
(2010) 06 AHC CK 0015
In the Allahabad High Court
Case No : Writ Petition No. 1238 of 2008 (S/S)

Pushpa Devi W/o Late Sri Uttam Ram	APPELLANT
Vs	
State of Uttarakhand and others	RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness)
Rules, 1974 — Rule 2(a)(iii), 5

Citation : (2010) 06 AHC CK 0015

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Allowed

Judgement

Tarun Agarwala, J.

Heard Shri C.K. Sharma, the learned counsel for the petitioner and Shri Subhash Upadhyaya, the learned Brief Holder for the State/respondents.

The petitioner's husband was appointed as a Driver in November, 1987. From the record, it transpires that he was shifted in the work charge establishment on 19 th March, 2005. The petitioner's husband died in harness on 14/11/2007 and, upon his death, the petitioner applied for appointment on compassionate ground under the dyinginharness rules. The petitioner's application was rejected by the impugned order on the ground that the petitioner was appointed by a backdoor method and, consequently, in the light of the judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991, the contention of the petitioner cannot be considered for appointment on compassionate grounds.

Having heard the learned counsel for the parties, this Court is of the opinion that the stand taken by the opposite party is patently misconceived. Before proceeding further, it would be relevant to peruse Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules, 1974 (hereinafter referred to as "Rules of 1974") which, for facility, is extracted below:

[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 timelimit 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 subrule (1) should be under the condition that the person appointed under subrule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.]

A perusal of the aforesaid Rules indicates that the dependant of a Government servant, who dies in harness, could be given a suitable employment in government service subject to fulfilling the educational qualifications, etc. ? Government servant? has been defined under Rule 2 of the Rules of 1974. For facility, the said provision is extracted hereunder:

?2. Definition. In these rules, unless the context otherwise requires:

(a) ?Government servant? means a Government servant employed in connection with the affairs of Uttar Pradesh who

(i) was permanent in such employment; or

(ii) though temporary had been regularly appointed in such employment; or

(iii) though not regularly appointed, had put in three years" continuous service in regular vacancy in such employment.?

The aforesaid definition of a Government servant indicates that the Government servant must be employed in a permanent or in a temporary capacity and, if not regularly appointed, the Government servant must have put in three years of continuous service in a regular vacancy in such employment. The petitioner has been nonsuited on the ground that her husband was working as a daily wager and was not a Government employee. This reasoning, in my view, is totally bereft of merit.

In Santosh Kumar Mishra Vs. State of U.P. and others, [(2002) 1 UPLBEC 337], the Court while considering the matter of daily wager and the appointment of dependant on compassionate grounds held :

?16. It may also be taken note of that if daily wager or a workcharge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.?

The aforesaid judgment is squarely applicable to the present facts and circumstances of the case. Similarly, in Meena Devi Chaudhary (Smt.) Vs. Chief Engineer, U.P. Public Works Department, Lucknow and others, [(2000) 2 UPLBEC 1421, the Court while considering the case of the daily wager who died in harness, held that a daily wager who worked continuously and was being paid in the regular pay scale, would be treated as a Government servant contemplated under Rule 2 of the Rules of 1974 and that the dependant would be entitled for consideration on compassionate appointment. In Saroj Devi (Smt.) Vs. State of U.P. and others [(1999) 2 UPLBEC 1404], the Court while considering the case of a casual or adhoc employee held that if a person worked for a long period against a substantive vacancy, his dependant would be considered for appointment on compassionate grounds.

In view of the aforesaid, this Court is of the opinion that the impugned order cannot be sustained and is quashed. The writ petition is allowed. A writ of mandamus is issued to the respondents to consider the application of the petitioner for appointment on compassionate grounds on merit by a reasoned and speaking order within six weeks from the date of the production of a certified copy of the order.