
(2011) 01 AHC CK 0233

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 69895 of 2009

Niyamat Ali and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 01 AHC CK 0233

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Dilip Gupta, J.—The Petitioners had claimed compassionate appointment on the post of Sub-Inspector under the U.P. Recruitment of Dependant of Government Servants Dying in Harness Rule, 1974 (hereinafter referred to as the ""Rules") as father of the Petitioners died in harness while working in the Police Department. The appointment on the post of Sub-Inspector was denied to the Petitioners as the Government Orders dated 20th September, 2006 and 25th June, 2007 prohibited making compassionate appointment on these posts but the Petitioners were appointed on the post of Constables on compassionate ground. It transpires that subsequently Writ Petition No. 4746 of 2008 (Mukesh Shukla and Ors. v. State of U.P. and Ors.) was filed by certain persons who had been denied appointment on compassionate ground on the post of Sub-Inspector and this petition was allowed by the judgment and order dated 7th August, 2008. The Petitioners have, therefore, filed this petition with a prayer that they may now be considered for appointment on the post of Sub-Inspector since the two Government Orders which had been made the basis for denying them appointment on the post of Sub-Inspector on compassionate grounds, have been set aside by the Court.

2. In the counter affidavit filed by the Respondents, the same reason as mentioned in the two Government Orders has been given for denying

appointment to the Petitioners on compassionate grounds on the post of Sub-Inspector and it is stated that they were offered appointment on the post of Constables which they accepted.

3. It is contended by the learned Counsel for the Petitioners that the Petitioners were left with no option but to accept the appointment on compassionate grounds on the post of Constable since written communication was sent to them by the Department that because of the two Government Orders, they will not be offered appointment on the post of Sub-Inspector.

4. Learned Standing Counsel appearing for the Respondents states that it is for the Petitioners to apprise the Respondents about the facts by filing a representation which shall be decided expeditiously.

5. Writ Petition No. 4746 of 2008 was allowed by this Court by the judgment order dated 7th August, 2008 with the following observations:

I have heard learned Counsel for the parties and perused the record. 1974 Rules provides for compassionate appointment to a person against a post available for direct recruitment in class III and Class IV post. It is not disputed that no amendment in Rules has been made so far. The Respondents also could not show that the Recruitment Board is competent to take such decision which has the effect of amending the Rules which should be adhered to by the Respondents. In order to deny Petitioners' claim in accordance with 1974 Rules as they stand as on date, unless there is an amendment in the rules, the Respondents cannot proceed only on the proposal. In view thereof, I do not find any justification on the part of Respondent No. 3 by refusing to consider Petitioners for appointment directly on the post of S.I./P.C. Under 1974 Rules only on the basis of said resolution. However, it goes without saying that that mere consideration does not confer a right of appointment on the post of S.I./P.C. but it is subject to fulfilment of all the requirements for recruitment to the said post and unless a person fulfils, educational, physical and other qualifications he cannot be appointed on the post of S.I./P.C. under 1974 Rules. In some of the cases, death of deceased person has taken place long back, therefore, this aspect is also open to be considered by the competent authority as to whether after such a long time appointment on compassionate basis under 1974 Rules is permissible or not in the light of statutory rules as well as the law laid down by this Court as well as the Apex Court.

With the aforesaid direction both the writ petitions are allowed. Respondent No. 3 is directed to consider the Petitioners for appointment on compassionate basis in accordance with law ignoring the above resolution of Recruitment Board, expeditiously without any further delay, preferably within a period of three months from the date of production of a certified copy of this order before him. There shall be no order as to costs.

6. It is further stated that Sanjeev Dubey who had been appointed as a Constable on compassionate grounds and who was undergoing training, was

subsequently called for physical test for appointment on the post of Sub-Inspector pursuant to the directions issued in Writ Petition No. 4746 of 2008 and was thereafter appointed as a Sub-Inspector. The submission, therefore, is that the Petitioners should also be considered for appointment on compassionate grounds on the post of Sub-Inspector.

7. Learned Counsel for the Petitioners has also placed before the Court the judgment and order of the Supreme Court in *Surya Kant Kadam Vs. State of Karnataka and Others*, wherein the Supreme Court directed the Respondents to consider the case of the persons for appointment on the post of Sub-Inspector (Excise) even though they had been offered appointment on compassionate appointment on the lower post of Clerk and the relevant observations are as follows:

The learned Counsel for the Appellant contended that even though the Respondents 3 and 4's appointment could not be assailed on the ground of belated approach by the Appellant but the prayer with regard to consideration of the Appellant for the post of Sub-Inspector of Excise could not have been rejected by the Tribunal. The learned Counsel appearing for the State Government on the other hand, contended that against the earlier order when the Tribunal denied the relief of considering the case of the Appellant for the post of Sub-Inspector of Excise, the Appellant having not moved this Court, the same has become final and therefore should not be interfered with by this Court. There is some force in the aforesaid contention of the learned Counsel for the State. But having considered the facts and circumstances of the present case and admittedly the Respondents 3 and 4, who were similarly situated like the Appellant and who were given compassionate appointment later than the Appellant, having been appointed as Sub-Inspector of Excise, the Appellant has a justifiable grievance. It is true that the appointment on compassionate ground in the State of Karnataka is not governed by any statutory rules but by set of administrative instruction and as such is not enforceable in a Court of Law. But the grounds on which the Appellant makes out the case for consideration of his case, is the violation of Article 14 and discriminatory treatment meted out to the Appellant. It is undisputed that the date on which the Appellant was given a compassionate appointment as the Second Division Assistant/Clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that the Respondents 3 and 4 were given appointment initially as Second Division Assistant/Clerk but later than the Appellant. When the State therefore thought it fit to change the post of Respondents 3 and 4 and appointed them to the post of Sub-Inspector of Excise, unless there is any justifiable reason exists, there is no reason as to why the Appellant should be treated with a hostile discrimination. In the aforesaid circumstances, we set aside the impugned order of the Tribunal rejecting the prayer of the Appellant for being considered for the post of Sub-Inspector of Excise and we direct that the State Government may consider the case of appointment of the Appellant as Sub-Inspector of Excise. Be it stated, in the event he is appointed it would be prospective and he

will not be entitled to any retrospective benefit. The appeals are allowed accordingly.

8. Thus, even though the Petitioners may have been appointed on the post of Constables on compassionate grounds, yet when the two Government Orders which had been made the basis for denying appointment to them on compassionate grounds on the post of Sub-Inspector, have been set aside by this Court, it will be appropriate to issue a direction to the Respondents to decide the representation to be filed by the Petitioners for appointment on the post of Sub-Inspector. Such decision should be taken expeditiously, preferably within a period of three months from the date the representation is filed with a certified copy of this order.

9. The writ petition is, accordingly, disposed of with the aforesaid observations.