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Reserved

Case :- WRIT - A No. - 17078 of 2015

Petitioner :- Smt. Gomti Devi
Respondent :- State Of U.P. And 2 Ors.
Counsel for Petitioner :- N.L. Srivastava,Bibhuti Narayan Singh
Counsel for Respondent :- C.S.C.

Hon'ble Vikram D. Chauhan,J.

1. Heard learned counsel for the petitioners and the learned Standing Counsel for the State-respondents.

2. The present writ petition is preferred challenging the order dated 28th January, 2015 passed by DIG (Establishment), Police Head Quarter, U.P., Allahabad and with a further prayer to issue a mandamus directing the respondent no.2 to appoint petitioner no.2 on compassionate ground in the office of the respondent.

3. The submission of the learned counsel for the petitioners is that the husband of petitioner no.1 and father of petitioner no.2, namely, Late Prem Shankar Dwivedi was a Constable and he was posted at District Sultanpur in the year 1999. Late Prem Shankar Dwivedi died during his service while working on the post of Constable in District - Sultanpur. After the death of the deceased employee, petitioner no.1 submitted a representation dated 9th September 1999 before respondent no.2 and requested that petitioner no.1 is an illiterate lady and, therefore, compassionate appointment may be granted to her elder son, namely, Shri Dinesh Kumar Dwivedi, as there is no earning member in the family of petitioner no.1 after death of her husband.

4. After completion of all the formalities and after due inquiry with regard to financial status of family, respondent no.2, has issued appointment letter dated 11th December, 2014 appointing Shri Dinesh Kumar Dwivedi (eldest son of deceased employee) on the post of Constable (M) and the aforesaid appointment letter dated 11th December, 2004 further provided that Shri Dinesh Kumar Dwivedi will appear before the Police Training Centre, Moradabad on 15th December, 2004 for six months training. Unfortunately, mental condition of Dinesh Kumar Dwivedi was very serious on 14th December, 2004 and, therefore, in place of joining the place of Training Centre, Moradabad for training on 15th December, 2004, he was hospitalized at Primary Health Centre, Tarun, Faizabad on 17th December, 2004 as he was suffering from mental disease and was continuously undergoing treatment.

5. On account of the aforesaid fact, eldest son of petitioner no.1 (namely Shri Dinesh Kumar Dwivedi) could not join the aforesaid post. On 2nd May, 2006, petitioner no.1 filed a representation along with an affidavit before the respondent no.2 with a request that mental condition of her son namely Shri Dinesh Kumar Dwivedi has deteriorated and is unable to join the post in question and as such appointment letter may be issued in favour of petitioner no.2, being younger son of petitioner no.1, namely, Shri Manoj Kumar Dwivedi for being appointed on compassionate ground.

6. After receiving the aforesaid representation of petitioners, respondent no.2 did not pass any order and as such petitioners preferred a reminder dated 1st January, 2008 before respondent no.2 along with an affidavit and medical certificate

of Shri Dinesh Kumar Dwivedi. The petitioners thereafter approached the respondent no.2 on several occasions for consideration of appointment of petitioner no.2 on compassionate ground in place of his elder brother. However, no action was taken on the request of the petitioners.

7. Thereafter, the petitioner no.2 met respondent no.2 personally on 2nd July, 2008 at his office and narrated the entire grievance and further requested for grant of compassionate appointment. On the aforesaid, respondent no.2 orally directed the petitioner no.1 to file a fresh representation in respect of grant of compassionate appointment and in furtherance thereof, petitioner no. 1 has filed a representation dated 5th July, 2008 along with an affidavit and medical certificate of Shri Dinesh Kumar Dwivedi before the respondent no.2.

8. Despite the aforesaid representation, no order was passed by the respondent no.2 for grant of compassionate appointment and as such the petitioner preferred Writ-A No.67008 of 2008 before this Court wherein a direction was issued on 27th August, 2012 to respondent no. 2 to consider the claim for compassionate appointment of petitioner no.2 in accordance with law by a reasoned order within a period of six weeks from the date of submission of a certified copy of the order. The respondent no.2 thereafter, referred the matter to respondent no.1 for condonation of delay in accordance with Rule 5 of U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (hereinafter referred as Rules of 1974). The State Government by means of a communication dated 19th January, 2015 to the Police Head Quarter has rejected the application for compassionate appointment and has refused to

condone the delay in preferring the application for compassionate appointment. In pursuance to the aforesaid, the respondent no.2 passed the impugned order dated 28th January, 2015 rejecting the claim of the petitioners.

