

Court No. - 38

Case :- WRIT - A No. - 16068 of 2023

Petitioner :- Kumari Nisha

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Amit Kumar Singh

Counsel for Respondent :- C.S.C., Ashish Kumar (Nagvanshi)

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 and 2 as well as Mr. Ashish Kumar Nagvanshi, learned counsel appearing for the Respondents No. 3 & 4.

2. Petitioner through this writ petition has challenged the order dated 26.12.2022 passed by the District Basic Education Officer, Gorakhpur, whereby petitioner's application for her compassionate appointment has been rejected.

3. Facts of the case, in brief, are that father of the petitioner while working on the post of Head Master at Primary School Manikapur, Block Belghat District Gorakhpur, died in harness on 07.12.2019. On the date of death of petitioner's father, there remained widow (mother of the petitioner), two unmarried sons and unmarried daughter in the family. Petitioner is permanently disabled and her disability has been quantified to the tune of 75% and further she has been completely dependent on the earnings of her father.

4. Petitioner's elder brother Mr. Deepak Kumar is a government servant in the Provincial Armed Constabulary (PAC) of U.P. and is posted at District Jaunpur. Mr. Deepak Kumar along with his family is residing at District Jaunpur.

5. Petitioner after the death of her father submitted application for her compassionate appointment and along with the said application, she also filed an affidavit given by her elder brother, wherein he has categorically stated that he is in government job but is residing separately from his parents and he has no objection if the compassionate appointment in lieu of death of his father is offered to the petitioner.

6. The District Basic Education Officer, Gorakhpur has rejected the application of the petitioner for her compassionate appointment vide order dated 26.12.2022. The ground for rejection of the petitioner's application for compassionate appointment is that the eldest son of late Indra Dev (father of the petitioner) is employed in the Provincial Armed Constabulary (PAC) of the State of U.P. and therefore, there is no financial stress with the family of late Indra Dev and further since eldest son of the deceased teacher is employed with the State Government, the compassionate appointment of the member of the family is not permissible under U.P. Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 (hereinafter referred to as "the Rules of 1974").

7. Learned counsel appearing for the petitioner has submitted that petitioner's brother in his affidavit filed before the District Basic Education Officer, Gorakhpur has categorically stated that though he is employed but is residing separately from his parents therefore, there was no material available with the District Basic Education Officer, Gorakhpur to infer that the petitioner's brother is providing sufficient financial support to the family of late Indra Dev (deceased teacher).

8. Learned counsel appearing for the petitioner has also submitted that the legislature while making amendment in the Rules of 1974 by promulgating Uttar Pradesh Recruitment of Dependants of Government Servant Dying in Harness (Fifth) Amendment Rules, 1999, was conscious of the fact that even if one son of the deceased government servant is in employment, that cannot be a reason for denying the compassionate appointment to other son or daughter (as the case may be) as the earnings of the employed son may be utilized for his family alone and may not be available for the sustenance of the remaining family of the deceased government servant therefore, only one exception has been carved out and

it has been provided that where surviving spouse of deceased government servant is in government job, compassionate appointment shall not be offered to any other family member of the deceased government servant.

9. Learned counsel appearing for the petitioner has argued that once there is no such prohibition either under the Rules of 1974 or under the Government order dated 04.09.2000 that if one son or daughter is in government job, the compassionate appointment shall not be given to other son or daughter (as the case may be) dependent on the deceased government servant therefore, apparently order dated 26.12.2022 passed by the District Basic Education Officer, Gorakhpur is against the spirit of the Rules of 1974 and the Government order dated 04.09.2000 and accordingly cannot sustain in the eyes of law.

10. Learned counsel appearing for the petitioner has also vehemently argued that once brother of the petitioner Mr. Deepak Kumar has given affidavit before the District Basic Education Officer, Gorakhpur categorically mentioning therein that he is residing separately from his parents therefore, unless there was sufficient evidence, there was no occasion for the District Basic Education Officer, Gorakhpur to reject petitioner's application for compassionate appointment on the ground that brother's income is being utilized for sustenance of the family of late Indra Dev (deceased teacher) accordingly, order dated 26.12.2022 cannot sustain in the eyes of law.

11. Per contra, Mr. Ashish Kumar Nagvanshi, learned counsel appearing for the Respondents No.3 and 4 has contended that the District Basic Education Officer, Gorakhpur has considered the entire matter and has found that on the date of death of petitioner's father, her brother was in government job and therefore, surviving family of late Indra Dev (deceased teacher) was not in financial stress and accordingly petitioner's case for compassionate appointment has been rejected vide order dated 26.12.2022.

