

(2019) 07 UK CK 0195
In the Uttarakhand High Court
Case No : Writ Petition No. 1363 Of 2019

Saroj

APPELLANT

Vs

Govind Bhallabh Pant Agriculture And Technology University
And Others

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Uttar Pradesh Recruitment Of Dependants Of Government Servants Dying In Harness Rules, 1974 — Rule 2(c), 2(c)(i), 2(c)(ii), 2(c)(iii)
Constitution Of India, 1950 — Article 14, 15, 16
Uttar Pradesh Cooperative Committee Employees Service Regulations, 1975 — Regulation 104

Citation : (2019) 07 UK CK 0195

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Vinay Kumar, Kartikey Hari Gupta

Final Decision : Disposed Of

Judgement

Lok Pal Singh, J

1. By means of the present writ petition, petitioner has prayed for the following reliefs:

"(i) Issue a writ, order or direction in the nature of mandamus declaring the exclusion of 'married daughter' as dependent of deceased employee as provided in Section 6(8)(13)(1)(d) of the statute of the University, for the purpose of grant of compassionate appointment under dying in harness category, as arbitrary, illegal and discriminatory and thus, violative of Article 14, 15 & 16 of the Constitution of India.

(ii) Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned communication dated 20.05.2016 issued by the Associate Director, Horticulture Research Center Patharchatta, G.B. Pant University, Pantnagar, Udham Singh Nagar.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to reconsider the claim of the petitioner for compassionate appointment under Dying in Harness category in view of the law laid down by the Full Bench of this Hon'ble Court in Special Appeal No. 187 of 2017 and other connected bunch of Special Appeals."

2. It is contended that father of the petitioner was working on the post of Horticulture Chaudhary in Horticulture Research Center Pantnagar and died in harness on 12.11.2014 and left behind his wife Gyanti Devi, the petitioner (daughter) and sons Manoj Kumar, Vinod Yadav and Rajesh Yadav.

3. It is contended that the wife of the deceased employee, mother of the present petitioner, submitted an application to the Establishment Officer, G.B. Pant University stating therein that her daughter (petitioner) be considered for appointment on compassionate ground under dying in harness category as the petitioner was residing with her and she does not have any other source of income. The petitioner moved an application/representation before the authority concerned stating therein that she may be considered for appointment under the compassionate appointment under Dying in Harness category.

4. Thereafter, the respondents sent a letter to the petitioner on 20.05.2016 there is no provision in the University for appointment on compassionate ground of a married daughter. Hence, present writ petition.

5. Learned counsel for the petitioner would submit that at the time of death of the deceased employee, the petitioner was married having three minor daughters and as the husband of the petitioner was unemployed, therefore, the petitioner had to reside with her father (since deceased) for the education and maintenance of her minor daughters. He would further submit that Section 6(8) (13)(1)(d) of Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short 1974 Rules) provides that the dependent (wife or husband, son, unmarried daughter and widow daughter) of an employee, who meets with untimely death or get permanent disability during the service, period may be appointed on any non-teaching post for which he/she is suitable and fulfills the minimum qualifications, without selection process.

6. Counter affidavit has been filed by respondents, wherein it has been stated that the claim of the petitioner was rejected by the respondent authorities on the ground that the petitioner being married daughter of late Bahadur Yadav is not eligible for compassionate appointment under 1974 Rules, since the married daughter was not covered under the definition of 'family'. In paragraph-13 of the counter affidavit it is categorically stated that in the light of judgment dated 27.03.2016, passed by the Full Bench of this Court, in Special Appeal No. 187 of 2017, Udham Singh Nagar District Cooperative Bank Ltd. and another Vs. Anjula Singh and others, married daughter has also been held entitled for compassionate appointment under the aforesaid 1974 Rules. It is also stated in the Counter affidavit that the petitioner has not provided any documents in

support of her statement that she was fully dependent on the deceased employee at the time of his death.

7. I have heard the learned counsel for the parties and perused the material available on record.

8. The Division Bench of this Court, by its order dated 05.02.2018 passed in Special Appeal No. 187 of 2017 has referred the questions to be answered by the Full Bench judgment. This Court has dealt with the issue in Writ Petition No. 2421 of 2007 (S/S) in the case of Smt. Poonam Rawat Vs. State of Uttarakhand decided on 23.07.2019.