9. It is submitted by learned counsel for the petitioners that the rejection of the claim of the petitioners is arbitrary and is not tenable under law. He submits that impugned order takes notice of the fact that the deceased employee expired on 7th August, 1999 and the application for compassionate appointment was submitted on 6th May, 2013, which is after a period of 13 years from the date of death of the employee and as such the application was held to be time barred. The respondents further did not find it appropriate to condone the delay in filing the application.

10. The submission of learned counsel for the petitioners is that the initial application for grant of compassionate appointment was submitted on 9th September, 1999 before the respondent no.2 and on the aforesaid application, appointment letter was issued in favour of eldest son of petitioner no.1 on 11th December, 2004. However, eldest son of petitioner no.1 could not join in pursuance of the appointment letter as he was mentally unfit and on account of aforesaid fact, petitioner no.1 again filed a representation dated 2nd May, 2006 before respondent no.1, that in place of eldest son of petitioner no. 1 namely Shri Dinesh Kumar Dwivedi, who is now mentally unsound, the younger son of petitioner no.1, namely, Shri Manoj Kumar Dwivedi (Petitioner no. 2) be appointed. It is further submitted that the aforesaid application remained pending and the petitioner no. 1 had filed a reminder on 1st

January, 2008 along with medical certificate of Shri Dinesh Kumar Dwivedi and an affidavit. It is further submitted that when no action was taken, petitioner no.2 met respondent no.2 personally on 2nd July, 2008 at his office and respondent no.2 orally directed petitioner no. 1 to submit a fresh representation in respect of the claim of petitioner no. 2 and, thereafter, a fresh representation dated 5th July, 2008 was submitted by petitioner no. 1 for appointment of petitioner no.2 on compassionate grounds.

11. Learned counsel for petitioners further submits that once the initial application has been submitted in the year 1999 and the respondents after considering the financial condition and other aspects of the matter has issued the appointment letter in favour of eldest son of petitioner no.1, who subsequently became medically unfit, when the appointment letter was issued, as such the petitioner no.1 by representation had requested for appointment of petitioner no.2 in place of eldest son Shri Dinesh Kumar Dwivedi and as such there is no delay in approaching the respondents for grant of compassionate appointment.

12. It is submitted that the application for compassionate appointment, which was firstly preferred in the year 1999 was finally considered by the respondents in 2004 and when the eldest son of the petitioner no. 1, namely, Shri Dinesh Kumar Dwivedi could not join on account of his mental condition, an application was filed to appoint petitioner no.2 in his place and as such the circumstances in which the petitioner no. 1 was forced to apply for changing the offer of compassionate appointment in favour of petitioner no 1, warranted under law

for condonation of delay (if any) in exercise of power under the proviso to Rule 5 of the Rules of 1974.

13. It is further submitted that the rejection of the claim of compassionate appointment of petitioners on the ground of delay, is arbitrary and untenable under law and without application of mind. While passing the impugned order, the authority concerned has not taken into consideration the aforesaid facts and circumstances which warranted condonation of delay and further the finding recorded in the impugned order that the petitioners applied for the first time in the year 2013 is also *dehors* the record.

14. It is further submitted on behalf of petitioners that the impugned order further rejects the claim of petitioners on the ground that the petitioners is receiving family pension to the tune of Rs.7,000/- per month and has income from agricultural land of Rs.7,700/- per month and as such respondent no.2 has held that financial condition of the petitioners is not such that the compassionate appointment may be granted. The respondent no.2 further by passing impugned order has taken objection to the marriage of petitioner no.2 during his poor financial condition and as such has denied compassionate appointment. It has also been taken note in the impugned order that the petitioner no.1 is illiterate however, she could have applied for appointment, as even illiterate persons are being given appointment on compassionate ground. The impugned order takes note of the fact that the medical certificate of petitioner no.1 has not been filed and that the petitioner no. 1 has waited for the fact that the petitioner no.2 becomes major and thereafter, has applied for grant of compassionate appointment.

15. It is submitted that the family pension being given to the petitioners is not sufficient particularly in view of the fact that eldest son of petitioner no.1 is suffering from mental illness and a family of four persons would not survive at a meagre family pension of Rs.7,000/- per month.

16. It is further submitted that the agricultural income shown as Rs.7,700/- per month is *dehors* the record as there was no evidence before the respondent authorities which could have found the basis of the aforesaid income nor any such documentary evidence was served on the petitioners neither any opportunity was given prior to determination of the agricultural income of the petitioners. He submits that initially on the death of the employee, the petitioner no.1 had given the name of his eldest son Shri Dinesh Kumar Dwivedi. However, on the date of issuance of appointment letter in 2004, he was mentally sick and as such he was not in a position to join the duties and as such respondents cannot raise objection that petitioner no.1 should have applied for grant of compassionate appointment. The rules in this respect give a right to any family member to be appointed on compassionate ground and as such the choice vests with the petitioners.

