
(2015) 02 AHC CK 0009

In the Allahabad High Court

Case No : C.M. Delay Condonation Application No. 20092 of 2015 and Special Appeal Defective No. 71 of 2015

State of U.P.

APPELLANT

Vs

Vinay Yadav

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Citation : (2015) 3 ADJ 299 : (2015) 3 ALJ 556 : (2015) 2 AWC 1467 : (2015) 2 ESC 1203 : (2015) 145 FLR 441 : (2015) 2 UPLBEC 990

Hon'ble Judges : D.Y. Chandrachud, C.J.;Suneet Kumar, J.

Bench : Division Bench

Advocate : A.K. Roy, S.C., for the Appellant; Ram Sagar Yadav, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The special appeal arises from a judgement of the learned Single Judge dated 8 July 2014.

2. The brother of the respondent was selected in the Provincial Armed Constabulary¹ as a constable on 5 July 2006. He was appointed in the 28th Battalion at PAC Etawah. On 8 November 2007, the Government cancelled the selection process and appointments of constables throughout the State on the ground that there were malpractices in the selection process. By orders dated 11 September 2007, 18 September 2007 and 30 September 2007, the appointments of over 18700 personnel were cancelled. A large batch of writ petitions was filed in this Court challenging the decision of the State Government. The leading writ petition in Pawan Kumar Singh v. State of U.P. and others Writ Petition No. 45645 of 2007 was allowed by a judgment and order dated 8 December 2008. The writ petitions were allowed and the orders passed by the Government canceling selection process and appointments were quashed. A special appeal Special Appeal No. 244 of 2009 filed by the State was dismissed on 4 March 2009. The State Government moved the Supreme Court in a special

leave petition. It is not in dispute that in pursuance of an order of the Supreme Court dated 25 May 2009, the State Government had issued a government order dated 26 May 2009 by which all the constables were allowed to rejoin on provisional basis. Eventually, the special leave petition was withdrawn. Consequently, the directions issued by this Court attained finality.

3. The brother of the respondent met with an accident and died on 26 February 2008. The claim of the respondent for compassionate appointment was rejected by an order dated 10 April 2013 on the ground that his brother had joined service on 2 September 2006 but the State Government had on 8 November 2007 cancelled all the recruitments and appointments throughout the State. On 12 September 2007, the services of the brother of the respondent were also terminated. Hence, it was submitted that the brother of the respondent who had died in the meantime on 26 February 2008 was deemed to be out of service. Even though a notice had been sent to him on 30 May 2009 in compliance of the order of the Supreme Court dated 25 May 2009 and the subsequent government order dated 26 May 2009, he had not reported in view of the admitted position that he had already died in an accident on 26 February 2008.

4. Before the learned Single Judge, the submission which was urged on behalf of the respondent was that as an unmarried brother of the deceased and a person who was dependent on the deceased, the respondent fell within the definition of the expression family under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules 19742. On the other hand, the submission which was urged in defence by the State was that on account of the death of the employee on 26 February 2008, he had never joined service in compliance of the direction of the Supreme Court dated 25 May 2009 and the implementing order of the State Government dated 26 May 2009. Since he would be deemed to be out of service, in consequence of his death in the meantime, the respondent would not be entitled to seek compassionate appointment.

5. The learned Single Judge rejected this contention noting that the orders passed by the State canceling the entire selection process across the State had been set aside by this Court in a batch of matters. After the special appeal of the State had failed and the Government carried the matter in a special leave petition to the Supreme Court, the State, in fact, complied with the direction for allowing all such persons provisionally to join service and eventually withdrew the special leave petition. The learned Single Judge held that all the government orders as well as individual termination orders were quashed by this Court in a batch of matters while upholding the recruitment which was made for over 18700 constables. Hence, it was held that the respondent could not be denied the benefit of compassionate appointment since the plain consequence of the setting aside of the orders of termination and the cancellation of the selection process was that all the constables who were similarly placed, were reinstated in service.

6. The learned Judge noted that save and except for this submission which was

urged in paragraph 10 of the counter, no other submission had been raised. Moreover, it was found that it was not disputed that as per the definition of the expression "family", an unmarried brother, dependent on a deceased government servant, was entitled to compassionate appointment. Moreover, the learned Single Judge held that while rejecting the claim, the State had not taken the plea that the respondent was not covered by the definition of the expression "family" in the Rules.

7. In support of the appeal, the learned Standing Counsel has urged only one submission. The submission is that the definition of the expression "family" in Rule 2(c) was amended on 22 December 2011 so as to bring within its purview an unmarried brother.

8. In the present case, it was submitted that when the brother of the respondent died on 26 February 2008, the definition did not include an unmarried brother. Hence, it was submitted that when the right to apply accrued to the respondent, he was not entitled to compassionate appointment.

9. At the outset, we may note that this point has neither been raised in the counter nor was it urged before the learned Single Judge. However, in the interest of justice and since a pure question of law has been raised, we deemed it appropriate to allow the learned Standing Counsel to address the Court on the issue so as to bring finality to the matter. There is a basic fallacy in the submission of the learned Standing Counsel. The Dying in Harness Rules were amended by the (Sixth Amendment) Rules of 2001 which were notified on 12 October 2001. By the amendment, the definition of the expression "family" was enlarged to include an unmarried brother, unmarried sister and a widowed mother provided (i) the deceased government employee was unmarried; and (ii) the heirs as described were dependent on the deceased. There is hence an error in the submission of State that it was for the first time in 2011 that the Rules were amended to bring in unmarried brother within the purview of the expression "family". The amendment of 2011 has further enlarged the definition of the expression "family" which is not relevant for the present purpose. Since the amended definition covered an unmarried brother right from 2001, there is no merit in the submission.

10. The learned Single Judge has not issued a mandamus for the appointment of the respondent but has remanded the proceeding back to the State after quashing and setting aside the order dated 10 April 2014 rejecting the claim for compassionate appointment. The matter has been remanded for fresh consideration in the light of the observations contained in the judgment. On remand, the State would have to consider whether the respondent fulfills all the other requirements of the Rules including those which are set out in Rule 2(c) to the effect that the deceased should have been unmarried and that the person claiming employment should have been dependent of the deceased. We also clarify that the State would be at liberty to duly assess whether the claim for appointment is otherwise sustainable on the basis of the Rules as explained in

the judgment of the Full Bench of this Court in Shiva Kuma Dubey v. State of U.P. and others Special Appeal No. 356 of 2012, decided on 6 February 2014. The law laid down by the Full Bench recently is on the basis of the position in law, as explained by the judgment of the Supreme Court.

11. For these reasons and subject to the above, we see no reason to interfere with the order of the learned Single Judge. The special appeal is dismissed.

12. Since in the meantime, the respondent has instituted a contempt application for non compliance of the impugned order under appeal, we deem it appropriate in the interest of justice to extend the time for compliance by a further period of two months from today.

13. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

14. There is a delay of 124 days in filing the special appeal. The delay has been satisfactorily explained in the affidavit in support. In fairness, the application for condonation has not been opposed. Hence, we condone the delay.

15. The application stands disposed of.

1 PAC 2 Dying in Harness Rules