

# SUPREME COURT OF INDIA

Santosh Kumar Dubey

Vs.

State of U.P.

C.A.No.1955 of 2003

(Dr.Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

18.05.2009

## JUDGEMENT

### **Dr. Mukundakam Sharma, J.**

1. This appeal is directed against the judgment passed by the Division Bench of the Allahabad High Court whereby the Special Appeal filed by the appellant was dismissed. The said appeal was filed against the judgment and order passed by the Learned Single Judge of the High Court on 8th July, 2002 who dismissed the writ petition of the appellant on the ground that no case for issuance of any writ was made out.

2. The writ petition was filed by the appellant on the ground that his father who was working as Constable was untraceable and that his whereabouts were not known. Another writ petition was filed by the mother of the appellant in which the Court observed that since whereabouts of the father of the appellant are not known for last seven years therefore the concept of deemed death of the father of the appellant could be invoked to the case in hand. Accordingly, there was a direction of the Court directing for payment of service benefits of the father of the appellant to his mother. It was also contended in the writ petition filed by the appellant that having received the said benefit, now a right has accrued to the appellant to seek for a compassionate appointment in the light of the rules applicable.

3. The afore-mentioned writ petition was contested by the respondent contending inter alia that the father of the appellant was dismissed from service for unauthorised absence and, therefore, in a case like that, the appellant was not entitled to claim the benefit of compassionate appointment. The writ petition was also opposed by the respondent on the ground that the rules as applicable did not permit any compassionate appointment in favour of a person like the appellant and, therefore, no such benefit could be given in favour of the appellant.

4. The writ petition thereafter was taken up for arguments by the learned Single Judge who considering the facts and circumstances of the case dismissed the writ petition holding that no case for such appointment was made out. Being aggrieved, the appellant filed a Second

Appeal before the Division Bench of the Allahabad High Court. The said Special Appeal was taken up for consideration and by impugned judgment and order dated 28th August, 2002, the Division Bench dismissed the appeal holding that there was no scope to interfere with the order of the Learned Single Judge. Still being aggrieved by the said order present appeal is filed in which leave was granted.

5. We have heard learned counsel appearing for the appellant as also learned counsel for the respondents and with their assistance have also perused the records.

6. Counsel for the appellant has submitted before us that by virtue of the orders of the Court, the mother of the appellant got the service benefits sometime in the year 1999 and, therefore, the appellant was justified in asking for a compassionate appointment and it cannot be said to be belated.

7. In order to appreciate the aforesaid contentions of the counsel appearing for the appellant, we have perused the rules called the "*U.P. Recruitment of Dependents of Government Servants Dying in harness Rules, 1974*". In our considered opinion, Rule 5 has relevance on the facts of the present case and, therefore, we extract the said provision hereinafter:

“5. Recruitment of a member of the family of the deceased.- 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 of 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 times limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense such 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.”

8. A bare perusal of the aforesaid rule would make it crystal clear that there is a time limit prescribed according to which a deserving candidate has to make an application for

appointment within five years from the date of death of the government servant. 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.

9. 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.