
(2010) 03 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No. 1360 of 2008 (S/S)

Smt. Vandana Baloni

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Dying in Harness Rules, 1974 — Rule 5

Citation : (2011) 1 UC 705

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : M.S. Bisht, for the Appellant; Subhash Upadhyaya, Brief Holder for State and Nagesh Agarwal, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri M.S. Bisht, the learned Counsel for the Petitioner, Sri Subhash Upadhyaya, the learned Brief Holder for the State and Sri Nagesh Agarwal, the learned Counsel for the Respondent Nos. 3 and 4.

2. The Petitioner has filed the present writ petition for the quashing of the order dated 02nd January, 2007 passed by Respondent No. 3 and for issuance of a writ of mandamus commanding the Respondents to give an appointment to the Petitioner on compassionate ground under the Dying-in-Harness Rules.

3. The facts leading to the filing of the writ petition is that the husband of the Petitioner was working as an Accountant in the office of Khadi Gram Udhog, Haridwar and was missing since 29.10.2005. The Petitioner lodged a complaint in the police station on 30th October, 2005. The matter was investigated and the police gave a final report dated 19.06.2007 stating therein that the husband of the Petitioner cannot be found. Since the Petitioner's husband remained missing and the family was facing critical financial condition, the Petitioner moved an application before the authority concerned praying for an appointment on compassionate ground. The Chief Executive Officer, by an order dated 02.01.2007, rejected the claim of the Petitioner on the ground that seven years had not elapsed since the Petitioner's husband was found missing and therefore,

the application of the Petitioner could not be considered. The Petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The learned Counsel for the Petitioner invited the attention of the court to a Government Order dated 20.03.1987 issued by the then State of Uttar Pradesh, wherein directions were issued to all departments of the Government with regard to missing employees. A perusal of this Government Order indicates that directions were issued to the effect that missing employees should be treated as dead and their family members should be given family pension and other post terminal / retiral benefits, including service upon fulfilling certain conditions, namely, that the family members of the missing employee would submit a complaint to the police and that the police would have to give a report to the effect that the missing employee could not be traced out despite their best efforts. Further, an indemnity bond was required to be taken from the family members for the release of the post retiral benefits, including family pension to the effect that in the event the employee is found alive and joins, the amounts so paid would be adjusted. In this regard, the Petitioner has alleged in paragraph 12 and 13 of the writ petition that some widow of the missing employees were given employment pursuant to the Government Order dated 20.03.1987. The Respondents in their counter affidavit have contended that the Dying-in-Harness Rules, 1974 does not contemplate the appointment of the dependants of missing employees. Further, the Respondents contended that the Government Order dated 20.03.1987 does not contemplate appointment on compassionate ground, but only, relates to pension and other benefits to the family members of a missing employee subject to certain conditions to be fulfilled by them. The Respondents have, however, not denied the fact that in similar circumstances, appointments were given under the Government Order dated 20.03.1987. Paragraph 12 and 13 of the writ petition has not been denied by the Respondents in paragraph 14 of the counter affidavit.

5. In the light of the aforesaid, in the case of *Ajay Kumar Shukla v. State of U.P. and Ors.* 2005 (1) U.P.L.B.E.C. 858, I had an occasion to deal with a similar question in which I hold that the provision of Rule 5 of the Dying in Harness Rules, 1974 (hereinafter referred as Rules of 1974) would also be applicable to the dependants of an employee, who is missing since long and that his heirs would be entitled to be considered for employment on compassionate grounds. The said decision is squarely applicable to the present facts and circumstances of the case. The contention of the Respondents that the Rules of 1974 are not applicable is, consequently, rejected.

6. A careful reading of the Government Order dated 20.03.1987 clearly indicates that the intention of the Government was to soften the hardship, which the family member of a missing employee faces. It is on account of this that the Government directed that if an employee is missing and the police submits a report that they are unable to trace him out inspite of best efforts, in that scenario, the dependants of the missing person would be entitled for family

pension and other post terminal benefits, which are permissible under the rules and regulations. The said Government Order also talks about service. The learned Counsel for the Respondents submitted that the word "service" is only confined to service benefits and not employment on compassionate grounds. In my view, a liberal interpretation of the said order is required to be taken coupled with the fact that the Respondents have not denied the averments made in paragraph 12 and 13 of the writ petition wherein it has been alleged that in similar circumstances, several dependents of the missing employees had been given appointments. These appointments were made pursuant to the said Government Order dated 20.03.1987. This Court is, therefore, of the opinion that the Petitioner should also be given a similar relief and should not be discriminated.

7. In the light of the aforesaid, this Court is of the opinion that the impugned order dated 02.01.2007 cannot be sustained and is quashed. The writ petition is allowed and the matter is remitted again to the Respondent No. 3, who is directed to consider and decide the application of the Petitioner for appointment on compassionate grounds in the light of the observations made above within six weeks from the date of production of the certified copy of this order. The petition is disposed of accordingly. In the circumstances of the case, there shall be no order as to cost.