

A.F.R.**Court No. - 34****Case :-** WRIT - A No. - 4174 of 2022**Petitioner :-** Km. Mohini**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Prakhar Tandon**Counsel for Respondent :-** C.S.C.,Shravan Kumar Pandey,Shyam Narain Pandey**Hon'ble Neeraj Tiwari,J.**

Heard learned counsel for the petitioner, learned standing counsel for respondent no. 1, Sri Yashwant Singh, learned counsel for respondent nos. 2 and 3 and Sri S.N. Pandey, learned counsel for respondent no. 4.

Present petition has been filed with following prayers;

“(i). Issue a writ, order or direction in the nature of mandamus directing the respondents to decide the representation dated 01.12.2021 for compassionate appointment of the petitioner within a month.

“(ii). Issue a writ, order or direction in the nature of mandamus directing the respondents to grant compassionate appointment to the petitioner.”

Learned counsel for the petitioner submitted that father of petitioner was working on the post of “Safai Karmchari Ward 99/107” at Nagar Nigam, Kanpur and during the course of service, he died. After his death, brother of petitioner (son of deceased- employee) has been granted appointment on compassionate ground under the provisions of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as “Rules, 1974”) as “Safai Karmchari” to cater the need of all family members dependent upon deceased- employee including petitioner- sister. Unfortunately, in a road accident, brother of petitioner also died on 16.10.2021. After his death, her mother has given consent for appointment of petitioner on compassionate ground. Petitioner has filed representation dated 01.12.2021 before respondent no. 2 for appointment, which is pending for decision, therefore, a direction may be issued to respondent no. 2 to decide the same and appoint the petitioner on compassionate ground under the provisions of Rules, 1974 amended vide The Uttar Pradesh Recruitment of Dependents of Government Servants Dying In

Harness (Twelfth Amendment) Rules, 2021 (hereinafter referred to as “Rules, 2021).

Learned counsels for the respondents objected the submissions raised by learned counsel for the petitioner and submitted that as per Rules, 1974 readwith amended Rules 2021, definition of family is given in order of hierarchy. After death of deceased- employee, first right goes to husband or wife, second right goes to sons/ adopted sons, third right goes to daughters (including adopted daughters) and widowed daughter-in-law and fourth right goes to unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried. He next submitted that in the present case, there is no dispute that deceased- employee was married and his wife has also raised a claim for appointment on compassionate ground after death of her husband. Therefore, as per Rules, 1974 readwith amended Rules 2021, petitioner has no right of appointment after death of deceased- employee and respondent no. 4 is only having right to be appointed on the compassionate ground after death of her husband.

Learned counsel for the petitioner could not dispute the aforesaid facts and only submitted that earlier appointment was given to her brother to cater the need of all family members dependant upon her father, therefore, petitioner is also entitled to get appointment after death of her brother.

I have considered the rival submissions raised by learned counsel for the parties as well as perused the record and Rules, 1974 readwith amended Rules 2021. Language of Rules is very much clear, which provides that first right of appointment on compassionate ground goes to husband or wife as the case may be in case of death of Government employee. For ready reference, Rules, 1974 is being quoted hereinbelow;

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no. 6/XII-1973-Personnel-2-2021T.C.-IV, dated November 12, 2021:

**GOVERNMENT OF UTTAR PRADESH
PERSONNEL SECTION-2**

NOTIFICATION

Miscellaneous

No. 6/XII-1973-Personnel-2-2021T.C.-IV

Dated Lucknow, 12 November, 2021

IN exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974:

THE UTTAR PRADESH RECRUITMENT OF DEPENDANTS OF GOVERNMENT SERVANTS DYING IN HARNESS (TWELFTH AMENDMENT) RULES, 2021

- Short title and commencement** 1. (1) These rules may be called **The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Twelfth Amendment) Rules, 2019.**
- (2) They shall come into force at once.
- Amendment of rule-2** 2. In the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, in rule 2, for existing clause (c) set out in column-1 below, the clause as set out in column-2 shall be substituted, namely:-

COLUMN-1

Existing clause

(c) "family" shall include the following relations of the deceased Government servant:-

COLUMN-2

Clause as hereby substituted

(c) "family" shall include the following relations of the deceased Government servant:-

(i) wife or husband;

(ii) sons/ adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughters-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court.

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

(i) wife or husband;

(ii) sons/ adopted sons;

(iii) daughters (including adopted daughters) and widowed daughters-in-law,

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court.

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

By order,

(Dr. Devesh Chaturvedi)
Additional Chief Secretary.

In the present case, there is no dispute of fact that deceased- employee was married and his wife is alive and also claiming appointment on compassionate ground. Therefore, under the Rules, she is only entitled for appointment and no relief can be granted to petitioner- sister, which is at Serial No. 4 in order of hierarchy given in Rules, 1974 readwith amended Rules 2021, in case deceased Government employee is unmarried. Therefore, petition is having no force and liable to be dismissed.

So far as claim of petitioner about her maintenance is concerned, it is open for her to seek appropriate remedy against respondent no. 4, if any Rule provides for the same.

Accordingly, writ petition is **dismissed** with aforesaid observations. No order as to costs.

Order Date :- 16.8.2022
Arvind