2025:AHC:230161

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19328 of 2025

Rohit Dhama

.....Petitioner(s)

Versus

The State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arvind Kumar Pandey, Arya Gautam, Atipriya Gautam, Sr. Advocate
Counsel for Respondent(s)	:	C.S.C.

Court No. - 34

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Vijay Gautam, learned Senior Counsel assisted by Ms. Vaishnavi Srivastava, (AoR U.P. 36077/2025)holding brief of Ms. Arya Gautam, learned counsel for the writ petitioner and Sri B.K. Srivastava, learned Standing Counsel for the State.

2. The case of the writ petitioner is that the father of the writ petitioner late Ram Prasad Dhama who was working as Constable, expired on 25.12.2010, however, prior to his death, post conduction of the departmental proceedings, his services came to be dispensed with on 09.12.2010 by the Inspector General of Police, Meerut on the ground of unauthorized absence.

3. Questioning the dismissal order passed against her husband and the father of the writ petitioner and Writ-A No. 18427 of 2011 came to be decided on 18.02.2010 while passing following orders.-

"(1) Heard the learned counsel for the parties and perused the record.

(2) This petition has been filed challenging the order dated 09.12.2010 passed by the respondent no.3, the Inspector General of Police, Meerut, dismissing the petitioner's husband on grounds of unauthorized absence.

(3) The petitioner who is widow of Late Ram Prasad has filed this petition alleging that her husband Late Ram Prasad was posted as Constable in Civil Police and had fallen seriously ill when he returned home from duty on 24.04.2007. A preliminary Inquiry was conducted which recommended regular disciplinary proceedings to be initiated against the petitioner on 16.04.2008. The charge framed by the respondent

was that Late Ram Prasad had remained unauthorizedly absent with effect from 24.04.2007 to 15.02.2009. In the Departmental Inquiry, Ram Prasad had admitted to the fact of his absence and mere admission had been treated as admission of his guilt also regarding unauthorized absence and the order of dismissal was passed. Although the Inquiry Officer, while submitting his Inquiry Report had recommended that Ram Prasad should be warned and should be placed on minimum pay scale for three years, the petitioner's husband was dismissed by the order dated 09.12.2010 and died thereafter, on 25.12.2010 as he continued to be seriously ill.

(4) It is alleged that the petitioner tried to submit an Appeal before the Appellate Authority but was orally informed that under Rule 20 of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, only a Police Officer can file an Appeal against a punishment order and the widow of the deceased Police Officer cannot file such an Appeal.

(5) Learned counsel for the State-respondents, on the basis of the dismissal order challenged in this writ petition, has pointed out the detailed consideration made by the Appointing Authority wherein it has been stated that the Delinquent employee had given his oral evidence on 11.02.2010 saying that he had remained absent. That he had received the charge-sheet on 23.06.2009 but did not wish to submit any reply to the same nor he did wish to cross-examine the prosecution witnesses nor produce any defence witnesses in his support. He had pleaded guilty to the charge of absence with effect from 24.04.2007 to 15.02.2009.

(6) It has been submitted that admission is the best form of evidence in conducting any Departmental Enquiry. Any irregularity of procedure would not give any benefit to the petitioner, once there is an admission by the Delinquent employee himself of his remaining absent without leave.

(7) This Court has perused the order impugned dated 09.12.2010. It mentions clearly that Late Ram Prasad was on duty at Sadar Havalat, Meerut, on 24.04.2007, when he suddenly took ill and went home. In his defence statement he has also admitted that he did not give any information regarding his illness to his Higher Officers and that he did not possess any papers regarding his illness, at the moment, as they had been lost, but he would be careful in future and inform the Authorities in case he absented himself from duty in future.

(8) The dismissal order also states that since there is an admission of guilt and the failure to produce any documentary evidence regarding illness by the Delinquent employee, it appeared that the Delinquent employee was only trying to mislead the Higher Officers by feigning illness. By a separate order passed on the same day i.e.

09.12.2010, the Appointing Authority has held that Late Ram Prasad would not to be entitled to get any wages for the period he had not worked with effect from 24.04.2007 to 15.02.2009.

(9) This Court finds from a perusal of the facts as mentioned in the writ petition and also a copy of the Appeal which was tried to be filed by the widow of Late Ram Prasad, that Ram Prasad was suffering from pulmonary Tuberculosis (T.B.) and he was confined to bed. Late Ram Prasad had completed 29 years of unblemished service before his unauthorized absence. In fact, Ram Prasad was so seriously ill that within months of the completion of the regular Disciplinary proceedings against him, and within a fortnight of the dismissal order dated 09.12.2010, he died on 25.10.2010.

