

A.F.R.

Court No. - 4

Case :- WRIT - A No. - 12975 of 2022

Petitioner :- Pawan Kumar Singh And 5 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Sanjay Kumar Srivastava, learned counsel for the petitioners and learned Standing Counsel for the State respondents.

2. Petitioners before this Court were all applicants for appointment in Home Guard service on compassionate grounds for the reasons that their sole earning member of the family died in harness while in service of respondent establishment, however, they have been denied compassionate appointment on the ground that their height did not match the height prescribed under the rules.

3. It is contended by learned counsel for the petitioners that Government order dated 27th September, 2012 that lays down the rules for consideration of the dependent of the deceased employee dying in harness during service, prescribes for consideration of candidature of such dependents in terms of norms prescribed under the Government order dated 6th September, 2010 and 1st September, 2011. The Government order dated 6th September, 2010

prescribes 167.7 cms height for a candidate to possess in the plain area in general category.

4. It is next submitted that Government order dated 1st September, 2011, reiterates the prescribe height for a candidate falling in the category of general (civil).

5. All these petitioners who had applied for compassionate appointment have been declared unfit in the physical standard test only for the reason that they did not have the requisite height of 167.7 cms.

6. It is contended by learned Senior Advocate appearing for the petitioners that if rules prescribed for the purposes of compassionate appointment to be offered in U.P. Police Service under Government order dated 24th November, 2015 is taken into consideration, then 2 cms relaxation has been provided for in the height of a candidate. Clause 4(i) of the said Government order which has been relied upon is reproduced hereunder:

"4- पुलिस विभाग के आरक्षी एवं समकक्ष पदों पर मृत पुलिस कर्मियों के आश्रितों की सेवायोजन की प्रक्रिया

(i) सामान्य प्रक्रिया

मृत पुलिस कर्मियों के आश्रितों के आरक्षी एवं समकक्ष पदों पर सेवायोजन के संबंध में कार्यवाही संबंधित जनपद/इकाई, आरक्षी पीएसी के संबंध में संबंधित पीएसी वाहिनी, फायरमैन के संबंध में संबंधित जनपद/फायर सर्विस मुख्यालय द्वारा प्रारम्भ की जाएगी। आरक्षी एवं समकक्ष पदों पर सेवायोजन के संबंध में उनकी शैक्षिक अर्हता, शारीरिक मानक, शारीरिक दक्षता के मानक, अन्य अर्हताएं व योग्यताएं वही होगी जो संबंधित पद पर सीधी भर्ती हेतु तत्समय प्रचलित संबंधित सेवा नियमावली के प्रावधानों में होगी किन्तु शारीरिक मानक की अर्हता में न्यूनतम लम्बाई में शासनादेश के अन्तर्गत 2 से०मी की छूट पूर्व की भांति लागू रहेगी। संबंधित जनपद अथवा इकाई

द्वारा सेवायोजन हेतु इस परिपत्र में जारी किए गए 37 बिन्दुओं की चैक लिस्ट के अनुसार सेवायोजन कराए जाने हेतु कार्यवाही अपने स्तर से सम्पूर्ण करायी जाएगी। चैकलिस्ट के अनुसार अगर अभ्यर्थी मृतक आश्रित सेवायोजन हेतु उपयुक्त पाया जाता है तो संबंधित अभिलेखों के साथ सम्पूर्ण सूचनाएं पुलिस मुख्यालय/पीएसी मुख्यालय/फायर सर्विस मुख्यालय को प्रेषित की जाएंगी। पुलिस विभाग की अजनपदीय शाखा जहां आरक्षी के पद पर सीधी भर्ती नहीं की जाती है, जैसे- सीबीसीआईडी, अभिसूचना, रेलवे सतर्कता इत्यादि तो इन अजनपदीय शाखाओं द्वारा आरक्षी के पद पर सेवायोजन का प्रस्ताव तैयार कर नियमानुसार पुलिस मुख्यालय को उपलब्ध कराया जाएगा जहां से इस संबंध में अग्रिम कार्यवाही की जाएगी। संबंधित मुख्यालय द्वारा सभी अभ्यर्थियों की सूची संकलित कर आवश्यक अभिलेखों के साथ पुलिस महानिदेशक के अनुमोदनोपरान्त भर्ती बोर्ड को भेजी जाएंगी जो इनकी दक्षता मूल्यांकन परीक्षा आयोजित करायेंगा।"

(emphasis added)

