

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1984/05 (S/S)
Kishori Prasad Dobhal
Vs.
State of Uttaranchal and others.

Approved for reporting.

Not approved for reporting

Date of Decision 23.12.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1984 (S/S) of 2005

Kishori Prasad Dobhal
S/o Late Ram Bharose Dobhal
R/o Village Biror P.O. Jakhdhar
Patti Lalur District- Tehri Garhwal.

.....Petitioner

Vs

1. State of Uttaranchal through Secretary
Forest Department, Uttaranchal, Dehradun.
2. Director, Rajaji National Park, Dehradun.
3. Conservator, Govindpur Sanctuary
Purola, Uttarkashi.

.....Respondents

Sri M.C. Pant learned counsel for the petitioner.
Sri Paresh Tripathi learned Standing Counsel.

Dated: - 23-12-2005

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Pant learned counsel for the petitioner and Sri Paresh Tripathi learned Standing counsel.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus directing the respondent to grant compensatory appointment to the petitioner after the death of the father of the petitioner who was murdered during the course of employment.

Brief facts giving rise to the present writ petition are that the father of the petitioner (deceased) was initially appointed in the year 1982 as daily wage in Class IV (Orderly/ Chowkidar) in Govindpur Sanctuary, Purola, Uttarkashi. On the fateful night of 4-3-2003, when the petitioner's father Late Sri Ram Bharose was on duty he was murdered by some unidentified persons. A F.I.R. to this effect was lodged on 5-3-2005 and post mortem of the deceased was also conducted on 6-3-2003.

On 5-4-2003 and 8-4-2003, the mother of the petitioner submitted a representation before the respondent No. 2 requesting to grant appointment to her son (petitioner) under the dying in harness rules. It is relevant that the petitioner is unemployed person and after the death of his father, the burden of the whole family has fallen upon his shoulder because the whole family including the petitioner was fully dependent upon the father of the petitioner and after his death the entire family is facing severe financial crises and have no means of livelihood.

On 8-10-2003 the wife of the deceased wrote a letter to the Chief Conservator of Forest (Garhwal) to include the name of the deceased in the regularization list so that her son (petitioner) may get the benefit of dying in harness rules.

According to the petitioner her mother had already moved the representation for the appointment of petitioner well within time. When the respondents did not considered the earlier representations of the mother of the petitioner to appoint the petitioner under dying in harness rules, she made further representation on 9-1-2004 before respondent No. 2. The petitioner also submitted representations dated 10-11-2004 and 5-4-2005 to the respondents requesting to grant him compassionate appointment.

Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules, 1974 provides as under:-

5. “ *[Recruitment of a member of the family of the deceased]*
[Subs. By Noti. 6/XII/73-Ka-2-99, dated 20th January, 1999, published in U.P. Gazette (Extra). Part-4 section (Ka) dated 20th January, 1999].
(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 purposes, 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 qualification prescribed for the post,

(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 whether 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 the relaxation of the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(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) [Ins. By Noti. No.6/12-73-Ka-2-2001, dated 12th October, 2001 [vide U.P Recruitment of Dependents of Government Servants Dying in Harness(Sixth Amendment) Rules. 2001(w.e.f 12-10-2001)] Each appointment under Sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.

In the case of Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:-

“ We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper

to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Gosain appellant in the post of which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today.”

In Santosh Kumar Mishra Vs. State of U.P. [(2002) 1 UPLBEC 337. It has been held as under:-

“ Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner’s father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted in work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner’s husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U. P and others, reported in 1999 (3) ESC 2187 (All): 1

UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy.”

“ The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for.”

“ It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.”

“ It is also not disputed that appointments of such nature have already been given by the department earlier and the respondents State has not been able to indicate as to why the same benefit has not been given to the petitioner.”

In Jagdish Prasad Vs. State of Bihar and another 1996 1 SCC 301, it has been held as under: -

“ The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.”

In view of the above, respondent no. 2 is directed to consider the claim of the petitioner for the appointment on compassionate ground under U.P Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 within a period of two months after filing of the certified copy of this order.

Consequently, writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated:- 23-12-2005

M.K.