

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (S/S) No. 927 of 2021

Kanti Devi

.....Petitioner

Vs.

State of Uttarakhand & others

.....Respondents

Mr. Rakshit Joshi, Advocate, for the petitioner.

Mr. Narain Dutt, Brief Holder, for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J (Oral)

The petitioner has preferred this writ petition for the following reliefs:-

“I. A writ, order or direction in the nature of mandamus commanding the respondent No.3 to give consent for compassionate appointment to the petitioner under Dying in Harness Rules in light of the board resolution of respondent no.2 dated 16.05.2013 (contained as Annexure No.9 to this writ petition)

II. A writ, order or direction in the nature of mandamus commanding the respondents to consider the claim of petitioner for appointment on compassionate ground being the divorced dependent daughter of the deceased Government servant against any appropriate vacant posts in the concerned department.”

2. The brief facts of the case are that the petitioner has come up with a case that her mother has met with the sad demise as back as on 02.01.2012, and as a consequence thereto, since she was a divorced widow daughter, she would be entitled to be considered for an appointment under the Dying in Harness Rules, 1974, and hence she has raised a claim for appointment on compassionate grounds on 28.06.2013 by way of filing an application, before the competent authority.

3. As per the contention of the learned counsel for the petitioner, the application thus submitted by the petitioner, on 28.06.2013, had been processed, and the Board has already passed the resolution, as back as on 16.05.2013, recommending for the grant of approval, of compassionate appointment to the petitioner. It is ever since, the said date of death i.e. 02.01.2012 or ever since passing of the resolution of the board dated 16.05.2013, the petitioner has never agitated her claim before any competent judicial forum with a reasonable time, as it was except by way of filing of the representation, as it has been pleaded in the writ petition.

4. The very purpose of Rule 5 of the Dying in Harness Rules, 1974, where the maximum tenor of period during, which the applicant could apply has been provided under Rule 5 of the Dying in Harness Rules, 1974, which could be extendable by the State for the reasons to be assigned by them to the maximum period of five years, from the date of death, which is not a factual case herein. Because the Board has already decided the matter on 16.05.2013, in favour of the petitioner. If that be the situation, the issue of the petitioner's entitlement stood resolved by the Board on 16.05.2013, and in that eventuality, if the respondents were still not granting an approval to the appointment of the petitioner, on compassionate grounds, she ought to have approached the Court within an appropriate time.

5. Having filed the writ petition with a prayer, which is extracted above, by approaching a writ court only on 27.07.2021. It runs contrary to the very intention and purpose of the welfare legislation provided under the Dying in Harness Rules, 1974, which intends to provide an immediate reprieve to the bereaved family, whose only breadwinner has died.

6. The very fact that the petitioner has been able to sustain herself, ever since 2012, and till the date of the filing of the writ petition, that itself would disentitles her to be considered for compassionate appointment, and that is what has been envisaged by

the Hon'ble Apex Court in a judgment reported in AIR 1999 SC 564, **“Dhalla Ram Vs. Union of India and others”** where it has been laid down that a delayed claim or delayed enforcement of the claim for compassionate appointment would be bad in the eyes of law, being contrary to the very legislative intent of the Dying in Harness Rules, 1974.

7. Hence the writ petition for the aforesaid reasons lacks merit and the same is accordingly dismissed.

(Sharad Kumar Sharma, J.)

30.07.2021

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