7. It is argued on behalf of the petitioner by learned Senior Advocate that in the event respondents do not apply the relaxation rule to the candidates seeking compassionate appointment in Home Guard service, may be as a volunteer, then they stand discriminated against for two reasons: *firstly*, all the applicants falling in the category of candidates seeking compassionate appointment are to be classified as one and there cannot be any reasonable classification to provide different set of heights for such category of candidates; and *secondly*, the Home Guard services may be volunteer in nature or may be the home guards are not holding a civil post but the home guard establishment does form a force which provides an auxiliary force to the police force of the state of Uttar Pradesh and, therefore, looking to the relevant provisions of the U.P. Home Guards Adhiniyam, 1963, such home guards force is in a supportive role to the U.P. Police and therefore, no *intelligible differentia* can be had for providing relaxation to the U.P. Police in matters of height for the purposes of selection and appointments on

compassionate basis and denial of the said benefit to the home guards volunteers in matter of selection for compassionate appointment.

8. Thus, according to Mr. H.N. Singh, learned Senior Advocate, by not providing relaxation of 2 cms. in the matter of height for offering compassionate appointment to the home guards is quite discriminatory and arbitrary and cannot pass the testing *anvil* of Article 14 of the Constitution. Mr H.N. Singh, however, hastens to add that petitioner do not intend to challenge the provisions, instead, they want same treatment by directing the respondents to give the same benefit of relaxation as is provided to the candidates seeking compassionate appointment in U.P. Police service.

9. It is argued that State of Uttar Pradesh being a model employer should formulate rules and regulations for the purposes of giving appointment on compassionate ground with an object to provide support to the family of deceased. It is is argued that object to provide compassionate appointment in home guard service cannot be different from the one behind compassionate appointments in civil police, more especially when home guard force is auxiliary to civil police. It is argued by Mr. Singh that wherever there is deficiency in number *qua* availability of police force, the State Government has been directing the home guard volunteers to provide substitute in service and, therefore, it cannot

be said that home guards, may be rendering only volunteer service, are not involved in the job of police administration in the State *qua* public peace and public order and security.

10. Meeting the submissions so advanced as above by Mr. H.N. Singh, learned Senior Advocate, learned Standing Counsel sought to defend the stand of the respondents in rejecting the candidature of the petitioners seeking compassionate appointment on the ground that in the absence of relaxation rules, the respondents cannot be faulted with in rejecting candidature of petitioners for not possessing requisite height. He also argued that this Court may not exercise its extraordinary jurisdiction under Article 226 of the Constitution for incorporating the provisions which is applicable to a different department as it would amount to an act of legislation.

11. However, upon a pointed query being made as to whether the home guards are discharging duties akin to the police force or not, it is argued on behalf of the State respondents by learned Standing Counsel that when a force itself has been defined as an auxiliary force then they are only in supportive role and cannot transform itself into the main role. However, to the argument advanced by Mr. Singh that home guard services are also being utilized by the police force in maintenance law and order or otherwise controlling the traffic in the cities by ensuring security, could not be disputed by learned Standing Counsel.

12. Having heard learned counsel for the respective parties and having perused the records, I see two points to be emerging for consideration of this Court:

(a) Whether in matter of compassionate appointment in Uttar Pradesh Homeguard Service non-relaxation of 2 cms. in prescribed height to the volunteers of the home guards seeking compassionate appointment is discriminatory and arbitrary for such relaxation being provided to the candidates seeking compassionate appointment in civil police and hence the State should follow the relaxation rules while considering compassionate appointment of home guard volunteers?; and

(b) Whether this Court would be exceeding its jurisdiction under Article 226 of the Constitution in applying the rule of relaxation which ordinarily falls within the domain of State legislative function?

13. In order to find answer to the first question framed, I consider it appropriate to first refer to the object behind constitution of Home Guard Force and relevant provisions of the U.P. Home Guards Adhiniyam, 1963. The object for constituting the force is, "*an act to provide for the constitution of the home Guards in Uttar Pradesh Whereas it is expedient to provide for the constitution of a force known as the Uttar Pradesh Home Guards for utilizing its services*

for duties in times of emergency and serving as an auxiliary to the Police for the maintenance of law and order".

14. From a bare reading of the aforesaid object as contained in the Adhiniyam, 1963, it becomes absolutely clear that this Home Guard force was conceived of for utilization in emergency as an auxiliary to the police for maintenance of law and order. The word 'auxiliary' has been defined as additional/ substitution especially to an important person or thing. The Cambridge Dictionary (Fourth Edition) defines it as giving help or support specially to a very important person or thing. The synonym of the auxiliary is ancillary. Ancillary means secondary.

