

(2000) 03 AHC CK 0029

In the Allahabad High Court

Case No : Special Appeal No's. 1337 connected with Special Appeal No. 1336 of 1999

Mohd. Danish Siddiqui

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2000) 2 AWC 1541 : (2000) 85 FLR 567 : (2000) 2 UPLBEC 1183

Hon'ble Judges : G.P. Mathur, J;A.K. Yog, J

Bench : Division Bench

Advocate : V.K. Singh, G.K. Singh, R.N. Singh and A.P. Sahai, for the Appellant;

Judgement

G.P. Mathur, J.—The question Involved in both the appeals is similar and, therefore, they are being disposed of by a common order.

2. In Special Appeal No. 1337 of 1999 appellant Mohd. Danish Siddiqui's father was a constable who died on 25.10.1981 while he was still in service. The appellant was aged about 3 years at that time. The appellant's mother gave an application for giving appointment to the appellant under U. P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as the Rules) on 4.11.1997. It was stated in the application that the appellant had passed intermediate and knew Hindi typing and shorthand. It was prayed that the appellant may be appointed in the post of Sub-Inspector of Police. Ministerial (Steno) Instead of the post of constable (Ministerial). The claim of the appellant for being appointed on the post of Sub-Inspector of Police (Ministerial) was referred to the State Government as the application had been made more than five years after the death of his father. However, the State Government by its order dated 30.6.1999 rejected the prayer made by the appellant on the ground that the same was made more than five years after the death of his father. The writ petition filed by the appellant challenging the orders of the State Government was dismissed by a learned single Judge on 11.11.1999

on the ground that the appellant having made the application for compassionate appointment 17 years after the death of his father, he was not entitled to any relief.

3. In Special Appeal No. 1336 of 1999, the appellant Kaushal Kumar Misra's father was working as reserve Inspector of Police who died on 27.10.1980 while he was still in service. The appellant moved an application on 24.8.1998 stating that he was 31 years of age and had passed B.A. and being the eldest member of his family, he may be given appointment on compassionate ground under the Rules. The Superintendent of Police, Pilibhit, required the appellant to furnish some documents which he did. The appellant claimed that he may either be appointed as Sub-Inspector of Police or be appointed on the post of Stenographer. The appellant did not meet the prescribed physical standard for the post of Sub-Inspector and, therefore, the Superintendent of Police forwarded the application for consideration regarding the post of Stenographer. In due course, the application was forwarded from Police Head Quarter to the State Government which rejected the same by the order dated 30.6.1999 on the ground that the claim for compassionate appointment had been made more than five years after the death of father of the appellant.

4. Sri A. P. Shahi learned counsel for the appellants has submitted that at the time of the death of their father, the appellants were minor and as such there was no question of their making any application for appointment. After attaining majority and requisite educational qualification, they moved application for being given employment and in these circumstances they were entitled to the benefit of the rules and the view to the contrary taken by the State Government is illegal. Learned counsel has further contended that the proviso appended to Rule 5 gives power to the State Government to relax the time limit of five years fixed for making the application for employment and the question of grant of relaxation to the appellant has not been taken into consideration while passing the impugned order.

5. U. P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974, had been amended by Fifth Amendment on January 20, 1999 and Rule 5 as it has been substituted after amendment reads as follows :

"(1) In case 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) fulfils 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 cause 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."

6. The Rule as it stands after amendment provides that the application for employment should be made within five years from the date of death of the Government servant. The proviso lays down 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.

7. It is well-settled that the appointments in public service should be made strictly on the basis of an open invitation of applications and merit and any other mode of appointment by following a different procedure or relaxing the prescribed qualification would be invalid being violative of Article 16 of the Constitution. In order to mitigate the hardship of the family of a Government employee who dies while in service, an exception has been carved out and U. P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 have been framed purely on humanitarian considerations. But for this exceptional feature, the Rules would be ultra vires being violative of the guarantee enshrined under Article 16 of the Constitution.

8. The question regarding grant of employment on compassionate ground has engaged the attention of the Supreme Court recently in two cases. In Life Insurance Corporation of India v. Mrs. Asha Ramachandra JT 1994 (2) 183, it was observed as follows in para 10 of the reports :

"Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law In this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration."

