

**Pooran Devi (Smt.) Vs. Chief Engineer, Electricity Board and ors.**

**Pooran Devi (Smt.) Vs. Chief Engineer, Electricity Board and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/478395](http://sooperkanoon.com/478395)

**Court :** Allahabad

**Decided On :** May-27-2004

**Reported in :** [2004(102)FLR803]; (2004)3UPLBEC2292

**Judge :** D.P. Singh, J.

**Acts :** Uttar Pradesh State Electricity Board Appointment of Dependant of Employees of Board (Dying-in-Harness) Rules, 1975 - Rules 2 and 5; Hindu Marriage Act, 1975 - Sections 11

**Appeal No. :** Civil Misc. Writ Petition No. 26375 of 1997

**Appellant :** Pooran Devi (Smt.)

**Respondent :** Chief Engineer, Electricity Board and ors.

**Advocate for Def. :** A.K. Mehrotra and ;Nipendra Misra, Advs. for the respondents 1 to 3

**Advocate for Pet/Ap. :** S.S. Chauhan and ;S.C. Pandey, Advs.

**Disposition :** Petition allowed

**Judgement :**

**D.P. Singh, J.**

1. Rejoinder affidavit and supplementary rejoinder affidavit have been filed today.

2. Sri J.P. Singh, appearing for Respondent No. 4 had made a mention in the morning to adjourn the case on the ground that he has to file counter affidavit to the supplementary affidavit. Counsel for the petitioner objected to the mention and informed the Court that in fact the allegation in the amendment application has been replied to in the counter affidavit filed to the amendment application and as such request for adjournment was rejected. When the matter was taken up for hearing in the revised list, a mention was again made on behalf of Sri J.P. Singh that the matter may be adjourned but the same was objected by the Counsel for the petitioner and was rejected.

3. Heard learned Counsel for the petitioner and Sri A.K. Mehrotra Counsel for the Respondent Nos. 1 to 3 Sri J.P. Singh, appearing for Respondent No. 4 has not appeared before the Court.

4. The husband of the petitioner was a Class IV employee in the office of the Respondent No. 3, who died in harness in an accident on 3.4.1996 leaving behind the petitioner (his widow) and his mother aged about 75 years. The petitioner applied for release of gratuity, General Provident Fund etc. from the department. The department refused to release the amount and insisted on production of a succession certificate. The petitioner, thereafter applied for a succession certificate before the Civil Court wherein the Respondent No. 4 raised objections that she was the second wedded wife of the deceased employee and as such the succession should not be granted. However, by an order dated 21.7.1987 the application of the petitioner was allowed and she along with her aged mother-in-law were granted succession certificate to the extent of half of the amount. The petitioner also applied for appointment on compassionate ground on 1.4.1997 but the respondents refused to act on it saying that the succession certificate was only with respect to retiral benefit and she should obtain such a certificate from the District Magistrate. In the meantime, it appears that the Respondent No. 4 filed a Suit No. 166 of 1997 for declaration wherein the respondent Board was also a party. The suit was dismissed on 26.2.1999 thus the petitioner again approached the respondent Board which referred the matter to its Head Office. The Respondent No. 4 also made an effort for cancellation of the succession certificate granted to the petitioner but her objection has been dismissed and in the execution

filed by the petitioner, the objections under Section 47 CPC filed by the Respondent No. 4 has also been rejected. From the order and judgment dated 21.3.1997 it is apparent that the Civil Court has already held that the petitioner was the widow of the deceased employee.

5. Learned Counsel for the petitioner has urged that in view of the definition of the word, 'family' as used in U.P. State Electricity Board Appointment of Dependant of Employees of Board (Dying-in-Harness) Rules, 1975, only the petitioner to the exclusion of Respondent No. 4 was entitled for compassionate appointment. Section 11 of the Hindu Marriage Act, 1956 provides that second marriage during the life time of the spouse is void. A learned Single Judge of this Court in the case of Ramesh Chandra v. U.P. Power Corporation Ltd., 2004 (1) LBESR 152 (Allahabad), has held that right to compassionate appointment is not a right to property and as such the respondents could not insist upon a succession certificate for compassionate appointment. Another learned Single Judge of this Court in the case of Shakuntala Devi v. Executive Engineer, Electricity Board Transmission Division, 2001 (1) UPLBEC 869, has held that only legally wedded wife is entitled for appointment under the Dying-in-Harness Rules, even though nomination in the service record has been made in favour of an illegal wife. The Apex Court in the case of Rameshwari Devi v. State of Bihar, 2000 (1) ESC 577, while confronted with a somewhat similar situation, after considering the provisions of Hindu Marriage Act and the Central Civil Service Rules, 1964 and 1976, came to the conclusion that second wife has no status of a widow and is not entitled for any benefit. Further in the case of Smt. Sharbati Devi and Anr. v. Smt. Usha Devi, (1984) 1 SCC 424, the Apex Court while considering the right of a nominee under the Life Insurance Act came to the conclusion that a nominee cannot be treated as being equivalent to an heir and legatee and the amount under policy could be claimed by the heirs in accordance with law of succession. The objection on behalf of the department that in the service book the name of Respondent No. 4 has been mentioned as nominee, would be irrelevant so far as a compassionate appointment is concerned. In fact, the signature of the deceased employee in the nomination form of the service book has been strongly disputed. In my view the argument of the learned Counsel for the petitioner is well founded.

6. Having considered the entire facts and circumstances of the case, it is evident that the stand of the respondents is against the settled law. Thus, this petition succeeds and the impugned order dated 7.4.1997 is hereby quashed. The respondents are directed to forthwith grant compassionate appointment to the petitioner under the U.P. State Electricity Board Appointment of Dependant of Employees of Board (Dying-in-Harness) Rules, 1975 within a month from the date of submission of a certified copy of this order. No order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**