

**Court No. - 36**

**Case :-** WRIT - A No. - 19479 of 2023

**Petitioner :-** Shashikant

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

**Counsel for Petitioner :-** Durga Shanker Mishra

**Counsel for Respondent :-** C.S.C.,Ashutosh Mishra

**Hon'ble Manjive Shukla,J.**

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1 & 2 and Sri Shrinath, learned counsel appearing for the Respondents No. 3 and 4.

2. Petitioner has filed this writ petition inter alia praying therein for the following reliefs:-

*"(a) Issue a writ, order or direction in the nature certiorari calling for the records and quashing the impugned order dated 13.10.2023 passed by the respondent no.4- Basic Education Officer, Baghpat (Annexure No.1 to the writ petition).*

*(b) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to appoint the petitioner in the office of District Basic Education Officer Baghpat under dying in harness rules on Class III/IV post."*

3. Facts of the case, in brief, are that father of the petitioner, while working in a primary school run by U.P. Basic Education Board died in harness. Petitioner immediately submitted an application for compassionate appointment in place of his father.

4. The District Basic Education Officer, Baghpat vide order dated 23.09.2011 granted appointment to the petitioner on the post of Assistant Teacher. Later on, the aforesaid appointment made on compassionate ground on the post of Assistant Teacher was cancelled on 28.8.2012 by the District Basic Education Officer, Baghpat on the ground that after enforcement of Right of Children to Free and Compulsory Education Act, 2009, nobody can be appointed on the post of Assistant Teacher unless he possess TET qualification.

5. The candidates identically placed to that of petitioner challenged the orders whereby their appointments were cancelled by filing different writ petitions, which were clubbed together and leading writ petition became Writ-A No.33828 of 2012 (Hari Shanker and

others vs. State of U.P. and others). The said writ petition was dismissed by this court vide judgment and order dated 25.7.2012 and the said judgment has been upheld by the Division Bench of this court vide order dated 9.9.2021 passed in Special Appeal No.1467 of 2012. Later on, Petition(s) for Special Leave to Appeal (C) No.19316-19342 of 2021 preferred against the judgment and order dated 9.9.2021, was also dismissed on 17.01.2022 as withdrawn with liberty to file review before the High Court.

6. This court vide judgment and order dated 25.7.2012 rendered in Writ-A No.33828 of 2012 has directed that petitioners be given compassionate appointment on Class III/Class IV posts as per their educational qualifications.

7. Learned counsel appearing for the petitioner has submitted that petitioner is entitled for compassionate appointment on a Class III/IV post as per the directions issued by this court vide judgment and order dated 25.7.2012 rendered by this court in Writ-A No.33828 of 2012.

8. Learned counsel appearing for the petitioner has vehemently argued that the issue involved in the petitioner's matter has already been settled by this court vide judgment and order dated **18.7.2023 rendered in Writ-A No.8741 of 2023, Subhash Chand vs. State of U.P. and others**, wherein it has been held that application for grant of compassionate appointment on Class III/Class IV post has to be considered by the competent authority and shall not be rejected on the ground of delay in filing the application for compassionate appointment.

9. Learned counsel appearing for the petitioner has also argued that in identical circumstances various candidates have already been given compassionate appointment on Class III/IV posts vide orders passed on different dates and the said orders are contained in Annexure No. 11 to the writ petition.

10. On the other hand, Sri Shrinath, learned counsel appearing for the Respondents No. 3 and 4 has not disputed that the issue involved in this writ petition has already been decided by this court vide judgment and order dated **18.7.2023 rendered in Writ-A No.8741 of 2023, Subhash Chand vs. State of U.P. and others**.

11. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that identical issue has already been decided by this court vide judgment and order dated **18.7.2023 rendered in Writ-A No.8741 of 2023, Subhash Chand**

**vs. State of U.P. and others.** The relevant paragraphs of the judgment rendered in the case of Subhash Chand (supra) are extracted as under:-

*"30. Petitioner challenged order dated 28.08.2012 by filing Writ-A No. 59648 of 2012 which was dismissed by this court in terms of judgement and order dated 25.07.2012 passed in Writ-A No. 33828 of 2012 (Hari Shankar and others Vs. State of U.P. and others). This Court vide judgement and order dated 25.07.2012 upheld the validity of the order dated 28.08.2012 whereby petitioner's appointment was cancelled but also issued direction to the respondents to consider the claim of petitioner against existing Class-III/Class-IV vacancy preferably within next two months. The relevant portion of the judgement and order dated 25.07.2012 is extracted as under:*

