

Court No. - 34

Reserved
A.F.R.

Case :- WRIT - A No. - 15485 of 2023

Petitioner :- Aman Pathak

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajesh Kumar Yadav

Counsel for Respondent :- C.S.C., Ravindra Singh

Hon'ble J.J. Munir, J.

1. This writ petition is directed against the order dated 30.09.2023 passed by the District Cane Officer, District Sambhal and the resolution dated 25.09.2023 issued by the State Cane Service Authority (for short, 'the State Authority'), rejecting the petitioner's claim for compassionate appointment.

2. The petitioner's father was a Stock Clerk in the Establishment of the District Cane Officer, Chandausi, District Sambhal. He passed away in harness on 13.11.2011. The deceased was survived by his widow, a son and three daughters. It appears that the petitioner at the time of his father's demise was a minor. He moved an application, seeking compassionate appointment on 10.11.2020, after attaining the age of majority. On 11.01.2021, the District Cane Officer, Sambhal demanded some documents, which the petitioner provided on 25.10.2021. On 21.11.2021, the petitioner submitted some other documents to the District Cane Officer for the consideration of his claim. The petitioner claimed inaction on the respondents' part to consider his case for compassionate appointment and said that despite his requests to the respondents to pass necessary orders, no orders were made. Very recently, again it is pleaded that the petitioner made applications dated 21.02.2023 and 17.07.2023 before the District Cane Officer, urging his claim for a consideration for

compassionate appointment, but to no avail. It is pleaded that the only source of livelihood for the petitioner and his father's family was the deceased's salary. After his demise on 13.11.2011, neither compassionate appointment has been offered by the District Cane Officer to the petitioner nor post retiral dues released in his favour. He is on the verge of starvation. The respondents are sitting tight over the matter. It is on these pleadings that the petitioner initially sought a writ, order or direction in the nature of *mandamus* directing the Cane Commissioner, Lucknow, the District Cane Officer, District Sambhal to pass appropriate orders on the petitioner's application for compassionate appointment. This Court *vide* order dated 15.09.2023 issued a show cause notice to the respondents in terms of the following orders:

“The petitioner's father, who was a Stock Clerk in the office of the District Cane Officer, Chandausi, died in harness on 13.08.2011. The petitioner was a minor at the time of his father's demise. He applied for compassionate appointment on 10.11.2020.

Let the District Cane Officer, District-Sambhal file his personal affidavit within ten days showing cause why the petitioner's claim for compassionate appointment has not been considered so far.

Lay this writ petition as fresh on 03.10.2023.

Let this order be communicated to the District Cane Officer, District-Sambhal by the Registrar (Compliance) by Monday i.e. 18.09.2023.”

3. A counter affidavit was filed on behalf of respondent No.3 on 03.10.2023. Since it was not on record on that day, the matter was adjourned to 11.10.2023. A perusal of the counter affidavit shows that the State Authority has passed a resolution dated 25.09.2023, rejecting the petitioner's claim for compassionate appointment. This Court, accordingly, permitted the petitioner on 11.10.2023 to move an application, seeking to

amend the writ petition and challenge the order dated 25.09.2023. An application for the purpose was moved in Court on 20.11.2023, which was taken on record and allowed by an order of the said date. A supplementary affidavit was then filed by the petitioner, in answer to which, a supplementary counter affidavit was filed in Court. The parties having exchanged affidavits, when the matter came up on 11.12.2023, it was admitted to hearing, which proceeded forthwith and concluded. Judgment was reserved.

4. Heard Mr. Rajesh Kumar Yadav, learned Counsel for the petitioner, Ms. Jhanvi Singh, Advocate holding brief of Mr. Ravindra Singh, learned Counsel appearing on behalf of the District Cane Officer, Sambhal and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State respondents.

5. A perusal of the impugned order dated 25.09.2023 passed by the State Authority shows that the petitioner at the time of his father's demise was aged about 9 years. It is remarked that the application moved on behalf of the petitioner for compassionate appointment was forwarded by the District Cane Officer, Sambhal to the State Authority *vide* a memo No. 767/ Shee dated 20.07.2021. It is recorded by the State Authority that the case is being considered under the U.P. Cooperative Cane Service Regulations, 1975 (for short, 'the Regulations of 1975') by the Committee appointed for the purpose, which has resolved in terms that the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974') have been enforced for the purpose of providing immediate succour to the dependent family of a deceased government servant. In this case, Sanjay Pathak died on 13.08.2011 and the family have

managed to live through it normally for ten years. At the time of his demise, the deceased's dependent was his widow, who could have applied for compassionate appointment in order to provide for the family immediately, but no such application was made on her behalf.

