

A.F.R.

Court No. - 6**Case :-** WRIT - A No. - 556 of 2022**Petitioner :-** Smt. Kavita Tiwari**Respondent :-** State Of U.P Thru. Prin. Secy. Deptt. Of Irrigation And Water Resources Govt. Of U.P.Lko And Others**Counsel for Petitioner :-** Tushar Verma, Prashant Kumar Singh**Counsel for Respondent :-** C.S.C.**Hon'ble Abdul Moin, J.**

1. Heard learned counsel for the petitioner as well as learned Standing counsel for the respondents.
2. The instant petition has been filed challenging the order dated 25.10.2021 passed by the respondent No.3, a copy of which is annexure 1 to the petition, whereby the claim of the petitioner for compassionate appointment has been rejected. Further prayer is for a mandamus commanding the respondents to grant compassionate appointment to the petitioner under the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974.
3. Bereft of unnecessary details, the case set forth by the learned counsel for the petitioner is that the petitioner's father namely Shri Om Prakash Tiwari, while working on the post of Driver in the office of Executive Engineer, Sinchai Khand, Lucknow, died in harness on 18.05.2019 leaving behind his widow namely Smt. Uma Tiwari, a married son namely Rahul Tiwari and two married daughters namely the petitioner and Smt. Pratibha Tiwari.
4. The petitioner staked her claim for compassionate appointment under the provisions of U.P. Recruitment of

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Dependants of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as Rules, 1974). The claim of the petitioner was rejected vide orders dated 15.02.2020 and 11.03.2020 on the ground that she being a married daughter is not entitled for being appointed on compassionate grounds under the provisions of the Rules, 1974.

5. A challenge was raised to both the orders by filing **Writ Petition No.12052(S/S) of 2020 in Re: Smt. Kavita Tiwari Vs. State of U.P. and Others** and writ Court, vide order dated 30.07.2020, a copy of which is annexure 7 to the petition, set aside both the orders and required the competent authority to reconsider the claim of the petitioner afresh. The said judgment was passed considering the judgment of this Court passed in Writ A No.60881 of 2015 decided on 04.12.2015 and the Special Leave to Appeal against which had also been dismissed.

6. Incidentally, **Writ A No.60881 of 2015 in Re: Smt. Vimla Srivastava Vs. State of U.P. and Another**, a copy of the judgment which has been annexed as annexure No.8 to the petition, pertains to a judgment of this Court whereby this Court had also held a married daughter to be entitled for compassionate appointment and the State was required to consider the case of a married daughter and to not reject the same solely on the ground of her marital status.

7. In pursuance thereof, the petitioner again staked her claim for being appointed on compassionate grounds, which has been rejected vide order impugned dated 25.10.2021, a copy of which is annexure 1 to the petition.

8. Learned counsel for the petitioner states that a perusal of the order impugned would indicate that the respondents have rejected the claim of the petitioner for compassionate

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appointment primarily on three grounds namely (a) that as per the judgment of Division Bench of this Court passed in **Special Appeal No.223 of 2021 in Re: State of U.P. and Another Vs. Madhavi Mishra and 2 Others**, a married daughter is not entitled for compassionate appointment and would be said to be dependent on her husband (b) two brothers of the petitioner are working on the post of Lekpal and (c) the mother of the petitioner is receiving pension every month and has also received the GPF amount.

9. Learned counsel for the petitioner further states that in the counter affidavit filed by the respondents, another ground has been taken in paragraph 7 of the counter affidavit that the petitioner was not dependent on her father.

10. The contention of learned counsel for the petitioner is that so far as the judgment is concerned, over which reliance has been placed by the respondents while rejecting the claim of the petitioner i.e. in the case of **Madhavi Mishra (supra)**, the same does not pertain to the Rules, 1974 and as such, has no applicability to the facts of the present case, more particularly, when the petitioner has staked her claim for compassionate appointment under the provisions of the Rules, 1974 which in fact have been considered by the Division Bench of this Court in the case of **Smt. Vimla Srivastava (supra)**.

11. So far as the allegation of two brothers of the petitioner being in employment are concerned, reliance has been placed on the provisions of Rules, 1974 to contend that there is no such bar in the Rules which prohibits the petitioner from being appointed on compassionate ground in case any of her brothers are in employment. He further states that this aspect of the matter has been considered by this Court in **Writ A No.16068 of 2023 in Re: Kumari Nisha Vs. State of U.P. and 3 Others**

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decided on 08.02.2024.

12. So far as the ground of the petitioner's mother having received pension and other dues is concerned, it is contended that mere grant of pensionary benefits to a person would not disentitle either that person or the family member of the deceased from staking their claim for compassionate appointment. Reliance has also been placed over the judgment of this Court in the case of **Pramod Kumar Rajak Vs. Registrar General High Court Allahabad, 2011 (4) U.P.L.B.E.C. 2692.**

13. So far as the ground taken in the counter affidavit of the petitioner not being dependent on the deceased employee is concerned, again reliance has been placed on the provisions of the Rules, 1974 to contend that the Rules, 1974 do not contemplate the family member to be dependent upon the deceased employee rather the definition of family, as indicated in Rule 2 (c), would now include a married daughter and the only condition for compassionate appointment, as stipulated in Rule 5, does not contemplate or stipulate a person seeking compassionate appointment to be dependent upon the deceased employee, rather he should be a family member.

