

Sunil Kumar Vs State of Uttarakhand & others

Court: Uttarakhand High Court

Date of Decision: Oct. 4, 2018

Acts Referred: Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 & Rule 2, 2(c)

Constitution of India, 1950 & Article 14, 16

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: R. P. Nautiyal, Prashant Khanna, V. D. Bisen

Final Decision: Dismissed

Judgement

Alok Singh, J.

1) By means of present writ petition, petitioner seeks following prayers, among others:

1) Issue a writ, order or direction in the nature of certiorari calling the record and quashing the order dated 12.10.2012 (Annexure-7 to the

petition) passed by competent respondent authority.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to give appointment to the petitioner in the

department on compassionate ground.

2) Brief facts of the case are that petitioner's father Sri Mathura Lal was working on Class IV post in the Revenue Department, Rudraprayag.

He died in harness on 24.12.2010. After the death of deceased employee, petitioner while claiming to be an adopted son of the deceased, made a

representation to the District Magistrate, Rudraprayag for compassionate appointment. The said representation of the petitioner was rejected by the

respondent authority, vide impugned order dated 12.10.2012.

3) In the instant petition, the petitioner has questioned the validity of the impugned order whereby the compassionate appointment to the petitioner has

been refused on the ground that the compassionate appointment cannot be given to an adopted son of the deceased employee.

4) Learned senior counsel for the petitioners submits that the deceased in his life time and his wife had adopted the petitioner in November, 2009 and

the petitioner, being an adopted son of the deceased, made a representation for granting him compassionate appointment. It was further submitted by

learned senior counsel for the petitioner that the representation of the petitioner for compassionate appointment was rejected on the ground that the

Adopted son is not covered within the definition of family under the U.P. Recruitment of Dependents of Government Servants Dying

in Harness Rules, 1974 (hereinafter referred to as the Rules, 1974). Learned senior counsel for the petitioner vehemently argued that the distinction

between adopted son and natural son cannot be drawn by taking shelter of definition of family under the Rules, 1974 and, as

such, the petitioner cannot be deprived of granting compassionate appointment. Rule 2 is the definition clauses and defines the Government Servant,

deceased government servant and the family. Rule 2(C) defines the term family, which reads as under :

"family" shall include the following relations of the deceased Government servant:

(1) wife or husband;

(2) son;

(3) unmarried daughter and widow daughters;

(4) unmarried brother, unmarried sister and widow mother who are dependent upon deceased Government servant, if he was unmarried.

5) Learned Brief Holder for the State refuted the contentions and supported the impugned order of the respondent authority.

6) After considering rival submissions of learned counsel for the parties, this Court is of the opinion that there is substance in the arguments made by

learned Brief Holder for the State, in as much as, under the provisions of the Rules, 1974, the adopted son does not come within the ambit of

family of the deceased employee and, as such, the claim of the petitioner for compassionate appointment has rightly been rejected by the

respondent authority. Apart from this, the deceased employee died in harness on 24.12.2010 and, after his death, the adoption deed of the petitioner

was registered on 05.08.2011 as per the report of Tehsildar dated 30.05.2012 (Annexure - 6 to the petition). Meaning thereby, the adoption deed of

the petitioner was not executed in the life time of deceased employee. If the adoption deed of the petitioner would have been executed before the

death of deceased or during his life time, then, the case of the petitioner for compassionate appointment would be different.

7) There is another aspect of the matter. Hon'ble Apex Court in Bhawani Prasad Sonkar Vs. Union of India and others, 2011 (4) SCC 209, has

held as under:

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to

be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate

appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the

bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the

financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/ incapacitated employee, viz. parents, spouse, son or

daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

8) It is a settled position of law that compassionate appointment is granted to meet the sudden crisis on account of death of breadwinner while in

service. While considering the claim for compassionate appointment, financial condition of family of deceased employee must be taken into

consideration. The object to grant compassionate appointment is to provide immediate help to the dependents of deceased employee, so that they may

not die in starvation.

9) It is also a settled position of law that compassionate appointment is not a Rule and cannot be sought, as a matter of right. The compassionate

appointment is a concession and exception to public appointment provided under Articles 14 and 16 of the Constitution of India, therefore, to seek a

concession of compassionate appointment, claimant must prove his financial condition and must prove that in the event of non grant of compassionate

appointment, claimant would face financial crisis and may die in starvation.

10) In view of the observations made above, the writ petition is liable to be dismissed. Consequently, the writ petition is hereby dismissed. No order as

to costs.