

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 64/DB/2020

Rishi Ram Mishra, s/o Late Sri Radha Krishna Mishra, aged about 55 years, presently working and posted as Senior Administrative Officer in Directorate Agriculture, Uttarakhand, Nanda Ki Chowki, Premnagar, Dehradun.

....Petitioner

vs.

1. State of Uttarakhand through Secretary, Agriculture Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Agriculture, Uttarakhand, Directorate, Nanda Ki Chowki, Dehradun.
3. Agriculture and Soil Conservation Officer, Department of Agriculture, Raipur, Dehradun.

....Respondents

Present: Sri L.K.Maithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JUNE 14, 2023

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

“(a) To quash the impugned order dated 29.10.2018 (Annexure No. A-1) passed by the respondent No. 2 with its effect and operation declaring the same as null and void in the eyes of law.

(b) To declare that under the seniority Rules 1991 the petitioner is entitled to regain his seniority over the junior persons in the cadre of group-C and further issue an order or direction to the concerned respondent to determine and re-fix the seniority of the petitioner in group-C under the explanation of Rule 6 of U.P. Govt. servant seniority Rules 1991.

(c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(d) Award the cost of the petition to the petitioner.”

2. Brief facts, necessary for adjudication of present claim petition, are as follows:

2.1 Father of the petitioner was employed in the respondent department. He died in harness in 1982. The petitioner was given compassionate appointment under the Dying in Harness Rules after the death of his father. When petitioner's father passed away in 1982, petitioner passed High School, which was the essential qualification for Group 'C' posts. However, the respondent department offered appointment to the petitioner on Group 'D' post with the assurance that as and when the post of Group 'C' falls vacant, he will be adjusted on the same and the petitioner was appointed on Group 'D' post on 07.08.1982.

2.2 Although after appointment of the petitioner on Group 'D' post on 07.08.1982, various vacancies arose in Group 'C', but the petitioner was not considered for the said post. From 1982 to 1987, twelve vacancies of Junior Clerk fell vacant. Petitioner moved representations for the same, but respondent department did not pay any heed to his request.

2.3 The grievance of the petitioner is that, one Sri Kamleshwar Prasad Bacheti, who also passed High School, was appointed on Class III post on 20.09.1983 while petitioner's case was not considered for Class III appointment under the Dying in Harness Rules on 07.08.1982. Subsequently, petitioner was given promotion on Class III post, therefore, he should be given seniority above Sri Bacheti, who was given appointment on Class III post on 20.09.21983. Hence, present claim petition.

3. W.S. has been filed by the respondents. Sri Ajay Kumar Verma, Deputy Director, Agriculture, Agriculture Directorate, Uttarakhand, Dehradun has filed affidavit on behalf of respondents.

3.1 It has been mentioned in the W.S. that at the time of appointment of the petitioner on compassionate ground, he was having qualification of High School and as such he was not eligible for appointment on Class III post, for which educational qualification was Intermediate. On the request of the petitioner, he was given appointment on the category for which he was eligible. Thus, the submission of the petitioner that if the post of Class III falls vacant, he was assured to be adjusted against that post, is wrong and deserves to be rejected.

3.2 It is also the plea of the respondents that the appointment of the petitioner was made as a dependent of the deceased employee under the Dying in Harness Rules. Therefore, once the compassionate appointment was given on a Class IV post and the petitioner took over the charge of that post, there is no justification for adjusting him against the vacant Class III posts from the year 1982 to 1987. Thus representations of the petitioner were not considered, as the request made by the petitioner in those representations was unreasonable.

3.3 It has also been mentioned in the W.S. that Sri Kamleshwar Prasad Bacheti was Intermediate pass at the time of his appointment on Class IV post, which has been mentioned by him in his application, seeking appointment on compassionate ground. He has mentioned in his application to appoint the applicant on the post of Clerk, Tracer or on any Class IV post. Therefore, the respondent department appointed Sri Bacheti on a Class IV post, because no post of Class III was vacant at that time.

