
(2015) 09 AHC CK 0009
In the Allahabad High Court
Case No : Service Single No. 5201 of 2015

Suryansh Trivedi	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2015) 9 ADJ 188 : (2015) 6 AWC 6488 : (2015) 4 UPLBEC 2946

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Pawan Kumar Pandey, for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J—Heard Sri Pawan Kumar Pandey, learned counsel for petitioner, Sri Badrul Hasan, learned Additional Chief Standing counsel and perused the record.

2. Facts in brief of the present case are that petitioner's father Sri Rajendra Nath Trivedi who was working on the post of Van Rakshak under respondent No. 3, on 04.12.2011, did not return back from his duties to home on 04.12.2011, so an FIR was lodged in Police Station, however, till date no information regarding the whereabouts of Sri Rajendra Nath Trivedi is known.

3. Accordingly, an application was moved on behalf of petitioner's mother for giving compassionate appointment to the petitioner under U.P. Dying in Harness Rules, 1974 (hereinafter referred to as the Rules, 1974) because Sri Rajendra Nath Trivedi is missing since 04.12.2011 and also prayer has been made to give post retiral dues (pension, gratuity, G.P.F., etc.) but no heed paid, as such present writ petition has been filed by the petitioner with a prayer that opposite parties may be directed to consider the case of the petitioner for compassionate appointment under Rules, 1974 and also a direction be issued to pay all service benefits (pension, gratuity, G.P.F., etc.).

4. After hearing learned counsel for parties and going through the record, the

following point is to be adjudicated and decided in the present case: (a) whether the petitioner is entitled for compassionate appointment on the ground that his father/Sri Rajendra Nath Trivedi is missing since 04.12.2011, under Rules, 1974. (b) whether the petitioner is entitled for the service benefits which are payable to Sri Rajendra Nath Trivedi on the ground that he is missing since 04.12.2011.

5. So far as the matter relating to compassionate appointment is concerned, the same is to be considered as per Rule 5 of Rules, 1974 as well as Government Order dated 20.03.1987 which is quoted as under:-

"The Government Order dated 20.3.1987 is as under:-

6. Before amendment in 2011 in Rules, 1974, missing persons declared dead who are not covered under Rules, 1974, those persons have been so covered after amendment of Rules, 2011 subject to the provisions as provided under Section 108 of Indian Evidence Act.

7. Section 108 of Indian Evidence Act reads as under:-

"108. Burden of proving that person is alive who has not been heard of for seven years.-1 *[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2 [shifted to] the person who affirms it."

8. Object and purpose of the grant of compassionate appointment is that where the wage earner in a family dies while in service, or as it is said, in harness, the financial distress and hardship being faced by the family upon the death of its wage earner should be alleviated by the grant of compassionate appointment. Compassionate appointment is understood to be an exception to the general rule and principle of equality of opportunity in matters of public employment since a person who seeks compassionate appointment as an heir of a deceased employee is not required to seek appointment in the normal channel involving competition with rival applicants. The exception is carved out because of the sudden impact due to the death of the employee, on the members of the immediate family. In other words, the whole basis and purpose of the grant of compassionate appointment is to alleviate the distress suffered by the members of the bereaved family of a deceased employee in terms of the financial impact which is suffered by the loss of the wage earner.

9. Accordingly, if an employee is missing for seven years and has not yet been traceable then it is to be presumed that the person has been dead in the eyes of law. The nature, manner and cause of death may be many, such death might occur in a natural course, accidental murder, natural calamities, during war, anti terrorist activities etc. and once acknowledge to be dead during the course of services, then the case of his dependent is to be considered by the competent authority as per Rules, 1974 and in regard to give compassionate appointment in respect to a person who is missing during the tenure of his service, this Court in

the case of Ramakant Singh Vs. State of U.P. and Others, (2011) 4 ADJ 874 : (2011) 4 AWC 4268 : (2011) 130 FLR 395 : (2011) 3 UPLBEC 1902 , after taking the provisions under Rules, 1974 as well as Section 108 of Indian Evidence Act, in paragraph No. 12 held as under:-

"In Ajay Kumar Tewari Vs. Dy. Inspector General of Police (Establishment) Police Headquarter, U.P. Allahabad and others [2005 ESC (Alld.) 67] [delivered by one of us (Hon"ble Sunil Ambwani, J.)], it has been held that the provision of Section 108 of Evidence Act would be applied for claiming compassionate appointment."