14. Thus, it is contended that all the grounds taken by the respondents, while rejecting the claim of the petitioner for compassionate appointment, are legally unsustainable in the eyes of law and accordingly, the order impugned merits to be set aside with a direction to the respondents to consider the claim of the petitioner on compassionate grounds afresh.

15. On the other hand, learned Standing counsel, on the basis of averments contained in the counter affidavit, has supported the order impugned and states that on account of the grounds, as

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contained in the order impugned, the petitioner is not entitled for compassionate appointment.

16. Heard the learned counsels for the parties and perused the record.

17. From a perusal of record, it emerges that admittedly, the petitioner is a married daughter of the deceased employee, who died in harness. She staked her claim for compassionate appointment which was initially rejected by the respondents, vide orders dated 15.02.2020 and 11.03.2020, on the ground that she being a married daughter is not entitled for compassionate appointment. The writ Court, vide judgment and order dated 30.07.2020, quashed both the orders considering the judgment of this Court passed in the case **Smt. Vimla Srivastava (supra)** and required the respondents to reconsider the claim of the petitioner for compassionate appointment.

18. In pursuance thereof, the respondents have reconsidered the claim of the petitioner for compassionate appointment but have rejected her claim on the grounds as already indicated above.

19. So far as the ground taken by the respondents of the Division Bench of this Court in the case of **Madhavi Mishra (supra)** having held that a married daughter as not being dependent and hence not entitled for compassionate appointment, is concerned, a perusal of the judgment in the case of **Madhavi Mishra (supra)** would indicate that the Division Bench of this Court was considering the provisions of Regulations, 1995 and not the provisions of the Rules, 1974 rather the Division Bench has gone to the extent of indicating that the order of Single Judge, whose judgment had been challenged in the Special Appeal, had wrongly invoked the provisions of the Rules, 1974.

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20. Thus, the said judgment would have no applicability in the instant case, more particularly, when the claim of the petitioner for compassionate appointment is governed by the Rules, 1974 which aspect of the matter has been considered threadbare by the Division Bench of this Court in the case of **Smt. Vimla Srivastava (supra)**, wherein the Division Bench has observed that the case of compassionate appointment of a married daughter would not be rejected solely on the ground of her marital status.

21. So far as the ground of two brothers of the petitioner working as Lekpal is concerned, the said ground may also not detain the Court as this aspect of the matter has been considered threadbare by this Court in the case of **Kumari Nisha (supra)** wherein this Court, after considering the provisions of the Rules, 1974, has held as under:

17. This Court finds that initially Rule 5(1) of the Rules of 1974 provided for compassionate appointment to one family member dependent on the deceased government servant provided he is not in government job meaning thereby that there was only one condition where the compassionate appointment could have been refused i.e. person seeking compassionate appointment was already in government job. Later on, Rule 5(1) of the Rules of 1974 has been amended in the year 1999 and amended Rule 5(1) provides that if the surviving spouse of the deceased government servant is in government job then the other family members dependent on the deceased government servant shall not be entitled for compassionate appointment.

15. This Court further finds that the legislature while amending Rule 5(1) of the Rules of 1974 was conscious of the fact that if one son of the deceased government servant is in government job, his earnings may not be available for survival of the remaining family members of the deceased government servant for the reason that the earnings of the son are meant for survival of his own family (his wife and children) and therefore only one prohibition has been incorporated that if the surviving spouse of the deceased government servant is in government job, the other dependent family members are not entitled for compassionate appointment."

22. Thus, from a perusal of the judgment of this Court in the case of **Kumari Nisha (supra)**, it clearly emerges that the mere fact that any brother of a person seeking compassionate appointment is in a government service the same would not be a

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bar to the family member of staking a claim for compassionate appointment under the Rules, 1974. Thus, the said ground is also rejected.

23. So far as the ground that the mother of the petitioner is receiving pension every month and had also received the other retiral dues, financial benefits have not been made a bar under the Rules, 1974 or cannot be considered to be a bar when no such condition has been stipulated in the Rules, 1974 as to entail a person seeking compassionate appointment as being not eligible for seeking compassionate appointment. This aspect of the matter has been considered threadbare by the Court in the case of **Pramod Kumar Rajak Vs. Registrar General High Court Allahabad, 2011 (4) U.P.L.B.E.C. 2692** while considering the provisions of the Rules, 1974. Thus, the said ground is also rejected.

24. So far as the ground of the petitioner not being dependent on the deceased government servant, as has been taken in the counter affidavit, is concerned, even the said ground may not detain the Court inasmuch as Rules, 1974 only defines the word Family as per Rule 2 (c) and Rule 5, which specifically governs the compassionate appointment, also does not indicate that a person seeking compassionate appointment should be a dependent of the deceased government servant. It cannot be a case that when a word is not included under the Rules, 1974, the respondents may add any word in order to deprive the consideration of the claim of the petitioner for compassionate appointment.

25. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 25.10.2021, a copy of which is annexure 1 to the petition, is **set aside**. The respondents are required to reconsider the claim of the

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petitioner for compassionate appointment keeping in view the discussion made above. Let such a decision be taken in accordance with law within a period of two months from the date of receipt of a certified copy of this order.

Order Date :- 4.4.2024

S. Shivhare