

Reserved on 25.07.2022

Delivered on 03.08.2022

Court No. - 36

Case :- WRIT - A No. - 47252 of 2003

Petitioner :- Sanjay Kumar Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- A.K. Dubey, Arvind Tripathi, B.K. Tripathi, M.P. Pandey, Pradeep Singh Sengar, S.K. Yadav

Counsel for Respondent :- C.S.C., A.K. Dubey, B.K. Tripathi, S.K. Yadav

Hon'ble Saurabh Shyam Shamsery, J.

Order on Delay Condonation Application

1. This writ petition was filed in the year 2003 and was dismissed in default on 11.11.2005. A restoration application was filed on 30.08.2007 alongwith delay condonation application, i.e., after one year and eleven months. Thereafter the matter remained pending before this Court.

2. There is an extraordinary delay, however, in the interest of justice and that the writ petition be decided on merit, delay in filing restoration application is hereby condoned. The application is allowed.

Order on Restoration Application

1. This is an application for recall of the order dated 11.11.2005, whereby the writ petition was dismissed in default.

2. The cause shown for non-appearance is sufficient. The order dated 11.11.2005 is recalled and writ petition is restored to its original number. The application is, accordingly, allowed.

Order on Writ Petition

1. The petitioner has claimed to be an adopted son of late Ram Achal Singh through adoption deed dated 23.10.1990. Ram Achal Singh died in harness on 31.01.1995. Learned counsel for petitioner submitted that petitioner was given assurance for compassionate appointment, therefore, he remained silent. However, on 17.08.1999 he submitted an application for compassionate appointment. Meanwhile, a declaratory suit was also filed by

petitioner, which was allowed in his favour and he was declared adopted son of Late Ram Achal Singh.

2. Learned counsel for petitioner further submitted that application of petitioner for compassionate appointment remained pending before respondents and on 17.10.2001 Respondent-2 send a communication to petitioner wherein the adoption deed was doubted. In these circumstances, petitioner again moved an application on 12.11.2001. However, by means of impugned order dated 15.09.2003 claim of petitioner was rejected on the ground that adopted son was not included in the definition of ‘family’ under Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (*hereinafter referred to as “Rules, 1974”*). This order is under challenge in present writ petition.

3. Learned counsel for petitioner submitted that cause of petitioner still survives and adopted son is now included in the definition of family, therefore, his claim may be considered and petitioner be appointed on compassionate ground.

4. Learned Standing Counsel appearing for State-Respondents, submitted that Ram Achal Singh died way back on 31.01.1995, i.e., 27 years ago, therefore, even the petitioner has purported right of compassionate appointment, it could not be considered at such belated stage.

5. Heard learned counsel for parties and perused the material available on record.

6. Before considering the rival submissions it would be apposite to mention two recent judgments of Supreme Court on the issue of compassionate appointment.

A. Government of India and another vs. P. Venkatesh (2019) 15 SCC 613:

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Case, SCC pp. 141-42, para 6)

*“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. **The consideration for such employment is not***

a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

11. *The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable.” (Emphasis added)*

B. Central Coalfields Limited through its Chairman and Managing Director and others vs. Parden Oraon, 2021 SCC OnLine SC 299:

8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family 1. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.”

(Emphasis added)

7. In the present case, it is not in dispute that Ram Achal Singh died in the year 1995 and petitioner for the first time approached respondents on 17.08.1999, i.e., after more than four years. Thereafter petitioner remained silent for some time and again approached respondents in the year 2001 and

ultimately claim of petitioner was rejected on the ground that adopted son is not included in the definition of 'family'.

8. Definition of 'family' in Rules, 1974 was limited to relations, namely, (i) wife or husband; (ii) sons; (iii) unmarried and widowed daughter. Thereafter an amendment was carried out which was published in U.P. Gazette dated 22.12.2011 wherein adopted son was also included. Therefore, the impugned order dated 15.09.2003 cannot be faulted since at that time adopted son was not included under the definition of 'family'.

9. There is another aspect which also goes against petitioner. As held in **P. Venkatesh (supra)** and **Parden Oraon (supra)** the object of compassionate appointment is to tide over the immediate financial crisis suffered by the bereaved family due to unexpected death of employee concerned. The substantial delay in the present case is now more than 27 years which goes against the claim of petitioner. Therefore, the claim of petitioner was rightly rejected by impugned order as well as considering the claim of petitioner for compassionate appointment at belated stage, after 27 years of death of his father, cannot be sustained. Compassionate appointment cannot be claimed or offered after a significant lapse of time and after crisis is over.

10. The writ petition lacks merit and is accordingly dismissed. Interim order, if any, stands vacated.

Order Date :- 03.08.2022

AK