

Court No. - 50

**Case :-** WRIT - A No. - 17732 of 2022

**Petitioner :-** Vikrant Sengar

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

**Counsel for Petitioner :-** Chandan Sharma,Jadu Nandan Yadav, Pranvesh

**Counsel for Respondent :-** Akhilesh Chandra Srivastava,C.S.C.,Gaurav Bishan

**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:**

2. The petitioner is aggrieved by the order dated 03.03.2021 passed by the Basic Shiksha Adhikari dismissing him from service. The petitioner has also assailed the order dated 18.09.2022 passed by the appellate authority/Secretary, Basic Shiksha Parishad, Prayagraj rejecting the appeal of the petitioner against order of dismissal.

**II. Events leading upto impugned orders:**

3. The petitioner was appointed as an Assistant Teacher on 04.10.1990 under the Dying in Harness Rules. A chargesheet was drawn up against the petitioner on 12.10.2020 which caused the initiation of departmental proceedings against him.

4. The gravamen of the charges in the said chargesheet were as under: As per the first charge the petitioner was working as a DSL Cleaner in the Indian Railways, and later he was removed from service. The petitioner obtained an appointment as a teacher under the Dying in Harness Rules in the Basic Shiksha department by concealing the said facts of his service and removal from Railways. According to the second charge, the petitioner was appointed on compassionate grounds on 04.10.1990 after the period of limitation had expired. The third charge alleges acts of financial irregularities and disobedience of the orders of superior authority.

5. The chargesheet records that various documents which were proposed to be relied upon against the petitioner were being appended thereto.

6. The petitioner submitted a response to the chargesheet on 02.11.2020. In the aforesaid reply the petitioner did not tender his defence or refutation of the charges against him. The petitioner never disputed the recitals in the chargesheet that the documents appended to the chargesheet were served upon him. The petitioner simply demanded copies of some documents relating to his appointment and initiation of the enquiry against him. By order dated 12.11.2020 the documents which depicted the petitioner's appointment as DSL Cleaner and removal from service of the railways were duly provided to him along with other relevant documents.

7. The petitioner furnished another reply on 24.12.2020, wherein he demanded certain documents pertaining to allegations of financial irregularities. It needs to be emphasized in the aforesaid reply that the petitioner did not dispute his appointment and termination from the Indian Railways.

8. A report was prepared on 05.01.2021 by the Block Education Officer regarding the financial irregularities committed by the petitioner. After receipt of the aforesaid report and the replies of the petitioner a show cause notice was issued to the petitioner on 27.01.2021 by the disciplinary authority. The show cause notice reiterated the substance of the chargesheet against the petitioner. The show cause notice appended various documents which were proposed to be relied upon against the petitioner including those

pertaining to his appointment as DSL Cleaner and subsequent removal from service in the railways.

9. The reply of the petitioner to the show cause notice merely states that the petitioner was not supplied the documents which had been demanded by him. The petitioner also made an enquiry of the list of departmental witnesses who were proposed to be examined and asked for opportunity to cross examine the said witnesses. Further the petitioner demanded copies of the complaint against him and also copies of various departmental enquiries conducted in the year 2014. The reply did not refute the charges on merits.

10. It is noteworthy that none of the aforesaid documents demanded by the petitioner were proposed to be relied upon against him as per the charge-sheet or the show cause notice.

### **III. Impugned Orders:**

#### **III(A). Order dated 03.03.2021 passed by the disciplinary authority:**

11. After consideration of the same petitioner's reply the Basic Shiksha Adhikari, Hathras passed the impugned order on 03.03.2021. The disciplinary authority in the impugned order dated 03.03.2021 has recorded that the petitioner was given adequate opportunity to defend himself. However, the petitioner failed to submit any refutation of the charges nor adduced evidence in support of his case. The impugned order relied upon the documents pertaining to his service as DSL Cleaner in the Railways. The disciplinary authority found that the charges relating to the illegality and fraud in the petitioner's appointment

were found to be proved. Further the charge of the financial embezzlement stood established according to the impugned order. In this wake the order of dismissal was passed by the disciplinary authority on 03.03.2021.

