

Court No. - 18

Case :- WRIT - A No. - 5834 of 2024

Petitioner :- Abhay Malik

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. (Co-Operative)
U.P. Lko. And Others

Counsel for Petitioner :- Piyush Asthana

Counsel for Respondent :- C.S.C.,Prashast Puri,Vinod Kumar Singh

Hon'ble Manish Mathur,J.

1. Heard Mr.Piyush Asthana, learned counsel for petitioner, learned State Counsel for opposite party no.1, Ms. Alina Masoodi, Advocate holding brief on behalf of Mr. Gaurav Mehrotra, learned counsel for opposite parties 2 to 5 whose power filed today is taken on record and Ms. Madhur Jhavar, Adocate holding brief on behalf of Mr. Prashast Puri, learned counsel for opposite party no.6 whose power filed today is also taken record.

2. Petition has been filed challenging order dated 18.07.2024 to the extent where petitioner has been granted compassionate appointment as a class IV employee on the post of Peon. Further direction has been sought to opposite parties to grant compassionate appointment to petitioner on the post of Assistant Field Officer on Class III/Category-III posts or posts equivalent thereto.

3. It has been submitted that petitioner's father late Devendra Singh was employed with the Bank concerned on the post of Accountant and passed away while in service on 13.05.2015 whereafter petitioner filed Application for Compassionate Appointment in terms of Regulation 104 of Uttar Pradesh Cooperative Societies Employees Service Regulations, 1975 (hereinafter referred to as Regulations of 1975). It is submitted that petitioner's father was initially appointed in the Bank on the

post of Assistant Accountant on 26.09.1989 and at the time of his demise was working on the post of Branch Accountant. It is submitted that petitioner is fully qualified to hold a Class-III post in the bank concerned. It is further submitted that the post of Peon which has been offered to petitioner is in fact two stages below the post on which petitioner's father was employed at the time of his demise.

4. Learned counsel for petitioner has placed reliance on judgment rendered by Hon'ble the Supreme Court in **State of Uttar Pradesh & ors v. Premlata** reported in (2022) 1 SCC 30 to submit that the term 'suitable post' in terms of Rule 5 of U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 [hereinafter referred to as the Rules of 1974] includes consideration of status/post held by the deceased employee and educational qualifications/eligibility criteria is required to be considered in view of post held by the deceased employee.

5. It is submitted that the petitioner is not claiming any particular post on the basis of his own educational qualification but is in fact claiming consideration for appointment on a suitable post in terms of Rule 5 of Rules of 1974, again in terms of the status/post held by his father as an employee of the Bank at the time of his demise as has been held in aforesaid judgment in **State of Uttar Pradesh & ors v. Premlata**(supra).

6. Learned counsel for opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that compassionate appointment by its very terminology indicates appointment out of pure humanitarian consideration only to provide a source of livelihood so as the family is not left destitute on the sole breadwinner passing away. It is also submitted that petitioner's application for

compassionate appointment is in fact governed by Regulation 104 of Regulations of 1975 and not Rule 5 of the Rules of 1974 and therefore the aspect of applicant possessing minimum educational qualifications prescribed for the post and otherwise being fit for such an appointment is a factor required to be considered. Learned counsel has placed reliance on a Full Bench decision of this Court in **Shiv Kumar Dubey v. State of U.P. and others** reported in 2014 SCC OnLine All 16214.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, particularly the provisions of compassionate appointment in view of terminology used in Rule 5 of Rules of 1974 and Regulation 104 of Regulations of 1975, it is discernible that for the purposes of appointment on compassionate ground, the term 'suitable post' or 'suitable employment' has been used in both the provisions. Hon'ble the Supreme Court in **State of Uttar Pradesh & ors v. Premlata**(supra), which has been relied upon by learned counsel for petitioner has expounded the law pertaining to compassionate appointment particularly with regard to suitability of post or employment in the following terms:

"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.

10.1.....

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 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.

....."

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

8. Learned counsel has placed specific emphasis on paragraph 10.2 of judgment in **State of Uttar Pradesh & ors v. Premlata**(supra) to submit that suitable post has to be considered considering the status/post held by the deceased employee and once that is done, then the educational qualification/eligibility criteria is required to be considered considering the post held by the deceased-employee.

9. In the considered opinion of this Court, on a conjoint reading of paragraph 10.2 and paragraph 11 of judgment in **State of Uttar Pradesh & ors v. Premlata**(supra) it is quite clear that Hon'ble the Supreme Court has held that consideration of status/post held by the deceased employee and educational qualification of the applicant is not required to be considered for the purposes of 'suitable post' in terms of Rule 5 of the Rules of 1974. It has clearly been held that in case such consideration is made, there would be no difference/distinction between appointment on compassionate ground and regular appointment. In paragraph-11, aforesaid interpretation has clearly been held to defeat the object and purpose of appointment on compassionate ground.

10. The observation in paragraph 10.2 of the judgment of consideration of post held by deceased employee is to be construed in the context, as in the present case where compassionate appointment is being sought on a higher post and it has been held that such claim cannot be as a matter of right, as clearly enunciated in paragraph 10 of the same judgment.

11. In **Umesh Kumar Nagpal v. State of Haryana and others** reported in (1994) 4 SCC 138, Hon'ble the Supreme Court has held aforesaid aspect in the following manner:-

"2. 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..... 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."

"3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible."

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

12. In view of law settled, compassionate appointment itself not being a vested right, there cannot be a vested right to a particular post as a consequence thereof for issuance of a writ in the nature of Mandamus.

13. Having regard to aforesaid facts and law enunciated by Hon'ble the Supreme Court, no indulgence can be granted to

petitioner for seeking employment on a particular post or category.

14. The petition therefore fails and is dismissed at the admission stage itself. The parties to bear their own costs.

15. It is provided that dismissal of this petition, however, shall not preclude petitioner from availing benefit of the order impugned for joining on a Class IV post.

Order Date :- 29.7.2024

kvg/-