17. It is submitted that finding recorded by the respondent no.2 that petitioner no. 1 waited for the younger son Manoj Kumar Dwivedi to become major to apply for compassionate appointment is not in accordance with law as initially eldest son had applied for grant of compassionate appointment. However, he suffered from mental sickness and as such change was sought and petitioner no.2 was requested to be appointed on compassionate ground .

18. Learned Standing Counsel on behalf of the respondents submits that the husband of petitioner no.1 was posted as Constable in District Sultanpur, who died on 7th August, 1999 while in service. After the death of the aforesaid employee, petitioner no.1 applied for appointment of Shri Dinesh Kumar Dwivedi (eldest son of deceased employee) on compassionate ground and the Police Head Quarter by order dated 11th December, 2004 appointed Shri Dinesh Kumar Dwivedi as Constable (M) with the condition that Dinesh Kumar Dwivedi will join the Police Training Centre, Moradabad on 15th December, 2004.

19. Learned Standing Counsel further submitted that Shri Dinesh Kumar Dwivedi due to his mental sickness could not join for training. Thereafter, petitioner no.1 preferred application for grant of compassionate appointment to petitioner no.2 in place of Shri Dinesh Kumar Dwivedi. The aforesaid application remain pending and, therefore, this Court by order dated 27th August, 2015 passed in Writ-A No.67008 of 2008 directed the respondents to decide the claim of the petitioners for compassionate appointment within a period of six weeks from the date of submission of a certified copy of the order. However, the claim of the petitioners did not find favour of the authorities concerned and the same was rejected by means of the impugned order on the ground that the claim was filed after a period of five years and no ground was substantiated for condoning the delay in preferring the application. He submits that the application of the petitioners have been rightly rejected and the impugned order is in accordance with law.

20. Appointment in public service are to be made with open invitation to all eligible candidates and on merit. In all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. No other mode of appointment nor any other consideration is permissible. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The exception is carved out to meet certain exigencies and in the interest of justice out of humanitarian consideration. The whole object of granting compassionate employment is thus to enable the family to tide over the crisis. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family on account of sudden ending of erstwhile employment.

21. Appointment on compassionate grounds is not automatic, but subject to scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee. Therefore, no one can claim to have a vested right for appointment on compassionate grounds.

22. In **Malaya Nanda Sethy Vs. State of Orissa and others** passed in Civil Appeal No. 4103 of 2022 [Arising out of S.L.P. (Civil) No. 936 of 2022] dated 20th May, 2022 has held that application for compassionate appointment is to be considered

well in time. The consideration must be fair, reasonable and based on relevant considerations. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.

23. In the present case, husband of petitioner no.1 and father of petitioner no.2, namely, Late Prem Shankar Dwivedi was a Constable and he was posted at District - Sultanpur in the year 1999. However, he died on 7.8.1999 during his service while working on the post of Constable in District - Sultanpur. After the death of deceased employee, petitioner no.1 submitted a representation dated 9th September 1999, before the respondent no.2 and requesting that the petitioner no.1 is an illiterate lady and, therefore, compassionate appointment may be granted to her elder son, namely, Dinesh Kumar Dwivedi because there is no earning member in the family of petitioner no.1 after the death of her husband.

24. In pursuance to aforesaid application for grant of compassionate appointment, respondent no. 2 has issued an appointment letter dated 11th December, 2004 directing the appointment of Shri Dinesh Kumar Dwivedi (eldest son of the deceased employee) on the post of Constable (M) and the aforesaid appointment letter further provided that Shri Dinesh Kumar Dwivedi will appear before the Police Training Centre, Moradabad on 15th December, 2004 for six months training.

25. Unfortunately, the mental condition of Shri Dinesh Kumar Dwivedi was very serious on 14th December, 2004 and, therefore, in place of joining the place of Training Centre, Moradabad for training on 15th December, 2004, he was

hospitalized at Primary Health Centre, Tarun, Faizabad on 17th December, 2004 as he was suffering from mental disease and was continuously going under treatment. In this respect a medical certificate dated 17th December, 2007 has been issued by the In-charge, Medical Officer, Primary Health Centre, Tarun, Faizabad.