**III(B). Order dated 18.09.2022 passed by the appellate authority:**

12. The petitioner carried the order of dismissal in appeal before the appellate authority. The appellate authority in the impugned order dated 18.09.2022 dwelt at length on the grounds raised by the petitioner and the materials in the record. After consideration of the same the appellate authority found that the following facts were established.

13. The appellate authority in the order dated 18.09.2022 recorded that the petitioner was appointed under the Dying in Harness Rules on 04.10.1990. The father of the petitioner died in harness on 11.06.1984. The petitioner was appointed as a DSL Cleaner on 05.07.1984 in the Indian Railways, and was subsequently removed from service on 03.06.1989. The appellate authority has referenced a document of the Indian Railways attesting the aforesaid facts in extenso. Thereafter upon invoking the provisions of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, the appellate authority has found that the petitioner was in service in the Indian Railways at the time of death of his father and was not entitled to be appointed on compassionate grounds. Lastly the appellate authority has also held that the charge of

financial irregularities against the petitioner also stood proved before the disciplinary authority and warranted no interference.

14. The appellate authority has specifically found that the petitioner was given various opportunities to tender his defence to the charges against him. However, the petitioner failed to refute charges on merits in his reply to the show cause notice.

15. After independent consideration of material in the records and grounds of appeal the appellate authority in the order dated 18.08.2022 confirmed the guilt of the petitioner and also upheld the order of dismissal passed by the disciplinary authority.

#### **IV. Facts established from the record:**

16. These facts are established. The death of father of the petitioner on 11.06.1984 in harness is a fact admitted to both the parties. The petitioner was appointed as a DSL Cleaner in Indian Railways on 05.07.1984 and he was removed from service on 03.06.1989. The communication of the Indian Railways in this regard has been referenced in the impugned order.

17. Moreover, the petitioner has not disputed the fact of his appointment as DSL Cleaner on 05.07.1984, and his removal from service from the Railways on 03.06.1989 at any stage before the authorities below. In the writ petition the petitioner has admitted to the fact of his appointment in the Indian Railways and his removal from service by order dated 03.06.1989. On the footing of various materials in the record the Court has no hesitation in holding that appointment of the petitioner as DSL Cleaner on 05.07.1984 in the Indian Railways

and his subsequent removal from the said post on 03.06.1989 has been established beyond doubt and dispute.

18. The order dated 03.06.1989 issued by the competent authority removing the petitioner as DSL Cleaner in the Railways has been appended to the writ petition and is being extracted hereinunder for ease of reference:

“I have gone through the enquiry report and evidence on record carefully and agreed with the findings of the enquiry officer. Your past record also does not speak well in regard to the attendance performance. Moreover, lenient views taken in each and every post offence on your part with the hope that you will improve but in vain. It is felt that you are not serious in being regular. I therefore hold you guilty of the charges levelled against you vide SF-5 of even No. date 11-09-1988 and has decided to impose upon you the penalty of removal from service from the date issue of this notice.”

19. The petitioner was appointed on compassionate grounds under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 on 04.10.1990 too is common ground between the rival parties.

#### **V. Questions for consideration:**

20. The questions that arise for consideration in the facts and circumstances of this case narrated above are:

I. Whether in the facts and circumstances of the case and the materials available before the authorities below the order of dismissal from service was justified?

II. Whether the procedure envisaged in law was adopted while passing the impugned orders?

III. Whether the petitioner is entitled to any relief by this Court?

**VI. Compassionate Appointments:****VI(A). Rationale and Purpose:**

21. 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.

22. 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 as a result of the death of the employee in harness. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

23. Appointments on compassionate grounds give a sheltered entry to the dependents 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.

24. 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.

25. Appointments on compassionate grounds made in violation of the Rules governing such appointments or 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.

26. The narrative will be buttressed by authorities in point. The purpose of appointment on compassionate grounds was explained by the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana**<sup>1</sup>. Jurisprudential rationale laid down in **Umesh Kumar Nagpal (supra)** is the locus classicus which provides the sole legal basis 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

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1 (1994) 4 SCC 138

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 non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. 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."

27. The same propositions were expounded by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**<sup>2</sup>:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for

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<sup>2</sup> (1998) 5 SCC 192

giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the 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.....”

28. A Full Bench of this Court in **Shiv Kumar Dubey and others v. State of U.P. and others**<sup>3</sup> summed up 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

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3 2014 SCC OnLine All 16214

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.”

