
(2016) 10 AHC CK 0027

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Service Single No. 25974 of 2016

Sanjeet Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 10 ADJ 830 : (2016) 6 AllWC 6043 : (2017) 120 ALR 150 :
(2016) 119 ALR 662 : (2017) 152 FLR 826

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : C.S.C. and Shree Prakash Singh, Advocates, for the Respondent;
Piyush Chandra Agarwal and Rajesh Tiwari, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Rajan Roy, J. - Heard learned counsel for parties.

The petitioner herein seeks compassionate appointment. In another matter i.e. Writ Petition No. 6348 (SS) of 2016 decided on 29.03.2016 this Court had passed the following order:-

"Heard learned counsel for the petitioner, learned Standing Counsel for the State and Shri Shree Prakash Singh, learned counsel for the Corporation.

2. The petitioner herein seeks compassionate appointment. He claims that in similar circumstances this Court has issued directions for consideration as contained in Judgment and order dated 07.03.2014 passed in Writ - A No. 10015 of 2012; Santosh Kumar Srivastava v. State of U.P. & Ors. which reads as under:-

"Heard counsel for the petitioner, learned standing counsel on behalf of respondent No. 1 and Sri S.K. Tripathi, on behalf of respondent Nos. 2 & 3. With consent of the learned counsel for the parties, this writ petition is being disposed of finally in accordance with Rules of Court.

The petitioner's father Dharmesh Kumar was an employee of U.P. Food and Essential Commodities Corporation Ltd. (hereinafter referred to as the Corporation). He died on 01.09.2005 while in harness. It appears that the petitioner's mother made an application for being given compassionate appointment to the petitioner. It came up to be rejected by order dated 29.04.2006 passed by the Managing Director of the Corporation respondent No. 2, on the basis of Government Order dated 11.07.2003, which provides that such Corporations or Organisations, which are not earning profits and have surplus employees are not required to provide employment to the dependents of the deceased employees.

Learned counsel for the petitioner submits that the impugned order is a non-speaking order as it only makes a reference to the Government Order dated 11.07.2003 but does not spell out the reason on account of which the aforesaid Government Order will apply to the Corporation. He further submits that the Corporation is making profits as is evident from the information furnished to him under Right to Information Act brought on record as Annexure 8 to the writ petition. It discloses that approximate earnings for the year 2002-03 is a sum of Rs. 338.69 lakhs, for the year 2003-04, a sum of Rs. 1274.52 lakhs, for the year 2004-05, a sum of Rs. 2232.62 lakhs and for the year 2005-06, a sum of Rs. 2365.30 lakhs. He further submits that as per Annexure 9, the information furnished to him under Right to Information Act, there is shortage of employees as compared to the sanctioned post in the Corporation and, thus, it is also not a case where there are surplus employees in the Corporation. It is, thus, contended that the Government Order dated 11.07.2003 would not apply to the Corporation and the application of the petitioner for compassionate appointment has been rejected on manifestly incorrect grounds.

It is further contended by learned counsel for the petitioner that the respondent Corporation has made compassionate appointments of the dependents of deceased employees even after the year 2003 as is evident from the chart brought on record at page 33 of the writ petition. It is contended that the dependents of the employees Bhagat Ram, Smt. Usha Singh and Sunil Chandra Srivastava and others were given compassionate appointment after the year 2003. He, thus, contends that the action of the authorities as against the petitioner is discriminatory and violative of Article 14 of the Constitution of India.

It is further contended by learned counsel for the petitioner that in the case of Late Nanuhe Lal, Chawkidar, who died while in harness, his dependent was given compassionate appointment on recommendation made by the State Government as a special case. He further submits that as per assertions made in Paragraph 9 of the counter affidavit, the case of the petitioner has also been referred to the Principal Secretary, U.P. Government, Lucknow for necessary directions. He submits that according to the respondents, the matter is still pending with the State Government and interest of justice would be served in case a direction is issued to the respondent No. 1 to decide the claim of the petitioner as well,

keeping in view the previous order dated 20.02.2007 passed in the case of the dependent of Late Nanuhe Lal.

Learned standing counsel and Sri S.K. Tripathi, appearing on behalf of respondent Nos. 2 & 3 submit that there is no illegality in the impugned order as it is based on the Government Order dated 11.07.2003. It is further submitted that the case of the petitioner has also been referred to the State Government and consequential action will be taken as per the directions given by the State Government.

Since, learned counsel for the petitioner has no objection to his claim being decided by the State Government as per the reference made to it by the Corporation, therefore, without going into the other questions raised by the learned counsel for the petitioner, this writ petition is disposed of with consent of learned counsel for the parties directing the respondent No. 1 to take a final decision in the matter relating to compassionate appointment of the petitioner as per the reference made to it by respondent Nos. 2 & 3 by its letter dated 12.07.2010, within a period of four months from the date of production of a certified copy of this order before the said respondent. It is clarified that before taking any decision in the matter, the respondent No. 1 shall also provide opportunity of hearing to the Corporation as well as the petitioner and thereafter pass appropriate order strictly in accordance with law.

Subject to the aforesaid observations/directions, this writ petition is disposed of.

The stand of the Corporation is that as per Government Order dated 11.07.2003 the corporations running in loss can not make compassionate appointment. However, he also submits that as per the balance sheet the corporation is running in accumulated profits though it is said to be running in loss for the past two years.

Learned counsel for the petitioner submits that the Corporation has failed to consider that it is running in accumulated profit, therefore, the Government Order dated 11.07.2003 does not come in the way of making compassionate appointment.

Be that as it may, it would be appropriate that the opposite party no. 1 should look into the matter as to whether as per the policy of the State Government compassionate appointments are permissible in the U.P. State Food Essential Commodities Corporation or not and while doing it so it will consider as to whether the corporation is running in accumulated profits as claimed or not. Based on the said decision consequences shall follow accordingly and if it is found that such compassionate appointments are permissible in the Corporation then the case of the petitioner shall also be considered. While taking such decision the State Government shall also verify as to whether such appointments have been made in the Corporation after the issuance of the Government Order or not. If so under what circumstances. The aforesaid exercise shall be completed within the next three months. The decision thereon so taken shall be

communicated to the Corporation and also the petitioner herein.

With the aforesaid observations, the writ petition is disposed of. There shall be no orders as to costs."

3. There is no reason to differ from the view taken in the said writ petition as such this writ petition is also disposed of on the same terms and the petitioner shall be entitled to the benefit of the observations/directions contained in the aforesaid judgment passed in Writ Petition No. 6348(SS) of 2016 and a decision shall be taken in the case of the petitioner accordingly.

4. The writ petition is disposed of in the aforesaid terms.