26. On account of the mental health of elder son of petitioner no. 1 not been favourable, petitioner no. 1 preferred representation dated 2nd May, 2006 along with affidavit informing the respondent authorities that mental health of Shri Dinesh Kumar Dwivedi have become worst and, therefore, requested that appointment letter be issued in favour of the petitioner no. 2 (younger son of petitioner no. 1) on compassionate ground. The aforesaid representation dated 2nd May, 2006 further stated that on 15th November, 2005 petitioner no. 1 had informed the Superintendent of Police, Sultanpur about the medical condition of Shri Dinesh Kumar Dwivedi and had further requested for appointment of petitioner no. 2 in place of Dinesh Kumar Dwivedi.

27. When the respondents did not take any action on representation of the petitioner no. 1 for appointment of petitioner no. 2 in place of Shri Dinesh Kumar Dwivedi, then the petitioner no. 1 again filed a representation dated 1st January, 2008 before the respondent no. 2 along with affidavit and medical certificate of Shri Dinesh Kumar Dwivedi. Despite the aforesaid representation of the petitioner no. 1, no action was taken by the respondent authorities and only assurances were given that the matter would be taken up and the decision would be communicated. Since no order was being passed on

the above-mentioned representation of the petitioners, the petitioners met the respondent no. 2 personally on 2nd July, 2008 at Allahabad and the entire grievance was narrated to respondent no. 2, then respondent no. 2 directed petitioner no. 1 to give a fresh representation along with entire records so that matter can be considered. On the oral direction of respondents, the petitioner no. 1 again preferred representation dated 5th July, 2008 along with affidavit and medical certificate for issuance of appointment letter in favour of petitioner no. 2 in place of Shri Dinesh Kumar Dwivedi on compassionate ground.

28. No action was taken by the respondents on the above-mentioned representations of petitioner no. 1 and as such the petitioner no. 1 preferred Writ Petition No 67008 of 2008 (Smt Gomti Devi Vs State of U.P.) before this Court. The above-mentioned writ petition was finally decided by judgement and order dated 27th August, 2012. By order dated 27th August, 2012 this Court directed the respondents to consider the claim for compassionate appointment of petitioner no. 2 in accordance with law by a reasoned order within a period of six weeks from the date of submission of certified copy of the order passed by this Court.

29. The petitioner no. 2 submitted the above-mentioned order dated 27th August, 2012 before the respondent no. 2 on 24th September, 2012 along with the covering letter through registered post. After receiving the certified copy of the order dated 27th August, 2012, respondent no. 2 has rejected the claim for compassionate appointment of the petitioner no. 2 by impugned order dated 28th January, 2015.

30. The claim for compassionate appointment is governed by

Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974. The Rule 5 of the aforesaid Rules of 1974 provides that in case the 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, one member of his family who is not already employed under the Central government or a State government shall on making an application for the purpose be given a suitable employment in government service on a post. The aforesaid Rules further provides that the application for employment shall be made within a period of five years from the date of death of the government servant. The Rules of 1974 further empower the State Government to relax the requirement including the time limit where it is satisfied that the time limit fixed for making application for employment causes undue hardship in a particular case.

31. A perusal of the impugned order dated 28th January, 2015 would demonstrate that the application for compassionate appointment of the petitioner no. 2 was send to the State Government treating the same to be beyond the five years limit prescribed in Rule 5 of the Rules of 1974. The respondent no. 2 by impugned order dated 28th January, 2015 rejected the claim of the petitioner no. 2 for compassionate appointment and thereby declined to relax the time limit provided in the above-mentioned Rules of 1974.

32. The rejection of the claim for compassionate appointment is made by the respondents on the ground that the deceased employee expired on 7th August, 1999 and the petitioner no. 1

has applied for appointment on compassionate ground by application dated 6th May, 2013 after almost 13 years of the death of the deceased employee. On the aforesaid basis respondents came to the conclusion that the application for compassionate appointment was barred by time. Further, the claim of petitioners has also been rejected on the ground that the petitioners are getting family pension of Rs. 7000/- per month and further income from agricultural land to the tune of Rs. 7700/- per month is being received by the petitioners and as such the respondents have come to the conclusion that the family is not in financial crisis. The respondents further taking note of the fact that the petitioner no. 2 is married and in case the financial condition of the petitioners' family was not good then the petitioner no. 2 would not have married. The impugned order further states that the petitioner no. 1 has not applied for compassionate appointment on the ground that she is illiterate despite the fact that the State Government also provide employment to illiterate person. The respondents further recorded that the petitioners have not filed any proof with regard to ill-health of petitioner no. 1 and petitioner no. 1 waited for petitioner no. 2 to become major and then has applied for grant of compassionate appointment and on the aforesaid basis claim of the petitioners for compassionate appointment has been rejected being filed beyond the time prescribed under the Rules of 1974.

