

(2018) 10 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition No. 2087 (SS) of 2015

Raj Kumar Tiwari

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 04-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 340
Constitution of India, 1950 — Article 14, 16

Citation : (2018) 10 UK CK 0009

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : C.K. Sharma, V.D. Bisen

Final Decision : Dismissed

Judgement

Alok Singh, J.

1. Petitioner's step mother namely late Ms. Prema Tiwari was serving as Assistant Teacher in Primary School, Reyuni, Majkhali, Ranikhet,

District Almora. She died during her service period. After the death of his mother, petitioner applied for compassionate appointment under the Dying

in Harness Rules. Respondent Department rejected the claim of the petitioner inter alia on the ground that as per High School Certificate,

petitioner's date of birth is 30.06.1977 while as per school record, Ms. Prema Tiwari, joined her duties on 01.07.1977 after summer vacation and

she did not avail any maternity leave. Therefore, petitioner cannot be son of Ms. Prema Tiwari. Against the order of District Education Officer

(Basic) Almora, petitioner approached this Court stating therein that his date of birth is 03.10.1976. This Court, after going through record, vide order

19.08.2002 held the petitioner guilty under Section 340 CrPC and imposed a fine

of Rs. 5,000/-. No appeal was filed against the order dated

19. 08.2002, therefore, it attained finality. On 24.08.2002, alleged appointment letter was issued pursuant to which, petitioner sought joining. On this,

District Education Officer (Basic), Almora issued direction to Assistant Education Officer (Basic) Tarikhet, Almora to lodge an FIR, as he has not

issued any appointment letter in favour of the petitioner. Consequently, an FIR was lodged. Petitioner was acquitted in the said case by giving benefit

of doubt. Petitioner approached the respondent Department to give him joining, as he has been acquitted. District Education Officer once again

rejected the claim of the petitioner. Feeling aggrieved, petitioner has approached this Court.

2. Heard Mr. C.K. Sharma, Advocate for the petitioner and Mr. V.D. Bisen, Brief Holder for the State of Uttarakhand/ respondents and perused the record.

3. Though petitioner was acquitted by Judicial Magistrate by giving benefit of doubt in procuring the alleged appointment letter dated 24.08.2002 but

this does not establish that the said appointment letter dated 24.08.2002 is genuine. District Education Officer has already denied its sanctity. When

there is no appointment letter issued in favour of the petitioner, therefore, no relief, as sought in the writ petition, can be granted by this Court.

4. There is another aspect of the matter. In my view compassionate appointment is not a right but it is a concession. Honâ??ble Apex Court in the

case of Bhawani Prasad Sonkar Vs. Union of India and others reported in 2011 (4) SCC 209 has held as under:

â??20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to

be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate

appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the

bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the

financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/ incapacitated employee, viz. parents, spouse, son or

daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.â??

5. As per dictums of Honâ??ble Apex Court, it is settled position of law that compassionate appointment is granted to meet the sudden crisis on

account of death of breadwinner while in service. While considering the claim for compassionate appointment, financial condition of family of

deceased employee must be taken into consideration. The object to grant compassionate appointment is to provide immediate help to the dependents

of deceased employee, so that they may not die in starvation.

6. It is settled position of law that compassionate appointment is not a Rule and cannot be sought, as a matter of right. The compassionate appointment

is a concession and exception to public appointment provided under Articles 14 and 16 of the Constitution of India, therefore, to seek a concession of

compassionate appointment, claimant must prove his financial condition and must prove that in the event of non grant of compassionate appointment,

claimant would face financial crisis and may die in starvation.

7. In the present case, petitioner applied for compassionate appointment in 1998 and now, it is 2018, therefore, this Court cannot issue direction for

compassionate appointment.

8. In view of the above discussion, writ petition fails and is hereby dismissed.