

A.F.R.

Neutral Citation No. - 2025:AHC:121859

Court No. - 4**Case :-** WRIT - A No. - 21425 of 2019**Petitioner :-** Deepak Kumar And 14 Others**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Seemant Singh**Counsel for Respondent :-** C.S.C.**Hon'ble Ajit Kumar,J.**

1. Heard Sri Seemant Singh, learned counsel appearing for the petitioners, learned Additional Chief Standing appearing for the State-respondents and perused the records.
2. By this petition filed under Article 226 of the Constitution, petitioners have prayed for a writ of certiorari for quashing the order dated 17.10.2019, whereby the petitioners were declared 'unsuccessful' in the test of 'Stenography' and their claims have been rejected.
3. At present, learned counsel submits that petitioners are only pressing for relief no.3, according to which, petitioners have prayed that their candidature may be considered for compassionate appointment as per Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness (11th Amendment) Rules, 2014 (hereinafter referred to as 'the Rules 2014').
4. Brief facts of the case are that father/husband of the respective petitioners, as the case may be, died-in-harness in respective years given in paragraph 6 which is reproduced hereinunder:

"That the father/husband of the petitioners died-in-harness on dates like 17.07.2013, 07.12.2013, 19.04.2009, 28.05.2012,

21.06.2008, 03.07.2003, 03.02.2011, 28.03.2013, 12.10.2010, 12.05.2011, 22.05.2009, 11.08.2012, 10.01.2009, 10.10.2010 and

27.06.2006 in so far as it relates to petitioner No.1 to petitioner No.15.”

5. Since they were the sole bread-earner, their respective families suddenly landed in a huge financial crisis and, hence, there arose a need for compassionate appointment to be claimed by their respective dependants. In the circumstances, they all applied for compassionate appointment before the respondent-Establishment as per the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as the ‘Rules, 1974’) against suitable posts and by the time their applications could have been accorded consideration, the State Government framed new rules namely the Uttar Pradesh Police Ministerial, Accounts and Confidential Assistant Cadres Service Rules, 2015 (hereinafter referred to as ‘the Rules, 2015’) vide its Gazette Notification dated 23.07.2015, wherein Rule 10(3) provided appointment against the post of Sub-Inspector (Confidential), a minimum eligibility criteria for dying-in-harness purposes was ‘Speed of 25 words per minute in Hindi Typing’ and ‘80 words per minute in Shorthand’ and a candidate who applies for appointment, should also possess ‘O’ Level Computer Certificate’ issued by DOEACC/ NIELIT.

6. It further transpires that Rules, 2015 were made applicable by the respondents, but it did not force for necessary requirements of ‘O Level Computer Certificate’ issued by DOEACC/ NIELIT. The petitioners upon coming to know that their candidature for the purposes of compassionate appointment were being subjected to the procedure prescribed under Rules, 2015 coupled with the eligibility criteria prescribed therein, they rushed to this Court by filing a writ petition being Writ-A No.5039 of 2016 (Ajeet Kumar and 7 others Vs. State of U.P. and 2 others) and Writ-A No.9045 of 2016 (Jitendra Kumar Yadav and 6 others Vs. State of U.P. and 2 others), which were allowed finally with a direction to the authorities to accord due consideration to the candidature of the petitioners for compassionate appointment in terms of old rules.

7. The said co-ordinate Bench of this Court in Writ-A No.5039 of 2016 has set aside the order dated 13.01.2016, by which the respondents held the petitioners 'not to be eligible' as per Rules, 2015. Relevant paragraph 22 thereof is reproduced hereinunder:

“22. Having regard to the facts and circumstances of the case, the orders issued by the respondents which are under challenge in the writ petition, are liable to be set aside. Accordingly, the impugned orders dated 13.1.2016, collectively annexed as annexure-5 to the writ petition, issued to each petitioner, are set aside. The petitioners are entitled to be considered under the old scheme.”