4. WPSS No. 3042 /2001, Rishi Ram Mishra vs. State of Uttaranchal & others was decided by Hon'ble High Court on 13.07.2004. Complete text of the judgment runs as below:

“By the present writ petition, the petitioner has prayed for the writ of mandamus directing the respondents to treat the petitioner to be promoted on class III post under Dying in Harness Rules w.e.f. the date when right to get Class III post was accrued in favour of the petitioner. A further prayer has been made in the writ petition for a writ of mandamus directing the respondents to decide the representation of the petitioner dated 17.3.2001.

Brief facts of the case according to the petitioner are that his father while in service died in the year 1982 and the petitioner was qualified to be appointed in Class III post, but at that time, the vacancy was not available in the department and on the assurance of the respondent, petitioner has taken the appointment in Class IV post.

The submission of the petitioner is that after the appointment in Class IV post, a regular vacancy of Class III post fell vacant, but the petitioner was not considered by the respondent for appointment in Class III post. Petitioner has further submitted that since the year 1982 to 1987 at least, 12 vacancies of Junior Clerk have fallen vacant, but the petitioner was not considered. Petitioner has stated in the writ petition that one Shri Kameswar Prasad Bachheti was appointed in Class IV post and after two years from the date of appointment of the petitioner, he was given Class III post under Dying in Harness Rules and as such, the action of the respondent is discriminatory.

Learned counsel for the petitioner has also referred that letter of the Soil Conservation Officer to the Deputy Director dated 1st post of Class III according to his seniority was considered and same was recommended to the Deputy Director for taking necessary action. The recommendation to the effect is quoted below:

“इस कार्यालय में भी मिश्रा की नियुक्ति के पश्चात अनुरेखक के दो पद तथा कनिष्ठ सहायक के एक पद पर नियुक्ति की गई। परन्तु श्री मिश्रा के आवेदन पत्र पर विचार न करके उनको न्याया नहीं दिया जा सका, जो कि उनको दिया जाना था क्योंकि उनके आवेदन पत्र से स्पष्ट है कि योग्यता के आधार पर पद रिक्त न होने के कारण फिलहाल मुझे चतुर्थ श्रेणी पद ही दिया जाय। अतः अनुरोध है कि श्री ऋषिराम मिश्रा की नियुक्ति के समय योग्यता एवं संशत चतुर्थ श्रेणी पद हेतु आवेदन तथा वर्तमान शैक्षिक योग्यता इण्टर मीडिएट पर विचारापरान्त में इस निष्कर्ष पर पहुँचा हूँ कि श्री मिश्रा को कनिष्ठ लिपिक के किसी भी रिक्त पद अथवा आसन रिक्त के विरुद्ध पात्र मानते हुए वरिष्ठता क्रम में पदोन्नति प्रदान करने की कृपा करे।”

Petitioner has also submitted a representation dated 17th March, 2001 stating therein that w.e.f. 1982 to 1987, 12 Junior Clerk were appointed ignoring the claim of the petitioner and also in the year 1984 a post of Draftsman and Junior Clerk fell vacant in the District, but his claim was again ignored by the respondent, but to which, the petitioner was deprived from Class III post.

It is settled law that so far as the compassionate appointment is concerned, no one has a right to get the appointment under Dying in Harness Rules and there cannot be insistence for a particular post as already held in the case the Director of Education (Secondary) Vs Pushpendra Kumar reported in 1998(5) SCC 192.

This case of Director of Education (Secondary) Vs. Pushpendra Kumar has also been relied upon in the case of State of Haryana & another Vs Ankur Gupta reported in 2003(7) SCC 704. Relevant observation are quoted below:

“In Director of Education (Secondary) Vs Pushpendra Kumar it was observed that **in the matter of compassionate appointment, there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceases who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment**

against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provisions to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.”

