

(2013) 06 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 408 of 2013

Bhuwan Chandra Pandey

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2014) LabIC 122

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Bhagwat Mehra, for the Appellant; B.P.S. Mer, Brief Holder, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The petitioner's father who was a confirmed employee in Agricultural Department, Government of Uttarakhand at Dehradun, died while in harness on 26.9.2012. The petitioner being son of the deceased-employee applied for appointment on compassionate ground under the provision of Recruitment, of dependent of Government Servant Dying-in-Harness Rules, 1974 (hereinafter referred to as Dying-in-Harness Rules). By order dated 23.2.2013, his application has been rejected on the ground that one brother of the petitioner is employed in Indian Army. This is the sole ground for rejection of the petitioner's appointment. It is not the case of the respondents that the Rules i.e. Dying-in-Harness Rules are not applicable in the case of the petitioner. Rule 5 of the said Rules which is in fact the main provision reads as under:--

5. Recruitment of a member of the family of the deceased.--(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 qualifications 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 where 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 or relax 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) 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 dependant of the abovesaid deceased Government servant immediately before his death.

2. There is no dispute that the petitioner comes under the definition of "family" as defined u/s 2(c) of the Dying-in-Harness Rules and he is a dependant. Therefore, the sole ground of the petitioner that brother of the petitioner is employed in Indian Army cannot be accepted for the reasons that the Rules do not visualize such contingency. Moreover, the brother of the petitioner who is said to be in Government service has a separate family. He has a wife and children, in other words a "family" to support, and therefore, the petitioner cannot be said to be a "dependant" of him, i.e. his brother. In any case, the Rules cannot prohibit the petitioner if one of the dependants of the deceased employee is already in service. The ban is only for a spouse or for a person who is seeking such an appointment.

3. The petitioner has relied upon a judgment of this Court passed in Ajay Kumar Vs. State of Uttarakhand and Others, wherein the same proposition has been reiterated. Therefore, the order dated 23.2.2013 (Annexure No. 8 to the writ petition) is quashed. A Mandamus is issued to the respondent authorities to give appointment to the petitioner within a period of 10 weeks from the date a certified copy of this order is produced before him.

4. Writ petition is allowed in the above terms. No order as to costs.