

**A.F.R.**

**Court No. - 46**

**Case :- SPECIAL APPEAL No. - 1601 of 2012**

**Appellant :- Narendra Kumar Upadhyay**

**Respondent :- State of U.P. and Others**

**Counsel for Appellant :- Neeraj Tiwari, Ashok Khare**

**Counsel for Respondent :- C.S.C., Mrigraj Singh**

**Hon'ble Surya Prakash Kesarwani, J.**

**Hon'ble Vikas Budhwar, J.**

1. Heard Sri Ashok Khare, learned Senior Counsel, assisted by Sri Anurag Ojha, learned counsel for the petitioner/appellant, Sri Mrigraj Singh, learned counsel for the respondent nos. 2 and 3 and Sri Manvendra Dixit, learned counsel for the respondent no.1.

2. Briefly stated facts of the present case are that the appellant/petitioner is the son of the deceased, namely, Gyan Chand Upadhyay, who was working as Assistant Teacher, and has died on 07.07.1991. According to the petitioner/appellant, he was about 8 years old at the time of death of his father. His mother, namely, Shashi Kala, made an application on 23.07.1992 before the District Basic Education Officer, Jaunpur, seeking appointment on compassionate ground, which was followed by a representation dated 14.10.1991 and reminders dated 23.09.1993, 17.07.1994 and 07.11.1995, but the appointment was not granted. The petitioner/appellant passed his Intermediate Examination in the year 2001 and thereafter did graduation from Purvanchal University, Jaunpur. Thereafter, he filed Civil Misc. Writ Petition No. 71340 of 2007, which was finally disposed of by order dated 09.02.2007 providing that the petitioner/appellant may file representation before the respondent no.1 ventilating all his grievances.

3. According to the petitioner/appellant, the respondent no.1 in the aforesaid Writ Petition No. 71340 of 2007, was the State of U.P. However, the petitioner/appellant instead of filing representation before the State Government, moved an application for compassionate appointment before the District Basic Education Officer, Jaunpur, who granted appointment vide order dated 31.03.2010. Admittedly, the petitioner/appellant filed an application for compassionate appointment after about 9 years of death of his father, but neither relaxation was sought from the State Government nor any representation was filed by him before the State Government pursuant to the order of the learned Single Judge dated 09.02.2007 nor delay in filing the application was condoned. Therefore, show cause notice dated 05.03.2012 was issued by the District Basic Education Officer, Jaunpur to the petitioner/appellant requiring him to show cause as to why his appointment may not be cancelled on the ground that petitioner/appellant obtained compassionate appointment by concealment of facts and misrepresentation. However, the petitioner/appellant had not submitted any reply to the aforesaid show cause notice. Consequently, the District Basic Education Officer, Jaunpur passed an order dated 14.04.2012 cancelling the appointment of the petitioner/appellant as untrained assistant teacher. Aggrieved with this order, the petitioner/appellant filed Civil Misc. Writ Petition No. 39344 of 2012 (Narendra Kumar Upadhaya Versus State of U.P. and others), which was dismissed by the learned Single Judge vide impugned judgment dated 13.08.2012, observing as under:-

*(I) The said order is in utter violation of the order passed by this Court, as in the absence of order passed by the State Government, according relaxation, the District Basic Education Officer, could not have entertained the said application, and accorded compassionate appointment. District Basic Education Officer, had no authority whatsoever to accord compassionate appointment, the order offering compassionate appointment was void/illegal.*

*(ii) Thereafter District Basic Education Officer, has acquired knowledge of fact that date of death of father of the petitioner is 07.07.1991 and by misrepresenting the then District Basic Education Officer, Dharendra Nath*

*Singh offered appointment to the petitioner after 19 years and same was totally illegal and in contravention of Government Order.*

*(iii) Fact of the matter is that this Court has given categorical direction that matter be considered and decided by the State Government and accepted position is that there is no decision of the State Government.*

*(iv) In the facts of the case District Basic Education Officer, has rightly proceeded to revoke the earlier order, inasmuch as earlier order is based on misrepresentation and law on the subject is clear, that even if there is no power of review conferred under statute, every authority has inherent jurisdiction to recall/review its order, if the order has been passed on misrepresentation.*

