

Court No. - 20

Case :- WRIT - A No. - 4493 of 2023

Petitioner :- Neelam Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Pwd U.P. Civil
Secrett. Lko. And 3 Others

Counsel for Petitioner :- Savita Jain

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 7492 of 2023

Petitioner :- Rajnikant

Respondent :- State Of U.P. Thru. Prin. Secy. P.W.D. Lko. And
Another

Counsel for Petitioner :- Shyamendra Singh, Tej Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Since both the petitions involve same cause of action, they are being disposed of by means of a common judgment.
3. Writ-A No. 4493 of 2023 has been filed by widowed daughter-in-law of the deceased challenging order dated 22.05.2023 whereby her claim for compassionate appointment under the U.P. Government Servants dying-in-harness Rules, 1974 has been rejected.
4. Writ-A No. 7492 of 2023 has been filed by the unmarried son of deceased for a direction to opposite parties to appoint him on compassionate basis under the aforesaid Rules of 1974.
5. Learned counsel appearing for widowed daughter-in-law submits that her husband late Rajneesh Kumar pre-deceased her father-in-law late Ram Chandra and thereafter petitioner was fully dependent upon her father-in-law. It is submitted that petitioner also has two minor children aged 7 and 4 years and in terms of amendments incorporated in the year 2001 vide

notification dated 12.11.2021 in the Rules of 1974, widowed daughters-in-law are now also included under the definition of 'family' as per Rule 2 (c) of the Rules of 1974.

6. It is submitted that petitioner being the widowed daughter-in-law of deceased and being covered under the definition of family under the aforesaid Rules is facing greater hardship than the son of deceased since she also has to take care of her two minor children. It is submitted that while passing the impugned order, opposite parties have not at all complied with Rule 7 of the Rules of 1974 and petitioner's application for compassionate appointment has been rejected only on the ground that the son would have primacy over the widowed daughter-in-law as also on the ground that the widow and daughter of deceased had given a no objection certificate in favour of the son.

7. Learned counsel for appearing on behalf of son of deceased in Writ-A No. 7492, on the other hand submits that the son is required to be granted primacy in consideration for compassionate appointment since he is indicated under Rule 2 (c) (ii) whereas the widowed daughters-in-law are covered under Rule (iii) of the aforesaid Rule. It is submitted that petitioner also does not have any other means to sustain himself and was fully dependent upon his father and therefore he is required to be granted primacy for compassionate appointment as has been correctly indicated in the order impugned in Writ-A No. 4493 of 2023.

8. Learned State Counsel appearing on behalf of opposite parties as on the other hand submitted that in case there are more than one claimants for compassionate appointment, the provision under Rule 7 of the Rules of 1974 is required to be followed as has been done in the present case and particularly in view of the fact that no objection certificates were granted in favour of the son of deceased by the mother and sister.

9. Upon consideration submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that the claim of widowed daughter-in-law has been rejected on the twin grounds that a son is required to be given primacy for compassionate appointment in view of his being covered under Rule 2 (c) (ii) whereas widowed daughter-in-laws are covered under Clause (iii) as also the fact that no objection certificates have been issued in favour of the son by his mother and sister.

10. It is admitted between the parties that as yet no compassionate appointment has been provided to the son either till date.

11. Considering the aforesaid facts, it is evident that in case there has more than one member of the family of deceased claiming compassionate appointment, the procedure as indicated in Rule 7 of the Rules of 1974 is required to be followed whereby decision has to be taken keeping in view the overall interest of the welfare of entire family, particularly the widow and minor members thereof.

12. In the present case, the impugned order does not at all advert to greater financial distress being faced by either of the claimants. There is no subjective satisfaction recorded by the authority concerned regarding overall interest of family which would be served better by compassionate appointment to one or the other member of the family. The order also does not advert to any income being derived by either of the parties or properties being held by them.

13. The aspects which are required to be considered for compassionate appointment have already been indicated by Supreme Court in the case of **General Manager (D & PB) and others versus Kunti Tiwari and another reported in (2004) 7 Supreme Court Cases 271**. The aforesaid judgment in turned places reliance on another judgment of Supreme Court in the case of **Umesh Kumar Nagpal versus State of Haryana (1994) 4 SCC 138**. The aspects indicated therein are as follows:-

"(a) Family pension.

(b) Gratuity amount received.

(c) Employee's/employer's contribution to provident fund.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc."

14. Although, the said factors have been considered in the light of circulars of banks but in the considered opinion of this Court would also have relevance with regard to compassionate appointment of dependents of Government servants as well.

15. So far as question of primacy of one claimant vis-a-vis the other is concerned, a perusal of Rule 2 of the Rules of 1974 will

make it evident that it merely indicates the definition of family pertaining to the deceased and does not indicate any primacy required to be accorded to one member of family with regard to claim of another, which in fact is required to be adverted to only in accordance with Rule 7 of the Rules of 1994. Therefore, this Court does not find any justification in the impugned order for recording a finding that the son of deceased would have primacy over the claims of the widowed daughter-in-law. Such a finding would run contrary to Rule 7 of the Rules of 1994.

16. The other aspect as recorded in the impugned order pertaining to grant of no objection by other family members in favour of one particular family member also does not find any sustenance from any provision of the Rules of 1974. Such a procedure adopted by the impugned order also contrary to Rule 7 of the Rules of 1994 whereunder the overall interest and welfare of the family, particularly the widow and minors of the family are required to have a predominating interest and not a no objection certificate by other members of family in favour of a single member of the family.

17. In view of aforesaid discussion, the impugned order clearly has been passed against the provisions of Rule 7 of the Rules of 1994 as is therefore vitiated. Accordingly, the order dated 22.05.2023 in Writ-A No. 4493 of 2023 is quashed by issuance of a writ in the nature of certiorari. A further writ in the nature of mandamus is issued directing the opposite party no. 2 i.e. Engineer-in-Chief (Project/Planning), Public Works Department, Lucknow to re-consider the matter and pass fresh orders pertaining to claims of Smt. Neelam Devi and Sri Rajnikant strictly in accordance with Rule 7 of the Rule 1994 and in the light of judgments referred to hereinabove particularly adverting to which of the two would face greater financial hardship and grant of compassionate appointment to which of the two would serve the greater interest of the family and the minors.

18. Such a decision shall be taken by opposite party no. 2 within a period of eight weeks from the date a certified copy of this order is produced before him.

19. Resultantly, the Writ-A No. 4493 of 2023 is **allowed** and Writ-A No. 7492 of 2023 is **disposed of**.

Order Date :- 30.10.2023

Satish