third respondent; and a writ of mandamus directing the respondents to appoint the petitioner under the Dying in Harness Rules according to his qualification.

2. Facts, to the limited extent necessary, are that the petitioner's father, who was working as a Conductor in the Uttar Pradesh State Transport Corporation/ Uttarakhand Parivahan Nigam, died on 5.12.1996 during his service; the petitioner was then a minor, aged 11 years and 4 months; the petitioner's mother is said to have made an application on 9.9.1997 informing the authorities that her son was a minor, and when he becomes a major, he be appointed under the Dying in Harness Rules; the petitioner's mother is said to have made another application on 11.12.2003 requesting the authorities that, since her son had attained majority, he may be appointed under the Dying in Harness Rules. Reference is made to a letter, said to have been furnished by the third respondent under the Right to Information Act, dated 18.12.2003 stating that, if

the petitioner fulfilled the qualifications, he could be appointed under the Dying in Harness Rules. The third respondent is also said to have passed an order on 15.7.2004 calling upon the petitioner to submit his documents. The third respondent passed an order on 2.12.2004 informing the petitioner that, on 4.12.2001, he was aged 16 years 4 months; and he had not submitted his application within five years, as prescribed under the Rules, from the date of the death of his father i.e. 5.12.1996.

3. The petitioner claims to have passed intermediate which is the educational qualification prescribed for being appointed as a Conductor; and submits that he was therefore entitled to seek appointment on his attaining the age of majority on 9.8.2003. The petitioner filed WPSS No. 315 of 2006 which was disposed of, by order dated 27.12.2012, directing the respondents to consider the case of the petitioner for appointment on compassionate grounds. Thereafter the impugned order dated 26.7.2013 was passed rejecting the petitioner's claim, for compassionate appointment, on the ground that the difficulties faced by the family of the petitioner were over; and the petitioner was not qualified since he did not attain the age of majority within five years from the date of the death of his father. Aggrieved thereby, the petitioner filed WPSS No. 1670 of 2013.

4. In the order under appeal dated 18.4.2018, the learned Single Judge observed that the respondents should have decided the representation of the petitioner as ordered by this Court on 27.12.2012; the petitioner fulfilled the essential educational qualifications; he could not apply, within a period of five years after the death of his father on 5.12.1996, for the simple reason that his case was kept alive by his mother as he was a minor; rejection of the petitioner's claim was arbitrary and unreasonable; and the petitioner could apply only after attaining the age of majority. The impugned order was quashed, and the respondents were directed to consider the case of the petitioner for appointment to the post of Conductor on compassionate basis. Aggrieved thereby, the present appeal.

5. Sri Lalit Samant, learned Counsel for the appellant, would place before us a copy of the judgment, in *Sanjay Kumar v. State of Bihar & Others*, (2000) 7 SCC 192, wherein the Supreme Court observed thus:

".....We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education & Anr. v. Pushpendra Kumar & Ors.* supra. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years,

unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief....."

(Emphasis supplied)

6. The law declared by the Supreme Court, in the aforesaid judgment, is that compassionate appointment is intended only to enable the family of the deceased employee to tide over a sudden crisis resulting because of the death of the bread earner who had left the family in penury and without any means of livelihood; there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions; and the very basis of compassionate appointment is to see that the family gets immediate relief.

7. As noted hereinabove the petitioner was a minor, aged a little more than 11 years, when his father passed away on 5.12.1996. He attained majority nearly 7 years thereafter on 9.8.2003. In the light of the law declared by the Supreme Court, in Sanjay Kumar, a vacancy for compassionate appointment cannot be reserved for several years awaiting the minor attaining the age of majority. In the present case, the minor attained the age of majority nearly 7 years after the death of his father. In the light of the law declared by the Supreme Court, in Sanjay Kumar v. State of Bihar & Others, the petitioner is not entitled to the relief granted by the learned Single Judge. The order under appeal is set aside, and the Special Appeal is allowed. However, in the circumstances, without costs.