

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

WRIT PETITION NO. 760 OF 2006 (SS)

Mukesh

.....Petitioner.

Versus

Director, Shahari Vikas, Uttaranchal, Dehradun and
others.Respondents.

Mr. Bhagwat Singh Mehra, Advocate for petitioner.

Mr. N.P. Sah, Standing Counsel for the State/respondent no. 1.

Mr. Lalit Sharma, Advocate for respondent no. 2 and 3.

30th October, 2009

Hon'ble Sudhanshu Dhulia, J.

Heard Mr. Bhagwat Singh Mehra, Advocate for petitioner, Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand/respondent no. 1 and Mr. Lalit Sharma, Advocate for respondent no. 2 and 3.

This writ petition has been filed by the petitioner claiming appointment on compassionate ground under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (**hereinafter referred to as "Dying in Harness Rules"**).

The facts of the case are that the father of the petitioner was working as a Sweeper in Nagar Palika Parishad, Rudrapur, Udham Singh Nagar since 1st October, 1989. Consequently, a Govt. Order was passed in the erstwhile State of U.P. i.e. G.O. dated 8.1.1992 by which all such persons such as petitioner, who were continuously working for last three years, their services were liable to be regularised. However, although this order was passed way back in the year, 1992, the same was complied with in February/March, 2006 and consequently, the services of the petitioner's father were

regularised vide order dated 22.3.2006, which is Annexure-3 to the writ petition. As per the said appointment order, petitioner's father was appointed in the pay scale of Rs. 2550-55-2660-60-3200 on the vacant post of Sweeper. The appointment order further states that the petitioner's father shall submit within fifteen days the certificate issued by the Chief Medical Officer regarding his age and other certificates.

The contention of the petitioner is that the petitioner's father appeared before the Chief Medical Officer, Udham Singh and was subsequently examined, but thereafter he referred the petitioner's father to Government Hospital, Bajpur where modern equipments for determining such age were available and while he was going to Bajpur on Motor Cycle, he met with an accident and sustained serious injuries, he ultimately died on 17.4.2006. The petitioner being the son of the deceased Sukhlal applied for appointment on the post of Safai Karmachari in the Nagar Palika Parishad, Rudrapur, District Udham Singh Nagar. However, the same was refused to the petitioner vide order letter dated 22.5.2006 by the Executive Officer, Nagar Palika Parishad, Rudrapur/respondent no. 3 stating that the appointment cannot be granted to the petitioner as the father of the petitioner was not in regular service.

The order of the Executive Officer, Nagar Palika Parishad, Rudrapur, Udham Singh Nagar/respondent no. 3 is absolutely incorrect inasmuch as vide order dated 22.3.2006, the father of the petitioner was appointed on regular basis on an existing vacancy. The appointment order clearly states that the father of the petitioner was already working at the relevant time on daily wage basis. Although there was no formal joining of the petitioner's

father he consequently died on 17.4.2006 as appears from the medical certificate annexed as Annexure 4 to the writ petition. It cannot be said that there was no appointment of the petitioner's father on regular basis. Tragically, the father of the petitioner met with an accident before he could formally join the service. The matter deserved sympathy. Instead a hyper technical view has been adopted by the authorities. The approach of the respondents is not correct. The petitioner is liable to be given appointment on compassionate ground under the Dying in Harness Rules.

The writ petition is therefore allowed. The order dated 22.5.2006 (Annexure 7 to the writ petition) passed by the respondent no. 3 is quashed. Respondents are directed to immediately give appointment to the petitioner on the post of Safai Karmachari on compassionate ground under the Dying in Harness Rules.

(Sudhanshu Dhulia, J.)
30.10.2009

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