## **VI (B). Strict adherence to law while making compassionate appointments:**

29. Strict compliance of provisions for grant of appointments on compassionate grounds, and rigorous adherence to holdings of constitutional courts in point have been consistently emphasized in the constitutional law discourse. The discussion shall be fortified by extracting the relevant citations. The authorities discussed below under score that non compliance of provisions for grant of appointments on compassionate grounds, and violation of case laws holding the field is on the pain of invalidation of such appointments. In fact appointments on compassionate grounds made in the teeth of statutory provisions and case laws delegitimize the very concept of compassionate appointments.

30. 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**<sup>4</sup> 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.”

31. 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**<sup>5</sup>. **N.C. Santhosh (supra)** while citing the cases in point reaffirmed that such appointments did not create any vested right and also held that adherence to the criteria for such appointments is a mandatory requirement in law:

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<sup>4</sup> (2018) 2 CAL LT 177 (HC)

<sup>5</sup> (2020) 7 SCC 617

“13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *SAIL v. Madhusudan Das* [*SAIL v. Madhusudan Das*, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in *SBI v Raj Kumar* [*SBI v. Raj Kumar*, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in *MGB Gramin Bank v. Chakrawarti Singh* [*MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

17. The above discussion suggest that the view taken in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on *Canara Bank v.M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik v. State of Karnataka* [*Uday Krishna Naik v. State of Karnataka*, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648] , it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in *State of H.P. v. Shashi Kumar* [*State of H.P. v. Shashi Kumar*, (2019) 3 SCC 653 : (2019) 1 SCC (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.”

32. 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**<sup>6</sup> :

“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.”

33. The purpose of appointments on compassionate grounds and the need to avoid conferring benefits merely on sympathetic considerations alone were reiterated by the Supreme Court in

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<sup>6</sup> (2021) 12 SCC 20



**State of Haryana and another v. Ankur Gupta**<sup>7</sup>. 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 claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi's case (supra)* it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr.* (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

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<sup>7</sup> (2003) 7 SCC 704



7. In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.”

34. More recently the Supreme Court in **Tinku v. State of Haryana and others**<sup>8</sup> stated the position of law settled over the years thus:

“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.

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8 2024 SCC OnLine SC 3292

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.”

35. Lastly in **Canara Bank v. Ajithkumar G.K.**<sup>9</sup> the Supreme Court elaborated the need for assessing the suitability for appointment and emphasized the requirement of determining financial hardship and reiterated the caution of not merely giving one post for another post while making compassionate appointments:

11. “(q) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependent of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [see *National Institute of Technology v. Niraj Kumar Singh*].

(s) The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of “not very well-to-do”. [see *General Manager (D and PB) v. Kunti Tiwary*].

(t) Financial condition of the family of the deceased employee, allegedly in distress or penury, has to be evaluated or else the object of the scheme would stand defeated inasmuch as in such an eventuality, any and every dependent of an employee dying-in- harness would claim employment as if public employment is heritable [see *Union of India v. Shashank Goswami*, *Union Bank of India v. M.T. Latheesh*, *National Hydroelectric Power Corporation v. Nank Chand* and *Punjab National Bank v. Ashwini Kumar Taneja*].

(u) The terminal benefits, investments, monthly family income including the family pension and income of family from other sources, viz. agricultural land were rightly taken into consideration by the authority to decide whether the family is living in penury. [see *Somvir Singh (supra)*].

(v) The benefits received by widow of deceased employee under Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appointment. Family Benefit Scheme cannot be equated with benefits of compassionate appointment. [see *Balbir Kaur v. SAIL*]

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9 2025 SCC OnLine SC 290

(w) The fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. [see *State of H.P. v. Shashi Kumar*].

(x) Courts cannot confer benediction impelled by sympathetic consideration [see *Life Insurance Corporation of India v. Asha Ramchandra Ambedkar*].

(y) Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/instructions [see *SBI v. Jaspal Kaur*].

(z) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see *Kendriya Vidyalaya Sangathan v. Dharmendra Sharma*].”

“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.”

