

Court No. -5

Case :- WRIT - A No. - 15450 of 2024

Petitioner :- Shailendra Kumar

Respondent :- The State Of U.P. And 5 Others

Counsel for Petitioner :- Devesh Kumar Giri,Som Veer

Counsel for Respondent :- C.S.C.,Gaurav Bishan

With

Case :- WRIT - A No. - 17760 of 2024

Petitioner :- Shitesh Kumari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare,Sr. Advocate

Counsel for Respondent :- C.S.C.,Krishna Kumar Chand

With

Case :- WRIT - A No. - 16988 of 2024

Petitioner :- Anupam

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- Bipin Bihari Pandey,C.S.C.

With

Case :- WRIT - A No. - 16636 of 2024

Petitioner :- Deep Mala Kushwah

Respondent :- District Basic Education Officer And 2 Others

Counsel for Petitioner :- Adarsh Singh,Indra Raj Singh,Ram
Ashish Pandey

Counsel for Respondent :- Ajeet Singh,C.S.C.

With

Case :- WRIT - A No. - 18085 of 2024

Petitioner :- Anirudh Yadav

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Aditya Yadav,Himanshu
Bansal,Shivam Yadav

Counsel for Respondent :- C.S.C.,Devesh Vikram

Hon'ble Ajay Bhanot,J.

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

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I. Introduction :

(A). Relief Sought:

2. The prayer made in the instant writ petition is to mandamus the respondents to appoint the petitioner as Assistant Teacher on compassionate grounds. The claim for appointment as Assistant Teacher on compassionate grounds has been made by the petitioner on the footing of the Government Orders dated 04.09.2000 and 15.02.2013.

3. The same prayer has been made in the companion writ petitions. All the writ petitions are being decided together since common questions of law arise for consideration therein.

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I(B). The issues arising for consideration:

4. The following questions arise for consideration:

A) Whether the prayer of mandamus for appointing the petitioner as a teacher on the footing of the Government Orders dated 04.09.2000 and 15.02.2013 will enforce the Constitution and law or will be in the teeth of the same?

B) Whether the aforesaid Government Orders dated 04.09.2000 and 15.02.2013 are in consonance with Articles 14, 16 of the Constitution of India and the fundamental right to education vested in children by virtue of Article 21A of the Constitution of India and the rights conferred upon children by the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'Right to Education Act, 2009')?

C) Whether the Government Orders dated 04.09.2000 and 15.02.2013 are consistent with the Rule 5 of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as 'Dying in Harness Rules, 1999'²)?

II. Submissions from the Bar:

5. Shri Indra Raj Singh, learned counsel, Shri Som Veer, learned counsel, Shri Siddharth Khare, learned counsel,

² Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 amended as Uttar Pradesh Recruitment of Dependants of Government Servants Dying In Harness (Fifth Amendment) Rules, 1999, dated Lucknow, January 20, 1999

and Shri Aditya Yadav, learned counsel for the respective petitioners have made the following submissions:

(I) The petitioner is entitled for appointment as Assistant Teacher in a Primary School on compassionate grounds in light of the Government Orders dated 04.09.2000 and 15.02.2013.

(II) The aforesaid Government Orders relate to compassionate appointments which are an exception to the general mode of appointments to public posts. Hence the Government Orders dated 04.09.2000 and 15.02.2013 are not liable to examination on the touchstone of Articles 14, 16 and 21-A of the Constitution of India.

(III) In the alternative, the said Government Orders are not violative of Articles 14, 16 and 21-A of the Constitution of India, and do not transgress the provisions of Rule 5 of the Dying in Harness Rules, 1999.

(IV) The petitioner possesses minimum eligibility qualifications for appointment as Assistant Teacher on compassionate grounds under the said Government Orders. A mandamus is liable to be issued to implement the rights of petitioner under the said Government Orders dated 04.09.2000 and 15.02.2013.

