

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 307 of 2012

(Delay Condonation Application No. 9923 of 2012)

Uttarakhand Jal Sansthan and another Appellants

Versus

Firoz Mukhtar Respondent

Present: Mr. Rakesh Thapalyal, Advocate for the appellants.
Mr. C.K. Sharma, Advocate for Mr. Sanjay Kothari,
Advocate for the respondent.

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble U.C. Dhyani, J.**

JUDGMENT

BARIN GHOSH, C.J. (Oral)

Learned counsel appearing on behalf of the respondent-writ petitioner very fairly submitted that he has instructions not to oppose the application for condonation of delay in preferring the appeal. We have considered the averments made in the application for condonation of delay in preferring the appeal and being satisfied with the reasons furnished, condone 99 days' delay in preferring the appeal.

2. Heard learned counsel for the parties.

3. The father of the respondent-writ petitioner was a workman, working in the Water Supply and Sewerage Department of Nagar Palika, Roorkee. His services were terminated on 25th February, 1991. The said termination led to raising of an industrial dispute and the Labour Court, by an award dated 30th March, 1998, upheld the termination. The father of the respondent-writ petitioner filed a writ petition, which having been allowed, the matter went back to the Labour Court to decide the same afresh. On 30th January, 2003, the Labour Court held that the termination was

illegal and directed reinstatement. Prior thereto, the Water Supply and Sewerage Department of Nagar Palika Parishad was taken over by the appellants with effect from 29th August, 2002. Nagar Palika Parishad, Roorkee filed a writ petition challenging the latter award of the Labour Court. Appellant/Jal Sansthan was a party to the said writ petition. By an order dated 27th September, 2005, the said writ petition was disposed of by modifying the award and thereby reducing back wages to 50 per cent thereof. Against that judgment of the writ petition of Nagar Palika Parishad, it is the appellants, who went before the Hon'ble Supreme Court by filing a Special Leave Petition. On the Special Leave Petition, a stay was granted of the judgment of this Court, but, later on, the Special Leave Petition was dismissed as abated, inasmuch as, in the meantime, the father of the respondent-writ petitioner had died and no substitution was made. Because the father of the respondent-writ petitioner had died before he reached his normal age of superannuation, the respondent-writ petitioner applied for a compassionate appointment. This was not accorded and hence the respondent-writ petitioner approached this Court for a direction for according such appointment. Inasmuch as, it was not disputed before the Court that the policy for giving appointment on compassionate ground was applicable to a case, where a workman has died in harness, the writ petition filed by the respondent-writ petitioner has been allowed with a direction to give the respondent-writ petitioner a suitable employment on a post, on which the writ petitioner fulfills the educational qualification. Aggrieved thereby, the present appeal has been preferred.

4. In opposition to the writ petition of the respondent-writ petitioner, it was contended by the appellants that in point of fact, appellants have not passed an order of reinstatement of the father of the writ petitioner and, accordingly, on the records of the appellants, there is no existence of the father of the respondent-writ

petitioner as an employee of the appellants. This contention has been rejected. We think correctly in view of the fact that by an award of the Labour Court, the termination order of the father of the respondent-writ petitioner was set aside. The appellants went before the Hon'ble Supreme Court being aggrieved by the said award. The approach to the Hon'ble Supreme Court rendered ultimately fruitless to the appellants. In the circumstances, because the appellants have not recorded in its records reinstatement of the father of the respondent-writ petitioner, the appellants cannot contend that the father of the respondent-writ petitioner was not an employee of the appellants. There is no dispute and it is not the contention of the appellants that the Water Supply and Sewerage Department of Nagar Palika Parishad, Roorkee, where the father of the respondent-writ petitioner was working, was not taken over by the appellants.

5. We, therefore, find no reason to interfere.

6. The learned counsel for the appellants submitted that the direction, as given, seems to appoint and not to consider for appointment. We think that in the manner the direction has been given by the judgment and order under appeal, the same is nothing, but to consider the case of the respondent-writ petitioner for an appointment on compassionate ground on a suitable post in accordance with the requirement of the appellants and educational qualification of the respondent-writ petitioner.

7. With the observation as above, we dispose of the appeal.

(U.C. Dhyani, J.)
28.09.2012

(Barin Ghosh, C.J.)
28.09.2012