8. It further transpires, as is also admitted by the learned counsel for the petitioners, that all the petitioners, except petitioner nos.6, 14 and 15, were party to the aforesaid petitions. However, the respondents continued to test the eligibility of the petitioners as per Rules, 2015 and finally rejected their candidature being 'unsuccessful' in the test of 'Stenography'.

9. Learned Advocate appearing for the petitioners has placed two fold arguments. First, Rules, 2015 were not applicable in the case of the petitioners as the cause of action for compassionate appointment arose prior to Rules, 2015 on account of death of the sole bread-earner of the respective petitioners in the relevant years prior to Rules, 2015, and all dependents being major had moved an application for consideration of compassionate appointment prior to Rules, 2015 when Rules, 2014 were applicable. In support of his arguments, he has placed reliance upon the authorities of this Court in the case of ***Dharamveer Singh and another Vs. State of U.P. and 5 others (Writ-A No.15345 of 2023)***, where due consideration to the claim of the petitioners for compassionate appointment, was directed to be accorded under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness (11th Amendment) Rules, 2014 in the Police Department. He has also placed reliance upon judgment of the Supreme Court in the case of ***State***

of Madhya Pradesh & others Vs. Ashish Awasthi in Civil Appeal No.6903 of 2021 along with connected appeal being Civil Appeal No.6904 of 2021, *State of Madhya Pradesh & others Vs. Baalendu Yadav*, reported in LL 2021 SC 659 disposed of on 18.11.2021. He has also placed paragraph 4.1, 4.2 and 5 of that judgment before the Court and the same are reproduced hereinbelow:

*“4.1 In the case of **Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729**, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of **State of Madhya Pradesh and Ors. Vs. Amit Shrivastava, (2020) 10 SCC 496**. It is required to be noted that in the case of **Amit Shrivastava (supra)** the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.*

4.2 The submission on behalf of the respondent that after the impugned judgment and order passed by the High Court, the respondent has been appointed and therefore his appointment may not be disturbed, deserves rejection. Once the judgment and order passed by the Division bench under which respondent is appointed is quashed and set aside, necessary consequences shall follow and the appointment of the respondent, which was pursuant to the impugned judgment and order passed by the Division Bench of the High Court cannot be protected.

5. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court of Madhya Pradesh Bench at Jabalpur in WA No.1559 of 2018 is hereby quashed and set aside by observing that the respondent shall not be entitled for appointment on compassionate ground on the basis of the subsequent circular/policy dated 31.08.2016.”

10. Thus, the argument is that the respondents may be commanded by issuing writ of mandamus to offer compassionate appointment to the petitioners as per dying-in-harness Rules, 2014 on suitable posts.

11. *Per contra*, learned Additional Chief Standing Counsel has sought to defend the stand of the respondents on the ground that once the petitioners subjected themselves to the Rules, 2015 and appeared in the test of 'Typing' as well as 'Stenography', now they cannot be permitted to take 'U-turn' to suggest that their candidature ought to have been considered under the old rules. In support of his argument, he has placed emphasis on an extract of paragraph six of the counter affidavit and same is reproduced hereinunder:

"The claim of the petitioners for providing equality of the candidates who participated in the examination on 8.8.2021, is not sustainable in the eyes of law. It is relevant to mention here that separate notifications were issued for both the examinations. The petitioners were fully aware about the notification dated 27.6.2019 and after full satisfaction they have participated in the examination on 8.7.2019. It is submitted that since the selection was made separately, therefore, no question arises for giving any equality/parity to the petitioners as per relevant rules. The instant amendment application filed on behalf of the petitioners, is absolutely misconceived and nothing new fact has been brought by means of present amendment application, as such instant amendment application is liable to be rejected outrightly by dismissing the writ petition in view of facts stated in this counter affidavit of amendment application as well as main counter affidavit of writ petition."

12. It is sought to be urged by learned Additional Chief Standing Counsel that even under the dying-in-harness Rules, 2014 qualifying test was the 'Typing' and the petitioners having failed in 'Typing-cum-Stenography Test', now may not be permitted to take a plea that their candidature for compassionate appointment may be accorded due consideration against the post in question.

