

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 829 OF 2017

05TH JULY, 2023

BETWEEN:

State of Uttarakhand & another Appellants.

And

Smt. Munni Upreti Respondent.

Counsel for the Appellants : Mr. Vikas Pande, learned
Standing Counsel.

Counsel for the Respondent : Mr. Sandeep Tiwari, learned
counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Delay Condonation Application (CLMA No.13264 of 2017)

Learned counsel for the respondent does not fairly oppose the application seeking condonation of 141 days delay in preferring the present special appeal. The application is, accordingly, allowed and the delay is condoned.

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2. The present appeal is directed against the order dated 24.04.2017, passed by the learned Single Judge in Writ Petition (S/S) No.246 of 2009.

3. The impugned order is short and reads as follows:-

"Mr. Anil Dabral, Advocate for the petitioner.

Mr. Vikas Pande, Brief Holder for the State.

Learned counsel for the petitioner submits that present lis is squarely covered by the judgment rendered by this Court in WPSB No.882 of 2002 on 08.12.2003.

Accordingly, the writ petition is allowed in terms of the judgment cited hereinabove. Impugned Annexure No.10 dated 05.05.2006 is quashed and set-aside. Respondents are directed to consider offering appointment to the petitioner under dying-in-harness rules in view of the judgment cited hereinabove, within a period of ten weeks from today."

4. The submission of Mr. Pande, learned counsel for the appellants is that the case of the respondent, firstly, was not covered by the judgment of this Court in Writ Petition (S/B) No.882 of 2002, dated 08.12.2003, inasmuch, as the husband of the respondent Late Yogesh Prasad Upreti was a Seasonal Collection Amin, and was not in regular employment of the State. Her case could not be equated with the case of Smt. Manisha Chand (petitioner in WPSB No.882 of 2002) for the reason that, in that case the Court noted that the petitioner's husband, who had been appointed in the year 1988, had become eligible to be regularized as a regular Collection Amin in the year 1992 in view of Rule 5 of the U.P. Collection Amin Service Rules, and the High Court had passed an order allowing the husband of the petitioner to work regularly. However, in the present case, the husband of the respondent was never regularized, or directed to be regularized.

5. We find merit in this submission of Mr. Pande. That apart, even otherwise, in our view, the petition preferred by the respondent- widow could not have been allowed, for the reason that her husband had died in-harness while serving as

a Seasonal Collection Amin in the year 1995. The application moved by the respondent for compassionate appointment had been rejected on 20.08.1997. The petition had been preferred only in the year 2009 against the further rejection in the year 2006.

6. Compassionate appointments are granted to provide immediate succor to the bereaved family, who has lost the earning member of the family, who is in government service. It is well settled that compassionate appointment is not the source of recruitment. No right of succession, in respect of the employment of the father/ husband, vests either in the children, or in the widow.

7. Since the demise of the respondent- husband had taken place in 1995, the writ petition preferred in the year 2009 was highly belated, and could not have been entertained on that short ground.

8. We, accordingly, allow the present appeal, and set-aside the impugned order.

9. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 05th July, 2023

NISHANT