
(2012) 09 AHC CK 0171

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 913 of 2007

Saroj Verma

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 5, 8

Citation : (2012) 09 AHC CK 0171

Hon'ble Judges : Arvind Kumar Tripathi, J

Final Decision : Disposed Of

Judgement

Arvind Kumar Tripathi, J.

Heard learned counsel for the petitioner, learned counsel for the Basic Education Officer, learned Standing Counsel and perused the record.

The present writ petition has been filed with a prayer to issue a writ of certiorari to quash the impugned order dated 21.11.2006 passed by respondent no.1, Joint Secretary, U.P. Government, Lucknow and to direct the respondents to give appointment to the petitioner (on the post of clerk) on compassionate ground.

The case of the petitioner is that the father of the petitioner late Ram Chandra Verma was working as Assistant Teacher at Primary School Jigani, Kshiksha Kshetra, Garhwar, district Ballia, who expired on 31.5.1995 leaving behind his wife Smt. Jalesari, mother of the petitioner and two minor daughters including the petitioner namely Km. Saroj Verma and Km. Suman Verma. At the time of death of father of the petitioner she was aged about 11 years and her younger sister was aged about 6 years. His wife was suffering from serious disease and repeatedly she used to become unconscious. She was also illiterate lady due to these reasons, she has not applied for compassionate appointment, in place of late Ram Chandra Verma, father of the petitioner. The petitioner and her sister were minor hence after attaining majority and after passing the inter examination, the petitioner, whose date of birth is 1.3.1985 applied for

appointment in primary school on compassionate ground, on the post of Assistant Teacher, as she was eligible for that. The application was given on 17.8.2003. The letter was also sent to the Finance Minister, State of U.P. on 8.9.2006. However, application of the petitioner was rejected by impugned order dated 22.11.2006 passed by Joint Secretary, State of U.P., Lucknow, merely on the ground that application was given after five years from the date of death of father of petitioner and there was no ground for relaxation of period.

Learned counsel for the petitioner submitted that the mother of the petitioner is still under treatment of serious illness. The application of petitioner as well as mother of the petitioner was sent. Thereafter, several representation and reminders alongwith subscription and medical opinion regarding treatment of the mother of petitioner was also sent mentioning that the family of late Ram Chandra Verma was still in financial crisis and there was no sufficient income to overcome the financial crisis. In view of the provision the relaxation in the period of limitation should have been given. Hence the impugned order is liable to be set aside and the direction be issued for appointment of the petitioner.

Learned counsel for the respondent opposed aforesaid prayer and submitted that late Ram Chandra Verma father of the petitioner expired on 31.5.1995, however, medical slip of the year 1995 has not been filed alongwith the application to show that mother of the petitioner was seriously ill. After five years the application was given on behalf of the petitioner for appointment on compassionate ground on 17.8.2003 without giving any valid reason for relaxation. Hence the petitioner is not entitled for the relief sought for.

Considered the submission of counsel for the parties. The U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rule 1974 provides that if Government Servant dies in harness after a commencement of the rules and spouse of the deceased government servant is not already employed under the Central or State Government or a Corporation owned or controlled by the Central or State Government, one member of his family, who is not already employed on making application for the appointment will be given a suitable employment in government service on a post except the post, which is within the purview of the U.P. Public Service Commission, in relaxation of normal recruitment rules, if he fulfills the essential qualification and application is given for employment within five years from the date of death. There is a proviso that period of limitation for five years can be relaxed. The person concerned who applied for the appointment is required to explain the reason and give proper justification. If proper justification is given in writing regarding the delay for making the application for employment alongwith necessary documents and proof in support of said delay the Government after taking into consideration all the facts can take appropriate decision as far as it is possible and the employment can be given in the same department in which deceased was working prior to his death. According to rule 8 the candidates seeking appointment under these rules must not be less than 18 years at the time of appointment. In the present case, the

petitioner was less than 11 years and after completing the age of majority applied for employment on compassionate ground. The rules 5 and 8 of the aforesaid rule 1974 are quoted hereinbelow:

"5. Recruitment of a member of the family of the deceased.(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 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.

Provided further that for the purpose of the aforesaid proviso, the person concerned shall explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry of the time limit fixed for making the application for employment alongwith the necessary documents/proof in support of such delay and the Government shall, after taking into consideration all the facts leading to such delay take the appropriate decision.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Every appointment made under subrule (1) shall be subject to the condition that the person appointed under subrule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under subrule (1) neglects or refuses to maintain a person to whom he is liable to maintain under subrule (3), his services may be terminated in accordance with the Uttar Pradesh Government

Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

"8. Relaxation from age and other requirements (1) The candidate seeking appointment under these rules must not be less than 18 years at the time of appointment.

(2) The procedural requirements for selection, such as written test or interview by a selection committee or any other authority, shall be dispensed with, but it shall be open to the appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standards of work and efficiency expected on the post.

(3) An appointment under these rules shall be made against an existing vacancy only."

The case of the petitioner is that the application was not be given by her mother because she was seriously ill hence she could not apply for appointment. The petitioner was minor but any paper in support of illness of her mother and opinion of doctor of the year 199596 has not been filed with the writ petition. There is a formate and proforma for making application after the prescribed periods giving details but there is no indication that such details were given alongwith application moved for appointment on compassionate ground. This was stated that her mother was illiterate and seriously ill. The application was rejected merely on the ground that this was beyond period of limitation. The object and purpose of giving appointment on compassionate ground is to provide financial assistance to mitigate the hardship and distress of the family members, due to death of member of family, who was the only bread earner. Hence such appointments ought to be made immediately or within reasonable period to provide financial assistance to the family. Onus was on the petitioner to state the reason for delay in making the application. The one of the reason is that she was minor but the reason alongwith that application on behalf of her mother was not given because she was seriously ill. However, in view of the fact, it appears that the family of the petitioner is continuously facing financial distress and hardship due to death of father as there is no sufficient and adequate earning to meet out the expenses to maintain the family member properly including ailing mother. Hence if a fresh application is moved before the respondent no.1 with details, the respondent no.1 will consider the matter of the petitioner afresh and will take a decision preferably within a period of two months from the production of certified copy of this order by a reasoned and speaking order, in accordance with law.

Accordingly, present writ petition is finally disposed off. No order as to cost.