9. Again in Umesh Kumar Nagpal Vs. State of Haryana and Others, , It was held as follows in para 2 of the reports :

".....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in-harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to

examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of family."

10. It may be pointed out here that in Special Appeal No. 324 (SB) of 1992, U. P. State Road Transport Corporation v. Aviral Kumar Misra. decided on August 19, 1994, a Division Bench (ER. A. Sharma and Mrs. Shobha Dikshft, JJ.) have held that the object of Dying-in-Harness Rules is to provide financial assistance to the family of the Government servant who had died-in-harness and it is at the time of death that such help is required. It has been further held that no appointment on compassionate ground as such can be made several years after the death of the employee. In Special Appeal No. 514 of 1992. Umesh Kumar Srivastava v. State of U. P. and others, decided on October 19, 1994, a Division Bench (S. S. Sodhi, C. J. and G. P. Mathur, J.) held that the benefit of the Rules cannot be given to the family member of a Government servant who has died prior to the commencement of the Rules. In Haribans Sahai Srivastava v. State of U. P. 1990 AWC 383. it was held by a Division Bench that the clear intention of the rule is to provide assistance to the family of the deceased who was a Government servant and has died-in-harness and it is at that time, the help is required by the family. It was further held that by no stretch of imagination, it can be said that after more than nine years of the death of the Government servant, the dependants can seek benefit of the Rules.

11. In Special Appeal No. 1337 of 1999, the death of the father of the appellant took place on 25.10.1981 and the application was given by him in 1997 wherein a prayer was made that Instead of Constable (Ministerial) he may be appointed as Sub-Inspector (Ministerial) in view of the fact that he knew Hindi typing and shorthand. Similarly. In Special Appeal No. 1336 of 1999, the death of the father of the appellant took place on 27.10.1980 and the application for claiming compassionate appointment was made on 24.8.1998 when he had himself attained the age of 31 years. In both the cases, the applications were made many years after the death of the father. The case of the appellants, therefore, did not fall within the purview of Rule 5 and consequently, they were rightly rejected.

12. Sri A. P. Shahi has submitted that the State Government had power to dispense with or relax the requirement regarding moving of the application for employment within five years from the date of death and the benefit of the aforesaid proviso should have been extended to the appellants. He also referred to a decision by a Division Bench in Special Appeal. No. 1265 of 1999. Puspendra Singh v. UPSRTC, where after holding that the appeal preferred by the claimant of employment was bereft of merit, the Court made an observation that the employer may reckon with the feasibility of giving temporary appointment if the family of the appellant was still really under financial strain. It may be noticed that the proviso to Rule 5 clearly provides 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. The proviso does not give an unfettered right to the State Government to dispense with or relax the requirement enumerated in sub-clause (Hi) appended to sub-rule (1) of Rule 5 of the Rules. It is only in a case where the State Government is satisfied from the material produced before it that the period of five years fixed under the rules for making of the application is causing undue hardship in any particular case, it may dispense with or relax the requirement regarding period of limitation. We have carefully perused the application given on behalf of the applicants where claim for appointment was made. It is nowhere written in the application that the family was still facing undue hardship or extreme difficulty. In the case of Mohd. Danish Siddiqui, the prayer made was that Instead of Constable (Ministerial), he should be appointed as Sub-Inspector (Ministerial) as a Stenographer. In the case of Kaushal Kumar Misra, it is stated that after the death of his father, extraordinary family pension was granted to his mother. At the same time, he wanted appointment as Stenographer. Neither it was stated that the family was facing any undue hardship nor any material-in-support thereof was given. In these circumstances the State Government committed no illegality if it did not grant any relaxation from requirement regarding five years period of moving the application. In the case of Puspendra Singh (supra), it was held that the appeal was bereft of merits but a discretion was left with the employers to consider the feasibility of grant of temporary appointment. Neither any direction was issued to the employer to grant appointment to the claimant nor the order of the authorities rejecting his claim was quashed. Therefore, this decision can be of no assistance to the appellants.

13. Both the appeals lack merits and are hereby dismissed.