

(2012) 10 AHC CK 0192

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 267 of 2010

Manoj Kumar Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2012) 11 ADJ 671 : (2013) 1 AWC 646 : (2013) 136 FLR 984 :
(2013) 1 UPLBEC 183

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Lokendra Kumar, A.K. Shukla and Ram Pratap Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri R.P. Yadav, learned counsel for the petitioner and the learned Standing counsel. The petitioner's father died in the year 1987. At that time, the petitioner was a minor, being 12 years old and, consequently upon reaching the age of majority, applied for appointment on compassionate grounds under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the Rules of 1974), in the year 1993. Since there was a delay in moving the application, the matter was referred to the State Government. The State Government, after considering the matter, rejected the petitioner's application on the ground that it was belated. The petitioner, being aggrieved, filed a writ petition, which was allowed by a judgment dated 23rd February, 2000. The writ Court held that the delay could be condoned under the Rules and accordingly quashed the impugned order and remitted the matter again to the Authority concerned to re-decide the matter. The District Magistrate, by the impugned order dated 20th August, 2003, has again rejected the application on the ground of delay. The petitioner, being aggrieved, has filed the present writ petition.

2. Having heard learned counsel for the parties, the Court is of the opinion that

the District Magistrate had no authority to reject the application on the ground of delay. The application can be condoned under Rule 5 of the Rules of 1974 which provides that the delay can be condoned only by the State Government. In the instant case, the matter was earlier referred to the State Government, which it refused to condone the delay and the same was questioned by the High Court. The High Court had categorically stated that there was no undue delay and that the rejection of the application for appointment had caused undue hardship to the petitioner. In spite of these specific directions being issued by the High Court in its earlier judgment, the District Magistrate had the gall and cheek to reject the petitioner's application on the same ground, which had already been quashed by the High Court. Such attitude of the District Magistrate was totally unwarranted and could not be justified.

3. In *Vivek Yadav v. State of U.P. and others*, 2010 (7) ADJ 1 (DB). A Division Bench of this Court had the occasion to consider Rule 5 of the Rules, 1974 and held:

A perusal of Rule 5 would show that an application for employment on compassionate basis is to be made within five years from the date of death of the deceased Government servant. There is a proviso conferring power upon the Government for relaxing the time-limit fixed for making such application, where the Government is of the opinion that it causes undue hardship and for dealing with the case in a just and equitable manner. Reading of this rule would demonstrate that the application must be by a competent person, who is competent to make it. A minor, therefore, could not have made application. The time-limit for an application contemplated by the rule, therefore, could only be read to mean "by a competent person", in other words, who has attained the age of majority. In a case, where the applicant is minor, it would not be possible for the minor to make an application for various reasons including that he is minor and as such he cannot be appointed to a post in the Government. Rule 5, therefore, will have to be read in such manner that it gives effect to the policy of the Government, which is to provide employment to a member of the family of a Government employee, who dies in harness, so as to mitigate the hardship. The issue whether the family of the deceased over long passage of time continues to face the hardship, would be examined on the merits of the claim. Rule 8 of the Rules, 1974 itself contemplates that a candidate seeking appointment under the Rules must not be less than 18 years of age at the time of appointment. In the instant case, as averred by the appellant, his mother was uneducated or illiterate, he was a minor though the elder son and there were elder sisters. Therefore, in such cases, considering the object of the Rules, the proviso to Rule 5 must normally be exercised, as for the purpose of dealing with the cases in a just and equitable manner. In exercising such discretion, no doubt, the authority exercising the discretion will examine the record before him.

4. The Division Bench held that the proviso to Rule-5 confers a power upon the Government to relax the time period in making the application, where in its

opinion, the delay would cause undue hardship and for dealing with a case in a just and equitable manner. In the instant case, admittedly, the petitioner was a minor and was only 12 years of age. The application was moved upon attaining the age of majority. The Rule provides that the application can be filed within five years from the date of the death of the Government employee. In the instant case, the application was filed after six years from the date of death of the father and consequently the delay, if any, is of one year only. In the opinion of the Court, the delay was not such which could be said to be belated and, such delay can be condoned in the circumstances of the given case. In the light of the aforesaid, the District Magistrate committed a manifest error in rejecting the petitioner's application on the ground of delay which cannot be sustained and is quashed. The writ petition is allowed with cost, which the Court imposes at Rs. 20,000/-, which shall be paid by the respondent to the petitioner within six weeks from today. The matter is again remitted to the Authority concerned to decide the matter on merits within six weeks from the date of production of a certified copy of the order.