*"In view of what has been discussed above, all the writ petitions are dismissed. The claim of the petitioners be considered against existing class III/IV vacancies except qua class III vacancies which are to be filled up by way of promotion, preferably within next two months."*

*31. Once this Court upheld the validity of order dated 28.08.2012 whereby compassionate appointment of the petitioner on the post of untrained Assistant Teacher was cancelled and direction was issued to the respondents to consider claim of the petitioner against Class-III/Class-IV vacancies then it was obligatory upon the respondents to consider the claim of the petitioner for compassionate appointment on Class-III/Class IV post within a period of two months but respondents utterly failed to carry out directions issued by this Court vide judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012.*

*32. The Secretary, U.P. Basic Education Board, Prayagraj while passing order dated 20.02.2023 thereby rejecting the claim of the petitioner for his compassionate appointment on a Class-III/Class-IV post on the ground that compassionate appointment cannot be offered after elapse of about 11 years, has not only acted illegally but in-fact has also violated the direction issued by this Court vide judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012.*

*33. This Court is of the view that the District Basic Education Officer, Baghpat cannot blow hot and cold together i.e. on the one hand, he has not complied with the direction issued by this Court vide judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012 and on the other hand, he has rejected the claim of the petitioner for compassionate appointment on the ground the petitioner cannot be offered compassionate appointment after elapse of 11 years. Once petitioner submitted application for compassionate appointment immediately after the death of his father, it was obligatory on the part of the District Basic Education Officer, Baghpat to offer him a legal appointment but in the case of petitioner, the District Basic Education Officer, Baghpat appointed him on the post of untrained Assistant Teacher, though as per law, said appointment could not have been made, therefore, after cancellation of the said appointment, it was the duty of the District Basic Education Officer to consider the claim of compassionate appointment of the petitioner on Class-III/Class-IV post but he utterly failed to do so, therefore, now it is not open for him to take excuse that 11 years have elapsed and, therefore, petitioner cannot be offered compassionate appointment.*

*34. So far as the issue as to whether compassionate appointment can be offered after elapse of 11 years from the date of death of the government servant, is concerned, I find that in normal circumstances when the application for the compassionate appointment is filed with considerable delay then the law in that regard is very clear that the compassionate appointment is offered to meet out instant financial crisis faced by the family of deceased government servant, therefore, where the application for compassionate appointment has been submitted with considerable delay, the compassionate appointment cannot be offered but case of the petitioner stands on entirely different footing as petitioner applied for compassionate appointment immediately after the death of his father and even he was issued appointment order but later on, it was found that the said appointment of the petitioner was dehors the rules, therefore, it was incumbent on the District Basic Education Officer to offer compassionate appointment to the petitioner on Class-III/Class-IV post.*

35. The District Basic Education Officer, Baghpat even has not complied with the direction issued by this Court vide judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012, therefore, this plea is not available to him that case of the petitioner for compassionate appointment on Class-III/Class-IV post cannot be considered after elapse of 11 years.

36. I am also of the considered view that in-fact after passing of the judgement and order dated 25.07.2012 passed in Civil Misc. Writ Petition No. 33828 of 2012, there is no requirement for the petitioner to file fresh application for compassionate appointment as petitioner after the death of his father has already filed application for compassionate appointment, therefore, the District Basic Education Officer was under mandate of the Court to consider claim of the petitioner against existing Class-III/Class IV vacancy but instead of complying the said order, the Secretary, U.P. Basic Education Board, Prayagraj deliberately kept the matter pending and, therefore, the order dated 20.02.2023 thereby rejecting the claim of the petitioner for compassionate appointment on the ground that 11 years have elapsed, is not sustainable in the eyes of law and, thus is liable to be quashed by this Court."

12. In view of the aforesaid reasons, this writ petition is allowed. Order dated 13.10.2023 passed by the District Basic Education Officer, Baghpat is quashed. Respondent No. 3 is directed to consider and decide petitioner's case for compassionate appointment on Class III/IV post in light of the judgment and order dated **18.7.2023** rendered by this court in **Writ-A No.8741 of 2023, Subhash Chand vs. State of U.P. and others**, within two months from the date of service of certified copy of this order.

**Order Date :- 23.11.2023**

Salim