Learned counsel for the petitioner has also relied upon the judgment in the case of Surya Kant Kadam Vs State of Karnataka & others reported in 2002 SCC (L&S) 1115, where the direction has been given by the Hon’ble Apex Court for consideration on the availability of the post. Relevant paragraph 2 of the said judgment is quoted below:

“The learned counsel for the appellant contended that even though Respondents No. 3 and 4 appointment could not be assailed on the ground of belated approach by the appellant but the prayer with regard to consideration of the appellant for the post of Sub-Inspector of Excise could not have been rejected by the Tribunal. The learned counsel appearing for the state Government, on the other hand, contended that against the earlier order when the Tribunal denied the relief of considering the case of the appellant for the post of Sub-Inspector of Excise, the appellant having not moved this court, the same has become final and therefore should not be interfered with by this court. There is some force in the aforesaid contention of the learned counsel for the State. But having considered the facts and circumstances of the present case and admittedly respondents No. 3 and 4, who were similarly situated like the appellant and who were given compassionate appointment later than the appellant, having been appointed as Sub-Inspector of Excise, the appellant has a justifiable grievance, it is true that the appointment on compassionate ground in the State of Karnataka is not governed by any statutory rules but by a set of administrative instructions and as such is not enforceable in a court of law. But the grounds on which the appellant makes out the case for consideration of his case is violation of Article 14 and discriminatory treatment meted out to the appellant. It is undisputed that the date on which the appellant was given a compassionate appointed as Second Division Assistant / Clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that respondents No. 3 and 4 were given appointment initially as Second Division Assistant/ Clerk but later than the appellant. When the State, therefore, thought it fit to change the post of respondents No.3 and 4 and appointed them to the post of Sub-Inspector of Excise, unless there is any justifiable reason existing, there is no reason as to why the appellant should be treated with hostile discrimination. In the aforesaid circumstances, we set aside the impugned order of the Tribunal rejecting the prayer of the appellant for being considered for the post of Sub-Inspector of Excise and we direct that the State Government may consider the case of appointment of the appellant as sub-Inspector of Excise. Be it stated, in the event he is appointed it would be prospectively and he will not be entitled to any retrospective benefit. The appeals are allowed accordingly.”

A counter affidavit has been filed in para 7 of which, it has been stated that Class III post was not vacant and when the same fell vacant in the year 1993, the petitioner has already been promoted on the Class III post.

From the averments made in the counter affidavit, it is evident that the petitioner has already been promoted on Class III post and as such, there cannot be any grievance to the petitioner. Since the petitioner was not qualified at the relevant time for Class III post, therefore, any promotion on Class III post cannot be made effective from the date, when the petitioner was appointed in Class IV post.

In view of the foregoing discussion, the writ petition is dismissed. No order as to costs.”

5. Against the said order, the petitioner filed Special Appeal No. 52/2004, which was decided on 22.05.2006, as below:

“This special appeal has been preferred by the appellant against the judgment and order dated 13.7.2004 passed by learned Single Judge of this Court in Writ Petition No.3042(S/S) of 2001, Rishi Ram Mishra Vs. State of Uttaranchal and others.

2. Learned counsel for the appellant/petitioner made a prayer that the appellant/petitioner may be afforded an opportunity to make a representation before the authorities concerned relating to his re-fixation of seniority and the authority concerned may be directed to decide the same expeditiously.

3. Having regards to the facts of the case, it is provided that the appellant/petitioner may make a representation to the concerned authority for re-fixation of his seniority within a period of fifteen days from the date of production of certified copy of this order and thereafter the authority concerned shall consider to re-fix the seniority of the appellant/petitioner in view of the law laid down by the Hon’ble Apex Court in the case of Surya Kant Kadam Vs. State of Karnataka and others, reported in JT 2001(13) SC 485, within a period of one month thereafter.

