

**(2003) 11 UK CK 0017**

**In the Uttarakhand High Court**

**Case No : Civil Writ Petition No. of 2003 (S/S)**

Keshar Singh Bhandari

APPELLANT

Vs

General Manager (Karmik), Uttaranchal Power Corporation  
and Others

RESPONDENT

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**Date of Decision : 20-11-2003**

**Acts Referred:**

**Citation : (2005) 1 UC 52**

**Hon'ble Judges : Rajesh Tandon, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

Rajesh Tandon, J.—Heard the learned Counsel for the parties.

2. 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 Respondents to appoint the Petitioner under Dying in harness Rules.

3. Briefly stated the facts giving rise to the present writ petition are that the father of the Petitioner namely Sri Kunwar Singh Bhandari was truck cleaner in Electricity Distribution Sub Division, Rudraprayag. He died in the truck accident on 4.4.1974 during his duty. The Petitioner at that time was only 12 years old and he could not get service at that time, as he was minor. After creation of Uttaranchal Power Corporation, the Petitioner again moved application on 27.9.2002 to the Respondent No. 2 who in his turn sent the representation of the Petitioner to the Deputy General Manager, Electricity Distribution Circle, Srinagar Garhwal with his recommendation. Thereafter Petitioner sent several reminders to the Respondents but the Respondents have not considered his representation till now.

4. The counsel for the Petitioner has stated that since there was a bar in applying for employment under Dying in Harness Rules as the Petitioner has not attended 18 years of age at the time of the death of his father. The father of the Petitioner

died in the year 1974 and he attained age of majority in the year 1992.

5. The legal proposition is well settled as held in the case of *Sushma Gosain v. Union of India* 1998 SCC 468 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.

6. The judgment of *Sushma Gosain* has further been followed in the case *State of Manipur Vs. Md. Rajaodin*, . The Apex court has held as under:

In *Sushma Gosain v. Union of India* it was observed that in all claims of 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 winner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Smt. Phoolwati Vs. Union of India and Others*, and *Union of India (UOI) and Others Vs. Bhagwan Singh*, . In *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provisions by taking away completely the right conferred by the main provision.

7. Allahabad High Court in the case of *Shri Ram Pandey v. Senior Superintendent of Police Varanasi and Ors.* (2001) 90 FLR 738 has held as under:

Our Courts in the cases of 1997 (Suppl) AWC 701, *State of Rajasthan Vs. Umrao Singh*, , held that scheme contemplating dying in harness is to meet emergent

crises and it shall not be proper to give belated appointment. However, by passage of time and experience the court expanded the theory of compassionate appointment by providing that no rigid rule of limitation should be applied in the matter of compassionate appointment and such a claim may be considered, in the light of the facts and circumstances of each case even if such a claim is being made belatedly. This gave an occasion to the State Government for issuing Government order providing for reference of cases to the Government for seeking approval before making compassionate appointment in case the same was being made beyond five years of the death of the employee in question. No Rule and/or order or decision to the knowledge of this Court lays down that compassionate appointment is to be made even if the family of the deceased employee is not in distress. In other words, compassionate appointment cannot be justified only on the ground that some employee of the State Government or State Authority/instrumentality has died. The condition precedent is not death of an incumbent in service, but also existence of distress of the family requiring a helping hand by providing compassionate appointment.

8. The object behind the appointment under Dying in Harness Rule is to provide immediate financial help to the family in distress and it is not another source of recruitment. In the present case since the father of the Petitioner expired in the year 1974, delayed application cannot be entertained for appointment under Dying in Harness Rules.

9. However, subject to the availability of the post and looking to the financial condition of the family of the deceased and on humanitarian ground, liberty is given to the Respondents to consider the appointment of the Petitioner, other than on compassionate ground.

10. Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.