33. In the present case, deceased employee expired on 7th August, 1999 and application for grant of compassionate appointment was preferred by petitioner no. 1 on 9th September, 1999 for appointment of elder son of petitioner no. 1 being Shri

Dinesh Kumar Dwivedi. In the counter affidavit filed by the respondents in paragraph 10 it has been stated that the claim for compassionate appointment of the petitioner no. 1 for appointment of the elder son of petitioner no. 1 was processed by Superintendent of Police, Sultanpur by communication dated 8th March, 2000 within the time limit prescribed under the 1974 Rules and the appointment letter was issued on 11the December, 2004 in favour of Shri Dinesh Kumar Dwivedi (elder son of petitioner no. 1) by the police head quarter.

34. In pursuance to above-mentioned appointment order dated 11th December, 2004, Shri Dinesh Kumar Dwivedi could not join the post on account of his serious mental condition. The aforesaid fact with regard to Shri Dinesh Kumar Dwivedi not joining in pursuance to the appointment letter dated 11th December, 2004 is admitted by the respondents in the counter affidavit.

35. The petitioner no. 1 considering the mental health of Shri Dinesh Kumar Dwivedi and the fact that he may not be able to join his post in pursuance to the appointment letter dated 11the December, 2004 preferred representation dated 2nd May, 2006 along with affidavit before the respondent no. 2 informing about the ill-health of Shri Dinesh Kumar Dwivedi and further requesting that the petitioner no. 2 may be appointed in place of Shri Dinesh Kumar Dwivedi. The aforesaid fact that the petitioner no. 1 had approach the respondent by representation dated 2nd May, 2006 has not been denied by the respondents in the counter affidavit. The representation dated 2nd May, 2006 further records that on 15th November, 2005, the Superintendent of Police, Sultanpur was informed about the aforesaid fact.

36. The petitioner no. 1 thereafter preferred representation dated 1st January, 2008 before the respondent no. 2 along with affidavit and medical certificate of Shri Dinesh Kumar Dwivedi thereby requesting the respondent authorities to issue appointment letter in favour of petitioner no. 2 as the mental condition of Shri Dinesh Kumar Dwivedi is not such as would permit him to join his duties. The aforesaid representation dated 1st January, 2008 is not disputed by the respondents in the counter affidavit.

37. Thereafter the petitioner no. 1 has approached the office of respondent no. 2 and met him personally on 2nd July, 2008 at Allahabad and has narrated the entire grievance of the petitioner. The respondent no. 2 had orally directed the petitioner no. 1 to submit a fresh representation along with the entire record and as such petitioner no. 1 has filed representation dated 5th July, 2008 along with medical certificate of Shri Dinesh Kumar Dwivedi and affidavit and has further requested for issuance of appointment letter in favour of petitioner no. 2. The aforesaid representation dated 5th July, 2008 has not been denied by the respondents in the counter affidavit. When no action was taken by the respondents on the representation of the petitioner no. 1, the petitioner no. 1 preferred Writ Petition No. 67008 of 2008 before this Court and said writ petition was disposed of by order dated 27th August, 2012 directing the respondents to take decision on the claim for compassionate appointment of the petitioner no. 2. Thereafter the claim for compassionate appointment of the petitioner no. 2 has been rejected by the respondent authorities by impugned order dated 28th January, 2015.

38. The basis for rejection of the claim of the petitioner no. 2 for grant of compassionate appointment is on account of the fact that the application for grant of compassionate appointment was preferred by petitioner no. 1 on 6th May, 2013 whereas the deceased employee has died on 7th August, 1999. As per the impugned order, the claim for compassionate appointment was made by the petitioners beyond the five years limit prescribed under the Rules of 1974.

39. The aforesaid ground for rejection of the claim of the petitioner is untenable in view of the fact that the petitioner no. 1 initially applied for grant of compassionate appointment on 9th September, 1999 and the aforesaid application of the petitioner for grant of compassionate appointment was processed by the respondent authorities and the appointment letter dated 11th December, 2004 was issued in favour of Shri Dinesh Kumar Dwivedi (elder son of petitioner no. 1). It is to be noted that petitioner no. 1 promptly made application for compassionate appointment on 9th September, 1999 (within a month from the date of death of the government servant) and the respondents after almost 4 years proceeded to decide the aforesaid application for compassionate appointment of the petitioners. The appointment letter for compassionate appointment was issued in favour of Shri Dinesh Kumar Dwivedi (elder son of petitioner no. 1) on 11th Decmeber, 2004, however, during the intervening period, mental health of Shri Dinesh Kumar Dwivedi deteriorated and as such, he was not in a position to join the post as per the appointment letter dated 11th December, 2004. The petitioner no. 1 thereafter approached the respondents for issuing appointment letter in favour of

petitioner no. 2 (being the younger son of petitioner no. 1) in place of Shri Dinesh Kumar Dwivedi. The initial information with regard to the aforesaid was submitted by the petitioner on 15th November, 2005 and thereafter the representation dated 2nd May, 2006 along with the affidavit was also submitted before the respondent authorities. Further representation was also submitted by the petitioner on 1st January, 2008 and 5th July, 2008. The aforesaid facts have not been disputed by the respondents in the counter affidavit filed in the present writ petition.