4. With the aforesaid observation, the special appeal is disposed of finally.”

6. The decision was taken by the Director Agriculture on the same *vide* order dated 29.09.2006 (Annexure: A 6). It was directed that the petitioner is not entitled to the service benefits with retrospective effect. The decision of Surya Kant Kadam vs. State of Karnataka and others, 2001(13) SC 485 was considered. Thereafter the petitioner again filed WPSS No. 3248/2018, which was decided by Hon’ble High court of Uttarakhand on 20.09.2018. In such decision, the following was observed:

“This petition has been filed by the petitioner seeking the following relief:

“a) Issue a writ order or direction in the nature of Mandamus commanding and directing the respondents to re-fix the seniority of the petitioner on class III post and same be granted from his initial appointment or from the date when his juniors were given appointment/promotion on the class III post.”

During the course of argument, learned counsel for the petitioner confined his prayer and prayed that the writ petition may be disposed of by permitting the petitioner to submit a fresh representation before the competent authority and the competent authority may be directed to decide the representation of the petitioner at the earliest. Learned Brief Holder submitted that in case such direction is issued, the representation of the petitioner shall be decided in accordance with law. Considering the submission advanced by the learned counsel for the parties, the writ petition is disposed of by permitting the petitioner to submit a detailed representation, ventilating his grievances, before the competent authority within a period of ten days from today. In case such representation is filed by the petitioner within the stipulated period, the competent authority shall take decision on the representation of the petitioner by reasoned and speaking order, in accordance with law, within a period of two months from the date of filing of representation along with the certified copy of this order. Petitioner would be at liberty to raise all his contentions in the representation.”

7. Compassionate appointment under the Dying in Harness Rules is not a right of the legal heirs of a person who died in harness. If Sri Bacheti was given appointment on Class III post on 20.09.1983, the petitioner cannot claim, as a matter of right, that he is entitled to get seniority over such person. This fact is under no dispute that the petitioner was given appointment on Class III

post on 22.12.1993 and Sri Bacheti was given appointment on Class III post on 20.09.1983. The petitioner cannot be given seniority over Sri Bacheti.

8. Hon'ble Supreme Court, in the decision rendered on 04.05.1994 in Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC (4) 138, has observed as under:

“The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

9. The Director Agriculture, while deciding the representation on 29.10.2018 (Annexure: A-1) has passed a reasoned and speaking order mentioning therein that the petitioner was given appointment on a Class IV post on 07.08.1982 under the Dying in Harness Rules. There after another person, Sri Kamleshwar Prasad Bacheti was given appointment on a Class IV post on 20.09.1983. Sri Bacheti was appointed/promoted as Junior Assistant on 17.07.1984. The petitioner was also appointed/ promoted as Junior Assistant on 22.12.1993. As a consequence thereof Sri Bacheti became senior to him in the Clerical Cadre. The prayer of the petitioner is that he should be declared senior to Sri Bacheti in the Clerical Cadre *w.e.f.* 17.07.1984, the date of appointment/ promotion of Sri Bacheti in the Clerical Cadre.

10. It has been mentioned in the order impugned (Annexure: A-1) that when the petitioner applied for employment under the Dying in Harness rules, his educational qualification was High School. He was not eligible to be appointed in the Clerical Cadre. For employment as Junior Assistant in the Clerical Cadre, the minimum educational qualification was Intermediate. Petitioner was given employment in Clerical Cadre as Junior Assistant *vide* order dated 22.12.1993 only after he passed Intermediate examination. Any person is entitled to seniority as per the date of his substantive appointment.

Since Sri Bacheti was appointed in the Clerical Cadre as Junior Assistant earlier to the petitioner, therefore, he cannot be declared senior to Sri Bacheti.

11. Director, Agriculture has, therefore, by a reasoned and speaking order, rightly held as to why the petitioner cannot be given seniority over Sri Kamleshwar Prasad Bacheti on a Clerical Cadre post. The order impugned 29.10.2018(Annexure: A-1) does not call for any interference.

12. In the given facts of the case, the petitioner is not entitled to any relief. The claim petition, therefore, fails and is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 14, 2023
DEHRADUN

VM