9. It is worthwhile to mention here that the Division Bench in aforesaid special appeal has referred the following question to be answered by a Full Bench of this Court:

(i) Whether any of the members, referred to in the definition of a 'family' in Rule 2(c) of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 and in the note below Regulation 104 of the U.P. Cooperative Committee Employees Service Regulations, 1975 would be entitled for compassionate appointment even if they were not dependent on the Government servant at the time of his death?

(ii) Whether non-inclusion of a "married daughter" in the definition of 'family', under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India?

10. The Full Bench of this Court held that any person, who is a part of the 'family' of the deceased Government servant, who also be included within the said definition. Consequently, a 'married daughter' would also fall within the definition of a 'family' both in Rule 2(c) of the 1974 Regulations. Needless to state that the members of the 'family' of the deceased Government Servant in Clauses (i) to (iii) of Rule 2(c) of the 1974 Rules, and the note below Regulation 104 of the 1975 Regulations, which would include a 'married daughter', would be entitled to be considered for compassionate appointment only if they were dependent on the Government Servant at the time of his death, and satisfy all the other conditions stipulated in the 1974 Rules and the 1975 Regulations. In the aforesaid judgment, this Court has only considered that the married daughter should not be denied appointment on compassionate ground merely on the ground that that she is married. However, she has to strictly prove that she was dependent on the deceased employee at the time of his death.

11. The controversy involved in the present writ petition has already been answered by the Full Bench of this Court in aforesaid judgment dated 27.03.2009. Therefore, in the light of law pronounced by the Full Bench a married daughter shall also be held to fall within the definition of the 'family' of the deceased Government servant, for the purpose of being provided

compassionate appointment under the 1974 Rules.

11. The provisions for appointment in the said institution has been mentioned in Section 6(8)(13) of Chapter XIII for Appointment of Staff as under:

"(d) A dependent (wife or husband, son, unmarried daughter and widow daughter of an employee of the University who meets with untimely death or gets permanent disability during the service period may be appointed on any non-teaching posts for which he/she is suitable and fulfils the minimum qualifications, without selection procedure.

WITH THE PROVISO THAT

(i) The above facility will be given to only the dependents of employees who have put in at least 3 years continuous service in the University and only if there is no other earning member in the family of the deceased.

(ii) If there are more than one member in the family of the deceased desirous to get employment then the appointing authority shall select one of such persons on the basis of suitability particularly considering the interest of his widow and minor members of the family of the deceased."

12. The petitioner moved application before the Establishment Officer of the University stating therein that her father late Lal Bahadur Yadav had died on 12.11.2014 during service. Her mother is ill and after death of her father she is taking care of her mother and has no source of income, therefore, she wants employment under the Dying in Harness category in the University, so she may take care of her mother. Alongwith the said application, the petitioner also annexed the affidavits of her three brothers who are working in Uttar Pradesh Police, namely, Vinod Yadav, Manoj Kumar and Rajesh Yadav stating therein that they have no objection if appointment under the Dying in harness Rules is given to their sister (petitioner herein).

13. Petitioner has nowhere stated in the aforesaid application about her husband. The application is silent in this regard whether her husband is working somewhere else or not? It appears to this Court that in the guise of appointment under the dying-in-harness Rules since three brothers of the petitioners are in Government employment and there is no whisper in the application that she was the dependent on her father and her husband is not earning member. The appointment cannot be given to her as per the contention made by her in the application, however, since her candidature has been rejected that she is married daughter of the deceased employee. However, the respondents have not considered the issue as to whether the petitioner was dependent on her father at the time of his death.

14. Having considered the fact that the candidature of the petitioner has been rejected, only on the ground that she is married daughter of deceased employees, which cannot be a valid ground in view of the judgment (Supra), therefore, it is directed that respondent shall decide the application of the

petitioner for appointment under the Dying in harness Rules, in accordance with law. They shall consider as to whether the petitioner was dependent on her father and she is not dependent on her husband and her husband is unemployed, as the appointment under the Dying in harness Rules is not supposed to be granted in a routine manner.

15. A mandamus is issued to the respondent to consider and decide the application/representation of the petitioner by passing speaking and reasoned order, in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of this order.

16. With above observations and directions, the writ petition stands disposed of.

17. No order as to costs.