### **VI (C) Delay in compassionate appointments**

36. There is another facet to the controversy. The legislative intent and judicial rationale for appointment on compassionate grounds is subserved only when an application for appointment on compassionate grounds is made in quick time and in near proximity to the death of the employee. No delay can be brooked in the applications for grant of appointment on compassionate grounds. Constitutional law holdings regarding compassionate ground appointment mandate that dependents claimants have to be vigilant about their rights diligently prosecute their application for appointment. Delay in filing of the application or apathy in prosecution of the case for grant of compassionate appointment has not been countenanced by the Courts. In fact delay in filing of the application raises a presumption that financial crisis being faced by the family has ceased to exist. The discussion has the benefit of cases in point.

37. This Court in **Ashish Yadav Vs. Managing Director, UP State Road Transport Corporation and others** rendered in **Writ A No. 17483 of 2024**) states as under:

"25. A Division Bench of this Court after citing authorities in point also concluded that financial penury ceases to exist in case an application was made long years after the death of the employee in the case of Smt. Sonal Laviniya and another vs. Union of India and another reported at 2003 (5) AWC 4070:

38. The purpose of providing such an employment has been to render the financial assistance to the family, which has lost the bread earner immediately after the death of the employee. If the application has been filed after expiry of 9½ years the element of

immediate need stood evaporated and there was no occasion for the respondents to consider the case of the petitioner for such a relief. The observation made by the learned Tribunal are in consonance with the law laid down by the Hon'ble Apex Court and no exception can be taken out.

38. The impact of delay on the legality of compassionate appointments was examined by the Supreme Court in **Ajithkumar G.K. (supra)** by holding:

“11. (j). An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

27. Lapse of time could, however, be a major factor for denying compassionate appointment where the claim is lodged belatedly. A presumption is legitimately drawn in cases of claims lodged belatedly that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. However, what would be a reasonable time would largely depend on the policy/scheme for compassionate appointment under consideration. If any time limit has been prescribed for making an application and the claimant applies within such period, lapse of time cannot be assigned as a ground for rejection.”

**VII(A). Impugned order / Termination / Cancellation of appointment in light of statutory provisions and case laws:**

39. With these established facts and clear statutory mandate and settled position of law the correctness of the impugned orders and the legality of the petitioner’s appointment will be examined.

40. The existence of financial destitution emanating from the death of an employee is the sine qua non for appointment on compassionate grounds. In absence of financial penury caused by the death of the earning member in harness the dependents of

the deceased employee cannot claim compassionate appointment.

41. It is noteworthy that the petitioner has not disputed the findings of the authorities below regarding the factum of his employment as DSL Cleaner in the Railways for five years after the death of his father. The petitioner had a good and regular source of income for all those years, and clearly he did not suffer financial destitution due to the death of his father in harness. Financial crisis faced by the petitioner thus resulted from his removal from Railway service, and was not caused by his father's death. There is no nexus between the death of the petitioner's father in harness in 1984, and the financial penury faced by him in 1989. The financial hardship which was claimed by the petitioner for the first time in 1989 was entirely of his own making. Immediate financial destitution of the dependent caused by the death of an employee which is the mandatory prerequisite for appointment on compassionate ground does not exist in this case. The violation of the sole and imperative precondition for compassionate appointment is a non curable illegality which goes to the root, and renders the petitioner's appointment void ab initio.

42. The holdings in **Ajithkumar G.K. (supra)**, **Sonal Laviniya (supra)** and **Ashish Yadav (supra)** are applicable to the facts of this case and shall govern its fate. The application for appointment on compassionate grounds was obviously made by the petitioner nearly five years after the death of his father. The

delay on part of the petitioner too is fatal to the legality of his appointment.

43. There is no infirmity in the findings returned by authorities below regarding the fraud and invalidity in the petitioner's appointment. Moreover, granting relief of reinstatement to the petitioner would be in the teeth of the holdings of the Supreme Court discussed in the preceding part of the narrative, and would tantamount to legitimizing an appointment which was inherently illegal and void ab initio.

#### **VII(B). Abuse of Compassionate Appointments:**

44. The petitioner's appointment was made in complete violation of the law governing compassionate appointment and entirely subverted the beneficent purpose of the same. The appointment of petitioner was an abuse of the power of compassionate appointments and was vitiated since inception. The appointment of the petitioner was possible because of lax standards of scrutiny while making such appointments, if not an outright act of collusion of the competent authorities in the fraud. The petitioner cannot get any benefit of poor oversight of officials or their connivance in his illegal appointment.