*(v) Consequently, petitioner was not at all entitled to be offered compassionate appointment after 19 years of date of death, and there was no order passed by the State Government for accepting the time barred claim after 19 years of death of father, and as order has been obtained by manipulation then this Court refuses to interfere in the matter as any interference with the order impugned would amount to perpetuation of illegality. The State Government is directed to take action against erring officials also in accordance with law.*

4. The present special appeal has been filed challenging the aforesaid order dated 13.08.2012 passed in Civil Misc. Writ petition No. 38344 of 2012 (Narendra Kumar Upadhaya Versus State of U.P. and others).

5. Sri Ashok Khare, learned Senior Counsel submits as under:-

(i) The petitioner/appellant was only 8 years of age when his father died on 07.07.1991. Therefore, on attaining the age of majority, he filed an application for compassionate appointment, hence, there was no delay in filing the application for compassionate appointment.

(ii) The financial condition of the family of the deceased for the purposes of compassionate appointment has to be looked into, as on the date of death of his father. Reliance has been placed in the case of **Sheo Kumar Dubey Versus State of U.P. and others 2014 (2) ADJ 312.**

(iii) Once compassionate appointment has been granted to petitioner/appellant on 10.03.2012, then the said order cannot be reviewed on the ground that the order granting compassionate appointment is nullity, as the District Basic Education Officer,

Jaunpur has no power to review its own order.

(iv) The compassionate appointment in the District Basic Education Department is governed by the Government Order dated 04.09.2000, which is *pari materia* with the provision of the ***U.P. Dependents of Government Servants Dying in Harness Rules, 1974***. Therefore, the petitioner/appellant was entitled for compassionate appointment and was rightfully granted the compassionate appointment.

6. Learned Standing Counsel as well as learned counsel for the respondent nos. 2 and 3 support the impugned order passed by the learned Single Judge.

7. We have carefully considered the submission of the learned counsel for the parties.

8. It is undisputed that the deceased employee died on 07.07.1991 when the petitioner was about 8 years old. He passed Intermediate Examination in the year 2001 and thereafter did his graduation some time in the year 2004. Thereafter, he filed Civil Misc. Writ Petition No. 71340 of 2007 which was disposed of by the impugned order dated 09.02.2007 giving liberty to the petitioner/appellant to make a representation before the respondent no.1 ventilating all his grievances. However, petitioner had not filed any representation before the State Government which has power to condone/ relax the condition for filing an application beyond five years. Petitioner/appellant moved an application before the District Basic Education Officer, Jaunpur claiming appointment on compassionate ground pursuant to the order dated 09.02.2007 passed in Civil Misc. Writ Petition No. 31340 of 2007. The District Basic Education Officer, Jaunpur passed an order of compassionate appointment on

31.03.2010. Subsequently, show cause notice dated 05.03.2012 was issued by the District Basic Education Officer, Jaunpur to show cause as to why his appointment may not be cancelled, as it was illegally obtained. The petitioner/appellant, for the reason best known to him had not submitted any reply before District Basic Education Officer, Jaunpur. Therefore, the District Basic Education Officer, Jaunpur passed order dated 14.04.2012 cancelling his appointment.

9. Admittedly, the father of the petitioner/appellant Sri Gyan Chand Upadhyay was an Assistant Teacher in a Primary School Sauraiyyah, Block Khutahan, District Jaunpur, who died in-harness on 07/07/1991, leaving behind his widow Smt. Shashi Kala and two sons, namely, Narendra Kumar Upadhyay (petitioner/appellant) and Dharmendra. It is also not in dispute that after the death of Sri Gyan Chand Upadhyay (since deceased) on 7.7.1991, his widow Shashi Kala preferred application for the grant of compassionate appointment addressed to the third respondent on 23.7.1991, followed by reminders dated 14.10.1992, 23.9.1993, 17.7.1994 and 7.11.1995, respectively. There is nothing on record to substantiate the fact as to what action had been taken by the widow of the deceased Smt. Shashi Kala for enforcement of her legal right to be considered for compassionate appointment.

