

**Court No. - 29**

**Case :-** WRIT - A No. - 5017 of 2023

**Petitioner :-** Vibha Tiwari

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Prashant Mishra, Tarun Agrawal

**Hon'ble Vivek Kumar Birla, J.**

**Hon'ble Donadi Ramesh, J.**

1. Heard Sri Prashant Mishra, learned counsel for the petitioner and perused the record.

2. Petitioner is daughter in law of the deceased employee. She filed the present petition for the following relief:

*i) Issue a writ, order or direction in the nature of mandamus declaring Rule 2 (c) (iii) of the Uttar Pradesh Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 (as amended from time to time) as unconstitutional to the extent it creates a distinction between widowed daughters-in-law and those whose spouses are alive but suffering from incapacity;*

*ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.11.2022 passed by the respondent no.3 rejecting the claim of compassionate appointment of the petitioner.*

*iii) Issue a writ, order or direction in the nature of mandamus directing the respondent no.3 to reconsider the claim of the petitioner for compassionate appointment.*

3. The mother-in-law of the petitioner Smt. Kaushalya Tiwari died in harness on 18.1.2022. At the time of her death, she was serving as class IV employee in the office of respondent no.3. Smt. Kaushalya Tiwari was survived by her son Abhay Kumar Tiwari (husband of the petitioner) and her married daughter Smt. Poonam Tiwari Pandey who is living a prosperous and happy married life in her matrimonial home. The son of Smt. Kaushalya Tiwari i.e. Abhay Kumar Tiwari, met with a severe accident on 07.5.2019 in which he suffered grave injuries resulting in locomotor disability up to 75% and after thorough medical examination, a disability certificate was issued to Abhay Kumar Tiwari was declaring him to have suffered 75% permanent disability and incapable of earning a livelihood owing to his disability.

4. During the lifetime of Smt. Kaushalya Tiwari, she has taken care of her son and the entire family post accident. It is an

admitted fact that at the time of her death, she was the sole bread earner of her family and the petitioner and her husband were also totally dependent upon her. By virtue of her sudden demise, there was no other earning member of the family as the husband of the petitioner is incapable of working. Left with no other option, the petitioner has moved an application to consider her case for compassionate appointment under The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "the Rules"). Considering the said application, the third respondent passed an order dated 23.11.2022 rejecting her claim only on the ground that 'daughter-in-law' was not included in the definition of 'family' under the Rules. Questioning the said order, the present petition has been filed.

5. Based on the above facts, after arguing for some time, learned counsel for the petitioner intended to withdraw the first prayer which reads as follows:

*i) Issue a writ, order or direction in the nature of mandamus declaring Rule 2 (c) (iii) of the Uttar Pradesh Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 (as amended from time to time) as unconstitutional to the extent it creates a distinction between widowed daughters-in-law and those whose spouses are alive but suffering from incapacity;*

6. Learned counsel for the petitioner has mainly relied on the observations made by the third respondent in the order dated 23.11.2022. In the said order, the third respondent has considered all the relevant facts and also the observations of the Full Bench judgment of this Hon'ble Court in **U.P. Power Corporation, Urban Electricity Transmission Division-II, Allahabad vs. Urmila Devi 2011 (3) ADJ 432** and also the judgement of **Smt. Sharma Devi vs. State of UP through its Additional Chief Secretary, Food and Civil Supply Lko And Ors. 2022 (3) ADJ 646** as respondents have considered in apprising manner but for the reason that daughter-in-law was not included in the definition of 'family' under Rule 2 (c) of the Rules. To support his contention and to decide the issue involved in the matter, Rule 2 (c) has been quoted which is as follows:

*"(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 daughter-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 abovementioned 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."*

7. Learned counsel has submitted that the definition of family under Rule 2 (c) includes wife or husband, sons and adopted sons, daughters (including adopted daughters) and widowed daughters-in-law, unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried and Rule 5 deals with recruitment of members of the family of the deceased. From the above said Rule, one member of the family who is not already employed under the Central Government or State Government or a Corporation owned or controlled by the Central Government or State Government, on making an application in suitable manner in the Government Service in relaxation of the normal recruitment rules, if such person fulfills the educational qualification.

