

# **Rahul Sharma S/O Late S.R.Sharma vs State Of U.P. Through Secy. Basic Edu. ... on 31 January, 2025**

**Author: Abdul Moin**

**Bench: Abdul Moin**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6956

Court No. - 5

Case :- WRIT - A No. - 7498 of 2011

Petitioner :- Rahul Sharma S/O Late S.R.Sharma

Respondent :- State Of U.P. Through Secy. Basic Edu. Lko.

Counsel for Petitioner :- Vijay Kumar Bajpai,R.R. Dev,Trivendra Kumar Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

I.A.No. 08 of 2023 This is an application for recall of the order dated 02.12.2023 and for restoration of the writ petition.

Learned Standing Counsel has no objection to the prayer of the learned counsel for the petitioner.

Heard learned Counsel for the parties and perused the affidavit filed in support of recall application. Cause shown in the affidavit is found satisfactory.

On due consideration, application is allowed.

The order dated 02.12.2023 is recalled. The writ petition is restored to its original number.

#### Order on memo of writ petition

1. Heard learned counsel for the petitioner and Sri Ran Vijay Singh, learned Additional Chief Standing counsel appearing on behalf of the State-respondents.
2. Under challenge are the orders dated 19.11.2009 & 16.04.2007, copies of which are cumulatively filed as annexure 1 to the writ petition whereby the State Government has refused to grant relaxation in the time limit of five years for considering the claim of the petitioner on compassionate appointment.
3. Bereft of unnecessary details, the facts of the instant case are that the petitioner's father died on 05.11.1994. At that stretch of time, the petitioner was a minor and he said to have attained majority in the year 2005, the petitioner's date of birth being 03.07.1986. After having completed his graduation, he applied for compassionate appointment through his application dated 17.08.2006. The Basic Shiksha Parishad vide its order dated 12.01.2007, a copy of which is annexure 2 to the writ petition sent the matter to the State Government for relaxation of the time limit for making compassionate appointment considering the provisions of Rule 5 (1) proviso (iii) of the U.P. Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 (In short the Rules of 1974) which provides that an application for employment should be filed within a period of five years from the date of the death of the Government servant. However, another proviso to the aforesaid Rules, 1974 provides that where the State Government is satisfied that where 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.
4. The State Government vide order impugned dated 16.04.2007 did not grant any relaxation in the time limit.
5. Being aggrieved, the petitioner filed Writ Petition No. 6916 (SS) of 2009 Inre; Rahul Sharma Vs. State of U.P and Ors. The writ Court vide order dated 06.11.2008 directed the State/respondent no. 1 to take a decision with regard to condonation of delay. In pursuance thereof, vide order dated 19.11.2009, a copy of which is annexure 1 to the writ petition, the State Government has again rejected the said application by contending that except for indicating that the petitioner was a minor, no other factor has been indicated for relaxation of time limit.
6. Being aggrieved by both the orders, the instant writ petition has been filed.
7. The argument of the learned counsel for the petitioner is that as the petitioner was a minor at the time of death of his father in the year 1994 and only attained majority in the year 2004 and thereafter within five years of attaining majority, had applied for compassionate appointment in the year 2006 and the said application for relaxation of time limit had been forwarded by the Basic Shiksha Parishad to the State Government in January, 2007 consequently, these are the factors which should have been considered by the State Government for relaxation of time limit instead of

summarily rejecting the said application for extension of time by means of the orders impugned.

8. In this regard, reliance has also been placed on the Full Bench judgment of this Court passed in a bunch of special appeals leading being Special Appeal No. 356 of 2012 Inre; Shiv Kumar Dubey Vs. State of U.P and Ors decided on 06.02.2014 to contend that this aspect of the matter has been considered by the Full Bench of this Court and the Full Bench has formulated the principles which govern the compassionate appointment in pursuance to the Rules, 1974 of which principles (vi) & (vii) of the said judgment categorically provide that though Rule 5 mandates that the provision of application for compassionate appointment must be made within five years of the date of death of the deceased employee, the power conferred by the first proviso is a discretion to relax the period in case of undue hardship and for dealing with the case in a just and equitable manner and that the burden lies on the applicant where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and justification.

9. Contention is that considering the extraordinary circumstances which were prevailing at the time of death of the petitioner's father inasmuch as the petitioner was a minor at the time of death of his father in the year 1994 and only attained majority in the year 2004 and he applied for compassionate appointment in the year 2006 consequently, the period of five years as provided under Rule 5 of the Rules, 1974 should have been treated as five years from the date the petitioner attained the majority and thus these are the extraordinary circumstances which should have been considered by the respondents while considering the application for relaxation of time beyond five years.

10. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit has argued that all aspects of the matter have been considered by the State Government while passing both the orders consequently, there is no error in the same.

11. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records it emerges that at the time of the death of the petitioner's father on 05.11.1994, he was a minor. He attained majority in the year 2004. He applied for compassionate appointment in August, 2006. The said application was duly forwarded by the Basic Shiksha Parishad to the State Government on 12.01.2007 seeking relaxation of the time limit of five years . The said application has been rejected by means of the orders impugned dated 19.11.2009 & 16.04.2007 by contending that no extraordinary circumstances emerge to relax the time limit.

12. The Full Bench of this Court in the case of Shiv Kumar Dubey (supra) has laid down the principles governing compassionate appointment. Two of the said principles are that although Rule 5 of the Rules, 1974 mandates that ordinarily application for compassionate appointment must be made within five years of the date of death of the deceased employee yet the power conferred by the first proviso is a discretion to relax the period in case of undue hardship and for dealing with the case in a just and equitable manner and that the burden lies on the applicant where there is a delay in making an application beyond the period of five years to establish a case from the nature of reasons and a justification supported by documentary evidence.

13. The extraordinary circumstances as have been spelt out in the instant writ petition which prevented the petitioner from applying within a period of five years from the date of death of his father are that the petitioner was a minor at the time of the date of the death of his father and only attained majority in the year 2004. Thus, this was an extraordinary circumstances which could have been considered by the competent authority i.e the respondent-State while considering the application for relaxation of the time limit prescribed for making application for compassionate appointment beyond a period of five years. However, the Court may not lose sight of the fact that as of date, a period of almost 30 years have lapsed since the death of the petitioner's father but at the same time, the writ petition filed by the petitioner challenging the rejection orders has been pending before this Court since the last almost 14 years having been filed in the year 2011.

14. Considering the aforesaid, the orders impugned dated 16.04.2007 & 19.11.2009, copies of which are annexure 1 to the writ petition are quashed. It would be open for the petitioner to submit a representation before the respondents spelling out the extraordinary circumstances as prevailed in his case for seeking relaxation of the time limit of five years duly supported by documentary and other evidence which application would be submitted within a period of two weeks from today. In case, such an application is submitted then the respondent shall consider the said application in accordance with law keeping in view the discussion made above as well as the principles as laid down by the Full Bench of this Court in the case of Shiv Kumar Dubey (supra) and pass a fresh order within a period of eight weeks from the date of receipt of a certified copy of this order.

15. The writ petition is accordingly allowed.

Order Date :- 31.1.2025 Pachhere/-