

(1999) 10 AHC CK 0011

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35871 of 1995

Meena Devi Chaudhary (Smt.)

APPELLANT

Vs

Chief Engineer, U.P. Public Works Department and Others

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Dying in Harness Rules, 1974 — Rule 5

Citation : (2000) 2 UPLBEC 1421

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Rajendra Dobhal, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—Petitioner is the widow of Late Sri Kanhaiya Lal Chaudhary. The said Sri Kanhaiya Lal Chaudhary was appointed in May, 1988 as Daily Wager in Public Works Department, Provincial Division, Rudraprayag (Annexure-1 to the writ petition). The said employee worked continuously ever since and died on 30th March. 1992 in the Government Hospital. The petitioner made an application for appointment on compassionate ground under relevant Government order issued under Dying in Harness Rules, 1974 (Annexures 2 and 3 to the writ petition). The petitioner claims to have passed VIIIth Class and had a son aged about 5 at the time of filing writ petition.

2. Petitioner, not being given appointment as stated above, she filed this petition. This Court parsed an interim order dated 11.12.95 which reads as follows :

"Let an interim mandamus be issued commanding 3rd respondent to either offer appointment to the petitioner under Dying in Harness Rules or show cause by filing counter affidavit within six weeks from the date on receipt of a certified copy of this order."

3. A counter affidavit has been filed on behalf of the respondents. The respondent has filed copy of service book (Annexure CA II to the writ petition).

In para 6 of the counter affidavit, it is disclosed that appointment under Dying in Harness Rules, 1974 could not be extended in the case of employee who was not regularly appointed.

4. Perusal of the service book (Annexure CA II to the writ petition shows that there is an endorsement by hand which indicate that he was appointed Daily Wager on 9th July, 1992. There is another endorsement which shows that superintending Engineer vide his letter dated 8.5.99 (in compliance of the order of Chief Engineer dated 13.2.90 again issued in compliance to the Government Order dated 12.2.90) has fixed the salary of the said employee w.e.f. 1.4.88, he was extended benefit of annual increments for the period from 1.4.88 to 1.4.90. The petitioner was also fixed in regular pay scale.

5. Under the circumstances that he was engaged in the year 1982 initially as Daily Wager, but regularised and treated as such, stand of the respondent to treat the said employee as temporary employee/Daily Wager cannot be appreciated.

6. The petitioner cannot be denied appointment under Dying in Harness Rules on the alleged ground that her deceased husband was not working on regular basis.

7. I direct the concerned authorities, respondent Nos. 1, 2 and 3 to consider the case of the petitioner under relevant Dying in Harness Rules and relevant Government Orders, pass requisite order appointing the petitioner according to her qualifications, if she files a representation (containing her grievance) alongwith a certified copy of this judgment within two months from today. If such representation is being filed within the time stipulated above, the same shall be decided and requisite and necessary order shall be passed within 6 weeks of the receipt of the representation, A copy of the decision/order on the representation shall be dispatched to the petitioner by registered A.D. post within two weeks.

8. Writ petition stands allowed. No order as to costs. Petition allowed.