



2024:UHC:9973

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL

December 27, 2024

Writ Petition (S/ S) No. 2414 of 2024

Khushbu

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Counsel for the Petitioner:

Ms. Gurbani Singh and Ms. Sukhwani Singh, learned counsel.

Counsel for the respondents:

Mr. Jayvardhan Kandpal, Brief Holder.

Counsel for the respondents:

Mr. Kishore Rai, learned counsel holding brief of Mr. Parikshit Saini, learned counsel for respondent nos.4 and 5.

Upon hearing the learned Counsel, the Court made the following Order:

1. Petitioner is a married daughter of the deceased employee, the father of the petitioner, who died in harness, who is aggrieved by rejecting her claim for compassionate appointment.

2. Petitioner being dependent and married daughter of deceased employee submitted representation seeking compassionate appointment, however claim of the petitioner has been rejected on the ground that as per the Government Order dated 21.11.1995 married daughters are not included as a member of the family of deceased employee.

3. Learned counsel for the petitioner submits that the reasons, as given in the order impugned, rejecting the claim of the petitioner for compassionate appointment, cannot sustain in view of the judgment passed by the Full Bench of this Court in Special Appeal No.187 of 2017 Udham Singh Nagar District Co-operative Bank Ltd. and Another vs. Anjula Singh and Others decided



on 25.03.2019. The issue came up before the Full Bench of this Court, in view of the reference made by the Division Bench of this Court by the order dated 05.02.2018 passed in Special Appeal No.187 of 2017 and the following questions were framed to be answered by the Full Bench:-

“(i) Whether any of the members, referred to in the definition of a “family” in Rule 2(c) of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short “the 1974 Rules”) and in the note below Regulation 104 of the U.R. Co-operative Committee Employees Service Regulations, 1975 (for short “the 1975 Regulations”) would be entitled for compassionate appointment even if they were not dependent on the Government servant at the time of his death?

(ii) Whether non-inclusion of a “married daughter” in the definition of “family”, under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India?”

4. These questions have been answered in para 64 of the Full Bench judgment, which are being extracted hereunder:-

“i. Question No.1 should be answered in the affirmative. It is only a dependant member of the family, of the Government servant who died in harness, who is entitled to be considered for appointment, on compassionate grounds, both under the 1974 Rules and the 1975 Regulations.

ii. Question No.2 should also be answered in the affirmative. Non-inclusion of “a married daughter” in the definition of a “family”, under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Article 14, 15 and 16 in Part III of the Constitution of India.

iii. We, however, read down the definition of “family”, in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a “married daughter” shall also be held to fall within the inclusive



definition of the “family” of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations.”

5. Learned counsel for the petitioner submits that since by virtue of the judgment rendered by the Full Bench of this Court, the married daughters are also included as member of the deceased and dependent-employee, therefore, she is entitled to get appointment on compassionate ground.

6. Mr. Jayvardhan Kandpal, learned Brief Holder submits that U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short the 1974 Rules) are not applicable to the aided institutions and since the respondents’ institution is an aided institution, therefore, the procedure, as laid down in the Government Order dated 21.11.1995, annexure 9 to the writ petition, which was adopted on 10.07.2021, are applicable.

7. Mr. Jayvardhan Kandpal submits that in view of Clause 2 of this Government Order since petitioner being a married daughter, is not included as member of the deceased family, therefore, she is not entitled to get compassionate appointment.

8. Be that as it may. If we go through with the provision of the 1974 Rules, particularly the definition of the family the same is almost identical to Clause 2 of the Government Order dated 21.11.1995, which was adopted by the State in the year 2021. Since questions,



as framed by the Division Bench of this Court in its order dated 05.02.2018 passed in Special Appeal No.187 of 2017, have been answered by the Full Bench of this Court in affirmative that the married daughters are included as a member of the deceased family, therefore, the argument, as advanced by Mr. Jayvardhan Kandpal are not acceptable.

9. Mr. Jayvardhan Kandpal also fairly submits that in Clause 2 of the Government Order dated 21.11.1995, the definition of family are identical to the definition of family as defined in 1974 Rules and have also not disputed this fact that married daughters are included as a member of the deceased family, have also been answered by the Full Bench of this Court in affirmative.

10. Mr. Kishore Rai, learned counsel holding brief of Mr. Parikshit Saini, learned counsel for respondent nos.4 & 5 also submits that petitioner being a married daughter is the member of the deceased family in view of the judgment of the Full Bench of this Court, therefore, her claim was wrongly rejected.

11. After hearing the submissions as advanced by learned counsel for the parties further after gone through with the judgment rendered by the Full Bench of this Court dated 25.03.2019 in Special Appeal No.187 of 2017, and also after examining Clause 2 of the Government Order dated 21.11.1995 and the definition of family, as defined under Section 2(c) of the 1974 Rules, this Court is of the view that the petitioner being a married daughter of the deceased employee is



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the member of the deceased family, therefore, the rejection of her claim for compassionate appointment cannot sustain.

12. Accordingly, the writ petition is allowed. The impugned orders are quashed. The respondents are directed to consider the claim of the petitioner for compassionate appointment afresh in the light of the judgment rendered by the Full Bench of this Court in Special Appeal No.187 of 2017 decided on 25.03.2019, by a speaking and reasoned order, preferably within a period of two months from the date of production of certified copy of this order.

RAKESH THAPLIYAL, J.

Arti

ARTI SINGH