(10) The admission of guilt of Late Ram Prasad was only with regard to his absence. The reasons for such absence being illness in view of the law settled by the Hon'ble Supreme Court in the case of Krushnakant B. Parmar Vs. Union of India and another, reported in 2012 (30) LCD 519, paragraphs 16 to 20 of which are being quoted herein below:-

"16. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.

20. In the present case the Inquiry Officer on appreciation of evidence though held that the Appellant was unauthorisedly absent from duty but failed to hold the absence is willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the Appellant guilty."

It cannot be held that the delinquent employee had "wilfully" absented himself from duty leading to the charge of unauthorized absence being proved. Absence can be

sufficiently explained by the employee if he suffers from serious illness.

(11) Liberty should have been given to Late Ram Prasad to produce evidence of illness, at the time when the delinquent employee was alive, before submission of final Enquiry Report.

(12) The order dated 09.12.2010 is set aside. The matter is remanded to the Appointing Authority to consider afresh on the basis of any documentary evidence that the petitioner wishes to produce before him, with regard to the illness of Late Ram Prasad.

(13) Let a representation be filed by the petitioner i.e. widow of Late Ram Prasad alongwith all documentary evidence before the Appointing Authority, the opposite party no.3-The Inspector General of Police, Meerut, who shall consider the same and pass appropriate reasoned and speaking order thereafter taking into account the judgement of Hon'ble the Supreme Court in the case of Krushnakant B. Parmar (supra).

(14) Writ petition stands partly allowed to this extent."

4. Thereafter, an order came to be passed on 14.09.2020 by the Deputy Inspector General of Police, Meerut Range, Meerut setting aside the dismissal order so passed in favour of the her husband and the mother of the writ petitioner was made entitled to post retiral benefits. On 20.03.2021, the Superintendent of Police, Moradabad issued a communication to the mother of the writ petitioner for compassionate appointment. The writ petitioner's mother claim to have submitted an application on 07.02.2021 for compassionate appointment of her son i.e. writ petitioner post completion of graduation thereafter, the writ petitioner on 09.12.2024 preferred an application post completion of graduation for compassionate appointment which came to be rejected by the respondent no. 6, Superintendent of Police, Railways, Moradabad, District Moradabad on 04.03.2025.

5. Questioning the said order, the present writ petition has been preferred.

6. Learned counsel for the writ petitioner has sought to argue that the impugned order cannot be sustained for the simple reason that first of all it cannot be said to be an order on merits particularly when on 20.03.2021, once the mother of the writ petitioner was given an option for compassionate appointment and she has requested that the compassionate

appointment be accorded to the writ petitioner on 07.09.2021 and the writ petitioner preferred an application on 09.12.2024 for compassionate appointment then these aspects ought to have been considered and the order impugned does not recite the said fact but at one stroke of pen, negates the claim on the ground that compassionate appointment is to be given as a succur in order to tide away with the immediate crisis and it is an exception to Article 16 of the Constitution of India.

7. Sri B.K. Srivastava, learned Standing Counsel, on the other hand, submits that whatever might be once the mother of the writ petitioner had not herself sought compassionate appointment and she had claimed compassionate appointment for the writ petitioner post completion of B.A. course then it seems that there was no immediate financial crisis.

8. I have heard the submission so made across the bar and perused the record.

9. Facts are in issue. It is not in issue that the father of the writ petitioner's services stood dispensed with on 09.12.2010 and he expired on 25.12.2010 and the mother of the writ petitioner preferred Writ-A No. 18427 of 2011 which came to be allowed quashing the order of dismissal and thereafter the writ petitioner's mother was accorded terminal benefits by virtue of order dated 14.09.2020 and on 20.03.2021 the mother of the writ petitioner was asked to submit option for compassionate appointment then the mother of the writ petitioner on 07.02.2021 preferred an application for grant of compassionate appointment to her son i.e. writ petitioner post completion of B.A. course and the writ petitioner thereafter on 19.12.2024 claimed compassionate appointment which has been turned down by the order impugned, the order impugned recites as under.-