6. Shri Kunal Ravi Singh, learned Chief Standing Counsel assisted by Shri Subhranshu Shekhar, learned

Additional Chief Standing Counsel for the respondent-State have made the following submissions:

- (i) The rules of appointment on compassionate grounds are made only for the welfare of employees and are an exception to the general mode of appointment to public post. The Government Orders dated 04.09.2000 and 15.02.2013 are not amenable for testing on the anvil of Article 21-A of the Constitution.
- (ii) In the alternative, it is submitted that the said Government Orders do not contravene the provisions of Articles 14, 16 and Article 21-A of the Constitution.
- (iii) The said Government Orders only supplement the scheme of Rule 5 of the Dying in Harness Rules, 1999 and the two provisions can be harmoniously implemented.
- (iv). Competitive merit of candidates is not examined in the process of making appointments on compassionate grounds. However, all candidates have to possess the minimum eligibility qualifications. Satisfaction of eligibility criteria itself is an index of merit. No further exercise to determine the merit is required in cases of appointment on compassionate grounds.
- (v) The case of the petitioner for appointment on compassionate grounds is liable to be determined in the first instance in particular facts of each case by the

competent authority as per the Government Orders dated 04.09.2000 and 15.02.2013.

7. The above arguments have been adopted by Shri Ajeet Singh, learned counsel, Shri Bipin Bihari Pandey, learned counsel, Shri Gaurav Bishan, learned counsel, Shri Krishna Kumar Chand, learned counsel, Shri Devesh Vikram, learned counsel, for the respective respondent-Basic Shiksha Adhikaris.

8. Shri Kunal Shah, learned amicus curiae and Shri Abhinav Mehrotra, learned amicus curiae have made the following submissions:

(a) The Government Orders dated 04.09.2000 and 15.02.2013 are liable to stand the test of Articles 14, 16 and 21-A of the Constitution against the same for their validity.

(b) The Government Orders dated 04.09.2000 and 15.02.2013 violate Articles 14, 16 and the fundamental right to education vested in children under Article 21-A of the Constitution of India, and the statutory rights conferred upon children under the Right to Education Act, 2009.

(c). The procedure adopted for appointment of teachers on compassionate grounds under the Government Orders dated 04.09.2000 and 15.02.2013 does not test merits of the candidate.

(d). The right of children to quality education can only be realized if most meritorious candidates from open market are appointed as teachers.

(e). The Government Orders dated 04.09.2000 and 15.02.2013 are incompatible with Rule 5 of the Dying in Harness Rules, 1999.

(f). The Government Orders dated 04.09.2000 and 15.02.2013 are ultra vires Articles 14, 16 and 21-A of the Constitution.

III. Constitution and Appointments to Government Post/Services:

9. The Constitution of India contains copious provisions for appointment to government posts/services. Some of the provisions which can be referenced are: Article 14 of the Constitution is the equality clause in the Constitution, Article 15 of the Constitution proscribes discrimination and enables special provisions for socially and economically backward classes and scheduled castes. Article 16 of the Constitution provides for the recruitment to posts in government services and enables reservations for certain classes including SCs, STs and OBCs. Article 309 of the Constitution vests the State with powers to frame service Rules.

10. Constitutional law renderings of the aforesaid provisions hold that the recruitment to government services and posts should be made through a transparent and open process. Recruitment processes under the Constitution for appointment to government posts prise out the best talent to serve the country by enabling widest possible participation of eligible citizens, and selection based on competitive merit. The Constitutional

scheme ensures equality in opportunity to participate in the selection process, provides for representation of various categories of backward classes and scheduled castes and scheduled tribes in government services, and maintains the ascendancy of merit in appointments.

11. Appointments made in pursuance of said recruitment processes ensure an efficient administration which is leavened with social justice and solely geared to service of the citizenry. The recruitment processes undertaken in adherence to Constitutional norms aid the transition of a nation riven with disparities to a republic defined by an egalitarian order.

IV. Appointments on compassionate grounds:

(A). General Principles:

12. The process of appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees.

13. The sole purpose of compassionate ground appointments is to provide immediate financial succour to a family of the deceased government employee which faces sudden financial destitution after the death of the earning member. The compassionate ground appointments are not intended to confer lasting social

status. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

14. Appointments on compassionate grounds give a sheltered entry to the dependants of a deceased employee into government service without the rigors of an open selection procedure. The competitive merit of candidates is of no relevance since the appointments are made without adopting the public selection procedure. Norms of recruitment are completely relaxed for appointment on compassionate grounds. However the law requires the applicants to possess minimum qualifications for the posts.

