

Court No. - 29

Case :- WRIT - A No. - 8797 of 2020

Petitioner :- Mohammad Haidar

Respondent :- State Of U P And Another

Counsel for Petitioner :- Surendra Prasad Mishra

Counsel for Respondent :- C.S.C.,Daya Ram Yadav

Hon'ble Pankaj Mithal,J.

Heard Sri Surendra Prasad Mishra, learned Counsel for the petitioner and learned Standing Counsel for State-respondent No.1.

Briefly stated facts of the present case are that the petitioner was appointed on compassionate basis on the death of his wife. The petitioner now intends to marry the younger sister of his wife. Therefore, he seeks permission from Basic Shiksha Adhikari where he is employed to re-marry.

Learned Standing Counsel submits that there is no requirement under law for getting any permission for re-marriage by an employee. The petitioner appears to have applied for permission to re-marry in view of Rule 5 of the 1974 Rules.

Rule 5 of the Uttar Pradesh Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 (hereinafter referred to as 'the Rules, 1974') provides as under:-

"5. Recruitment of a member of the family of the deceased - (1) 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 shall, on making an application for the purpose, 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:

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, his services shall be dispensed with.

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 thereto from an Institution recognized 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, his services shall be dispensed with."

(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."

The aforesaid Rule nowhere stipulates that any permission is required by a person employed on compassionate basis for re-marriage. It only provides that the person employed on compassionate basis shall maintain other members of the family of the deceased government servant. It also provides that in case he neglects or refuses to maintain them, his services may be terminated. This does not mean that there is any rider on the right of the employee to re-marry. This is what has also been laid down by this Court in the case of **Smt. Santoshi v. State of U.P. and 2 others**, Writ-A No. 834 of 2020, decided on 21.1.2020. It has been observed that right to marry with person of choice is an integral part of Article 21 of the Constitution of India. Merely because petitioner has been appointed on compassionate basis, he cannot be forced to sacrifice his/her fundamental right of re-marriage, after the death of the earlier spouse. A person would not earn any disqualification on this score and warrant any disciplinary proceedings.

Thus, there is no provision under law which requires any person to seek permission from the employer for re-marriage.

In view of the aforesaid facts and circumstances, as there is no statutory requirement under law for seeking permission of Basic Shiksha Adhikari for the purpose of re-marriage by an employee, who has been appointed on compassionate basis, I am of the opinion that the petitioner has unnecessarily invoked the writ jurisdiction of this Court.

The petition as such is misconceived and is dismissed.

Order Date :- 11.11.2020
lakshman