
(2000) 02 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16549 of 1997

Manoj Kumar Saxena

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Dying in Harness Rules, 1974 — Rule 5(1)

Citation : (2000) 2 UPLBEC 1694

Hon'ble Judges : Bhagwan Din, J

Bench : Single Bench

Advocate : Lakendra Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Bhagwan Din, J.—The father of petitioner, late Ram Bahadur Saxena was holding post of Lekhpal in Tehsil Faridpur, District Bareilly. He died in harness on 13-8-1987. The petitioner, at the time of death of his father, was minor, aged about 12 years. The petitioner, therefore, after attaining the age of majority, applied for appointment on the post of Lekhpal, on compassionate ground, in the month of November, 1993. The Collector who is appointing authority, wrote a letter to Board of Revenue, for issue of the suitable/necessary direction. It appears that the Commissioner/Secretary, Anubhag-12, Lucknow referred the matter to the Joint Secretary, Government of U.P. The Joint Secretary, Government of U.P. wrote a letter to the Commissioner/Secretary, Board of Revenue that the employee, Ram Bahadur Saxena died in 1987. The applicant applied for his appointment on compassionate ground in 1993 after five years. There was no justification in granting relaxation in the delay in applying for the appointment on compassionate ground. This is the order which is under challenge in this petition.

2. Heard Sri Lokendra Kumar, learned Counsel for the petitioner and learned Standing Counsel at length.

3. The sole controversy in this petition revolves on the point whether the delay in applying for the appointment on compassionate ground can be allowed in the cases where the applicant appear on the date of death of his father?

4. Similar controversy arose before a Division Bench of this Court. After considering the decision rendered by the Hon"ble Supreme Court in Jagdish Prasad v. State of Bihar and Anr. 1996(1) SLR 7 and also taking into account the observations of this Court, made in Special Appeal No. 1265 of 1995. Pushpendra Singh v. Regional Manager, U.P.S.R.I.C. 2000 (1) ESC 448 (All) (DB) in Special Appeal No. 28 of 2000, Sanjay Kashyap v. Chief Medical Officer, Maharajganj and Ors., held that "the proviso to Rule 5(1) of the U.P. Recruitment of Dependents of Government Servants. Dying in Harness Rules, 1974, as inserted by notification dated 13th October, 1993, visualises that if the State Government is satisfied that denial of the compassionate appointment under Dying in Harness Rules due to any delay in moving the application would cause undue hardship, the same may be considered in relaxation of the rule of limitation in order to do complete justice."

5. It is not disputed that at the time of the death of his father in 1987, the petitioner was minor. The rule does not permit a minor to get an employment on compassionate ground. Therefore, when he attained the eligible age in 1993, applied for appointment on compassionate ground. In such Stage of circumstances. I am of the view that there was no delay in moving the application by the petitioner for consideration.

6. Having record to the views expressed by the Division Bench in the Special Appeal No. 28 of 2000, referred to above and also having regard to the facts and circumstances in which the petitioner could not apply for his appointment under Dying in Harness Rules, within the stipulated period that also in the light of the proviso to Rule 5(1) of the Rules, I am of the view that the petition should be allowed.

7. The petition is allowed and the impugned order dated 1-4-1997, passed by the respondent No. 3, is quashed. The respondents are directed to consider the application of the petitioner for compassionate appointment, keeping in view the aforesaid provision and other attending circumstances and take appropriate decision in the matter, within a period of two months, from the date of production of a certified copy of this order.