

Court No. - 4

Case :- WRIT - A No. - 11784 of 2021

Petitioner :- Rahul

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh, Kumar Kartikeya, R. B. Tripathi, Shresth Pratap Singh

Counsel for Respondent :- C.S.C., Pankaj Kumar Shukla

Hon'ble Ajit Kumar, J.

1. Heard Sri Adarsh Singh, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this petition filed under Article 226 of Constitution of India, the petitioner has challenged the order dated 28.08.2021 whereby petitioner's services have been dispensed with only on the ground that while seeking compassionate appointment for his father dying in harness on 01.02.2008, vide application dated 29.02.2008, he concealed this material fact that his mother was already under Government service.

3. Meeting the grounds raised in the order impugned in this petition, Sri Adarsh Singh, learned counsel for the petitioner argues that the petitioner as a matter of fact did not conceal any material fact while seeking compassionate appointment. He submitted two points, firstly that in those days in the year 2008 when the applications for compassionate appointment were invited by the respondents there was no form prescribed as such which may require particular information to be furnished and also the petitioner had annexed the copy of family register which very much disclosed that both the parents of the petitioner were in Government Service. Copy of

the family register has been annexed alongwith the petition as Annexure-2. He has also drawn the attention of this Court to the pleadings raised in paragraph no.20 of the writ petition in which it is clearly stated that the application that was filed for seeking compassionate appointment of the petitioner was accompanied by the family register. He submits that this paragraph 20 has not been denied in the counter affidavit as paragraph no.6 of the counter affidavit itself contains averment to the effect that the application of the petitioner seeking compassionate appointment was accompanied by High school and Intermediate marksheet and certificate, death certificate, copy of family register, caste certificate, domicile certificate, succession certificate and also no objection from his mother Smt. Asha Devi, sister Supriya Sonam and Shweta Sonam and brother Saurabh. All those affidavits were notarized affidavits giving no objection for employment to be offered to the petitioner on compassionate basis.

4. Learned counsel for the petitioner submits that in the light of these above facts it cannot be said that the petitioner concealed any material fact from the respondents for seeking compassionate appointment and hence the ground assigned in the order impugned is absolutely unsustainable. It is further submitted that the petitioner was offered compassionate appointment on 15.08.2008 and on a sheer third party complaint proceedings got initiated against him by issuing show cause notice on 19.08.2021 after a lapse of more than a decade of his appointment requiring him to explain his conduct. It is further submitted that the petitioner explained his conduct before the authority stating in his reply very clearly that he had filed documents and no specific information otherwise was required by the respondents while considering the claim of the petitioner for compassionate appointment. He also submits that the petitioner's appointment which is a compassionate appointment was permanent in nature and hence could not have been annulled by merely conducting a summary enquiry ordinarily meant for minor punishments.

5. He has placed before the Court the Division Bench judgment of this Court in the case of **State of U.P. through its Principal Secretary and 2 others v. Smt. Sugandha Upadhyay**: Special Appeal No.5 of 2025 decided on 24.01.2025. Relevant paragraph of the judgment are reproduced hereunder:

" 4. It is evident from the record that the application was accompanied by an affidavit of the mother of the petitioner and that the petitioner at the time of appointment was 18 years of age. After the application was accepted by the department, a Selection Committee was constituted to consider the appointment of the petitioner on compassionate grounds and thereafter on the recommendations of the Selection Committee, an appointment letter dated 13.12.2013 was issued by the Additional Labour Commissioner appointing the petitioner as Junior Assistant in the office of the Additional Labour Commissioner. Further, from the record, it is evident that the petitioner was also promoted to the post of Senior Assistant.

5. From the record we also find that on the basis of some complaint of a retired Senior Assistant, previously employed in the office of Deputy Labour Commissioner, an internal inquiry was undergone and it was found that at the time of death of the father of the petitioner, her mother was also employed as a Class-IV employee in the Labour Department and thereafter by an order dated 20.07.2022, on the basis of the fact that the petitioner had concealed the fact regarding employment of her mother, the appointment of the petitioner was cancelled.

6. The petitioner approached this Court, and the learned Single Judge relying upon the judgment in Md. Zamil Ahmed Vs. State of Bihar and others, (2016) 12 SCC 342 and the judgment and order dated 08.08.2023 passed by a Single Judge of this Court in Writ-A No.2134 of 2023 (Uday Pratap Singh Vs. District Basic Education Officer, Basti and two others), allowed the writ petition.

7. While allowing the writ petition the learned Single Judge gave specific findings with regard to the fact that there was no fraud committed by the petitioner at the time when the petitioner had made the application for getting the job under the Uttar Pradesh Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as 'the Rules, 1974'). It has also been found by the learned Single Judge that the petitioner had submitted a simple application which was not on any prescribed proforma stating her relationship with the deceased, her occupational skills and educational qualifications and thereafter had sought appointment on a

compassionate basis. The mother of the petitioner had also submitted an affidavit declaring that she had no objection to the appointment of the petitioner in the place of the deceased father.