15. Considering the aforesaid limitations of compassionate ground appointments, it has been held by good authority that there is no vested right to an appointment on compassionate grounds. Further, the right to compassionate ground appointment is derived only from specific provisions in this regard and the same have to be strictly adhered to. An unduly liberal view while interpreting the aforesaid rules may make the appointments vulnerable to reproach by the equality clause of the Constitution.

16. Unlimited appointments on compassionate grounds made without examination of relevant factors as per law or in the teeth of holdings of Constitutional Courts in point will “shear the cloak of legality” from these

appointments and will reduce the said appointments to a class of hereditary appointments. Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment.

IV(B). Case Laws:

17. The narrative has the benefit of cases in point. The purpose of appointment on compassionate grounds was explained by the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana**³. Jurisprudential rationale laid down in **Umesh Kumar Nagpal (supra)** is the locus classicus which provides the sole rationale for compassionate appointments:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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

3 (1994) 4 SCC 138

general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a 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 other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee.....”

19. A Full Bench of this Court in Shiv Kumar Dubey and others v. State of U.P. and others⁵ set forth the law as under:

“31. 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.”

20. This Court in **Ashish Yadav v. Managing Director, U.P. State Road Transport Corporation and 2 others**⁶ discussing the purpose of compassionate appointment held as under:

“10.The sole justification to make compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

15. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.”

21. There is consensus among Constitutional Courts in the country on the issue of compassionate appointments. The Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁷ summarized the aforesaid key principles which guide appointments on compassionate grounds by holding :

“10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

22. The paramount importance for granting equal opportunity to all aspirants under the constitutional scheme for government appointments and the exception created by the concept of appointments on compassionate grounds was reiterated by the Supreme Court in **N.C. Santhosh v. State of Karnataka and others**⁸.

⁷ (2018) 2 CAL LT 177 (HC)

⁸ (2020) 7 SCC 617

(L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.”

23. Absence of a vested right, mandate of the constitutional scheme of recruitment and the need to strictly adhere to the rules governing the grant of appointment on compassionate grounds was also emphasized by the Supreme Court in the **Director of Treasuries in Karnataka and another v. Somyashree**⁹ :

“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."

24. The purpose and limitations of appointments on compassionate grounds including the need to avoid conferring benefits merely on sympathetic considerations alone were reiterated by the Supreme Court in **State of Haryana and another v. Ankur Gupta**¹⁰. In **Ankur Gupta (supra)** it was clearly observed that the appointments on compassionate grounds are not source of recruitment and do not unduly interfere in the rights of other persons who are eligible for appointment against that post:

"6. As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of [Articles 14](#) and 16. Appointment on compassionate ground cannot be

¹⁰ (2003) 7 SCC 704

is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.”

25. More recently the Supreme Court in **Tinku v. State of Haryana and others**¹¹ summed up the position of law settled over the years:

“12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.

15. The purpose, therefore, of such policies is to give immediate succour to the family. When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government of Haryana cannot be said to be in any case unjustified or illogical, especially when compassionate appointment is not a vested right.”

26. Lately in **Canara Bank v. Ajitkumar G.K.**¹² the Supreme Court elaborated the need for assessing the suitability on certain posts, the requirement of

11 2024 SCC OnLine SC 3292

12 2025 SCC OnLine SC 290

determining financial hardship and the caution of not merely giving one post for another post while making compassionate appointments:

“33. The next sub-issue, which cannot be overlooked, is this. The scheme of 1993 envisages assessment of the suitability of the claimant for compassionate appointment. As has been laid down in several decisions of this Court, noted above, the clauses forming part of the policy/scheme 30 for compassionate appointment have to be followed to the letter. Without the respondent having been subjected to a suitability test, the Division Bench plainly fell in error in directing the respondent’s appointment in the category of clerk relying on the decision in *Canara Bank* (supra). It is of some significance that even *Canara Bank* (supra) did not order appointment but required reconsideration of the claim.

