

Court No. - 33

Case :- WRIT - A No. - 16846 of 2023

Petitioner :- Sonam

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ajeet Kumar Srivastava

Counsel for Respondent :- C.S.C., Satya Prakash Mishra, Shyam Mani Shukla

Hon'ble J.J. Munir, J.

A counter affidavit has been filed on behalf of respondent no. 4 by Mr. Satya Prakash Mishra, Advocate appearing on behalf of the said respondent. It is taken on record. Let it be numbered by the office.

A personal affidavit on behalf of respondent no. 3 has been filed by Mr. Shyam Mani Shukla, Advocate.

Parties have exchanged affidavits.

Admit.

Heard forthwith.

This writ petition has been moved on behalf of the petitioner, Smt. Sonam, wife of the late Narendra, claiming compassionate appointment. The case of the petitioner is that the late Narendra, her husband, was a *Safai Karmchari* in the employ of the Nagar Nigam, Bareilly. He died in harness on 01.01.2023, leaving behind him, the petitioner and two minor children, a son Pratham aged about ten years and a daughter Harshita, aged about six years. It is the petitioner's case that she is a poor and uneducated woman with no means of sustenance. The deceased's children are school going. In consequence of Narendra's demise, the family have plunged into an economic crisis and the children are being deprived of

education, besides basic needs. She has moved an application, seeking compassionate appointment on 02.06.2023, where no decision has been taken by the respondents.

Heard Mr. Ajeet Kumar Srivastava, learned Counsel for the petitioner, Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of respondent nos. 1 and 2, Mr. Shyam Mani Shukla, learned Counsel appearing on behalf of respondent no. 3 and Mr. Satya Prakash Mishra, learned Counsel for respondent no. 4.

Mr. Satya Prakash Mishra, learned Counsel for respondent no. 4 says that he is a son of the deceased employee, born of his first wife, Soni and represents the interest of the family of the deceased and his first wife. The case of the petitioner is that she married the deceased after his first wife passed away and has minor children to take care of. Concededly, the right to compassionate appointment in the respondents' establishment is governed by the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, "the Rules of 1974"). Rule 7 of the Rules of 1974 provides:

7. Procedure when more than one member of the family seeks employment. - If more than one member of the family of the deceased Government servant seeks employment under these rules, the Head of Office shall decide about the suitability of the person for giving employment. The decision will be taken keeping in view also the overall interest of the welfare of the entire family, particularly the widow and the minor members thereof.

In this case, there is apparently a claim by more than one member of the family seeking compassionate appointment. Therefore, it is the Head of Office, under Rule 7 of the Rules of 1974, who has to determine the suitability amongst the various claimants for compassionate appointment. This Court may say that while

judging the relative suitability, the Head of Office has to bear in mind, particularly, the interest of the widow and minor members of the family. This is a mandate that guides the discretion of the Head of Office, while deciding a claim between members of the deceased's family, where there are more than one members claiming compassionate appointment. This Court is of opinion that the respondents will also bear in mind that if one of the persons, claiming compassionate appointment, is not found suitable for some valid reason, the other eligible person shall be considered about his/her suitability. The Head of Office in this case, according to Mr. Mishra, who will exercise jurisdiction under Rule 7 of the Rules of 1974, is the Nagar Aayukt, Nagar Nigam, Bareilly. In the circumstances, it is he, who has to take the necessary decision.

In the result, this petition succeeds and is **allowed**. A *madamus* is issued to the Nagar Aayukt, Nagar Nigam, Bareilly to decide the claims for compassionate appointment put forward by the petitioner and respondent no. 4, in accordance with law, within a period of one month of the date of receipt of a copy of this order. There shall be no order as to costs.

Let the service book relating to the deceased, produced before the Court, be returned to Mr. Shyam Mani Shukla for its onward transmission to the Nagar Nigam, Bareilly.

Let this order be communicated to the Nagar Aayukt, Nagar Nigam, Bareilly by the Registrar (Compliance) **within 48 hours**.

Order Date :- 13.12.2023
Deepak