6. The Committee inferred that the widow not applying showed that after Sanjay Pathak's demise, the family faced no immediate financial crisis. Now, ten years after his demise, his son has applied solely for the purpose of securing employment. It is also remarked in the order that his widow, promptly after Pathak's death, did not make an application that her son is a minor and that his application may be considered as soon as he attains majority. The Committee also found that after the employee passed away, the fact that his dependent family members did not claim compassionate appointment and did so after a lapse of about 10 years in order to secure employment, shows that the case was one that did not fit into the requirement of a valid compassionate appointment claim under the Regulations of 1975 and the Rules of 1974.

7. It is also observed by the Committee that the District Cane Officer, Sambhal had evaluated the financial circumstances of the deceased's family. He found upon inquiry, which he has submitted in the form of a report, that the deceased's wife was employed as an *Anganwadi Karyakatri*. She has established the *Anganwadi Kendra* in her own house together with the other family members of the late Sanjay Pathak. It was also reported that the deceased's wife, Smt. Sudha Pathak and his son, Aman Pathak, hold an area of 0.498 hectares and 0.405 hectares, respectively of agricultural land, situate in Village Bahat Karan and Gavan, Tehsil Gunnaur, District Sambhal. It is observed by the Committee that the fact

that the deceased's wife is employed as an *Anganwadi Karyakatri*, his heirs holding agricultural land and the fact that the deceased's family have been leading life normally for 12 years since he passed away, shows that it was not a case, where the claim for compassionate appointment ought to be accepted. It is on the basis of the said reasoning of the Committee that the State Authority rejected the petitioner's claim. The rejection was formally communicated to the petitioner through the order dated 30.09.2023 passed by the District Cane Officer, Sambhal. Both these orders are impugned in this petition.

8. Upon carefully hearing learned Counsel for the parties and perusing the record, this Court finds that the respondents have not considered all relevant factors to judge the petitioner's claim for compassionate appointment. They might have broadly examined the claim on some relevant parameters, but left out of consideration equally important relevant material, which if considered, might have led them to a contrary conclusion. The fact that the deceased's widow did not apply immediately for compassionate appointment is relevant; the fact that she is employed as an *Anganwadi Karyakatri*, has a house of her own for the family, where she runs the *Anganwadi* Centre are all relevant. It is also relevant that the dependents of the deceased, including his widow and the petitioner, have some agricultural holding. If from this relevant information a plausible inference has been drawn, is quite another matter. If a plausible inference has been drawn, it is not for this Court to say if there is an equally plausible view which the Court would take and then substitute it for the respondents' opinion. That is beyond the province of a *wednessbury* review. At the same time, if perverse conclusions have been drawn from the material

considered, though the material is relevant, this Court would have justification to interfere.

9. So far as the question of leaving out of consideration relevant material bearing on the issue of the petitioner's entitlement to seek compassionate appointment, it must be remarked that it nowhere figures, what was the death-cum-retirement benefits that the family received upon death of the employee. It has not been considered at all what are the investments of the family that yield income. It has also not been considered what are the liabilities of the family to be met. It has figured that two of the deceased's daughters are married, but one is still unmarried. These are matters that are relevant, but omitted from consideration altogether by the State Authority and their Committee, who have examined the petitioner's claim. The State Authority has much depended on the fact that the family have managed to survive for a period of 12 years and leading a normal life. It is true that the family have not landed in an orphanage, but between the family becoming a causality of the civilization on account of the breadwinner's untimely death and a sufficiently prosperous or normal life is the twilight zone, where they could be seen struggling to make end's meet. It is for this reason that in **State of W.B. v. Debabrata Tiwari and others, 2023 SCC OnLine SC 219**, it was held:

"32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the

deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

34. As noted above, the *sine qua non* for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter."

(emphasis by Court)

10. The position of the law that then appears is that what has to be compared is the income of the deceased at the time of his death and the family's income after his demise from various sources. This would be a safe index to assess, if indeed the family have been plunged into a crisis or they still have a reasonably normal life to lead, which is not ridden by financial crisis. It must be remarked that the State Authority and their

Committee have singularly omitted to consider this very relevant material as to what was the deceased's income, when he passed away and the family's income when the District Cane Officer Officer appraised their circumstances.

11. The deceased's widow is no doubt employed as an *Anganwadi Karyakatri*, but that does not mean that the family are not financially struggling. An *Anganwadi Karyakatri* is not a government employment. It is pleaded in paragraph No.6 of the supplementary affidavit that the engagement as an *Anganwadi Karyakatri* is a contractual job, for which no salary is paid. The petitioner's mother receives an honourarium in the sum of Rs.3250/- - 6500/- per month. It must be remarked that a contractual employment that offers the sum of money that the petitioner alleges is hardly any reckonable financial resource to guarantee a subsistence level of income for the family. The fact that the petitioner's mother receives an honourarium for her engagement as an *Anganwadi Karyakatri* in the sum of Rs.3250/- - 6500/- per month, has not been denied in any of the two counter affidavits filed on behalf of the respondents. Therefore, the fact asserted in paragraph No.6 of the supplementary affidavit has to be accepted as correct. In fact, in the supplementary counter affidavit, contents of paragraph No.6 about the fact of what the nature of engagement of an *Anganwadi Karyakatri* is and what remuneration is received, has not at all been denied or pleaded to by the respondents.

