

Court No. - 8

Case :- WRIT - A No. - 7461 of 2019

Petitioner :- Ashish Kumar Shukla

Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health
Lucknow And Ors.

Counsel for Petitioner :- S.K. Tripathi

Counsel for Respondent :- C.S.C.,Arun Kumar Gupta,Saloni Jaiswal

Hon'ble Dinesh Kumar Singh,J.

1. Heard Shri S.K. Tripathi, learned counsel for the petitioner and Shri Prafulla Kumar Yadav, learned Standing Counsel appearing for the State-respondents No.1 to 4.

2. No one has put in appearance on behalf of respondent Nos.5 to 7, however, a counter affidavit has been filed on their behalf.

3. The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"(i) To issue a writ, order or direction in the nature of mandamus commanding respondent No.1 to 4 to consider and appoint the petitioner under the U.P.Employment of Dependents of Government Servants (Dying in Harness Rules, 1974), due to death of his mother Smt. Saroj Kumari Shukla during her service tenure, according to his qualification.

(ii)...

(iii)..."

4. The petitioner is son of Late Saroj Kumari Shukla, who was initially married to Shri Gopi Shyam Shukla. It is said the during the lifetime of Shri Gopi Shyam Shukla, the mother of the petitioner got remarried to Shri Rama Kant Shukla-respondent No.5 and she gave birth to respondent No. 6 and 7.

5. The late mother of the petitioner was working as Basic Health Worker (Women), Department of Medical Health and she died in harness on 04.10.2017.

6. It appears that the petitioner as well as respondent No.6 and 7 stake their claim for their employment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "Dying in Harness Rules, 1974").

7. Shri S.K. Tripathi, learned Counsel for the petitioner submits that

respondent No.6 and 7 were not legitimate children of late mother of the petitioner inasmuch as the mother of the petitioner had not given divorce to the father of the petitioner and during the lifetime of the father of the petitioner she had married to respondent No.5-Rama Kant Shukla and gave birth to respondent No.6 and 7. He therefore, submits that when the petitioner is the child from the first husband, who was alive, he has right to be appointed on compassionate ground under the Dying in Harness Rules, 1974 in preference to the illegitimate children of late mother of the petitioner.

8. Shri Prafulla Kumar Yadav, learned Standing Counsel for the State-respondents does not dispute this legal position.

9. In view thereof, the present petition is **allowed**. The respondent Nos. 1 to 4 are directed to process the application of the petitioner for giving him appointment under the Dying in Harness Rules, 1974 in accordance with law within a period of two months from today.

(Dinesh Kumar Singh, J.)

Order Date :- 25.5.2023

Piyush/-