
(2009) 05 AHC CK 0621
In the Allahabad High Court

Vimlesh Kumar Shukla

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0621

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

In the present case petitioner has approached this Court for issuing writ in the nature of mandamus commanding and directing the respondents to offer appointment to the petitioner under dying in harness provision within the time stipulated by this Court.

Brief background of the case is that petitioner's father had been performing and discharging duties as Assistant Teacher in L.T. Grade at Siddiqui FaizA Aam Inter College, Kanpur Nagar. Father of the petitioner was murdered on 27.11.1998. Petitioner submits that he applied for grant of compassionate appointment and repeated request was made for providing job. Petitioner has contended that till date claim of the petitioner has not been adverted to, as such requisite mandamus be issued.

Sri Bheem Singh, learned counsel for the petitioner contended with vehemence that petitioner's father died in harness as such compassionate appointment be provided to petitioner, as is envisaged under Rules.

Countering said submission, learned Standing counsel on the other hand contended that in the present case institution wherein petitioners father had been functioning is run and managed by minority and there is no provision provided for compassionate appointment under Regulation 103 to 107 of chapter III of U.P. Act No. II of 1921, as such writ petition in question as has been framed and drawn is liable to be dismissed.

After respective arguments have been advanced factual position which is emerging in the present case is that petitioner is claiming compassionate appointment. This fact has not been disputed that petitioner's father was working in the institution which is recognised as minority institution known as Siddiqui FaizA Aam Inter College, Kanpur Nagar. To grant compassionate appointment statutory provisions have been incorporated. Regulation 103 of chapter III of U.P. Act No. II of 1921 speaks like this "Notwithstanding anything contained in these regulations, where any teacher or employee of ministerial grade of any recognized, aided institution, who is appointed accordingly with prescribed procedure, dies during service period, then one member of his family, who is not less than eighteen years in age, can be appointed on the post of teacher in trained graduate grade or on any ministerial post, if he possesses prescribed requisite academic qualifications, training eligibilities, if any, and he is otherwise fit for appointment.

Provided that anything contained in this regulation would not apply to any recognized aided institution established and administered by any minority class.

Explanation For the purpose of this regulation, "Member of the family" means widow or widower, son unmarried or widowed daughter of the deceased employee.

NoteThis regulation and Regulations 104 to 107 would not apply in relation to those employees who have died on or after 1 January, 1981."

A bare perusal of the provision quoted above would go to show that provision of compassionate appointment has been provided for to the teaching and nonteaching staff of any recognized aided institution who have been appointed according to the prescribed procedure and dies during the service period. Regulation 103 has a proviso which clearly provides that anything contained in this regulation would not apply to any recognized aided institution established and administered by any minority class. This much is writ apparent that as far as provision of providing compassionate appointment is concerned same would not apply to any recognized aided institution established and administered by any minority class, in this background once father of the petitioner was functioning in the institution established and administered by minority class then there is no provision for providing compassionate appointment. In this background claim set up by petitioner on account of such exclusion is legally not sustainable.

Consequently, writ petition as it has been framed and drawn is dismissed.