45. The law has looked askance against creation of such contrivances to make back door entries in public employment for the benefit of serving employees and creating a monopoly in their favour by treating government jobs as a largesse. Constitutional Courts have noticed the abuse of compassionate appointments and the law has set its face against such fraud for

appointment on compassionate grounds. Authorities in point will fortify the narrative.

46. A Full Bench judgement of the Andhra Pradesh High Court in **Government of Andhra Pradesh, General Administration, Department, Hyderabad, and others v. D. Gopaiah and others**<sup>10</sup> had drawn the red lines after noticing the abuse of the process of making compassionate grounds appointments in an indiscriminate manner. Familiar and ingenuous devices like Government Orders were created to grant government appointments as largesse, and to avoid appointments by the constitutional mode of recruitment to government posts. The overreach of the law laid down by the Supreme Court was looked askance in **D. Gopaiah (supra)**.

47. The observations of Andhra Pradesh High Court in **D. Gopaiah (supra)** were also affirmed by the Supreme Court in **National Institute of Technology and others v. Niraj Kumar Singh**<sup>11</sup> by holding as under:

“19. In *Govt. of A.P. v. D. Gopaiah* [(2001) 6 An LT 553 : (2002) 93 FLR 12 (AP) (FB)] , a Full Bench of the Andhra Pradesh High Court noticing the aforementioned judgment, opined : (An LT p. 555, para 8)

“8. By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent. Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception.”

It was further stated : (An LT p. 556, paras 11-14)

“11. The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central

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<sup>10</sup> 2002 (2) L.L.N. 484

<sup>11</sup> (2007) 2 SCC 481



Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about gross abuse of the schemes and inherent lack of safeguards.

12. Before further adverting to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which *stricto sensu* violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the non-governmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

13. The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the officer concerned or acted on pressure of the employees' unions.

14. The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs.”

48. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and others**<sup>12</sup> relied on a Division Bench Judgement of the Punjab and Haryana High Court wherein the learned Division Bench saw through the devices evolved by the Railways “to make backdoor

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entries in public employment” which brazenly “militated against equality in public employment” and held thus:

“22. The Union Ministry of Railways introduced a scheme called the “Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff”<sup>20</sup>. It allowed drivers and gangmen aged between 50 and 57 years to voluntarily retire after completing 33 years of service (later reduced to 20 years). After retirement, a “suitable ward” of the retired employee would be considered for employment.

23. The Division Bench in Kala Singh (supra) was seized of a writ petition concerning an employment dispute related to the LARSGESS but where the LARSGESS was not under challenge. Speaking for the Division Bench, Hon’ble Surya Kant, J. (as His Lordship then was) observed that the scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution and is a device evolved by the Railways to make backdoor entries in public employment and brazenly militates against equality in public employment. While dismissing the writ petition and directing the Railways to stop making any appointment, the Division Bench also directed that the Railways should revisit the same keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. An application seeking recall of the order of the Division Bench was dismissed. The order of the Division Bench having been challenged before this Court, a coordinate Bench declined to interfere. In view of the observations made by the High Court, the Railway Board terminated the scheme.”

49. The petitioner not only fails to satisfy the mandatory criteria for appointment on compassionate grounds, but in the facts of this case his appointment attracts an immediate and incurable disqualification. The infirmity in the appointment of the petitioner goes to the root of the matter, and strikes at the very legitimacy of the concept of compassionate appointments. The instant case actually shows how compassionate appointments are treated as a vested right. The manner of the petitioner’s appointment also reflects a growing of entitlement which employees is impervious to any transparency and shuns all accountability.

50. In these facts mere continuance for long years in service does not entitle the petitioner to any equitable relief from this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The first and the third questions framed earlier are answered accordingly in favour of the respondents and against the petitioner.

**VIII. Procedure adopted while passing impugned orders: Natural Justice:**

51. The second question as to whether the respondents have adopted the procedure known to law while passing the impugned orders will now be determined.

52. Before passing the impugned order of dismissal the petitioner was duly put to notice on charges of illegality in his appointment. The charges against the petitioner were defined by clarity and supported with material particulars. The petitioner was given several opportunities to tender his defence before the authorities below. The petitioner tendered his reply to the aforesaid charges on more than one occasion. However as seen earlier the petitioner never refuted the charges on merits and the material facts before the authorities below.