12. Another factor that has been taken into consideration by the respondents is the existence of agricultural holdings. Now, the agricultural holdings that have been found with the petitioner and his mother, are not lavish in size or big enough to support a steady income. The impugned order records that the holdings are situate in two different villages, one in Village

Bahat Karan and the other in Gavan. The petitioner's mother has a total of 0.498 hectares whereas the petitioner has a holding of 0.409 hectares. The *Khatauni*, that have been annexed with the counter affidavit at pages 29, 30, 31, 32, 33 and 34, would show that the holdings are joint with other co-sharers. The District Cane Officer, Sambhal has not made any endeavour to ascertain what is the yield from these small holdings to the petitioner or his mother, that is to say, the deceased's dependent family. By the bare existence of an agricultural holding with the petitioner and his mother of the sizes noticed in two different villages, there cannot be a plausible inference drawn that it yields reckonable income to the petitioner or the family, whom the deceased has left behind. To do that, the District Cane Officer has to undertake further inquiries and make a report on the annual yield from these holdings to the petitioner and his mother.

13. So far as the delay in making the application for compassionate appointment is concerned, it is obvious that the petitioner was a 9 years old boy, when his father passed away. He cannot be blamed for making the application 9 years after his demise. He apparently made the necessary application as soon as he attained majority. There is always adequate provision to consider the case of minors, while exercising the power to condone delay, in a deserving case by the Appointing Authority, where the delay is more than five years. The power of condonation may be exercised by a higher Authority and in this case, there could be no higher Authority than the State Authority itself. The State Authority seems to have gone by the fact that the petitioner's widow ought to have applied. They have not inquired into her educational qualifications, if at all she would be eligible to seek employment in their establishment,

even on a Class-IV post. A contractual engagement as an *Anganwadi Karyakatri* is on the basis of very different qualifications, from which no inference can *ipso facto* be drawn that she too could have applied upon her husband's demise for compassionate employment. The respondents ought to have probed the issue and sought information from the petitioner's mother about reasons why she did not choose to apply for compassionate appointment before they reached the conclusion that the widow not having made a prompt application, the inescapable inference is that there was no financial crisis for the family. We do not approve of the reasoning that the State Authority have adopted to deal with the petitioner's case. They ought to have done much more than what they have done, while passing the impugned order dated 25.09.2023.

14. This Court must remark that the petitioner made his application for compassionate appointment on 10.11.2020 and on the own showing of the State Authority, the application was received by them from the District Cane Officer, Sambhal on 20.07.2021. The impugned order was passed on 25.09.2023. This order came to be passed after we had passed orders on 15.09.2023, asking the respondents to show cause in terms indicated in that order, which we have quoted hereinabove *in extenso*. In administrative decision making, this Court cannot lose sight of the fact that the primary decision maker, the Administrator, sometimes loses his objectivity, the moment he is visited with a judicial command to do his duty. Either he is panicked into acting erratically and taking a wrong decision or turns malicious and motivated to teach the man, who has brought a writ to him of any kind. Administrators must not panic or retaliate when faced with a judicial command, asking them to

perform their duties. Sadly, they often do. Here, the Court thinks that the very nonchalant and halfhearted appraisal of the petitioner's claim, which the State Authority have done by the order impugned dated 25.09.2023, could be the result of either of the two possibilities that we have indicated above. We are sure that in the sequence of things, it is the result of one of the two; which one, would be best known to the State Cadre Authority themselves. We do not wish to probe into it, but caution the State Authority in this regard.

15. In the result, this petition succeeds and is **allowed**. The impugned order dated 25.09.2023 passed by the State Authority and the order dated 30.09.2023 passed by the District Cane Officer, Sambhal are hereby **quashed**. The petitioner's application for compassionate appointment stands remitted to the State Authority, which they shall now decide strictly in accordance with law, within a period of one month, from the date of receipt of this judgment, bearing in mind our remarks.

16. Costs easy.

17. Let a copy of this judgment be communicated to the District Cane Officer, District Sambhal and the Adhyaksha, Rajya Ganna Pradhikaran, Uttar Pradesh by the Registrar (Compliance).

Order Date :- 28.5.2024
Anoop

(J.J. Munir, J.)