44. As pertinently held in *B. Kishore* (supra), indigence of the dependants of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Article 14 and 16 of the Constitution. Also, judicial decisions abound that in deciding a claim for appointment on compassionate grounds, the financial situation of the deceased employee's family must be assessed. In a situation otherwise, the purpose of the scheme may be undermined; without this evaluation, any dependent of an employee who dies while in service might claim a right to employment as if it is heritable.

45. The ratio decidendi of all these decisions have to be read in harmony to achieve the noble goal of giving succour to the dependants of the employee dying-in-harness, who are genuinely in need, and not with the aim of giving them a post for another post. One has to remember in this connection the caution sounded in *Umesh Kumar Nagpal* (supra) that as against the destitute family of the deceased there are millions of other families which are equally, if not more, destitute.”

27. The rationale for grant of compassionate ground appointments and various safeguards to prevent abuse of the process of compassionate ground appointments have been incorporated in the constitutional law

jurisprudence. The said holdings of the Constitutional Courts shall be read into the provisions for grant of appointment on compassionate grounds.

V.Statutory/Legal Framework:

V(A). Rules 5 of the Dying in Harness Rules, 1999 : Scope

28. The relevant Rules and government orders which govern the appointment on posts of Assistant Teachers on compassionate grounds are the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as 'Dying in Harness Rules, 1999'¹³) and the Government Orders dated 04.09.2000 and 15.02.2013.

29. Rule 5 of the Dying In Harness Rules, 1999 is extracted hereunder:

“Rule 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 a 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

¹³ Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 amended as Uttar Pradesh Recruitment of Dependants of Government Servants Dying In Harness (Fifth Amendment) Rules, 1999, dated Lucknow, January 20, 1999

(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.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) When the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his service may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

(emphasis added)

30. Rule 5 of the Dying in Harness Rules, 1999 which contemplates grant of appointment on compassionate grounds was enacted in exercise of power vested under Article 309 of the Constitution of India. Rule 5 of the Dying in Harness Rules, 1999 contemplates grant of suitable employment on a post by the Government, provided the applicant /candidate fulfills the educational qualifications required for the post and is otherwise qualified for government service.

31. The statute has provided "suitable employment on a post" in Rule 5 of the Dying in Harness Rules, 1999 as

the legal standard/yardstick to guide the process of appointments on compassionate grounds.

32. It is noteworthy that the Dying in Harness Rules, 1999 employs the phrase “be given a suitable employment on a post”, and not the words “given an appointment on a post on the basis of eligibility”. “Suitable employment” is distinct from mere eligibility for appointment. Eligibility simply prescribes minimum qualifications for appointment to a post. The phrase “suitable employment” is of a much wider ambit. Eligibility in itself may not ensure suitability, though suitability presupposes eligibility among other things.

33. The phrase “suitable employment” in Rule 5 of the Dying in Harness Rules, 1999 is an aggregate of several factors. The meaning of “suitable” in the Black’s Law Dictionary is “fit and appropriate for their intended purpose”.

34. Rule 5 of the Dying in Harness Rules, 1999 mandates that an enquiry by the competent authority into the nature of “suitable employment on a post” should precede the grant of compassionate appointment. The said process requires consideration of the various elements which are comprised in “suitable employment on a post”.

35. Judicial authorities in past have examined few aspects of “suitable employment on a post”. One set of

authorities rendered by this Court posited that the possession of eligibility qualifications by the dependant is the sole criteria which will determine the suitable post. [Reference: **Special Appeal Defective No.620 of 2018 (Smt. Premlata v. State of U.P. and 3 others)**]

36. While turning down the aforesaid view the Supreme Court in **State of Uttar Pradesh and others v. Premlata**¹⁴ opined that the qualifications will not be the singular criteria for appointment on compassionate ground and the post held by the deceased is a relevant consideration:

“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 dependants 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.