53. The relevant documents and adverse materials which were proposed to be relied upon by the authorities were also supplied to the petitioner. In particular the communication sent by the Indian Railways confirming the appointment of the petitioner as DSL Cleaner, and his subsequent removal from service was duly served upon him. Further only the documents supplied to the

petitioner were relied upon by the authorities below while holding that the petitioner had obtained his appointment by suppression of relevant facts and the same was illegal.

54. The documents which were demanded by the petitioner were neither relied upon nor found relevant by the respondents authorities while passing the impugned order.

55. The impugned orders reflect due application of mind to the facts and evidences in the record. The impugned orders are supported by reasons and are consistent with law. No other view can be taken in the facts and circumstances of the case.

56. Principles of natural justice were duly complied with in the course of proceedings before the authorities below prior to passing of the impugned orders. No prejudice has been caused to the petitioner by the aforesaid procedure adopted by the authorities. Demand of documents which were neither germane to the controversy nor were relied upon by the authorities against the petitioner cannot be said to be violation of principles of natural justice.

57. The question now arises as to whether a regular departmental enquiry ought to have been conducted to bring home charge of invalid appointment in the facts of this case. The applicability of the UP Government Servant Discipline and Appeal Rules, 1999 for the purposes of holding a regular departmental enquiry in similar facts fell for consideration before a learned Division Bench of this Court in **District Basic Education Officer and**

**another vs. Punita Singh and others** reported at **Special Appeal Defective No. 506 of 2024**.

58. In the case of **Punita Singh (supra)**, the services of the petitioner were terminated on the footing that her educational certificates were forged and fabricated. The question arose whether, the issuance of show cause notice and compliance of broad principles of natural justice were sufficient to meet the ends of justice or it was imperative to hold a regular departmental enquiry. The learned Bench considered the applicability of Rules 1999, and negated the demand for a regular departmental enquiry by enunciating the following proposition of law:

"16. From the above determination, it is apparent that the University has categorically indicated that the documents relied on by the respondent for seeking employment were totally forged and fabricated. Neither before the learned Single Judge nor before this Court any attempt has been made to negate the finding recorded about the eligibility/qualification documents being forged and fabricated.

17. The learned Single Judge allowed the writ petition only on the ground that termination of employment amounts to imposing major penalty and the same could not have been imposed without holding inquiry under Rules of 1973/Rules of 1999.

18. A Division Bench of this Court in *Zila Basic Shiksha Adhikari, Balrampur Vs. Anand Kumar Tripathi and others* : 2024:AHC-LKO:37313-DB, in a case where compassionate appointment accorded to the respondent therein, was terminated on account of failure to produce relevant documents as regard his parentage, etc., the Division Bench, on the question whether in such case show cause notice should be issued and thereafter order of cancellation of appointment should be passed or a full fledged inquiry in terms of Rules of 1999 should be held

followed by removal or dismissal, came to the conclusion that disciplinary proceedings are ordinarily initiated if any misconduct has been committed after joining service, therefore, if the initial appointment itself was fraudulent, then referring to the judgment of Hon'ble Supreme Court in R. Vishwanatha Pillai Vs. State of Kerala and others : (2004) 2 SCC 105, and Patna High Court judgements in Ishwar Dayual Sah Vs. State of Bihar : 1987 Lab IC390 and Rita Mishra Vs. Director, Primary Education : 1988 Lab IC 907, came to the following conclusion:

"12. Taking a cue from the ratio of the decision of the Supreme Court, we are of the opinion that if it is ultimately found on inquiry referred earlier that the opposite party no. 1 had practiced fraud or deceit to obtain the appointment as already discussed, then, it would be a case to proceed for cancellation of appointment by issuing a show cause notice for the said purpose annexing the inquiry report and material collected in such inquiry and then considering the reply of the appointee in this regard and taking a reasoned decision after affording an opportunity of personal hearing for cancellation of appointment and not necessarily for dismissal or removal of service, therefore, there is no question of any inquiry to be held in terms of Rules, 1999 as has already been held in the aforesaid decision of the Supreme Court.

