

RESERVED

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A NO. 7793 OF 2024

Kajal KumariPetitioner

Versus

State of U.P. and othersRespondents

Appearance :-

For Petitioner : Mr. Narendra Singh Chahar, Advocate

For Respondents : Standing Counsel for the State

HON'BLE J.J. MUNIR, J.

Ms. Shalini, the Commandant, 41st Battalion, Provincial Armed Constabulary, Ghaziabad, by her order impugned dated 16.04.2024, has rejected the petitioner's application for compassionate appointment without compassion; also, without jurisdiction.

2. The petitioner, Kajal Kumari, is the daughter of the late Ashok Kumar, who was serving as a Constable with the Provincial Armed Constabulary¹, Ghaziabad. He died in harness on 16.11.2013. He left behind him his widow, Smt. Guddi Devi, a son called Vishvendra Singh, besides the petitioner, Kajal Kumari, the deceased's daughter. Ashok Kumar's son, Vishvendra Singh, made an application dated 06.07.2015, seeking compassionate appointment under the Uttar Pradesh Recruitment

1 'PAC' for short

of Dependents of Government Servants Dying in Harness Rules, 1974². Vishvendra Singh was referred to a medical examination of the Chief Medical Superintendent, Ghaziabad, who, *vide* his medical report dated 03.09.2015, intimated the respondents that Vishvendra has complete loss of vision in the left eye. He was, therefore, denied appointment *vide* order dated 24.11.2015.

3. Vishvendra challenged the order dated 24.11.2015 before this Court by means of Writ - A No. 6339 of 2018, which was, later on, withdrawn on 08.02.2021. It appears that Smt. Guddi Devi, the deceased's widow, was informed that she could make an application for compassionate appointment for herself or any other family member eligible for employment under the Rules of 1974. The respondents say that Smt. Guddi Devi did not respond for a long time and then made applications dated 09.09.2019 and 11.09.2019 to the Deputy Inspector General of Police (Establishment), U.P. Police Headquarters, seeking employment this time for her daughter, the petitioner, Kajal Kumari. A letter dated 03.11.2020 was issued to Smt. Guddi Devi, asking her to ensure submission of an application form in the prescribed proforma for the employment of her daughter under the Rules of 1974.

4. As it appears, these applications dated 09.09.2019 and 11.09.2019 did not receive prompt attention, leading the petitioner to institute Writ - A No. 12241 of 2020, seeking a direction to the respondents to decide her applications dated 09.09.2019 and 11.09.2019 for compassionate appointment. In the meantime, the petitioner, when asked to apply on the prescribed proforma, did that, pursuant whereunto, a letter dated 17.11.2021 was addressed by the Commandant, 41st Battalion, PAC, Ghaziabad to the District Magistrate, Agra to verify the petitioner's income certificate, caste certificate and residence certificate. The Commandant also addressed a letter to the Regional Secretary, Board of High School and

2 'Rules of 1974' for short

Intermediate Education, Regional Office, Ajmer, Rajasthan, seeking verification of the petitioner's intermediate education certificate etc. issued by that Board.

5. While all of this was happening, the petitioner's writ petition - Writ - A No. 12241 of 2020, came up before this Court on 21.02.2024, where, the following order was passed (material part) :

4. In this view of the matter and also in the interest of justice, the present writ petition is **disposed of** finally directing the respondent no.3 namely Commandant 41st P.A.C. Vahini, Ghaziabad to take a decision in the matter most expeditiously and preferably within a period of **six weeks** from the date of presentation of certified copy of this order.

5. It is made clear that this Court has not passed order on the merits of the case and the authority concerned will pass appropriate orders in accordance with law without influence of any of the observations made by this Court.

6. As it appears, the Commandant, 41st Battalion, PAC, Ghaziabad sought guidance in the matter after this Court's order dated 21.02.2024 from the Additional Director General of Police (Establishment), Headquarters, U.P., Lucknow. The Superintendent of Police (Establishment), Uttar Pradesh by some letter dated 15.04.2024 seems to have issued guidelines to the Commandant to pass necessary orders on the petitioner's claim for compassionate appointment as the officer competent to decide it. The Commandant, by her order impugned dated April the 16th, 2024, rejected the petitioner's claim on ground that it was made beyond the prescribed period of limitation of five years under the Rules of 1974; it was found to have been made beyond five years. It is remarked to have been made in the sixth year.