10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of the 1974 Rules and has held that “suitable post” under Rule 5 of the 1974 Rules 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-à-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 dependant of the deceased employee who has applied for appointment on compassionate ground is having the

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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 dependant/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 breadearner. 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.”

37. A learned Single Judge of this Court in **Deepanshu v. State of U.P. and 2 others**¹⁵ has referred the following substantial questions of law to the Larger Bench:

“(i) Whether "suitable appointment" in terms of qualifications as given under Rule 5 of the 1974 Rules would mean that if a dependent of a deceased Government employee is qualified to hold a class III post, a supernumerary Class-III post should be created for him and he be given appointed, more so when it has been held by Hon'ble Supreme Court that a dependent of a deceased employee when he claims compassionate appointment is asking for an exception to be carved out for him against the normal rules governed by Article 14 and 16 of the Constitution for equality of opportunity in matters of public employment?

(ii) Whether the Coordinate Bench decision in Writ-A No. 10149 of 2021, 'Sameer Pandey vs. State of U.P. has correctly appreciated the observations of the Full Bench in Shiv Kumar Dubey (Supra)?

(iii) Whether the direction in Sameer Pandey (Supra) could have been given for ignoring the Government Order dated 18.05.2017, when it is settled law that compassionate appointment can be offered only in accordance with the Scheme including Government Order, if any, issued by the Government. The Government Order dated 18.05.2017 was not challenged in Writ-A No. 10149 of 2021 and the Authorities could not be issued any Mandamus to act against the provisions of the Scheme/Government Orders?”

38. The controversy at hand revolves around a yet completely different facet of “suitable employment on a post” in Rule 5 of the Dying in Harness Rules, 1999.

¹⁵ (Writ-A No.10832 of 2022)

39. What needs to be determined in the facts and circumstances of this case is the manner in which institutional needs and purposes relatable to the post are liable to be factored in while determining the nature of “suitable employment on a post” under Rule 5 of the Dying in Harness Rules, 1999.

40. The line of enquiry into “suitable employment on a post” under the Rule 5 of the Dying in Harness Rules, 1999 will thus commence with the consideration of public purpose and institutional needs served by the post in question. This will include analysis of obligations cast by the Constitution and the laws upon the State to realize the rights of the citizens which are discharged through the said post. The nature of duties attached to the post and their impact on fundamental rights of citizens will then be examined. The degree of expertise or knowledge base and skill sets required to execute the said post will also be part of this process.

41. In the course of this exercise it will also have to be seen whether the institutional needs and public purpose will be fulfilled by waiving the constitutionally sanctioned process of open recruitment and appointment by competitive merit for the said post. As a corollary the consequences of making an appointment on the said post through a restricted process without the criteria of merit will also be assessed.

42. The said process of determining “suitable employment on a post” gives precedence to institutional needs over individual claims for appointment on the said post.

43. The said enquiry under Rule 5 of the Dying in Harness Rules, 1999 will determine whether the said post is tenable by compassionate ground appointments or not. However, in case a post is not found suitable for compassionate ground appointment, the process of enquiry under Rule 5 of the Dying in Harness Rules, 1999 will not come to a stand still. Alternative avenues of employment will be explored, and appropriate posts for “suitable employment” will be identified through the said process.

44. At this stage it would be apposite to examine the contention of the State that welfare of dependants of the deceased employee is the sole basis of making compassionate ground appointments to the exclusion of all other aspects.

45. By adopting this approach the respondents have strayed far away from their constitutional obligations and duties, and the same is reflecting in disorganized priorities of the respondents.

46. The Constitutional order of priorities of the State are these. Upholding of the Constitution and realization of fundamental rights of citizens is the avowed goal of

government. Strengthening the capacity of the government to achieve these goals by recruiting the most meritorious talent by the constitutionally sanctioned manner of recruitment comes next in the scale of importance. Welfare of employees inheres in a model employer and a welfare State. However, the welfare measures like grant of compassionate appointments cannot be made at the cost of the first two objectives.