10. However, after a span of more than 16 years, it appears that the petitioner/appellant filed **Writ Petition no. 71340 of 2007, *Narendra Kumar Upadhyay vs. State of U.P. and others***, seeking direction to the respondents therein to consider his claim for grant of compassionate appointment on account of the death of Sri Gyan Chand Upadhyay on 7.7.1991. The order dated 9.2.2007 passed in the said writ petition is reproduced below: -

*“It is alleged that father of the petitioner expired during harness while working as assistant teacher in Prathmik Vidyalay Sauraiyya*

*district Jaunpur. At the relevant time, petitioner was minor. On attaining majority he has made an application for compassionate appointment. Petitioner seeks consideration of his claim for compassionate appointment under the relevant provision of the rules applicable.*

*Sri P.D. Tripathi learned counsel for the respondents points out that the application has been made after expiry of five years from the date of death of the employee concerned. It is therefore requires relaxation of outer limit fixed by the State Government.*

*In view of the aforesaid facts let a representation be made by the petitioner before Respondent No.1 ventilating all this grievances within two weeks from today along with certified copy of this order. ON such representation being made, Respondent No.1 shall consider and decide the same, by means of a reasoned speaking order, preferably within four weeks thereafter.*

*With the aforesaid observations/directions, the present writ petition is disposed of finally.”*

11.By the aforequoted order dated 09.02.2007 passed in the Writ Petition No. 71340 of 2007, direction was issued to the respondent no.1 therein i.e, the State of Uttar Pradesh, to consider and decide the claim of the petitioner/appellant, on representation by him for ventilation of his grievances. The petitioner/appellant as per her own showing has appended as Annexures-9 and 10 to the Writ Petition No. 39344 of 2012, the representation preferred by him before the respondent no.2 and 3 for consideration of his claim for grant of compassionate appointment. There is nothing on record to show that by which manner and by which mode, the said letters/ representations were served upon the respondent nos. 2 and 3.

12.Clause-8 of the Government Order dated 4.9.2000 issued by Secretary, U.P. Government, addressed to Director Education (Basic) and Chairman Uttar Pradesh, Basic Shiksha Parishad, Allahabad providing the manner according to which compassionate appointment may be granted to a dependent of a deceased teacher / employee of the Institutions of the Uttar Pradesh Basic Shiksha Parishad, Allahabad, is reproduced below:-

“(8) मृतक आश्रित द्वारा सम्बन्धित कर्मचारी के मृत्यु के

दिनांक से पांच वर्ष के भीतर सेवायोजन के लिए आवेदन प्रस्तुत किया जा सकता है। परन्तु जहां राज्य सरकार को यह समाधान हो जाये कि सेवायोजन के लिए आवेदन करने के लिए नियत समय सीमा से किसी विशिष्ट मामले में, अनुचित कठिनाई होती है वहां वह अपेक्षाओं को, जिन्हें वह मामले में न्याय संगत और साम्यपूर्ण रीति से कार्यवाही करने के लिए आवश्यक समझे, अभियुक्त या शिथिल कर सकती है। नियमों में इस आशय की अभिवृत्ति/शिथिलीकरण के सम्बन्ध में, प्रस्ताव सम्बन्धित प्राधिकारी द्वारा शिक्षा निदेशक (बे०) के माध्यम से शासन को प्रेषित किये जायेंगे।”

13. Clause-8 of the Government Order dated 4.9.2000 as referred to above is *para materia* with the provisions contained under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. Rules 5 and 6 of the Uttar Pradesh Dying in Harness Rules 1974 (in short “The Rules 1974”) are reproduced below:-

**“[5. Recruitment of a member of the family of the deceased. - (1)**  
*In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a **suitable employment** in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, **in relaxation of the normal recruitment rules**, if such person-*

*(i) fulfils the educational qualifications prescribed for the post,*

*(ii) is otherwise qualified for Government service, and*

*(iii) makes the application for employment within five years from the date of the death of the Government servant:*

***Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.***

*(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]*

*[5A. Recruitment of member of the family of Police/P.A.C. Personnel who dies in May, 1973. - Notwithstanding anything contained to the contrary contained in Rule 5 or in any other rule, the provisions of these rules shall apply in the case of members of the family of twenty-two police or per Provincial Armed Constabulary personnel who died as a result of disturbances in May, 1973, as they apply in the case of a Government servant during dying in harness after the commencement of these rules.]*

*6. Contents of application for employment. - An application for appointment under these rules shall be addressed to the appointing authority in respect of the post for which appointment is sought but it shall be sent to the Head of Office where the deceased Government servant was serving prior to his death. The application shall, inter alia, contain the following information :*

*(a) the date of the death of the deceased Government servant; the department in which he was working and the post which he was holding prior to his death;*

*(b) names, age and other details pertaining to all the members of the family of the deceased, particularly about their marriage, employment and income;*

*(c) details of the financial condition of the family; and*

*(d) the educational and other qualifications, if any, of the applicant.”*

14.A conjoint reading of Rule 5 of the Rules, 1974 and the Government Order dated 4.9.2000, clearly reveals that for the **purposes of consideration for grant of compassionate appointment to the dependent of the deceased employee, the dependent has to fulfil the minimum requirement**, i.e, **(a)** possess educational qualification prescribed for the post; **(b)** otherwise qualified for service; **(c)** makes an application for employment within 5 years from the date of the death of the deceased. Proviso to Rule 5 of the Rules, 1974 carves out an exception to entertain an application beyond five years, when the State Government is satisfied that the time limit for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

15.Thus from the aforesaid analysis with respect to the legal

provisions as recapitulated hereinabove and the facts of the present case, it is crystal clear that the petitioner/ appellant has neither taken any steps before the State Government in terms of the Proviso to Rule 5 of the Rules, 1974, or the aforequoted Clause 8 of the Government Order for relaxation of outer limit of five years for consideration of application for compassionate appointment, nor any such relaxation was granted by the State Government.

16. On a pointed query, made from the learned Senior Counsel, as to whether any decision had been taken by the State Government for relaxation of the outer limit of 5 years for consideration for grant of compassionate appointment? The learned Senior Counsel could not point out from records any decision so taken by the State Government.

17. Even from perusal of the order dated 31.3.2010 passed by the third respondent granting compassionate appointment to the petitioner/appellant, there is no recital about the mandatory compliance of the Clause-8 of the Government Order dated 4.9.2000 read with Rules 5 and 6 of the Rules, 1974.

18. Learned Senior Counsel has further argued that the family condition of the petitioner appointment for the purposes of compassionate appointment has not been looked into as on the date of the death of the deceased (father).

19. The said argument of the learned counsel for the petitioner/appellant is not acceptable, as the stage of consideration of the claim of the petitioner/appellant for grant of compassionate appointment can only be seen, once the hurdle of granting relaxation or dispensing with the delay in filing the application for compassionate appointment beyond 5 years is over. Until and unless

relaxation is accorded by the State Government on the basis of an application of the dependent of the deceased giving required particulars/ details, there was no occasion for respondents to have considered the claim of the petitioner for grant of compassionate appointment with regard to the family condition of the family. Hence we do not find any error in the order dated 14.4.2012, which has been impugned by the petitioner/appellant before the learned Single Judge.

20. The argument of learned counsel for the petitioner/appellant that once compassionate appointment had been granted to the petitioner/appellant on 31.3.2010, then it could not be reviewed by the third respondent, as he has no power to review its own order, cannot be accepted as once the order dated 31.3.2010 granting compassionate appointment was a nullity being in contravention of the Government Order dated 4.9.2000, then it was open for the third respondent to cancel its earlier order, which was nullity in the eyes of law. The learned Single Judge has recorded a categorical finding of fact in its judgment dated 13.8.2012, which is impugned before us, observing as under: -

*“Petitioner knew that, without his application for relaxation being allowed by State Government, he is not entitled to get appointment, even then he succeeded in procuring appointment. The order was for the benefit of petitioner, and complicity of petitioner in procuring order cannot be ruled out in the facts of the case. Fact of the matter is that manipulation is writ apparent and petitioner has already been apprised of the fact that in case any facts are found concealed, said appointment shall ipso facto cancelled.”*