15. Thus, for maintaining law and order while primary duty vests with the police but in case of emergency and as per requirements, home guard force is also utilized as auxiliary to the police force. Section 4 of the Adhiniyam, 1963 provides for funds and duties for the home guards as under:

"4. Function.- The Home Guards will have the following functions:-
(a) they will serve as auxiliary to the police, and, when required, help in maintaining public order and internal security;
(b) they will help the community in air raids, fires, floods, epidemics and other emergencies;
(c) they will function as an emergency force for such special tasks as may be prescribed;
(d) they will provide functional units for essential service; and
(e) they will perform such other duties, relating to any measure of public welfare as may be prescribed."

16. From the above provisions it is clear that this interpretation gets further strengthened that home guard force is an auxiliary to the police for maintaining law and order and internal security to help community during the air raids, fires, floods, epidemics and other emergencies. They are also to be utilized as emergency force for such special task as may be prescribed for them. They are also taken to be functional unit for essential services. The essential services are defined vide Section 2(d) as under:

"2.(d) "essential service" means motor transport, pioneer and engineering corp, fire brigades, nursing, first-aid operation of water and power supply installations and such other services as may be notified by the State Government as being essential to the life of the community;"

17. Home Guards are also required to discharge duties of public welfare as may be prescribed for. Sections 5 & 6 of the Adhiniyam, 1963, make it further clear that entire superintendence and control of the home guard force is under the State Government through the Commandant General of the Home Guards appointed by the State Government. Section 5 and 6 of the Adhiniyam, 1963 are reproduced here:

"5. Appointment of Commandant-General and other officers. - The State Government shall appoint a Commandant-General of Home Guards, hereinafter called the Commandant-General, and other officers on such terms and conditions as may be prescribed.

6. Superintendence and administration of Home Guards. - (1) The superintendence of the Home Guards shall vest in and be exercised by the State Government.

(2) The administration of the Home Guards throughout the State shall vest in and be exercised by the Commandant-General except in relation to any local area that may be excluded by notification by

the State Government in this behalf; and any officer appointed to administer the Home Guards of any local area so excluded shall exercise in relation to that area the like power as the Commandant-General exercises in the rest of the State.

[(3) Subject to the general control and direction of the District Magistrate, the administration of the Home Guards in a district shall vest in and be exercised by the District Commandant.]"

18. Section 9 provides for power, privileges and protection to the home guards, such as calling for the force to serve as an auxiliary to the police for maintaining public order and internal security and for doing the same they shall have the some power, privileges and protection as a member of the police force appointed under any enactment for time being inforce and such notification may also be made by the State Government under the Police Act, 1861 – subject to adaptations and modifications. Section 9 also provides amenities to the members of home guard force in respect of anything done or purported to be done by such a member in discharge of duties as home guard except with the previous sanction of District Magistrate concerned. However, with the sanction of the District Magistrate, he can be proceeded against for his action and conduct. Section 9 of the Adhiniyam, 1963 is reproduced hereunder:

"9. Powers, privileges and protection of Home Guards. - (1) Subject to the provisions of this Act and the rules made thereunder, a home guard when called out under Section 8 to serve as auxiliary to the police or to help in maintaining public order or internal security shall have the same powers, privileges and protection as a member of the police force appointed under any enactment for the time being in force, and shall subject to such adaptations and modifications as may be made therein by the State Government by notification in the official Gazette, be subject to the provisions of the Police Act, 1861 and the rule or regulation made thereunder in the same manner and to the same extent as he would, if such home

guard held a corresponding rank in the police force to the one he holds for the time being in the Home Guards.

(2) No prosecution shall be instituted against a home guard in respect of anything done or purporting to be done by him in the discharge of his duty as a home guard, except with the previous sanction of the District Magistrate having jurisdiction over the area in which the home guard was enrolled or in which the act was committed."

19. It is now necessary to refer here powers and privileges exercised by the police under the Police Act, 1861. Vide Sections 22, 23, 24, 25, 31 and 32 of Police Act, 1861 duties and powers of the police officers have been prescribed. The said provisions are reproduced hereunder:

"22. Police Officer always on duty and may be employed in any part of district. - Every Police Officer shall for all purposes in this Act contained, be considered to be always on duty and may at any time be employed as Police Officer in any part of the general police district.

23. Duties of Police Officers.- It shall be the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every Police Officer, for any of the purposes mentioned in this section without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

24. Police Officers may lay information, etc.- It shall be lawful for any Police Officer to lay any information before a Magistrate and to apply for a summons, warrant, search- warrant or such other legal process as may, by law issue against any person committing an offence.

25. Police Officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal.- It shall be the duty of every Police Officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the district.