7. Aggrieved by the impugned order, this writ petition has been instituted under Article 226 of the Constitution.

8. On 02.07.2024, we issued a notice of motion in the following terms :

The Commandant 41st PAC Vahini, Ghaziabad shall show cause, on his own affidavit to be filed within a week, how he has rejected the petitioner's application for compassionate appointment on the ground of delay, that is to say, the application being one made beyond a period of five years, when the power to consider such belated matters condoning delay is vested in the State Government. *Prima facie*, the Commandant should have referred the matter to the State Government, directing the petitioner to explain the delay before the Government referring the claim (*sic*). The personal affidavit of the Commandant shall be filed on or before 10.07.2024. The affidavit shall be in the nature of a counter affidavit.

Adjourned to **10.07.2024**.

To be taken up as **fresh**.

The Registrar (Compliance) is directed to communicate this order to the Commandant 41st PAC Vahini, Ghaziabad through the learned Chief Judicial Magistrate, Ghaziabad **within 24 hours next**.

9. In compliance with the order dated 02.07.2024, a counter affidavit has been filed on behalf of respondent No. 3, the Commandant 41st Battalion, PAC, Ghaziabad which is her personal affidavit.

10. The parties having exchanged affidavits, the writ petition was admitted to hearing on 23.07.2024, which proceeded forthwith. Judgment was reserved.

11. Heard Mr. Narendra Singh Chahar, learned Counsel for the petitioner and the learned Standing Counsel appearing on behalf of the State.

12. Rule 5 of the Rules of 1974 reads :

³**[5.(1) 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 of State Government shall, on making an application for the purpose, be given a suitably 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:-

⁴[(i) fulfils the' educational qualifications prescribed for the post:

Provided that in case appointment is to be made on a post for which typewriting has been prescribed as an essential qualification and the dependent of the deceased Government servant does not possess the required proficiency in typewriting, he shall be appointed subject to the condition that he would acquire the requisite speed of 25 words per minute in typewriting well within one year and if he fails to do so, his general annual increment shall be withheld and a further period of one year shall be granted to him to acquire the requisite speed in typewriting and if in the extended period also he again fails to acquire the requisite speed in typewriting, **then an order will be issued to provide him appointment on the post of class IV. The appointment so granted shall be deemed to be a fresh appointment and shall not be reversion. If he does not join the post of class IV within stipulated time his services will be terminated.**

Provided further that in case appointment is to be made on a post for which the knowledge of computer operation and typewriting has been prescribed as an essential qualification and the dependent of the deceased Government servant does not possess the required proficiency in computer operation and typewriting, he shall be appointed subject to- the condition that he would acquire the 'CCC' certificate in computer operation awarded by the DOEACC Society or a certificate equivalent

3 Substituted by Notification No. 6/12/73/Ka-2-T.C.-IV(II), dated 22 January, 2014

4 Substituted by Notification No. 6/12/73/Ka-2-T.C.-IV(II), dated 27 December, 2022

thereto from an Institution recognised by the Government together with the required speed of 25 words per minute in typewriting well within one year and, if he fails to do so, his general annual increment shall be withheld and a further period of one year shall be granted to him to acquire the required certificate in computer operation and the required speed in typewriting and if in the extended period also he again fails to acquire the required certificate in computer operation and the required speed in typewriting, **then an order will be issued to provide him appointment on the post of class IV. The appointment so granted shall be deemed to be a fresh appointment and shall not be reversion. If he does not join the post of class IV within stipulated time his services will be terminated.**

(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:

Provided further that for, the purpose of the aforesaid proviso, the person concerned shall explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry of the time limit fixed for making the application for employment along with the necessary documents/proof in support of such delay and the Government shall, after taking into consideration all the facts leading to such delay, take the appropriate decision.

(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.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other

members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his services may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time.

13. A reading of the proviso to Rule 5 of the Rules of 1974, apart from the law about the relevant and material facts, on the basis of which, the power to condone a delay beyond five years ought be exercised, shows that the power to condone the delay in making an application about compassionate appointment beyond five years vests in the State Government; not the Appointing Authority. Therefore, in this case, the Commandant, 41st Battalion, PAC, Ghaziabad, the competent authority, having found that there was a delay beyond five years and the application was made in the sixth year, ought not have determined the application on merits herself. She should have referred it to the State Government for a decision in the matter of condonation of delay. This reference should have been made with notice to the petitioner about it and apprising her also of the fact that she may file such material as she thought best. The material, if any, then filed by the petitioner in support of her case for condonation of delay beyond five years, ought have been forwarded to the State Government. By no stretch of the plain phraseology of the proviso to Rule 5 of the Rules of 1974 did the Commandant, acting as the Appointing Authority, had jurisdiction to decide the petitioner's application, seeking compassionate appointment, once it was made beyond the period of five years. The guidance in the matter by the Superintendent of Police (Establishment) *vide* letter dated 15.04.2024, asking the Commandant to decide the matter, as she was the competent authority, would not confer jurisdiction upon the Commandant, where, it was not vested in her, in

