
(2010) 03 AHC CK 0289
In the Allahabad High Court
Case No : Writ Petition No. 4731 (S/S) of 2007

Sharda Prasad Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 5

Citation : (2011) 4 AWC 3415

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard counsel for the Petitioner and standing counsel.

2. Brief facts of the instant writ petition are that late Devendra Prasad Upadhyay, who was head constable in police and at the relevant time was posted in district Faizabad, expired on 12.7.1992 during service tenure. After his death, his elder son-Shesh Narain Upadhyaya applied for appointment under Dying in Harness Rules. As no action was taken by the Respondents, the Petitioner filed a Writ Petition No. 306 (S/S) of 1994 wherein an order dated 20.1.2004 was passed directing the Senior Superintendent of Police, Faizabad either to give appointment to Shesh Narain Upadhyaya or show cause. Before the appointment letter could be issued, Shesh Narain Upadhyaya was implicated in a criminal case and as such an application was moved by him for keeping the process in abeyance. According, to the counsel for the Petitioner, on this application, the competent authority passed an order directing to keep the matter in abeyance. In the meantime, his mother had given a "no objection" for appointment of her younger son, namely, Sharda Prasad Upadhyaya (present Petitioner).

3. The Petitioner's application and representation remained pending for

considerable long time and as such he filed a Writ Petition No. 5389 (S/S) of 2003, which was disposed of vide an order dated 1.9.2003 with the direction to the Deputy Inspector General of Police (Establishment) U.P. Police Headquarters, Allahabad to consider the Petitioner's application for appointment under Dying in Harness Rules and issue appropriate orders. Thereafter, the Deputy Inspector General of Police (Establishment) rejected the representation of the Petitioner vide order dated 20.12.2003 on the sole ground that the same has been made beyond the time stipulated under Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules (hereinafter referred to be as "Rules"). Being dissatisfied with the said order, dated 20.12.2003 the Petitioner preferred another W.P. No. 1307 (S/S) of 2004. By an order dated 20.4.2004, this writ petition was disposed of with the direction to the Petitioner to make a representation before the State Government and the State Government was directed to consider it in accordance with the proviso appended to Rule 5 of the said Rules. After the said question having been considered, the opposite party No. 5 shall consider the representation of the Petitioner afresh.

4. Pursuant to the order dated 20.4.2004, the matter was examined by the State Government but the State Government refused to relax the period on the ground that late Devendra Prasad Yadav died on 12.7.1992 but his dependent has made application after about 10 years.

5. Counsel for the Petitioner has argued that the Petitioner's application has been rejected solely on the ground of it being time barred without considering the hardship, financial conditions of the Petitioner's family and the fact that the Petitioner's father alone was the source of livelihood.

6. I have heard the Learned Counsel for the Petitioner and have perused the impugned order dated 20.4.2004, passed by the State Government including the other materials on record.

7. The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, has been framed in exercise of the powers conferred by Article 309 of the Constitution of India. The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (in short referred to as "Dying in Harness Rules, 1974") are special set of rules, which have been made for providing a source of livelihood, and to give some respite to the members of the deceased Government servant's family at a time when the family is suddenly struck with a calamity where the sole bread earner dies. The overall idea and concept of these rules is to keep the family in main streamline of the society for which economic security and social status is to be provided by the State Government.

8. In the instant case, from the perusal of the record, it comes out that the impugned order dated 6.1.2005, passed by the State Government has been quoted by the Senior Superintendent of Police, Faizabad vide letter dated 6.4.2005. The State Government has refused to condone the delay only on the

ground that the Petitioner has made application after about ten years but it failed to take into consideration the past events. Infact the first application made by the elder brother of the Petitioner was well within time and it was under process, when he was implicated in a criminal case and his matter was kept in abeyance by the authorities. The Petitioner's mother has stated in clear words in her representation that authorities advised him to withdraw the Writ Petition No. 306 of 1994 and make a fresh application for appointment of her younger brother. Thereafter, the present Petitioner moved an application after "no objection" being granted by the mother. It is on the assurances given by the authorities, that the Shesh Narain Uapadhyay got his Writ Petition No. 306 (S/S) of 1994 dismissed as withdrawn.

9. It is also relevant to point out that Senior Superintendent of Police, Faizabad wrote a letter dated 31.8.2002 to inquire about the financial condition of the family and the source of income of the family. Therefore, the matter was inquired into by Sri Hiralal, Circle Officer, Kadirpur, Sultanpur, who in his report submitted that till date the dependents of deceased had not got the benefit of Dying in Harness Rules and the entire family is dependent upon the agriculture. Thus, the family continued to remain in financial stress as it was immediately after the death of the deceased. It is in these backgrounds that the Senior Superintendent of Police recommended the appointment of the Petitioner under the Dying in Harness Rules vide letter dated 8.11.2002. Therefore, the view taken by the State Government in refusing the relaxation of period for making application for compassionate appointment is wholly erroneous and against the materials on record. Infact there was no delay in making the application as the second application was in continuation of the earlier application made by the elder brother of the Petitioner.

10. For the reasons aforesaid and looking to the pathetic condition of the family and financial stress and strain that it has undergone all these years, the impugned order is not justified. The opposite parties have not at all taken into account the tremendous difficulties that the Petitioner and his family faced upon the death of their head of family.

11. Accordingly, the writ petition is allowed and the impugned order dated 6.1.2005 quoted in the letter dated 6.4.2005 is hereby quashed. The opposite party Nos. 1 and 5 are directed to consider the claim of the Petitioner for appointment on compassionate grounds in light of the observations made hereinabove within a period of three months. It is clarified that while considering the claim, the opposite parties shall not be guided by any of the observations made in the impugned order dated 6.1.2005.