
(2005) 04 UK CK 0032

In the Uttarakhand High Court

Case No : Writ Petition No. 1412 (S/S) of 2004

Smt. Nandi Devi

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Citation : (2005) 3 UC 1638 : (2005) 3 UC 1535

Hon'ble Judges : M.M.Ghildiyal, J

Bench : Single Bench

Advocate : Kamaljeet Narain, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Ghildiyal, J.—Heard Sri Kamaljeet Narain, Learned Counsel for the Petitioner and Learned Standing Counsel for the Respondents.

2. By means of this petition, the petitioner has prayed to issue a writ in the nature of mandamus directing the Respondents to regularise the services of the Petitioner on Class IV post.

3. Brief facts of the case are that the husband of the Petitioner died on 11-12-2001 while in service of the Respondents. On 24-12-2001, the Petitioner moved application to the Respondents for providing her appointment under Dying-in-Harness Rules. On 18th June 2002, the Petitioner was given appointment as Daily Wager and appointment letter was issued to the Petitioner, which is annexure No. 2 to the writ petition. The appointment letter indicates that the Petitioner was appointed under Dying-in-Harness Rules on the post of Beldar from the date she joins the post. On 11-02-2004, the Petitioner requested the authorities to provide her appointment on monthly salary basis however, the Department did not consider her request consequently; she filed the present writ petition.

4. On 04-12-2004, this Court granted four weeks' time to Learned Standing

Counsel to file counter affidavit and again on 02-03-2005 ten days" time was granted to the Learned Standing Counsel however, no counter affidavit was filed by the Department. Learned Standing Counsel has submitted that he has already sent FAX message on 3rd March 2005 to which the Department did not respond.

5. It is not disputed that the Petitioner's husband was working with the Respondents on monthly salary basis since 1981 till his death i.e. till 11-12-2001. It is also not disputed that the Petitioner was given appointment under Dying-in-Harness Rules on the post of Beldar on daily wage basis. This fact is also apparent from the appointment letter, which is annexed alongwith the writ petition. Contention of the Petitioner is that since the Petitioner was provided appointment under Dying-in-Harness Rules, her appointment cannot be treated similar to those appointed as Daily Wage basis. The Petitioner has placed reliance on the judgment of this Court in Writ Petition No. 91(S/S) 2003 reported in 2005 (1) UD 379 Bhaguli Devi v. State of Uttaranchal and Ors. She has further placed reliance on the judgment of Allahabad High Court in Civil Misc. Writ petition No. 39127 of 1994 Ravi Karan Singh v. State of U.P. and Ors. reported in 1999 (3) UPLBEC 2263 wherein the Division Bench has held that the appointment provided under Dying-in-Harness Rules shall be treated as permanent appointment and not a temporary appointment.

6. In absence of counter affidavit, Learned Standing Counsel could not show any reason as to why the Petitioner was appointed on daily wage basis despite the fact that she was appointed under Dying-in-Harness Rules. I find force in the submissions of the Learned Counsel for the Petitioner that since the Petitioner was appointed under Dying-in-Harness Rules, her appointment should have been treated on regular basis and not on daily wage basis.

7. In the circumstances and for the reasons stated above, the writ petition is allowed. The Respondents are directed to treat the services of the Petitioner as permanent and not the temporary one. No order as to costs.