13. Having heard learned counsel for the respective parties and having perused the records, I find only one question to be requiring determination by this Court and is, whether the petitioners' candidature should have been considered under the dying-in-harness Rules, 2014 or the respondents were justified in holding 'Typing-cum-Stenography Test' of the petitioners under the Rules, 2015.

14. It is admitted to the learned counsel for both the parties that the sole earning members of the respective petitioners had died between the period 2006 and 2013 when the dying-in-harness Rules, 2014 were very much in existence and were also applicable to the Police Department as well. It is also not disputed by the respective parties especially the State-respondents that all the petitioners as dependents of the deceased-employees had applied for compassionate appointment prior to coming into force of Rules, 2015.

15. In the circumstances, the natural inference to be drawn is that on the date applications were filed for the purposes of enforcement of relevant rights vested under the service rules existing on that date, admittedly, Dying-in-Harness Rules, 2014 was then in existence and hence the respondents were to abide by the said law while considering the candidature of petitioners for compassionate appointment. The rule of compassionate appointment is an exception to the general rule of appointment and the object behind it is to provide immediate succour to the bereaved family which has landed in a sudden financial crisis on account of death of the sole bread-earner of the family in harness. In the case of ***State of West Bengal vs. Debabrata Tiwari and others (2025) 5 SCC 712***, the Supreme Court has discussed the policy of compassionate appointment. Vide paragraph 23 to 31, it has held thus:

“23. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision

has been derived from the provisions of Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State Policy.

24. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

25. In Sushma Gosain vs. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

26. In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That 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, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That 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, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

27. In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, ("Hakim Singh") this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would

amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

28. *This Court in State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.*

29. *There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.*

30. *In State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.*

31. *In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and*

16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

"35. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment."

16. Keeping this object in mind, any prudent man would come to conclude that the moment an application is moved by the dependent of the deceased-employee seeking compassionate appointment, it should have been considered within a reasonable time because the delay would defeat the very object for which the rules have been framed. This aspect has been considered by the Supreme Court in the case of ***State of H.P. vs. Shashi Kumar, (2019) 3 SCC 653***. Vide paragraph 35 the Court has held thus:

"35. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies

in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment."

17. Relying upon the same, the Supreme Court in the case of ***Debabrata Tiwari (supra)*** vide paragraph 32.4 observed thus:

"That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

18. Further, in the case of ***Malaya Nanda Sethy vs. State of Orissa and others, 2022 SCC Online SC 684***, the Court vide paragraph 16 has held thus:

"Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications."

(emphasis supplied)

19. In this above view of the matter, the respondents were required to consider the application of the petitioners for compassionate appointment within a reasonable period the moment they received their applications. But, it appears that the respondents waited and lingered on the matter until Rules, 2015 came into force. It is thereafter, they proceeded to consider the candidature of the petitioners. Being aggrieved by the approach of the respondents to consider the claims vide new Rules, 2015, petitioners had rushed to this Court by filing petitions before this Court, except petitioner nos.6, 14 and 15, seeking a relief that their candidature may be considered under the dying-in-harness Rules, 2014 and not under the Rules, 2015. This Court issued a positive direction in this regard, which has already

been reproduced hereinabove. However, the respondents continued to stick to their own stand that Rules, 2015 would be applicable and subjected the petitioners to undergo 'Typing-cum-Stenography Test'. Paragraph 6 of the counter affidavit, which is a reply to paragraph 10 of the writ petition, does not in any manner dispute the mandate contained in the directions of this Court passed in the aforesaid writ petition, which have been reproduced hereinabove, wherein the respondents were directed to follow Rules, 2014.

20. The defence taken subsequently in the counter affidavit is that even the old rules required 'Typing Test'. It is also apparent from the records that all the petitioners qualified the 'Typing Test', but failed in the 'Stenography Test'. If this object as has been raised in the counter affidavit, is taken into consideration, then even as per the old rules all the petitioners deserve to be appointed.

