

**(2010) 02 AHC CK 0062**  
**In the Allahabad High Court**

Rajni Saxena alias Gudiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 16-02-2010

**Acts Referred:**

**Citation :** (2010) 3 AWC 2851

**Hon'ble Judges :** Amreshwar Pratap Sahi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the petitioner and learned standing counsel.

2. The petitioner is the married daughter of late Devendra Kumar Saxena, who died-in-harness. The contest arose with regard to appointment on compassionate basis after the death of Devendra Kumar Saxena between the petitioner, her sister and the respondent No. 5, who claims herself to be the wife of Devendra Kumar Saxena. The petitioner and her sister disputed the status of the respondent No. 5 as the legally wedded wife of late Devendra Kumar Saxena and ultimately the appointment, which was offered to the respondent No. 5, was cancelled. The petitioner also claimed compassionate appointment. The same has been rejected by the impugned order on the ground that the petitioner is the married daughter of late Devendra Kumar Saxena and, therefore, she is not entitled to be offered appointment keeping in view the provisions of 1974 Rules. The petitioner, being a married daughter, was not entitled for such appointment as per the Rules itself.

3. Apart from this, even a divorced daughter is not entitled to such benefit as has been held by this Court in the case of Santwana Kumari v. D.I.O.S., Ghazipur and Anr. 1998 (1) AWC 2.27 (NOC) , followed in Akhilesh Tiwari Vs. State of Uttar Pradesh, Chief Medical Officer, Prabhari Chikitsadhikari, Additional Primary Health Centre and Hem Lata Devi, There are contrary decisions as well in the

case of Smt. Kushum Devi Vs. State of U.P. and another, and V. Shanthi v. Chairman, Tamil Nadu Electricity Board. Writ Petition No. 28395 of 2005, decided on 22.11.2007. The heirs other than those, who fall within the Rules, are excluded as explained in the Division Bench Judgment of Patna High Court in the case of Malti Kumari Vs. State of Bihar and Others

4. However, it is not necessary to go into this question as the petitioner has not been able to establish her divorce before this Court. The divorce has to be obtained by the petitioner or has to be granted by the Court concerned at the instance of the husband in accordance with the procedure prescribed in law which has not occurred as yet. Accordingly, the claim of the petitioner cannot be considered for compassionate appointment and the impugned order to that extent does not require any interference.

5. Learned Counsel for the petitioner then contended that he apprehends that the respondent No. 5 might be extended the benefit of appointment which cannot be done and which should not be done keeping in view the contest between the parties. He submits that in case the claim of respondent No. 5 is being reconsidered by the State Government and she is extended any benefit, the same might have an adverse effect on all other claims relating to that of late Devendra Kumar Saxena.

6. The aforesaid apprehension is absolutely misplaced inasmuch as the claim of compassionate appointment which is stated to be under consideration before the State Government, cannot be against Rules. There is no occasion for this Court to interfere at this stage on a mere apprehension so long as no order adverse to the petitioner is passed. In view of this, the apprehension cannot be made the basis for filing of the writ petition.

The writ petition is, accordingly, dismissed.