

(2011) 01 AHC CK 0232
In the Allahabad High Court
Case No : Case Writ A No. 2270 of 2011

Rajesh Kumar Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0232

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The claim of the Petitioner for grant of compassionate appointment has been rejected by the order dated 5th July, 2010 passed by the Commandant 45th, Battalion, P.A.C., Aligarh on the ground that the application was filed beyond the five years.

2. It is the contention of the learned Counsel for the Petitioner that under the provisions of the U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 (hereinafter referred to as the "Rules"), the claim for relaxation is required to be considered by the State Government and, therefore, the Commandant could not have taken a decision. In support of his contention he has placed reliance upon the judgment of this Court in Writ Petition No. 69175 of 2009 (Maulayam Singh Yadav v. State of U.P. and Ors., decided on 16th July, 2010.

3. Learned Standing Counsel appearing for the Respondents states that it is not necessary to file any counter affidavit and the petition may be disposed at this stage in terms of the aforesaid judgment rendered in the case of Maulayam Singh Yadav.

4. In the case of Maulayam Singh Yadav, the Court observed:.

Heard learned Counsel for the Petitioner.

The Petitioner is claiming compassionate appointment and has challenged the order dated 2nd November, 2007. The submission raised is that the power to grant relaxation for accepting an application after five years of the date of death of the employee rests with the State Government or the authority competent to deal with it and not with the commandant.

It is submitted that the commandant on an erroneous interpretation of the rules has arrived at the conclusion that the application cannot be entertained as the Petitioner's father had not died on account of any unforeseen circumstance or in any encounter.

Learned Counsel contends that the said reason given in the impugned order is therefore beyond the competence of the authority. These aspect can be examined by the State Government keeping in view the Dying-in-Harness Rules, 1974.

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In such view of the matter and in view of the submissions raised, let the Petitioner approach the Respondent No. 2 who shall examine the claim of the Petitioner in the light of the 1974 Rules and thereafter proceed to pass an appropriate order within three months from the date of presentation of a certified copy of this order before him.

The writ petition is disposed.

5. In this petition, the Commandant has himself taken the decision. Thus, for the reasons mentioned in the judgment and order dated 16th July, 2010 passed in Writ Petition No. 69175 of 2009, the impugned order dated 5th July, 2010 passed by the Commandant, 45th Battalion, P.A.C., Aligarh cannot sustained and is, accordingly, set aside. The matter is sent to the State Government to take an appropriate decision expeditiously, preferably within a period of three months from the date a certified copy of this order is filed by the Petitioner before the State Government.

6. The writ petition is allowed to the extent indicated above.