V(B). Government Orders dated 04.09.2000 and 15.02.2013:

47. The Government Orders dated 04.09.2000 and 15.02.2013 adopt the Dying in Harness Rules, 1999 for making compassionate ground appointments in the Education Department. Further, the Government Orders dated 04.09.2000 and 15.02.2013 specifically provide for appointment on the post of teachers on compassionate grounds.

48. The Government Order dated 04.09.2000, relaxed qualifications for appointment as teachers on compassionate grounds. Opportunity was given to fulfill training qualifications even after grant of appointments. However, the Government Order dated 15.02.2013 while providing for appointment as teachers on compassionate ground has recalled the aforesaid relaxations in the Government Order dated 04.09.2000ⁱ. The Government Order dated 15.02.2013ⁱⁱ contemplates strict compliance of the criteria for educational qualification while making

such appointments. The Government Orders dated 04.09.2000 and 15.02.2013 are appended as Appendix I and II.

49. Briefly put the Government Orders dated 04.09.2000 and 15.02.2013 provide for possession of minimum qualification for the post of teachers as the only requirement for grant of appointment as teachers on compassionate grounds. The provisions do not prescribe any procedure or criteria for determination of merit of the applicants for appointment as teachers on compassionate grounds.

50. The tenor of the Government Orders dated 04.09.2000 and 15.02.2013 is that a virtual entitlement for appointment as a teacher on compassionate grounds is created once the dependant-claimant of the deceased-employee possesses the minimum eligibility qualifications for the said post.

VI. Constitutional and Statutory Setting:

VI(A). Children: Constitutional Rights, Duty of State and Role of Courts:

51. Children are the most precious assets of a nation, but also a most vulnerable class of the human species. Children are incapacitated from challenging their circumstances.

Constitutional Provisions:

52. The special provisions under the Constitution of India for holistic development, welfare and protection of

children under the Constitution were noticed by this Court in **Rajiv Kumar v. State of U.P.**¹⁶:

“20. The constitution makers understood the special needs of children and envisaged a distinct place for children in the Constitution. The children are constituted into a separate class of citizens under the Constitution. Various provisions devoted to the child in the text of the Constitution attest the paramount importance accorded to the welfare of the child in our Constitutional scheme.

21. The relevant provisions of the Constitution of the India in this regard are extracted hereunder:

22. Article 15(3) of the Constitution of India enables the State Government to make special provisions for children. The provision states thus:

"15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

23. Article 21(a) of the Constitution of India elevates the rights of education of children between 6-14 of age to a fundamental right.

24. It is noteworthy that free and compulsory education for children is also mentioned as a directive principle for formation of State Policy. Article 45 of the Constitution of India states thus:

"45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

25. Article 21(a) and Article 47 of the Constitution of India state thus: "21(A) The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

26. Article 39(e) and Article 39(f) of the Constitution of India acknowledge the vulnerability of the child against the exploitation and moral and material abandonment. The provision also affirms the realization of the incapacity of children to defend themselves against such adverse situations and contemplate a role of the State to create opportunities and facilities to enable the children to develop in a worthy manner.

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not

forced by economic necessity to enter avocations unsuited to their age or strength;

39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Duty of State:

53. The Constitution has also cast an iron clad obligation on the State to fulfil the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and de facto a guardian of children.

54. A clear and direct responsibility cast on the State to provide quality education to children is borne out from the words of Article 21A of the Constitution of India.

55. The State alongwith teachers were identified as key actors who influence the right of children to education by the Supreme Court in **Society for Unaided Private Schools of Rajasthan v. Union of India and another**¹⁷:

"5. Education is a process which engages many different actors: the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These actors influence the right to education."

Role of Courts:

56. The procedure for compassionate appointments invariably shields the said appointments from public sight and even knowledge. There is little possibility of the children understanding the consequences of dilution

¹⁷ (2012) 6 SCC 1

of merit in appointment of teachers on their right to education much less challenge the same. The Courts cannot idly watch the violation of fundamental rights of the children to education. Constitutional law contemplates a proactive role of Courts in these circumstances. Cases in point can be profitably referenced.

57. The Supreme Court in **Ashoka Kumar Thakur v. Union of India and others**¹⁸ also emphasized the special duties of the Courts while upholding the Right to Education Act, 2009:

“482.....It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.”