8. Learned Single Judge had mentioned that she had not stated that her mother was not employed with the State Government or the Central Government or any corporation owned or controlled either by the State Government or the Central Government. Learned Single Judge had also found that the mother of the petitioner was employed as Class-IV employee in the Labour Department itself and it was not believable that the Selection Committee and the Appointing Authority had no knowledge or information regarding the fact that the mother of the petitioner was already employed with the same department of the State Government. Learned Single Judge has thereafter found that there was absolutely no fraud committed by the petitioner. He had also found that the petitioner had already worked for ten years and her services had been confirmed and also the petitioner had been promoted after her initial appointment and the writ petition thereafter was allowed.

9. Learned counsel for the appellants has submitted that when there is a fraud committed then no length of service had to be seen and that no departmental inquiry etc. had to be gone into. He submits that fraud had been committed therefore the services of the petitioner had to be done away with, and in support of this submission, he relied on the decisions in Anoop Kumar Srivastava Vs. State of UP and others, 2021 (6) AWC 5341, and Sumit Kumar Verma Vs. State of UP and others 2022 (2) AWC 1683 (LB).

10. Learned counsel for the petitioner (respondent herein) has submitted that the petitioner had not concealed any aspect of the matter. All facts were disclosed by the petitioner. Mother of the petitioner had given an affidavit to the effect that she had no objection to the appointment of the petitioner. The appointment was preceded by a full fledged proceeding wherein the Selection Committee of the Department where the mother was working had assembled and thereafter the department itself had issued the appointment letter. Learned counsel for the petitioner therefore states that the judgments which had been relied upon by the learned counsel for the appellants had no application in the present case.

11. Having heard the learned counsel for the parties, we are of the view that no interference is warranted in the special appeal as the petitioner had while seeking her appointment made only a simple application disclosing her relationship with her deceased father.

She had given her occupational skills and educational qualifications etc. and had also appended alongwith her application an affidavit of her mother stating that she had no objection to the employment of her daughter. We are further of the view that the Selection Committee was of the very same department where her mother was working. We, also, therefore find that no fraud had been committed by the petitioner.

12. The special appeal lacks merit and is accordingly dismissed. "

(Emphasis added)

6. Sri Singh, learned counsel for the petitioner has also placed before the Court, the order passed in Special Leave to Appeal (C) No.6320 of 2025 against the aforesaid judgment which came to be dismissed on 28.03.2025. Thus according to Sri Singh, *ratio* of judgment has stood upheld by the Supreme Court. He has also relied upon a judgment of the Coordinate Bench of this Court in the case of ***Uday Pratap Singh v. District Basic Education Officer, Basti and 2 others*** vide Writ A No.2134 of 2023 decided on 08.08.2023 in which the order of dismissal from service after a lapse of 19 years while holding summary enquiry was set aside. Relevant paragraph nos.48 and 49 are reproduced hereunder:

"48. Essence of the time and length of service is of paramount importance in the matters of cancellation of appointment on the ground that the initial appointment is contrary to the provisions of rules or government orders. If immediately after the appointment, authorities would have acted upon and the appointment of the petitioner was cancelled, then definitely no interference by this Court was warranted but where initial compassionate appointment was made 19 years back and there was no concealment of facts at the time of the said appointment, the same cannot be cancelled after elapse of 19 years on the ground that the initial appointment was made in violation of some provision of government order. Even further, in the present case departmental authorities, at no point of time, ever noticed that petitioner's appointment on compassionate ground was made contrary to the provisions of Government Order dated 04.09.2000 rather the exercise of cancellation of the petitioner's appointment has been done after elapse of 19 years on the behest of private complainant, therefore, in the given facts and circumstances of the case, the order dated

30.12.2022 whereby appointment of the petitioner has been cancelled, cannot sustain in the eyes of law.

49. The order dated 30.12.2022 whereby services of the petitioner have been terminated by cancelling his appointment from the date of his initial appointment is also not sustainable on another ground as regular disciplinary proceedings were initiated against the petitioner by issuing him a charge-sheet to which he submitted reply but thereafter neither the procedure for conducting disciplinary inquiry was adopted nor inquiry report was submitted. It is well settled proposition of law that once disciplinary proceedings have been initiated by issuing a charge-sheet then the procedure prescribed for holding disciplinary inquiry has to be followed and on the basis of the inquiry report, disciplinary authority will issue a show cause notice and after taking reply, the final order in the disciplinary proceedings will be passed whereas in the present case though charge-sheet was issued to the petitioner and his reply was taken but thereafter procedure as provided under Rule 7 and Rule 9 of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 has not been followed, therefore, the final order passed by the District Basic Education Officer on 30.12.2022 cannot sustain in the eyes of law.

