

(2006) 08 UK CK 0039

Uttarakhand High Court

Case No: Writ Petition No. 551 of 2001 (SS)

Shashank Sharma

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Aug. 30, 2006

Acts Referred:

- Uttar Pradesh Recruitment of Dependents of Government Servant (Dying-In-Harness) Rules, 1974 - Rule 5

Citation: (2007) 2 UC 759

Hon'ble Judges: Rajesh Tandon, J

Bench: Single Bench

Advocate: Bipin Mohan Pingal, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Rajesh Tandon, J.

By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 26-12-2000 passed by Respondent and further a writ of mandamus directing the Respondent to consider the appointment of the Petitioner on class III post.

2. Briefly stated the mother of the Petitioner late Smt. Kiran Bala was working as . Assistant Teacher in Basic School Bahadurpur, Khadar, Laxar, Haridwar, who died in harness on 23-6-98. The Petitioner made an application on 12-11-1998 before the Respondents for his appointment on compassionate ground on a class III post. On 28-5-99 Respondent passed the order appointing the Petitioner on the post of peon though the Petitioner having passed Intermediate and was entitled to be appointed on class III post.

3. On 16-9-2000 the Petitioner submitted the representation before the Respondent No. 2 for appointing him on the class III post but no action has been taken on the representation of the Petitioner.
4. The Petitioner has submitted that at the time of his appointment on class IV post, there were three posts of class III lying in the Respondent department and vide order dated 15-12-1999, Respondent No. 3 Km. Alka Rani and Respondent No. 4 Manoj Kumar were appointed on the posts of Assistant Clerk by the Respondents under U.P. Recruitment Dependents of Govt. Servants Dying in Harness Rules. The Petitioner has also submitted that one Sri Bramha Singh was also given appointment on the post of Clerk.
5. According to the Petitioner there are still some vacant posts in Class III in the department and he may be given appointment against one of these posts.
6. No Counter affidavit, has been filed on behalf of the Respondents although opportunities were given to them.
7. Rule 5 of the UP. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974, provides the entitlement of the Petitioner to get the employment. Rule 5 of the said Rules is quoted below:
5. Recruitment of a member of the family of the deceased-(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-
- (i) fulfils the educational qualifications prescribed for the post.
- (ii) is otherwise qualified for Government service, and
- (iii) makes the application for employment within five years from the date of the death of the Government servant.
- Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

8. Under the provisions of Rule 5, the dependant of a deceased employee is entitled for the appointment on a post according to his qualification. It is not the sweet will of the appointing authority to give appointment either on class III post or class IV.

9. The counsel for the Petitioner relied upon the observation made by a Division Bench of Allahabad High Court in a similar case in 1994 (24) A.L.R. 11 Rajesh Kumar Morya v. District Judge, Varanasi and Ors. (II C.) and has observed as under:

24870 1991 (29) 8 (92) :

In the instant case, when the Petitioner is entitled to be appointed and possessed requisite qualification for a class III post, there is no plausible justification to keep his appointment pending on the ground that post in class III is vacant. If no suitable post is there, it has to be created to adjust the Petitioner.

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In view of principle of law enumerated above, the Respondent was not justified in appointing the Petitioner in class IV post, whenever he possesses requisite qualification for class III post.

10. Counsel for the Petitioner has submitted that the Respondents have acted arbitrarily and discriminately by appointing the Petitioner on class IV post while at that time there were two posts of Assistant Clerks were vacant in the Respondent department at Haridwar. The Petitioner filed supplementary affidavit and submitted information in this regard obtained by him from the Additional District Education Officer (Basic), Haridwar, under Right to Information Act. This letter also shows that Sri Brahmpal, Ms. Alaka Rani and Sri Manoj Kumar who were appointed as Assistant Clerk having educational qualification as Intermediate.

11. The extract of the letter dated April 19, 2006 is quoted below:

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05 / 2425 / 2005 06 29, 2006 05 / 512 / 2005 06 18, 2006

1. 28, 1999 *****

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1.	??	7	6	1
2.	??	5	4	1

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12. In view of above, the Respondents are directed to consider the Petitioner in class ill post, within one month after obtaining certified copy of this order. However, the order passed on 26-12-2000 shall be subject to the final order passed by the authority concerned.

13. Accordingly, the writ petition is disposed of. No order as to costs.