

(2012) 01 AHC CK 0494

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2446 of 2009

Mohit Mishra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0494

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—In the present writ petition, petitioner has rushed to this court with request to issue writ in the nature of mandamus directing the respondent to issue appointment order to the petitioner in place of his father late Ganesh Narayan Mishra.

2. Brief fact as are reflected that petitioner's father had been performing and discharging his duty as Class IV employee at District Agriculture Office, Kanpur Dehat. Petitioner claims that his father is missing since 20.6.1995 and further claims that his mother had informed the police on 24.8.1995. Petitioner submits that police have submitted final report on 24.8.1996. Petitioner has stated that authority concern have ultimately declared him dead on 20.5.2007 and further claim that in the past mother of the petitioner had moved an application on 8.7.1999. Petitioner thereafter, has rushed to this court contending therein that application has been moved on 17.11.2007 and 11.4.2008 but till today no decision has been taken on the same.

3. Counter affidavit has been filed and therein earlier mother of the petitioner had moved application for appointment but subsequently she had prayed for appointment of her son and as such claim cannot be considered. It has also been reiterated that no proper application along with all documents have been received.

4. Rejoinder affidavit has been filed reiterating therein that respondents are unnecessarily denying the compassionate appointment.
5. After pleadings mentioned above, have been exchanged, thereafter, present writ petition has been taken up for final disposal/hearing with the consent of the parties.
6. Sri. C.B. Gupta, learned counsel for the petitioner contended with vehemence that in all eventuality claim of the petitioner is liable to be considered for grant of compassionate appointment.
7. Countering the said submission, learned Standing Counsel on the other hand contended that in the present case petitioner's father has disappeared in the year 20.6.1995 and since 1995 at no point of time, any salary whatsoever was paid to him and in view of this after 16 years claim of compassionate appointment cannot be accorded, as such writ petition deserves to be dismissed.
8. After respective arguments have been advanced, undisputed factual position, which is emerging in the present case is that petitioner's father has been missing since 20.6.1995, and it is not at all case of the petitioner in the entire body of the writ petition that since June 1995 any salary whatsoever has been received by the petitioner's family till declaration has been made that it is case of civil death. Fact of the matter is that after 20.6.1995 at no point of time any salary had been paid to the father of the petitioner. Once such is the factual situation and in this background then claim of the petitioner for grant of compassionate appointment after 16 years from the date of missing of petitioner's father cannot be accorded.
9. Undisputed position which is emerging is that father of petitioner died on 20.5.2007. Application in question has been moved after 16 years of death. About 16 years period has already elapsed as on date Hon'ble apex Court in the case of State of J. & K. vs. Sajad Ahmed Mir, AIR 2006 SCW 3708, has taken the view that compassionate appointment cannot be claimed as matter of right, at the cost of others, and when matter was taken up fifteen years period had already passed from the date of death, and said fact was relevant and material fact that family survived, in spite of death of employee.
10. Apex Court, in Civil Appeal No. 2206, Local Administration Department Vs. M. Selvanayagam @ Kumervela, decided on 5.9.2011, wherein incumbent had died on 22.11.1988, and first application for grant of compassionate appointment was moved by applicant, when he was merely 11 years old on 29.7.1993 and thereafter another application was moved, after 7 years 6 months period, the claim was rejected as time barred, writ petition preferred was dismissed; Special Appeal preferred against the same was allowed on 30.4.2009 the Special Leave to Appeal, thereafter, has been allowed, holding that grant of compassionate appointment on application moved after 7 years 6 month, will not at all come within the scope of compassionate appointment.

11. Petitioner has placed reliance on judgment in the case of Union of India (UOI) and Others Vs. Phool Chand Pal and Another, . Said judgment will not at all come to the rescue of the petitioner for the simple reason that in the present case date of dis-appearance of the year 1995 and since then more than 16 years period have elapsed and the object of providing compassionate appointment is to save family from crisis.

12. On the touchstone of the principle enunciated above, here in spite of death of bread earner in the family, petitioner has survived and substantial period of 16 years is already over and at the point when application for grant of compassionate appointment was moved 16 years period had already elapsed, then there is no necessity to say goodbye to normal rule of appointment, and show favour to petitioner. Compassionate appointment is not reservation for all times to come and the same is not vested right.

13. Consequently, present writ petition is dismissed.