10. This Court in the case of Sanjai Kumar Singh Vs. State of U.P. and Others, (2005) 3 AWC 2724 , held as under:-

"5. There may be cases where while discharging duties particularly in police force or armed force persons may be placed in the list of lost or missing employees for some unforeseen reasons and denial for appointment on compassionate grounds to the dependents of such employees even after the lapse of statutory person of 7 years shall frustrate the very purpose of they Dying-in-harness Rules.

6. In view of the above discussions, the principle of purposeful interpretation may be applied in the present case while considering the availability of benefits to the petitioner under Dying in Harness Rules. The purpose of dying-in-Harness Rules is to provide help to the family of the deceased of a government employee by making appointment on compassionate ground. After the death of government employee in harness or in case the government employee is not traceable on account of certain mishappening like happened in the present case, the appointment on compassionate ground of a dependent may save the family from dying on account of starvation and financial hardships. Hence, the writ petition deserves to be allowed. Accordingly, a writ in the nature of mandamus is issued commanding the opposite parties to consider petitioner"s case for appointment on compassionate grounds on the basis of his merit or qualification for appropriate post expeditiously and preferably within a period of 4 months from the date of receipt of certified copy of this judgment. The writ petition is allowed accordingly. No order as to costs."

11. Hon"ble the Apex Court in the case of Santosh Kumar Dubey Vs. State of U.P. and Others, (2009) 122 FLR 587 : (2009) 8 JT 135 : (2009) 8 SCALE 726 : (2009) 6 SCC 481 : (2009) 2 SCC(L&S) 224 : (2009) 9 SCR 572 : (2009) 3 SLJ 289 : (2010) 1 SLR 261 , held as under:-

"Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate ground could be asked for in a case of deemed death under Section 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years therefrom the period of limitation for making an application for employment in the case of the appellant expired in the year, 1993. The very concept of giving a

compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.

In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed."

12. A Division Bench of this Court in the case of Commandant, 8th Bn. P.A.C. and Others Vs. Vimlesh Devi(2015) 2 ADJ 290 : (2015) 109 ALR 307 : (2015) 2 UPLBEC 925 , held as under:-

"Admittedly Vimlesh Devi has received all other benefits to which she was entitled vide G.O. Dated 20.3.1987. So far as her claim for compassionate appointment is concerned, it was not legally maintainable at that time because before the amendment in 2011 in the Rules, missing persons declared dead were not covered under Dying in Harness Rules, 1974. Those persons have been so covered after the amendment of Rules in 2011 which necessarily provides for a declaration by some competent court in accordance with Section 108 of Evidence Act. Admittedly there is no such declaration regarding the civil death of appellant's husband in the present case hence only on the basis of the order dated 18.12.1998 passed by the then Commandant by using incorrect language cannot be assumed that the husband of the petitioner had acquired the status of a dead person after expiry of about two and a half years only from the date of his disappearance."

13. In the present case, father of the petitioner/Sri Rajendra Nath Trivedi is missing since 04.12.2011, as such in view of the provisions as provided under Rule 5 of Rules, 1974 read with Section 108 of Indian Evidence Act, the petitioner in the present case is not entitled for compassionate appointment at this stage.

14. So far as the matter relating to payment of the dues i.e. family pension, gratuity, G.P.F., leave encashment etc. payable to Sri Rajendra Nath Trivedi are

concerned, his legal representatives are entitled to get the same as per the terms of Government Order dated 20.03.1987.

15. For the foregoing reasons, the writ petition filed by the petitioner for issue a direction to the official respondents for giving compassionate appointment is dismissed at this stage and for the other reliefs as indicated hereinabove, the petitioner is permitted to make a fresh representation to respondent No. 2/Chief Conservator of Forest, Lucknow Mandal, Lucknow within a period of two weeks from the date of receiving certified copy of this order for redressal of his grievances and after receiving the same respondent No. 2 shall consider and decide by way of speaking and reasoned order in accordance with Government Order dated 20.03.1987 within a further period of six weeks thereafter, if possible.