The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

31. Police to keep order on public roads, etc.- *It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing places and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship and in any case when any road, street, thoroughfare, ghat or landing place may be thronged or may be liable to be obstructed.*

32. Penalty for disobeying orders issued under last three sections, etc.- *Every person opposing or not obeying the orders issued under the last three preceding sections or violating the conditions of any license granted by the Additional District Superintendent or Joint District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.”*

20. Upon a conjoint reading of the aforesaid provisions it emerges out very clearly that wherever police officers for the purposes of the Act, 1961 are deployed on duty in a district, their basic task is to maintain public order and public peace and to prevent the commission of offences, public nuisances and to detect and bring the offenders to justice.

21. In order to ensure public order and peace a police officer is entrusted with duty to ensure that no illegal and unauthorised activity takes place in the area of his deployment and in order to ensure the same it can always inspect any place at any point of time. The police officers have also the duty to place information regarding warrant and summons before the Magistrate and also give the details to the Magistrate of the district regarding unclaimed properties and further obligation vide Section 29 upon the police administration is that, in the event a police officer is found guilty of

negligence or breach of official duty or discharging any duty in breach of rules and regulations, he shall be recalled from duty.

22. Now, comparing the aforesaid provisions with those prescribed under the Home Guards Act, it becomes unquestionable that home guard is also a force though unarmed one but to work as an auxiliary to the active police force and the task is the same i.e. maintaining public peace and public order and that is the reason why the Home Guards Act provides that home guards can always be posted to help the police.

23. Now when the functions and duties are almost the same in a sense that a home guard is also to help the police in maintaining public peace and public order and deployment is also as an aid to the police force, then in matters of selection for compassionate appointment if relaxation is provided for recruitment of sub inspectors and police head constables and constables a liberal view should also be taken to give relaxation in the matter of selection of home guard volunteers, who are only auxiliary to the police force, as has been given to the candidates applying for recruitment as police constables in the active police force.

24. In matters of compassionate appointment where the compassion is to be shown to the dependents of the members of service of police establishment then similar criteria should be

adopted for the purposes of enrolment of home guards. One must notice that the object for giving compassionate appointment is only to financially support the family that has suddenly fallen in crisis on account of death of sole earning member of the family. Thus object is the same for compassionate appointment in police force and enrolment of dependents in home guards by way of compassionate appointment. Still further, police in active force, chiefly meant for maintaining public orders, public peace and ensuring security and hence more stringent rule should be adopted in physical standard test for selection and appointment but looking to the object behind compassionate appointment, rules *qua* height have been relaxed like rules have been relaxed in various other government establishments providing for group 'C' appointments where typing skill is tested within next two years of appointment. In such circumstances, State being a model employer cannot have two eyes to see identically placed persons seeking compassionate appointment, for providing rule of requisite height in matters of compassionate appointment of police department and home guard volunteers/ officers. State should have a uniformed policy to provide relaxation to ensure that object behind compassionate appointment does not get frustrated. Dealing with the object of compassionate appointment Supreme Court in the case of **State of West Bengal v. Debabrata Tiwari and others (2025) 5 SCC 712**, vide paragraph 33 has held thus:

*“33. 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 due to the death of the breadearner 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 in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, **after** the crisis which arose on account of death of a breadwinner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate appointment would be frustrated. 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 thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”*

25. Thus, I see no justification for any classification between the two categories of aspirants for compassionate appointment; one seeking appointment in civil police being dependent of deceased employee of police force and the other in home guard service.

26. This is by way of default that on account of status of the deceased employee that the dependents get opportunity of appointment in that very establishment and have no other choice and thus has nothing to do with the object for which the compassionate appointment is offered to the dependents of the deceased employee dying in harness. Thus rule of relaxation has a rationale with the object sought to be achieved i.e. to offer compassionate appointment to the dependents to meet the immediate crisis.

27. Similar would be the object in matters of compassionate appointment in any other employment like in the case of home guards. A home guard, who is a sole earning member of the family if died then the dependent would be seeking compassionate appointment and once the compassionate appointment rules have been made applicable, then I see no justification for not providing similar relaxation to the candidates of home guards who died in harness for the purposes of compassionate appointment.

28. Thus the two classifications if are made, one the dependents of deceased employee seeking compassionate appointment and the other of those seeking compassionate appointment in home guard establishment, it has no intelligible differentia looking to the object behind compassionate appointment, and is hit by Article 14 of the Constitution of India. Thus the first question framed stands answered in favour of petitioner.

29. The rule for compassionate appointment is a piece of beneficial legislation and, therefore, in larger public interest and looking to the object sought to be achieved, this relaxation even if not there under the home guard rules, it should be borrowed as a principle from the rules meant for compassionate appointment in police force.