8. On perusal of both the Rules, it is clarified that if there are no other earning members in the family, any member of the family is entitled to make an application to be considered under the said Rule but surprisingly, the definition of "family" under Rule 2 (c) of the Rules, all the members were included except the daughter-in-law with surviving husband. The fact of the instant case is that the husband of the petitioner is surviving with disability of more than 75%, she could not be considered as a member of the family for employment as per the abovesaid Rule.

9. The relevant paragraphs of the Full Bench judgment of this Hon'ble Court relied upon by the respondent in **Urmila Devi (supra)** are quoted below:

*"6. We may mention that, at the preliminary hearing, our attention was invited to a Division Bench judgment of this Court in the case of Basic Shiksha Adhikari, Hardoi Vs. Madhu Mishra & Ors., [2009 (27) LCD 995], where the question for consideration was whether a widowed daughter-in-law can claim appointment under the Dying in Harness Rules? The learned Bench, after considering the definition of the word family, was pleased to hold that the decisions in Smt. Urmila Devi Vs. U.P. Power Corporation & Ors., 2003 (4) AWC 3205 & Sanyogita Rai (Smt.) Vs. State of Uttar Pradesh & Ors. (2006) 2 UPLBEC 1972, are not in conformity with the well settled principles of law and they are, accordingly, overruled. In other words, the judgment in Urmila*

*Devi (supra) no longer subsists. It is, therefore, clear that the reference as such, would not be maintainable.*

*7. However, during the pendency of these proceedings, considering the peculiar features of the case, the appellants themselves, on queries raised by the Court, have taken a decision to give appointment to the respondent on producing the documents as set out in the affidavit filed on behalf of the appellants. They have also made it clear that the age bar would not come in the way while giving appointment to the respondent. In the light of that, in our opinion, really, nothing further would survive in this reference. However, liberty to the respondent, in the event appointment is not given, to apply.*

*8. We must, however, note one feature of the definition of the word 'family' as generally contained in most Rules. The definition of 'family' includes wife or husband; sons; unmarried and widowed daughters; and if the deceased was an unmarried government servant, the brother, unmarried sister and widowed mother dependant on the deceased government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of 'family'. It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to our civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by including the daughter-in-law in the definition of 'family'. Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter, is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied."*

*10. Learned counsel further contended that in the identical situation, the Full Bench has considered and held that the widowed daughter in the house of her parents is entitle for consideration for compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitle for compassionate appointment as she is not included in the definition of 'family'. It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house.*

*11. Learned counsel for the petitioner has stated that in the present case also the daughter-in-law with surviving husband having more than 75 % disability has not been considered for compassionate appointment only on the ground that she is not included in the*

definition of 'family'.

12. Though counsel for the petitioner has not pressed prayer no.1 and withdrawn the same but considering the facts and circumstances of the present case as noted and admitted by the respondent in the impugned order, this Court also considered the observations made by the Hon'ble Full Bench in the above noted judgment.

13. As per the custom of Indian Society, daughter-in-law is also supposed to be treated as a daughter as she is also an integral part of the family. The main purpose of extending the benefit of compassionate appointment to the dependents of a deceased government servant is to relieve the family from distress and destitution on account of death of sole bread earner of the family. Even in the instant case, an exceptional situation has been created as though the husband of the petitioner is alive but he is having more than 75% disability and he is unable to earn/work, which requires a liberal construction of the meaning under Section 2(c) of the Rules, 1974.

14. Considering the special circumstances of the case and disability of the husband of the petitioner, the writ petition is **allowed**. The impugned order dated 23.11.2022 passed by respondent no.3 i.e. Joint Commissioner (Karya Palak), Rajya Kar, Sambhag-A, Prayagraj is set aside.

15. The respondent no.3 is directed to reconsider the case of the petitioner for compassionate appointment as per Rule 5 of the Rules and pass appropriate order within a period of three months from the date of production of certified copy of this order.

**Order Date :- 27.2.2024**

Madhurima