12. Mr. Ashish Kumar (Nagvanshi), learned counsel appearing for the Respondent Nos. 3 & 4 has vehemently argued that the Rules of 1974 have been amended in the year 1999 and it has been provided that if the surviving spouse of the deceased government servant is in government job, then the other family members dependent on the deceased government servant shall not be entitled for compassionate appointment and therefore, the spirit of the Rules of 1974 and the Government order dated 04.09.2000 is apparent that if any member of the family is in government job then the family of the deceased government servant shall not be in financial stress and accordingly the other dependent family members cannot claim compassionate appointment.

13. Mr. Ashish Kumar Nagvanshi, learned counsel appearing for the Respondent Nos. 3 & 4 has thus concluded his arguments by submitting that the compassionate appointment cannot be claimed as a matter of right and in the present case, the District Basic Education Officer, Gorakhpur has considered the entire material available on record and has recorded a finding that the surviving family of the deceased teacher is not in financial stress and thus has rejected the petitioner's case for compassionate appointment vide order dated 26.12.2022 therefore, the order dated 26.12.2022 does not call for any interference by this Court and the writ petition filed by the petitioner is liable to be dismissed.

14. I have considered the rival submissions advanced by the learned counsels appearing for the parties and I find that the District Basic Education Officer, Gorakhpur has rejected the petitioner's case for compassionate appointment on following two grounds :

(i) Petitioner's brother is in government job and therefore, she is not entitled for compassionate appointment under the Rules of 1974.

(ii) Since petitioner's brother was in government job on the date of death of her father and he was unmarried therefore, his earnings were sufficient for sustenance of the surviving family.

15. For arriving at a correct conclusion in this matter, it is necessary to have a brief look over the provisions made for compassionate appointment in the Rules of 1974. Unamended Rule 5 (1) of the Rules of 1974 reads as under :-

"5. 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, 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 or which was previously within the purview of the Uttar Pradesh Public Service Commission and has later on, been placed within the purview of the Uttar Pradesh Subordinate Service Selection Commission in relaxation of the normal recruitment rules, if such person-

*(1) 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.

16. Later on, the aforesaid Rule 5(1) of the Rules of 1974 has been amended by U.P. Recruitment of Dependents of Government Servant Dying in Harness (Fifth) Amendment Rules, 1999 and the amended Rule 5(1) reads as under :-

"5(1) 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 a 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 recruitment as it may consider necessary for dealing with the case in a just and equitable manner."

17. This Court finds that initially Rule 5(1) of the Rules of 1974 provided for compassionate appointment to one family member dependent on the deceased government servant provided he is not in government job meaning thereby that there was only one condition where the compassionate appointment could have been refused i.e. person seeking compassionate appointment was already in government job. Later on, Rule 5(1) of the Rules of 1974 has been amended in the year 1999 and amended Rule 5(1) provides that if the surviving spouse of the deceased government servant is in government job then the other family members dependent on the deceased government servant shall not be entitled for compassionate appointment.

15. This Court further finds that the legislature while amending Rule 5(1) of the Rules of 1974 was conscious of the fact that if one son of the deceased government servant is in government job, his earnings may not be available for survival of the remaining family members of the deceased government servant for the reason that the earnings of the son are meant for survival of his own family (his wife and children) and therefore only one prohibition has been incorporated that if the surviving spouse of the deceased government servant is in government job, the other dependent family members are not entitled for compassionate appointment.

16. This court is of the view that once there is no prohibition under the Rules of 1974 and the Government order dated 04.09.2000 wherein

identical provision has been made for the compassionate appointment on the death of a teacher, that if one son of the deceased teacher is in government job, the other dependent family member of the deceased teacher is not entitled for compassionate appointment, there cannot be any occasion for the District Basic Education Officer, Gorakhpur to reject petitioner's case for compassionate appointment on the ground that her brother is in government job. Petitioner's brother has given his affidavit, wherein he has categorically stated that though he is in government job but is residing separately from his parents, therefore, unless there was some material before the District Basic Education Officer, Gorakhpur, he could not have recorded a finding that since petitioner's brother is in government job, his earnings are sufficient for sustenance of surviving family of the deceased teacher accordingly, order dated 26.12.2022 is not sustainable in the eyes of law.

17. In view of the aforesaid reasons, this writ petition is **allowed**. Order dated 26.12.2022 passed by the District Basic Education Officer, Gorakhpur is quashed. Matter is remitted to Respondent No. 4 to consider the petitioner's matter afresh in the light of this order and to pass fresh order within a period of two months from the date of presentation of certified copy of this order.

Order Date :- 8.2.2024

Gaurav