21. In the circumstances, therefore, the judgment passed by this Court in the case of ***Dharamveer Singh (supra)*** is fully attracted in the case of the petitioners, wherein it has been categorically held that the rules as was in force on the date of cause of action would be applicable. In paragraphs 11 and 12 of that judgment, the Court has held thus:

*“11. Vide paragraph 61 of the judgment the Division Bench in the case of **State of U.P. and others v. Himanshu Yadav** (Special Appeal No.126 of 2023) finally held thus:*

*“61. Lastly, considering the submission of the learned Additional Advocate General for the appellants based on the decision of the Apex court in **State of Uttar Pradesh and others vs. Premrata reported in (2022) 1 SCC 30** that the offer given to the respondent/writ petitioner for appointment on compassionate ground on a lower post was sufficient compliance of the scheme requiring appointment to the dependents of the deceased, suffice it to note that such an offer ignoring the fact that the appellants do not adhere to the requirement of the rules by filling up vacancies year-wise, cannot be said to be in the spirit of law. No one can*

be granted benefit of their own wrong. By first accumulating the applications for compassionate appointment over the period of four years and then excluding the candidates from the zone of consideration by holding an objective test after a period of four years from the date of the promulgation of the Rules providing for restriction to 5% limit to the number of vacancies to be filled up by direct recruitment, the appellants have committed a mistake benefit of which cannot be granted to them. ”

12. Besides above, in recent judgment of the Division Bench in the case of **Oriented Insurance Company Ltd. v. Priyanka Agarwal** (Special Appeal No.309 of 2019), decided on 04.08.2023, the Court followed the judgment of the Special Appellate Bench in the case of **State of U.P. and others v. Himanshu Yadav** (Special Appeal No.126 of 2023), delivered on 07.07.2023. The Court further observed that merely because a matter has been referred to a larger Bench in **State Bank of India v. Sheo Shankar Tewari (2019) 5 SCC 600**, the legal position as stands today cannot be made unsettled but the law exists shall have to be followed. Vide paragraph 23 the Court held thus:

“23. We are also aware that the reference made to Larger Bench of the Supreme Court in State Bank of India Vs. Sheo Shankar Tewari is still pending before that Court. However, in view of the discussion made above as to the law laid down by the Supreme Court, since the occurrence of that reference vide order dated 08.02.2012 we do not find any doubt exists as to the law to be applied in matters of compassionate appointments, in the meanwhile. For that reason as well, since on the date of occurrence of death of Sri Surendra Kumar Agrawal, on 06.9.2014, there did not exist any scheme for grant of compassionate appointment, the claim made by the petitioner would fail.”

22. The Supreme Court judgments in the cases of **Dharamveer Singh (supra)** and **Ashish Awasthi (supra)** which have been relied upon by learned counsel for the petitioners, which have been reproduced hereinabove, also provides that the scheme that was prevalent on the date of death of an employee should be taken into consideration for the purposes of compassionate appointment.

23. In such above view of the matter, the respondents are held 'not justified' in rejecting the claim of the respective petitioners for compassionate appointment on the ground that they could not succeed in the 'Stenography Test' pursuant to the Rules, 2015.

24. Accordingly, the respondents are directed to reconsider the applications of the respective petitioners as per the dying-in-harness Rules, 2014. In the considered view of the Court, this time a positive consideration must be accorded more especially when the petitioners have succeeded in the 'Typing Test' as per own stand of the respondents and they shall be offered appointment.

25. I must add here that delay for long consideration of claims by respondents and the pendency of the matter before this Court since 2015 would not invite clause of 5 years' bar so as to seek further approval of State Government. The said clause shall not be attracted in the present case.

26. Appropriate orders for compassionate appointment, accordingly, shall be passed to all the respective petitioners within a maximum period of one month from the date of production of a certified copy of this order, if there is no legal impediment.

27. The writ petition succeeds and is, accordingly, **allowed** as above.

Order Date :- 24.7.2025

CS/-