
(2011) 09 AHC CK 0146
In the Allahabad High Court
Case No : C.M.W.P. No. 65844 of 2008

Vaibhav Tiwari

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Citation : (2011) 10 ADJ 589 : (2011) 6 AWC 5851 : (2012) 132 FLR 5

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard learned counsel for the petitioner and learned standing counsel for the respondents.

2. Petitioner's father was working as a Constable in Civil Police. He went missing from 31.1.1998. When there was no trace of his whereabouts, the mother of the petitioner lodged a first information report on 17.9.1998 at Police Station Kotwali, district Ballia. After expiry of period of 7 years, his civil death was presumed and the respondents treating him to be dead, proceeded to sanction and release family pension to the mother of the petitioner and also released Gratuity. General Provident Fund and Group Insurance etc Mother of the petitioner moved an application dated 28.7.2005 before the Superintendent of Police for giving compassionate appointment to the petitioner. When no action was taken, another application dated 27.12.2006 was moved before the U. P. Police Headquarter. Vide letter dated 23.6.2007, Deputy Inspector General (Establishment), Police Headquarter called for a report from the Superintendent of Police, Ballia. The petitioner's request for compassionate appointment was rejected vide order dated 20.11.2008 on the ground that there is no provision under the Dying-in-Harness Rules, 1974 (for short the Rules) to give compassionate appointment to the heirs of missing person, and therefore, the petitioner cannot be given compassionate appointment.

3. It is contended by the learned counsel for the petitioner that the Rule does not create any distinction between a person, who is dead or whose civil death is presumed. It only provides that where a Government servant dies in-harness, one member of his family is entitled to be considered for grant of compassionate appointment.

4. In reply, it has been submitted by the learned standing counsel that the State Government vide Government order dated 9th December, 1998 has clarified that the provisions of the Rules are not applicable in case of employees, whose death is presumed in law.

5. I have considered the argument advanced by the learned counsel for the parties and perused the record.

Rule 5 of the Dying-in-Harness Rules, 1974 reads as under :

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 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,

(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.

6. From a perusal of the above Rules, it is clear that where a Government servant dies in-harness, a member of the family could be given appointment under the Rules. The Rules do not contemplate death of any particular kind in order to benefit the heirs. It only provides that in case a Government servant dies in-harness, one member of the family would be entitled to be considered for grant of compassionate appointment. The Rules do not specify the manner of

death that would qualify any employment to the heirs. The language of the Rules clearly suggests that all kind of death caused by every possible manner, would be included under the Rules and the benefit of employment has to be given to the dependants of the person, who dies in-harness and the cases where civil death is presumed in law, are not liable to be excluded.

7. The view taken by me finds support from the judgment of the learned single Judge in the case of Ajay Kumar Shukla Vs. State of U.P. and Others, . and Amit Sharma v. State of U. P. and others, 2009 (6) ADJ 591.

8. In the present case, admittedly, the father of the petitioner was missing for 7 years and was presumed to be dead. Acknowledging the factum of death, the respondents not only starting paying family pension to the mother of the petitioner, but also released all the post retiral benefits. In such circumstances, there is no reason why the benefit of the Rules will not be applicable in the case of the petitioner.

9. Further a Government order cannot have overriding effect on the statutory Rules. Once the Rules do not exclude the cases of civil death, the same cannot be done by means of a Government order. In view of above, the Government order dated 9.12.1998 being relied upon by the learned standing counsel is of no avail and the consideration of petitioner for compassionate appointment cannot be rejected on the basis of said Government order.

10. In view of the above facts and discussions, the impugned order dated 20.11.2008, passed by respondent No. 2, Deputy Inspector General (Establishment) U. P. Police Headquarters, Allahabad is not liable to be sustained and is hereby quashed. Writ petition stands allowed. Respondent No. 2 is directed to reconsider the petitioners application for employment under the Rules in accordance with law within two months from the date of production of a certified copy of this order before him.

In the facts and circumstances, there shall be no order as to costs.