50. In view of the aforesaid reasons, this writ petition is allowed. The order dated 30.12.2022 passed by the District Basic Education Officer, Basti is quashed. Respondent No. 1 i.e. District Basic Education Officer, Basti is directed to reinstate the petitioner in service forthwith and to pay his salary along with arrears. "

7. It is submitted that against the said judgment Special Appeal Defective No.93 of 2025 (**State of U.P. Thru. Addl. Chief Secy. Agriculture Deptt. Lko. And 3 others v. Vishwaroop**) came to be dismissed by the Division Bench vide its order dated 04.03.2025.

8. Lastly Sri Singh, has also placed a judgment of Supreme Court in the case of **Md. Zamil Ahmed v. The State of Bihar:LAWS (SC) 2016 5 3** which has been relied upon in the judgment of the Division Bench of this Court and also a co-ordinate Bench of this Court as reproduced hereinabove. Relevant paragraphs of the judgment of Supreme Court are reproduced hereunder:

"18) Fourthly, the appellant after securing the employment

throughout maintained the family of the deceased in all respects for the last more than 15 years and he is continuing to do so.

19) In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment.

20) The fact that the appellant was younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of dependent at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment.

21) In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner.

The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare state to help the family of the deceased at the time of need of the family.

22) In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration and nor he suppressed any material fact for securing the appointment. The State was, therefore, not

entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.

23) It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State. "

(Emphasis added)

9. Learned Additional Chief Standing Counsel on the contrary tried to defend the order for the reason assigned therein and submitted that it was the duty of the person seeking compassionate appointment to disclose all relevant facts while filing an affidavit of no objection and, therefore, the petitioner was rightly held guilty for not disclosing the fact that his mother was already in government service. He has further contended that the compassionate appointment is offered only in special facts and circumstances where the sole bread earner of the family dies. It is further argued that the rule of compassionate appointment is to take out the bereaved family from sudden financial crisis after the death of the sole bread earner of the family and in the event the other family members are earning sufficiently then such cases cannot be considered for compassionate appointment. However, on the question of reasons assigned in the order impugned regarding non-disclosure of fact as it already stood disclosed in the family register, learned Additional Chief Standing Counsel submits that this was the matter of record and could have been considered by the authority at the time of giving compassionate appointment. Regarding the authorities cited before this Court, Sri Srivastava submitted that these authorities are on point of law but none of the authorities has discussed the object for which the policy of compassionate appointment has been introduced by the State Government.

10. Having heard learned counsel for the respective parties and having perused the record, I find that it is

a case where there was no prescribed format provided for a candidate seeking compassionate appointment to disclose every detail of the family including the status of each member of the family. It is true that the affidavit was filed by the mother of petitioner giving no objection in favour of the petitioner and she might not have disclosed the fact that she was a Government employee but the family register was before the authorities which showed that the mother of the petitioner who was a widow of late father of the petitioner was very well in the employment. I have perused the family register filed as Annexure No.2 that discloses the petitioner's mother to be in service.

11. Besides the above, I may observe here that in cases of compassionate appointment where the family suffers mental shock due to sudden death of bread earner of the family as in this case the father, the family cannot go into the technical niceties involved while moving application for compassionate appointment. It is a burden more upon the authorities to carry out verification as to the details of the family and its status. If the authorities themselves failed to verify the facts which was apparent on the fact of record then person appointed on compassionate basis could not be blamed for concealing any such fact. It is well established principle of law that fraud being a matter of fact cannot be presumed and so shall have to be proved by the party taking plea of fraud. It is a duty cast upon the authority to verify the records to look into them minutely. If no format is prescribed regarding disclosure of a particular fact, then non-disclosure of such fact cannot form a charge of misconduct. Moreover, in matters of compassionate appointment, which is permanent in nature, employer if finds an employee to have committed fraud in seeking appointment then that charge should be established by holding a full fledged enquiry under discipline and appeal rules as may be applicable to the establishment.

12. In these facts and circumstances and also in so far as the summary proceedings that have been

drawn in the matter of annulment of employment of the petitioner, I find myself in full agreement with the view of the co-ordinate Bench of this Court that a proper procedure ought to have adopted. I also find that the Division Bench as well as the Supreme Court has very clearly held that once the employment has been offered and the facts were before the authorities, after such a long gap of a decade or so such appointment should not be annulled. Looking to the facts that the family has survived due to the earning of the petitioner and petitioner also might have got married and may also having a family absolutely dependent upon him, subsequently I do not find any justification for cancelling the application of the petitioner.

13. In view of the above the order impugned dated 28.08.2021 passed by District Panchayati Raj Officer, Basti, District Basti and is accordingly, quashed.

14. Consequences to follow with reinstatement of petitioner in service alongwith payment of arrears of salary.

15. Thus writ petition succeeds and is **allowed** as above with no order as to cost.

Order Date :- 18.4.2025
Deepika