13. This will be sufficient observance of principles of natural justice. It may also be pointed out that an employee of Basic Education Department does not have the benefit of Article 311 of the Constitution of India as Article 311 of the Constitution of India would not apply, however, the relevant rules for disciplinary proceedings for imposition of major punishment such as removal, dismissal etc. would apply, but, for the reasons aforesaid, those will also not apply if on a fact finding inquiry it is found that the appointment was obtained by fraud, as already observed hereinabove and thereafter the aforesaid procedure is followed."

19. Recently, Hon'ble Supreme Court in Union of India Vs. Prohlad Guha etc.: 2024 SCC OnLine SC 1865, in a case where the writ

petitions filed by the employees were allowed for not following the Railway Servants (Discipline & Appeal) Rules, 1968 and on coming to the conclusion that qua a person in regular service, the dismissal cannot take place sans any disciplinary inquiry, while setting aside the judgement, came to the following conclusion:

"13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers* observed -

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning

or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

.....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which power can be exercised.

13.1. The words of Denning L.J. in *Lazarus Estates Ltd. v. Beasley* are of importance qua the impact of fraud. He wrote -

".....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever...."

13.2. 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; *Derry v. Peek*; *Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education*]

13.3 In *R. Vishwanatha Pillai v. State of Kerala*, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was



appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (supra) answers the question. The Respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in Devendra Kumar v. State of Uttaranchal. In paragraph 25 thereof it was observed.

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056].) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur)." (Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the Respondent-employees' Original Applications is

restored. The Respondent- employees were rightly dismissed from service by the Appellant-employer. ???."

20. From the above, it is well established that in case, the employment has been obtained based on fraudulent documents, the beneficiary of such fraud cannot seek that procedure prescribed under the Rules of 1999 must be followed.

21. So far as the judgment in the case of Smt. Parmi Maurya (supra) relied on by counsel for the respondent is concerned, it was a case where the Division Bench came to the conclusion that petitioner therein, was not afforded adequate opportunity of hearing. However, in the present case, it is ex facie clear from the order impugned that she was provided adequate opportunity with regard to her documents being forged and fabricated and the only plea raised by her was that she would produce duplicate copies of the said documents and neither in the writ petition nor in the present appeal, she has been able to produce any further document/material to substantiate that the mark-sheets issued to her, were not forged and fabricated. "

59. The case at hand is squarely covered by the law laid down in **Punita (supra)**. The charges relating to the fraud and infirmity in the initial appointment have led in effect to a cancellation of the petitioner's appointment. This is distinguishable from misconduct committed in discharge of official duties.

60. The procedure adopted while finding against the petitioner on the said charge cannot be faulted with and is consistent with the law laid down in **Punita (supra)**. Thus the second question framed for consideration is accordingly answered by finding for the respondents and against the petitioner.

## **IX. Conclusions and Directions:**

61. The charges relating to the financial irregularities shall now be dealt with. A regular departmental enquiry proceeding to bring home the aforesaid charge wherein the relevant departmental witnesses were to be produced and cross examined was the requirement of law. Various documents which established the said charges too had to be proved before the enquiry officer. The said procedure has not been followed and the second charge has not been proved as per the procedure prescribed by law. The findings of the authorities below in this regard cannot be sustained.

62. The findings of the authorities in the impugned orders in regard to the second charges are perverse and are not liable to be sustained. Ordinarily the matter would have been remanded to the authorities including into the charge as per the procedure provided in the relevant service rules. The two sets of charges relating to invalidity of appointment and financial regularities respectively are severable. Since the appointment of the petitioner has been found to be illegal beyond cure and vitiated beyond recall, no purpose will be served by remanding the matter. It is time for litigative repose.

63. The respondent No.1-Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow shall cause an enquiry to be conducted into the following issues as per law:

- (a) role of officials responsible for the petitioner's appointment.
- (b) the reasons why the matter went undetected for decades.

(c) the responsible officials who turned a blind eye or delayed the proceedings even after the issue came in full knowledge of the authorities. Appropriate action as per law shall be taken thereafter.

64. In light of such enquiry proper institutional measures including detailed scrutiny of applications and due diligence before making compassionate ground appointments are liable to be put in place to prevent recurrence of such incidents in future.

65. In wake of the preceding discussion, the writ petition is liable to be dismissed and is dismissed.

**Order Date :-** 04.07.2025

Pravin