40. The impugned order takes notice of the application for grant of compassionate appointment of 6th May, 2013 despite the fact that prior to the aforesaid application, the petitioner had already preferred the application for compassionate appointment on 9th September, 1999 which was followed by issuance of appointment letter on 11th December, 2004 in favour of Shri Dinesh Kumar Dwivedi. However, Shri Dinesh Kumar Dwivedi could not join his duty on account of his mental health and as such representation dated 2nd May, 2006 was preferred bringing to the notice of the respondent authorities the ill-health and mental condition of Shri Dinesh Kumar Dwivedi and further for issuance of appointment letter in favour of petitioner no. 2 (younger son of petitioner no. 1). The aforesaid facts have not been considered by the respondent authorities while passing the impugned order.

41. The date of application for compassionate appointment is recorded in the impugned order as 6th May, 2013 despite the fact that it is an admitted case of the respondents that the first application for compassionate appointment was preferred in

1999 itself and thereafter in 2006, the petitioner no. 1 had requested the change of the name of the beneficiary of compassionate appointment in place of Shri Dinesh Kumar Dwivedi who was mentally not of sound mind to join the post offered. It is also to be noted that the respondent authorities by order dated 11th December, 2004 has issued appointment letter in favour of Shri Dinesh Kumar Dwivedi which was after considering all the aspects with regard to grant of compassionate appointment.

42. The petitioner no. 1 had sought replacement of the name of Shri Dinesh Kumar Dwivedi with the name of petitioner no. 2 on account of unsound mental condition of Shri Dinesh Kumar Dwivedi. In this respect the petitioners have also filed medical certificate and affidavit before the respondent authorities. All these aspects have not been considered by the respondent authorities while passing the impugned order. The finding recorded in the impugned order that application for compassionate appointment has been made on 6th May, 2013 is not sustainable as it is admitted in the counter affidavit that the application for compassionate appointment was preferred firstly in the year 1999 and thereafter in the year 2006 (for replacement of the name of the beneficiary), as such, the impugned order insofar it as it rejects the application of the petitioner as being time barred is not sustainable under law. The respondents are obliged under law to take a decision considering all the facts and circumstances of the case and the non-consideration of the facts herein before stated would make the impugned order unsustainable under law. The respondent authorities while passing the impugned order has failed to take

into consideration the important facts which have bearing on the decision of the respondent authorities.

43. It is to be noted that the compassionate appointment was offered by the respondent authorities in pursuance to the application dated 9th September, 1999 to Shri Dinesh Kumar Dwivedi, however, he could not join the post on account of his mental health and as such the petitioner no. 1 sought replacement of the name of the beneficiary as petitioner no. 2. It is to be noted that Shri Dinesh Kumar Dwivedi has not joined his duties in pursuance to the appointment letter dated 11th December, 2004 and the right of employment on compassionate ground which stood fortified by issuance of appointment letter dated 11th December, 2004 has not extinguished on account of non-joining of Shri Dinesh Kumar Dwivedi on medical grounds and the subsequent replacement being sought by petitioner no. 1 by requesting for appointment of petitioner no. 2 in place of Shri Dinesh Kumar Dwivedi was in continuation of the earlier order dated 11th December, 2004. The aforesaid replacement of the beneficiary under the compassionate appointment scheme was being sought on account of the fact that the employee died in the year 1999 and application for appointment on compassionate ground was preferred in the year 1999 itself by petitioner no. 1, however, the respondent authorities issued the appointment letter on 11th December, 2004 and during the intervening period subsequent developments have taken place and as a result of the same, the mental health condition of Shri Dinesh Kumar Dwivedi was not such as he could have joined the post in pursuance to the appointment letter dated 11th December, 2004 and as such the petitioner no. 1 sought

replacement of the name of beneficiary for grant of compassionate appointment in favour of the petitioner no. 2.