58. Uninterrupted vigilance by Constitutional Courts over the rights of children was reinforced by this Court in **Smt. Rekha v. State of U.P.**¹⁹ by holding as under:

“81. Constitutional oversight on the rights of children is perpetual, and the courts are permanent guardians of children. A old writer made the following observations as regards the role of law and duties of instruments of law towards children:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings,the judges are their counsellors, the jury are their servants and law is their guardian.”

¹⁸ (2008) 6 SCC 1

¹⁹ Criminal Misc. Bail Application No.25993 of 2024

VI.(B). Article 21-A of the Constitution of India & the Right of Children to Free and Compulsory Education (RTE) Act, 2009:

“If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be”

~Thomas Jefferson

59. Education is the bulwark of a nation’s freedom and the engine of economic prosperity. Education has assured the survival of human civilization and holds the promise of success of human kind.

60. Since the first recordings of Indian thought the significance of learning has been a constant part of our civilizational consciousness. Article 21A of the Constitution has made education an irrevocable feature of the constitutional conscience. Article 21A vests the fundamental right to education in all children. The Right to Education Act, 2009 provides a detailed mechanism for implementation of the aforesaid right.

61. The paramount importance of “quality education” for children in our constitutional scheme is manifested in the Parliament’s Statement of Objects and Reasons for Article 21-A of the Constitution:

“....The Constitution of India in a directive principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age group gained

that the most meritorious candidates are appointed as teachers, and the rights of children to quality education are fruitfully realized.

80. To the contrary the procedure for appointment of teachers on compassionate grounds is a closed one and provides for sheltered entry to a select few. The said process does not allow participation from the public at large. Consequently best talent from the open market is precluded from applying for appointment.

81. Eligibility or possession of minimum qualifications for being appointed as teachers is in effect the sole criteria for appointment on compassionate grounds under the aforesaid Government Orders dated 04.09.2000 and 15.02.2013.

82. Eligibility for appointment as teachers merely prescribes the minimum threshold qualification for holding the post or participation in an open selection. Eligibility in itself does not determine merit. In fact eligibility is the start point of the process to determine merit. Constitutional processes of recruitment (as discussed earlier) are the most reliable methods to select the most meritorious from all eligible candidates for appointment as teachers. The argument of the State to the effect that eligibility is in itself the determinant of merit is accordingly rejected.

- (i) The role and duties discharged by teachers towards students and nation.
- (ii) The nature and scope of the fundamental rights to education vested in children by virtue of Article 21-A of the Constitution and the rights under the Right to Education Act, 2009.
- (iii) The role of teachers bringing the aforesaid rights to fruition.
- (iv) The consequences of relaxed recruitment norms and waiving of the regular recruitment process on the quality of teachers.
- (v) The impact of appointing teachers merely on basis of eligibility and without consideration of merit on the fundamental right of children to quality education and the society at large.

95. The preceding narrative establishes that Rule 5 of the Dying in Harness Rules, 1999 does not countenance compassionate ground appointments on the posts of teachers on compassionate grounds.

96. The Government Orders dated 04.09.2000 and 15.02.2013 prevent the said enquiry by preemptively providing for appointment of teachers on compassionate grounds without consideration of relevant factors contemplated in Rule 5 of the Dying in Harness Rules, 1999. The Government Orders dated 04.09.2000 and

(D). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they provide for appointment on the posts of teachers on compassionate grounds are struck down. The State Government is accordingly directed to forthwith cease the implementation of the Government Orders dated 04.09.2000 and 15.02.2013.

(E). The matter is remitted to respondents-authorities. The claim of the petitioner shall be considered by the respondents-authorities for appointment on compassionate grounds to any other post as per law and in line with the observations made in this judgement. The decision shall be taken by the respondents-authorities within a period of three months from the date of receipt of a certified copy of this order.

120. The writ petition is finally disposed of.

121. Registry is directed to send a copy of this order to the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow.

Order Date :- 16.4.2025

Ashish Tripathi