**Object and principles of Compassionate Appointment:-**

21. The Apex Court in the case of *Hamza Haji vs. State of Kerala* reported in 2006 (7) SCC 416 in paragraphs 28 and 29 has observed as under: -

*“In Hip Foong Hong vs. H. Neotia and Company (1918 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In Rex vs. Recorder of Leicester (1947 (1) K B 726) it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. **The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof.** In this situation, the High Court in this case, could have clearly either quashed the decision of the Forest Tribunal in OA No.247 of 1979 or could have set aside its own judgment in MFA No.328 of 1981 dismissing the appeal from the decision of the Forest Tribunal at the stage of admission and vacated the order of the Forest Tribunal by allowing that appeal or could have exercised its jurisdiction as a court of record by invoking Article 215 of the Constitution to set at naught the decision obtained by the appellant by playing a fraud on the Forest Tribunal. The High Court has chosen to exercise its power as a court of record to nullify a decision procured by the appellant by playing a fraud on the court. We see no objection to the course adopted by the High Court even assuming that we are inclined to exercise our jurisdiction under Article 136 of the Constitution of India at the behest of the appellant.”*

22. A Full Bench of this Court in the case of *Shiv Kumar Dubey and others vs. State of U.P. and others*, 2014(2) ADJ, 312 (Para 29), considered various aspects relating to compassionate appointment and held as under :-

*“We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:*

*(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. **The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;***

*(ii) **There is no general or vested right to compassionate appointment.** Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;*

*(iii) **The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;***

*(iv) **In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members,***

**together with the income from any other sources of employment;**

**(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;**

**(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;**

**(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;**

**(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”** **(Emphasis supplied by us)**

**23. In Civil Misc. Writ Petition No. 13102 of 2010, Union of India Vs. Smt. Asha Mishra, decided on 7.5.2010, a Division Bench of this Court has observed as under: -**

**“The principles of consideration for compassionate appointment have been firmly settled and have been reiterated from time to time. Compassionate appointment is not a vested right or an alternate mode of employment. It has to be considered and granted under the relevant rules. The object of compassionate appointment is to tide over an immediate financial crisis. It is not a heritable right to be considered after an unreasonable period, for the vacancies cannot be held up for long and that appointment should not ordinarily await the attainment of majority. Where the family has survived for long, its circumstances must be seen before the competent authority may consider such appointment. It is not to be ordinarily granted, where a person died close to his retirement. The Court, however, has emphasised time to time and more authoritatively in National Institute of Technology Vs. Neeraj Kumar Singh, (2007) 2 SCC 481 that such appointment can be granted only under a scheme. It should not be considered after a**

*long lapse of time.”*

24. The judgment in the case of *Smt. Asha Mishra (supra)* has also been taken notice by the Full Bench of this Court in *Shiv Kumar Dubey (supra)* reiterating the legal principles so mandated therein. Recently, the Apex Court in Civil Appeal No. 897 of 2021, in the matter of *Central Coalfields Limited Through its Chairman an Managing Director and Ors. Vs. Parden Oraon* decided on 09.04.2021, in paragraph 9 has observed as under:-

**“9. ... The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent’s husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the Respondent’s son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.”**

25. The object of compassionate appointment is to enable the family of the deceased - employee to tide over the sudden financial crisis due to death of the bread earner which has left the family in penury and without means of livelihood, it is an exception to the normal rule of public employment, it is a concession; vide; *V. Sivamurthy vs. State of A.P.*, (2008) 13 SCC 730 (Paras 13-18), *Umesh Kumar Nagpal vs. State of Haryana*, (1994) 4 SCC 138 (Para-2), *Haryana SEB vs. Hakim Singh*, (1997) 8 SCC 85 at 87, *Director of Education (Secondary) vs. Ankur Gupta*, (2003) 7 SCC 704 (Para-6), *Food Corporation of India vs. Ramkesh Yadav*, (2007) 9 SCC 531 (Para.9), *Indian Bank vs. Promila*, (2020) 2 SCC 729, *State of U.P. vs. Pankaj Kumar Vishnoi*, 2013 (11) SCC 178 (Paras 11-15), *N.C. Santosh vs. State of Karnatka* (2020) 17 SCC 617 (Para 18), *State of H.P. vs. Shashi Kumar*, (2019) 3 SCC 653 (Para 18), *State of Gujarat vs. Arvind Kumar Tiwari*, (2012) 9 SCC 545 (Para-8), *MGB Gramin Bank V. Chakrawarti Singh* (2014) 13 SCC 583 (Para 6-9), *Union of India vs. P. Venkatesh* (2019) 15 SCC 613 (Para.7), *Union of India vs.*