"आपके पिता आरक्षी 1238/812512483 रामप्रसाद धामा की मृत्यु दिनॉकः 25.12.2010 को पदच्युत (बर्खास्त) होने के दौरान हुई थी। आपकी माताजी श्रीमती कुसुम द्वारा दायर उच्च न्यायालय में रिट याचिका संख्याः ए-18427/2011 कुसुम बनाम उत्तर प्रदेश राज्य व अन्य में पारित निर्णय दिनांकित 18.02.2020 के पारित आदेश के क्रम में पुलिस महानिरीक्षक मेरठ परिक्षेत्र मेरठ, द्वारा अपने आदेश संख्याः एफ-काम-7 (18)-2020 दिनॉकः 14.09.2020 के द्वारा उक्त स्व० आरक्षी को पदच्युत किये गये दण्डादेश दिनांकित प्राप्ति के दिनॉकः 18.12.2010 से आरक्षी पद पर यथावत् पुनर्स्थापित मानते हुये सभी परिणामी सेवा लाभ स्व० आरक्षी रामप्रसाद के विधिक आश्रितो को नियमानुसार देय होने का आदेश पारित किया गया। उक्त आदेश

के कम में पुलिस मुख्यालय के आदेश संख्या: चार-1262-2021 दिनॉक: 23.03.2021 के द्वारा स्व० आरक्षी रामप्रसाद की पत्नी श्रीमती कुसुम के पक्ष में पी०पी०ओ०/ जी०पी०ओ जारी किया गया, जो वर्तमान में कोषाधिकारी बागपत से पेंशन प्राप्त कर रही है।

2-इस कार्यालय के समसंख्यक पत्र दिनॉक: 20.03.2021 के द्वारा आपकी माताजी को निर्देशित किया गया था कि इस पत्र प्राप्ति के तत्काल आप अपनी शैक्षिक योग्यतानुसार मृतक आश्रित सेवायोजन नियमावली-1974 (यथा संशोधित) के अन्तर्गत सेवायोजन हेतु आवेदन प्रस्तुत करें। यदि आप सेवायोजन हेतु इच्छुक न हो तो उक्त स्व० मु०आरक्षी के किसी अन्य आश्रित के द्वारा उसकी शैक्षिक योग्यतानुसार सेवायोजन हेतु तत्काल इस कार्यालय में आवेदन प्रस्तुत करायें।

3-उल्लेखनीय है कि सिविल अपील संख्या: 1955/2003 संतोष कुमार दुबे बनाम उ०प्र० राज्य व अन्य में माननीय उच्च न्यायालय नई दिल्ली, द्वारा पारित निर्णय दिनॉक: 18.05.2009 में यह सिद्धांत प्रतिपादित किया गया है कि मृतक आश्रित सेवायोजन मृतक के परिवार को आर्थिक सहायता पहुँचाने के उद्देश्य से दिया जाता है। अनुकम्पा के आधार नियुक्ति का अनुरोध सरकारी सेवक की मृत्यु के बाद तत्काल किया जाना चाहिए, मृतक आश्रित के रूप में नियुक्ति कोई उपहार अथवा भर्ती का स्रोत्र नही है, और न ही इसके लिये अधिकार स्वरूप दावा किया जा सकता है।

अत: इस कार्यालय के समसंख्यक पत्र दिनॉक: 20.03.2021 की प्राप्ति के तत्काल बाद आप द्वारा आवेदन नही किया गया। जबकि वर्ष 2021 में आपकी आयु 24 वर्ष एवं आपकी शैक्षिक योग्यता इण्टरमीडिएट थी।"

10. A Bare look of the impugned order would reveal that the relevant constitutions which ought to have been taken notice with regard to the claim set up by the mother of the writ petitioner on 07.09.2021 and the claim set up by the writ petitioner on 19.12.2024 has not been taken note of.

11. Importantly, also there is nothing on record except recital of the legal proposition that the purpose of compassionate appointment is to provide succur in order to tide away the family of the deceased. There has been no consideration to the relevant aspects and further according to the writ petitioner, if there was any delay then too the matter ought to have been sent to the State Government for relaxation. Since the aforesaid aspect has not been considered and cannot be said to be in accordance with law.

12. Accordingly, the order dated 04.03.2025 passed by the sixth respondent, Superintendent of Police, Railways, Moradabad is set aside; matter stands remitted back to the authority to pass a fresh order strictly in accordance with law.

13. With the aforesaid observation, the writ petition stands disposed of.

14. Needless to point out that this Court has not adjudicated on the merits for the matter.

(Vikas Budhwar,J.)

December 19, 2025
Rajesh

Digitally signed by :-
RAJESH KUMAR
High Court of Judicature at Allahabad