
(2024) 02 UK CK 0066

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1743 Of 2022

Ritesh Kumar

APPELLANT

Vs

G.B. Pant University & Others

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Citation : (2024) 02 UK CK 0066

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : P.C. Petshali, Shubhang Dobhal, Mohit Maulekhi

Final Decision : Dismissed

Judgement

Pankaj Purohit, J

1. The writ petition has been filed by the petitioner seeking a mandamus commanding the respondent nos.1 & 2 to give compassionate appointment to the petitioner in place of his brother Late Divyanshu.

2. Heard learned counsel for the parties.

3. It is submitted by learned counsel for the petitioner that the brother of the petitioner, namely, Divyanshu working with the respondent-University on the post of Junior Mechanic, met with sad demise on 10.06.2022, leaving behind petitioner, brothers, unmarried sister and mother who were exclusively dependant on late Divyanshu and also his legally wedded wife, who was living separately. He further submitted that petitioner has not moved any application to the respondent-University for seeking compassionate appointment, rather the application dated 04.07.2022 was moved on behalf of the petitioner by his mother-Rajkumari, in which, she claimed compassionate appointment for petitioner-Ritesh Kumar. The respondent-University on the said application vide order dated 18.07.2022 wrote a letter to mother of the petitioner-Rajkumari to supply certain documents, which according to the petitioner, were supplied.

4. It is reflected from the record that the wife of the deceased (Divyanshu) respondent no.3 has also submitted her application for compassionate appointment on 24.06.2022 and accordingly, she too was asked to supply certain documents by the respondent-University vide letter dated 18.07.2022.

5. The respondent-University did not give appointment to any of the claimants which resulted into filing of the present writ petition.

6. The respondent-University has filed its counter affidavit, in which, it has been stated that as per Law and Rules applicable to the University, the wife of the deceased, Government Employee, has got preferential right for compassionate appointment and the compassionate appointment is not given to the respondent no.3-wife, only for the reason of pendency of the present writ petition.

7. Respondent no.3, who is wife of the deceased-Smt. Nidhi Singh, has also filed her counter affidavit, wherein she expressed her willingness to be appointed in place of her husband on compassionate appointment. In the counter affidavit, it is stated that she has also moved an application for compassionate appointment on 24.06.2022. It is further stated that the Uttar Pradesh Recruitment of Government Servant Dying in Harness Rules, 1974, as adapted by the Uttarakhand State vide Government Order No.849/Ka-2/2002 dated 23.08.2022 and amended thereto issued vide Notification No.217/xxx(2)2019-55(21)2002 dated 04.09.2019 has been adopted by respondent-University, which fact is not disputed by learned counsel for the respondent-University.

8. Learned counsel for the petitioner submits that the application has been moved by mother of the petitioner for compassionate appointment in place of his deceased brother, late Divyanshu, for the reason that respondent no.3-wife and the deceased were not in cordial relation and the respondent no.3 had already left the company of the husband before his death. Therefore, petitioner is entitled to be given appointment on compassionate ground.

9. Learned counsel for the respondent-University has submitted that the University is bound by law and as per law the wife is entitled to get compassionate appointment, in place of her husband, who died while still in service.

10. Learned counsel for respondent no.3 has strenuously disputed the fact that the wife was living separately from the deceased-husband and he submitted that she was living with the deceased intermittently as per the understanding between them.

11. Having heard the learned counsel for the parties, this Court is of the opinion that it hardly makes a difference that if a wife is living separately or not, until and unless the marriage is dissolved legally by a decree of divorce by a competent court. There is nothing on record that any divorce decree was passed by any of the court of competent jurisdiction against the wife and, therefore, it cannot be said that there is no matrimonial alliance exists between the parties.

Accordingly, the writ petition fails and is hereby dismissed.

12. Respondent-University is directed to expedite the case of respondent no.3/ wife for appointment in place of her husband late Divyanshu as on compassionate appointment. No order as to costs.