view of proviso to Rule 5. Likewise, even our command carried in the order dated 21.02.2024 passed in Writ - A No. 12241 of 2020 is to be understood in the manner that the Commandant was required to take a decision as much as she could, to wit, a reference to the State Government for consideration of condonation of delay beyond five years, and, if the delay were condoned by the State Government, to take a decision on the merits of the petitioner's claim. Our command in Writ - A No. 12241 of 2020 could not have been regarded as one conferring jurisdiction upon the Commandant, contrary to the mandate of the proviso to Rule 5 of the Rules of 1974, which are rules framed by the Governor under the proviso to Rule 309 of the Constitution.

14. Much reliance has been placed by the learned Standing Counsel on the circular of the Police Headquarters dated 24.11.2015 issued with reference to the Government Order dated 18.09.2015, which reads :

सेवायोजन हेतु मृतक आश्रित के सेवायोजन के पूर्व इस बात का विशेष ध्यान रखा जायेगा कि मृतक आश्रित द्वारा मृत कर्मों की मृत्यु की तिथि से 05 वर्ष के अन्दर प्रार्थना-पत्र दिया गया है तथा माँगे गये पद हेतु सभी प्रकार से अहं है एवं उस पद हेतु निर्धारित न्यूनतम आयु एवं शैक्षिक अर्हता मृत कर्मों की मृत्यु के 05 वर्ष के अन्दर पूर्ण किया हो। यदि मृतक आश्रित द्वारा माँगे गये पद हेतु सम्पूर्ण अर्हतायें मृत कर्मों की मृत्यु के 05 वर्ष के अन्दर पूर्ण करता है तथा उस पद पर रिक्ति है, तो उसके सेवायोजन की कार्यवाही नियमानुसार की जायेगी।

15. The learned Standing Counsel submits most emphatically that beyond five years, no application for compassionate appointment can be entertained, neither under the Government Order dated 18.09.2015 nor the Police Headquarters' Circular dated 24.11.2015 issued in pursuance of the Government Order. Assuming that these say that there can be no condonation of delay beyond five years, neither can override the proviso to Rule 5 of the Rules of 1974, as the Rules last mentioned are statutory in character, being ones framed under the proviso to Article 309 of the Constitution. These would, without doubt, prevail over any Government

Order issued in the exercise of the executive power of the State, and *a fortiori*, any administrative circular by the Police Headquarters.

16. We are constrained to say that the Commandant, 41st Battalion, PAC, Ghaziabad, once she reached the conclusion that the application was beyond the period of five years, envisaged under Rule 5 of the Rules of 1974 made in the sixth year, as she says, should have laid her hands off the matter and referred it to the State Government, following the course that we have indicated. It was certainly not open to her to mechanically reject the application on ground that it was made beyond the prescribed period of five years.

17. In the result, this petition **succeeds** and stands **allowed**. The impugned order dated 16.04.2024 passed by the Commandant, 41st Battalion, Provincial Armed Constabulary, Ghaziabad is hereby **quashed**. A *mandamus* is issued to the Commandant aforesaid to forthwith forward all papers relating to the petitioner's application for compassionate appointment to the State Government in the department concerned, where it will be laid before the Secretary or other functionary empowered under the executive rules of business to take a decision on behalf of the Government. The petitioner will be given opportunity to file all necessary material by the State Government that she considers relevant in support of her case for condonation of delay. The State Government shall decide the petitioner's claim regarding condonation of delay under the proviso to Rule 5 of the Rules of 1974 alone, taking a decision in the matter within a period of two months of receipt of records from the Commandant. If the delay is condoned by the State Government, the records would be sent back to the Commandant, 41st Battalion, P.A.C., Ghaziabad, who will then pass orders on the merits of the petitioner's claim for compassionate appointment in accordance with law, within a period of four weeks of receipt of the State Government's decision.

18. There shall be no order as to costs.

19. The Registrar (Compliance) is directed to communicate this order to the Commandant, 41st Battalion, Provincial Armed Constabulary, Ghaziabad through the learned Chief Judicial Magistrate, Ghaziabad.

Allahabad

December 09, 2024

I. Batabyal

(J.J. MUNIR)
JUDGE

Whether the order is speaking : Yes

Whether the order is reportable : Yes