30. The question now is whether this Court would be exceeding in its jurisdiction by providing relaxation which relevant rules do not otherwise provide and would be amounting to including the domain in the State legislative function. I may observe here that there is no quarrel about the principle of law that the Court cannot provide for relaxation if rules do not provide for and further where it is legislative function to amend the rules, the Court definitely would desist itself from doing it and may request State for amending the rules.

31. State being employer in both the cases of police and home guard establishments, it can never be presumed that it ever intended for this discrimination to exist and persist. Upon a pointed query made to learned Standing Counsel, he though submitted that this discrimination should not have been there but since government order *qua* compassionate appointment in home guard establishment is silent, this omission should be presumed as deliberate one at the end of the State Government more especially when home guard force is only auxiliary to police force.

32. There are no statutory rules framed to govern appointments of home guard volunteers and guidelines have been laid down in government orders that have stood amended from time to time. Relaxation has been provided vide government order in respect of compassionate appointment in police service. Since I have already

held above that object behind rule of compassionate appointments both in police and home guard service is the same and further Statute itself provides for constitution/ creation home guard force as auxiliary to police force, a beneficial clause providing for relaxation of 2 centimetres in height as against prescribed height in matters of compassionate appointment in police establishment, in principle, can be borrowed to make it applicable to the compassionate appointment cases in home guard service until government issues/ notifies government order providing for such relaxation.

33. Thus, in cases where the legislation and subordinate legislation is there as beneficial piece of legislation, then the Court can provide for extension of benefit available under the rules, to ensure that object is achieved for which the rules have been framed, more especially where employer is the State as it would treat all equals alike and will give them equal protection of laws. Article 14 is a fundamental right available to all Indians for equality before law and equal protection of laws. The Constitution of India has been given by the people to themselves and so have this right fundamentally attached to them. Such extension of relaxation to the Indian citizens when they are seeking compassionate appointment should naturally be available and if this Court recognizes this right and commands State to honour it, this does not amount to

transgressing the field of legislative function that vests with the State. It is a legitimate expectation from the State.

34. One must not forget that bedrock of principle of natural justice is Article 14 of the Constitution. No society governed by rule of law can allow any one to be condemned unheard. Thus, even though service rules do not provide for compliance of principles of natural justice as an embedded rule but Courts have held “even if a statute is silent and there are no positive words, there would be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the order that may be passed and making it a requirement to follow as fair procedure before taking a decision unless the Statute provides otherwise” **(Mangilal v. State of M.P. (2004) 2 SCC 447).**

35. Fairness means fairness in every aspect of service jurisprudence, more especially when State is employer because State cannot have two different yardsticks to judge suitability in respect of identically placed candidates. Fairness in treating identically placed persons alike without discrimination is *sine qua non* for a fair procedure and for that no decree or order of a Court is required. If State’s action or omission on its part comes to the notice of this Court, this Court shall not shirk away from issuing appropriate discretions.

36. In view of the above, I do not see anything wrong on said principle as to power of this Court in its exercise of extraordinary jurisdiction under Article 226 of the Constitution, in directing for applicability of rule of relaxation available to candidates seeking compassionate appointments in police force, to cases of compassionate appointments in home guard force/ establishment.

37. In the circumstances, therefore, if 2 cms of relaxation in prescribed height given to the dependent candidates of the deceased employees to the police force, is also borrowed and applied for the purposes of compassionate appointment in home guard service, it would not amount to intruding the legislative field. It may be a case where the State may not have intended this discrimination but it remained there for not amending the relevant government orders and for which State may undertake the requisite exercise. But so long as the rules prescribed are not amended, it would serve ends of justice if 2 cms height relaxation as prescribed for in U.P. Police appointment of compassionate ground is borrowed in matters of compassionate appointment in home guard service, where only volunteers are engaged to provide an auxiliary to the active police force. Thus, second point is also answered in favour of the petitioner.

38. In view of the above, writ petition succeeds and is allowed. A writ of mandamus is issued to the respondents to provide benefit of

relaxation of 2 cms in height to the candidates, namely the petitioners, who are seeking compassionate appointment in home guard service borrowing the principle of relaxation from Clause 4(1) of the Government order dated 24th November, 2015 meant for compassionate appointment of the dependents of the employees of police department.

39. State Government is also directed to incorporate similar relaxation up to 2 cms in height at par with Clause 4(1) of the Government order dated 24th November, 2015 that is provided for the purposes of compassionate appointment in home guard service and so long as the Government order is not issued similar relaxation would continue to be provided to the dependents seeking compassionate appointment in home guard service.

Order Date :- 8.4.2025

Atmesh