**V. R. Tripathi, (2019) 14 SCC 646 (Para 13).** The basic intention to grant compassionate appointment is that on the death of the employee concern his family is not deprived of the means of livelihood vide **PNB Vs. Ashwini Kumar Taneja, (2004) 7 SCC 265 (para 4).** It can not be claimed by way of inheritance vide **State of Chhatisgarh & others Vs. Dhirjo Kumar Sengar (2009) 13 SCC 600 (para 10 and 12).** In **Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481 (para 11 & 12),** the Apex Court held that **Compassionate Appointment can not be treated as a Bonanza.**

26. In **Chief Commissioner, Central Excise & Customs, Lucknow & others Vs. Prabhat Singh (2012) 13 SCC 412 (para 19),** Hon'ble Supreme Court has held that it is not disbursement of gift. It is not sympathy syndrome. In **State of U.P. Vs. Pankaj Kumar Vishnoi 2013(11) SCC 178 (paras 7,12,13 & 20).** The Apex Court held that it is meant to provide minimum relief for meeting immediate hardship to save the bereaved family from sudden crisis due to death of sole bread winner. Similar view has been expressed in **SAIL Vs. Madhusudan (2008) 15 SCC 560 (para 15)** and **SBI Vs. Anju Jain (2008) 8SCC 475 (Para 33).**

27. In **SBI Vs. Surya N. Tripathi, (2014) 15 SCC 739 (paras 4,9),** the Apex Court held that if employer finds that **Financial Arrangement** made for family subsequent to death of the employee is **adequate** members of the family can not insist for compassionate appointment.

28. In **General Manager (D & PB) and others Vs. Kunti Tiwary and other (2004)7 SCC 271 (Para 9),** Hon'ble Supreme Court held that the Division Bench erred in diluting the criteria of penury to one of "not very well-to-do.

29. In **Union of India Vs. Shashank Goswami, (2012) 11 SCC 307**

(Paras 9, 10) the Apex Court held that an applicant has no right to claim compassionate **appointment in a particular class or group. It is not for conferring status on the family.** In **Pepsu Road Transport Corporation Vs. Satinder Kumar, 1995 Supp. (4) SCC 597 (Para 6)** the Apex Court held that **while minimum qualification** for eligibility may be matriculation, generally graduate and even post graduate degree holders respond and offer themselves for clerical appointments. **Courts can not ignore this fact and direct that possession of minimum qualification alone would be sufficient.**

30. In **State of Madhya Pradesh & others VS. Ramesh Kumar Sharma (1994) Supp.(3) SCC 661**, the Apex Court held that a candidate for compassionate appointment has no right to any particular post of choice. He can only claim to be considered.

31. In the judgment in the case of **The Director of Treasuries in Karnataka & Anr. vs. Somyashree, in Civil Appeal No.5122 of 2021, decided on 13.09.2021**, Hon'ble Supreme Court reiterated the object and principles of compassionate appointment, as under:

*“7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that **the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment.** A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground*

can be summarized as under:

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- (v) **the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.**

8.....

8.1.....

8.2 Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25.03.2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25.03.2012. Immediately on the death of the deceased employee, the respondent initiated the divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 for decree of divorce by mutual consent. By Judgment dated 20.03.2013, the Learned Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21.03.2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground. **The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground.** Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as 'divorced daughter'. This is one additional ground to reject the application of the respondent for appointment on compassionate ground.”