44. It is further to be noted that the claim for compassionate appointment was duly processed and accepted by the respondent authorities and appointment letter was issued in the year 2004, however, the acceptance of the compassionate appointment by the respondents could not be completed by joining of the beneficiary to the post on the ground of ill-health and as such although the respondents had issued the appointment letter, the beneficiary could not join duty and such peculiar facts and circumstances which have developed after the filing of the application for compassionate appointment in the year 1999 was required to be considered by the respondent authorities while passing the impugned order. The respondent authority while passing the impugned order has not taken aforesaid facts and circumstances into consideration and has passed the order mechanically. Such an approach by the respondent authorities is counter-productive to the very object for which the compassionate appointment scheme have been envisaged.

45. It is trite in law that facts of a particular case has a important bearing on the decision to be arrived at. The facts and particulars are the foundation on which the justice is to be administered. The administrative authorities while taking a decision is expected to consider all the material facts and circumstances to arrive at decision. Non-consideration of any material facts and circumstances may lead to injustice. The authority concerned is enjoined with the duty to apply the law on the facts and circumstances of a particular case while

arriving at a decision. Such an approach is also required to bring fairness and stability to the decision arrived at by the administrative authority. Non-consideration of material facts and circumstances in a particular case may lead the decision as unfair and untenable under law. It is further to be noted that the decision-making authority is also a fact-finding authority and as such is required under law to consider all the facts in proper perspective so that a fair decision is arrived at by the authority concerned. Each matter before the administrative authority has its own peculiar features. The authority concerned is enjoined with the duty to apply these peculiar facts of the matter to the law applicable and then recorded finding on the claim before the aforesaid authority.

46. The respondent in the impugned order has further recorded a finding that the petitioners are receiving the family pension of Rs. 7000/- per month and further has agricultural income of Rs. 7700/- per month from agricultural land and as such there is no financial distress to the family of the deceased employee. It is to be noted that insofar as receiving of the family pension is concerned, the same was also before the respondent authorities when the decision for grant of compassionate appointment was taken in the year 2004 and the respondent authorities in considering the aforesaid fact of the matter has granted compassionate appointment to the elder son of the petitioner no 1. The respondent authorities further has concluded that the petitioners have agricultural income to the tune of Rs.7700/- per month. Learned counsel for the petitioners have disputed the aforesaid fact and has stated that the petitioners are earning Rs. 20,000/- per year from the

agricultural land. The aforesaid fact has been stated in paragraph 14 of the writ petition, however, the aforesaid fact has not been denied in paragraph 18 of the counter affidavit. The basis on which the respondent authorities have come to the conclusion that the petitioners have agricultural income to the tune of Rs.7700/- per month has not been disclosed in the counter affidavit.

47. The impugned order is also silent on the basis on which the authority concerned has come to the conclusion that the petitioners is having agricultural income to the tune of Rs. 7700/- per month. The authority concerned while arriving at a decision is required to consider objectively the facts and circumstances of the case and any finding recorded by the authority concerned without there being factual foundation as well as evidence in support of the factual foundation would be unsustainable in law. The respondents have failed to bring on record any material to demonstrate as to how the respondents have come to the conclusion that the petitioners have agricultural income to the tune of Rs.7700/- per month and as such the finding of the respondents that the petitioners have agricultural income to the tune of Rs. 7700/- per month is wholly unsustainable in law.

48. It is further to be seen that the impugned order take notice of the family pension and agricultural income and comes to the conclusion that the petitioners are not in financial constraint and as such the compassionate appointment has been denied. The financial income of the family of a deceased employee is to be considered by the employer by taking into consideration whether the aforesaid income is enough to

support the family in a dignified manner. The State is a welfare State and has duty under the Constitution to safeguard the interest of a citizen and provide them a dignified life. The respondent authority by passing the impugned order has not considered whether a meagre amount of Rs.14,700/- per month would be enough to support a family member of four persons of the deceased employee specially in view of the fact that one of the son of the deceased employee is having mental sickness and expenditure is being incurred in his well-being. The respondent authorities while passing the impugned order has not disclosed the reasons as to why the income of the family has been considered to be enough to support the family.

49. The respondent authorities were also required to consider the expenditure which the family of the deceased employee is required to incur to maintain the dignified life and should have objectively considered all the aforesaid aspect of the matter specifically when the mental health of the elder son of the deceased employee is not disputed in the counter affidavit filed by the respondents before this Court.

50. The respondents in the impugned order has further held that the petitioner no. 2 is married and in case the family was suffering from financial constraint then the petitioner no. 2 would not have married. The finding recorded by the respondents in the impugned order is wholly unsustainable in law. It is to be noted that the right to marry a person of one's own choice is an integral part of Article 21 of the Constitution. The marriage of a person has no rational nexus with the financial status of the person. It is to be noted that even a poor person has a right to marry under the Constitution and the

respondents by passing the impugned order has held that the petitioner no. 2 is married and in case the financial position of the petitioners was not good then the petitioner no. 2 would not have married. The aforesaid finding of connecting the financial condition with the marriage is having no rational nexus. Even a poor person can marry despite financial constraint.

51. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship. The institutions of marriage is important social institution that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. Marriage is one of the civil right of an individual.

52. The civil society is based on the foundation of social institutions and the cumulative aim of various social institution is to bring harmony and order in the civil society. The institution like marriage give recognition to the relationship by the civil society and law.

53. The marriage by itself would not denude an individual of his financial status. The poorest person of the country has a right to marry while his financial status may remain intact. Any interpretation by the administrative authorities on the sole criteria of marriage of an individual denuding the financial status of the said individual is arbitrary and has no nexus to the object of compassionate appointment. The financial position of an individual is to be assessed by the authority concerned on the settled criteria. The rules of compassionate appointment does not provide that the marriage of an individual would raise presumption that the individual has the financial capacity to

support itself. The marital status of the members of the family may be a factor to consider the number of dependents in the family or number of bread earners in the family and such an approach should be considered to determine the financial crisis of the family of the deceased employee.

54. The impugned order further takes note that the petitioner no. 1 could have herself applied for compassionate appointment even if she is an illiterate person as the State even appoints an illiterate person. In this respect, it is to be noted that in the year 1999 itself when the deceased employee died, the petitioner no. 1 had applied for grant of compassionate appointment to the elder son of the petitioner no. 1. The Rules of 1974 provide that the employment should be granted to one member of the family of the deceased employee. The petitioner no. 1, therefore, had applied for appointment of the elder son of petitioner no. 1 for compassionate appointment, however, he could not joined the post on account of his mental illness and, therefore, the petitioner no. 1 had approached the respondent authorities for replacement of the name of beneficiary under the compassionate appointment scheme and the benefit of compassionate appointment be granted to petitioner no. 2.

55. It is the choice of the family members of the deceased employee as to the person who is to be accorded the benefit of compassionate appointment. Under the facts and circumstances, petitioners had promptly applied for grant of compassionate appointment in the year 1999 and decision of granting compassionate appointment was taken in the year 2004 by the respondent authorities and as such there was a huge delay on the part of respondent authorities in addressing the financial

distress of the family of deceased employee and on account of the aforesaid delay subsequent intervening facts came into consideration by way of mental illness of elder son of petitioner no. 1 in respect of which the replacement of the beneficiary was sought by the petitioner no. 1 from the respondent authorities.

56. The petitioners have also filed the medical certificate and affidavit to bring on record facts and circumstances before the authority concerned. It is further to be noted that affidavit filed before the authority concerned it is disclosed that the deceased employee had two sons and one minor daughter and the elder son of the deceased employee was mentally ill. The aforesaid facts and circumstances have not been taken into consideration by the respondent authorities while passing the impugned order. The financial distress has not been addressed by the respondent authorities in proper perspective. The liabilities being faced by the family of the deceased employee on account of sudden death has not been considered by the respondent authority specifically the fact that one of the son of the deceased employee has suffered mental illness after the death of the employee concerned.

57. Although, respondent authorities have positively considered the application for compassionate appointment and had offered appointment to the elder son of the petitioner no. 1 in 2004, however, he was mentally unfit when the aforesaid offer for appointment was made and as such it was the duty of the respondent authorities to have considered the aforesaid facts and have offered the replacement. The respondent authorities while passing the impugned order further has not taken into consideration the liability that is faced by the family of the

deceased employee on account of the medical treatment of the elder son of the deceased employee, who is mentally ill. The respondent authorities have only taken note of the income of the family of the deceased employee while passing the impugned order, however, has not dealt with the liability aspect as to whether the income generated by the family of the deceased employee is sufficient to meet out the liability of the family and would permit them to live a dignified life in consonance with Article 21 of the Constitution of India.

58. In view of the above-mentioned analysis the impugned order dated 28th January, 2015 passed by respondent no. 2 is not sustainable and as such is set aside and the matter is remanded back to respondent no. 2 to consider the application for compassionate appointment of petitioner no. 2 on merits and in accordance with law and in view of the observations made by this Court hereinabove. In peculiar facts and circumstances of the case, it is directed that the application for compassionate appointment shall be considered by the respondents as within time. The above-mentioned exercise shall be completed by the respondents within a period of three months from the date of production of certified copy of the order. The respondents shall prior to passing of the order shall give an opportunity of hearing to the petitioners.

59. As a result the writ petition is allowed with direction as detailed herein above.

Order Date :- 01.11.2022
VMA/Bhaskar

(Vikram D. Chauhan, J.)