(Emphasis supplied by us)

32. In a most recent judgment in the case of **The State of Uttar Pradesh and others vs. Premlata in Civil Appeal No.6003 of 2021, decided on 05.10.2021**, Hon'ble Supreme Court considered the provisions of U.P. Rules 1974 and summarized the principles of

compassionate appointment in the context of U.P. Rules, 1974, as under:

*“9. As per the law laid down by this court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.*

*9.1 In the case of State of Himachal Pradesh and Anr. vs. Shashi Kumar reported in (2019) 3 SCC 653, this court had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this court in case of Govind Prakash Verma vs. LIC reported in (2005) 10 SCC 289, in para 21 and 26, it is observed and held as under:-*

*“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930], SCC pp. 139-40, para 2)*

*“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. **Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post.** However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. **The whole object of granting compassionate employment is thus 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 nonmanual 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”*

“26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [*Mumtaz Yunus Mulani v. State of Maharashtra*, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

10. Thus as per the law laid down by this court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

10.1 Applying the law laid down by this court in the aforesaid decisions and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the submissions on behalf of the respondent and the interpretation by the Division Bench of the High Court on **Rule 5 of Rules 1974, is required to be considered.**

10.2 **The Division Bench of the High Court in the present case has interpreted Rule 5 of Rules 1974 and has held that ‘suitable post’ under Rule 5 of the Rules 1974 would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of**

*the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. **‘Suitable post’ has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment.** In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class-II or Class-I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.*

10.3 .....

*11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the ‘suitable post’ under Rule 5 of the Dying-In-Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground.*

*(Emphasis supplied by us)*

33. The petitioner/appellant has neither pleaded nor argued as to what had been the financial condition of the family of the deceased right from 1991 till today. There is nothing on record to show that the financial condition of the family of the deceased was deplorable.

34. As more than 30 years have passed since the father of the petitioner/appellant had expired, neither there is any useful purpose to issue any positive direction, nor the facts of the case warrants it.

**Conclusions: -**

35. We have discussed **above** in detail the case of the petitioner / appellant and the principles of law on compassionate appointment laid down by this Court and by Hon'ble Supreme Court, which are briefly summarized as under: -

(a) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only **those situations which subserve the basic object and purpose which is sought to be achieved;**

(b) The object of compassionate appointment is to enable the family of the deceased - employee to tide over the sudden financial crisis due to death of the bread earner which has left the family in penury and without means of livelihood, it is an exception to the normal rule of public employment, it is a concession. The basic intention to grant compassionate appointment is that on the death of the employee, his family is not deprived of the means of livelihood. It can not be claimed by way of inheritance. **Compassionate Appointment can not be treated as a Bonanza. It is not disbursement of gift.** It is not sympathy syndrome. **It is meant to provide minimum relief for meeting immediate hardship to save the bereaved family from sudden financial crisis due to death of sole bread winner.** If employer finds that Financial arrangement made for family subsequent to death of the employee is adequate members of the family can not insist for compassionate appointment.

(c) **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.**

(d) **In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;**

(e) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(f) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a

relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(g) An applicant has no right to claim compassionate **appointment in a particular class or group. It is not for conferring status on the family. A candidate for compassionate appointment has no right to any particular post of choice.** He can only claim to be considered.

(h) The dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post.

(i) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

**(j) The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.**

**(k) Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. The whole object of granting compassionate employment is to enable the family to tide over the sudden financial crisis.**

(l) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(m) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(n) The father of the petitioner died on 07.07.1991 when petitioner was aged about eight years. He applied for compassionate appointment sometime in the year 2006-07 and the District Basic Education Officer granted appointment unauthorisedly, without grant of relaxation by the Competent Authority/ State Government. Thus, the petitioner unauthorisedly and in contravention of the government order, without relaxation of period for submission of application, obtained appointment on compassionate ground, which is nullity. Therefore, the appointing authority has lawfully cancelled the order of appointment of the petitioner. Hence impugned order of the learned Single Judge does not suffer from any manifest error of law.

36. For all the reasons aforesaid, we see no reason to deffer or take different view, *vis-a-vis* the view taken by the learned Single Judge in the judgment under challenge.

37. The present intra-court appeal is devoid of merit. Hence, it is **dismissed**. There shall be no order as to costs.

**Order Date :-** 22.10.2021

N.S.Rathour