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**(2017) 02 AHC CK 0069**  
**In the Allahabad High Court**  
**Case No : Service Single No. 4048 of 2014**

Pankaj Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 06-02-2017

**Acts Referred:**

**Citation :** (2017) 4 ADJ 119

**Hon'ble Judges :** Devendra Kumar Upadhyaya, J.

**Bench :** Single Bench

**Advocate :** Ashutosh Shukla, Advocate, for the Petitioner; C.S.C, Sandeep Dixit, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Devendra Kumar Upadhyaya, J.&mdash; Heard learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents and Sri D.S. Ojha holding brief of Sri Sandeep Dixit, learned counsel for respondent nos. 3 and 4.

2. The petitioner by instituting this petition under Article 226 of the Constitution of India has prayed that the order dated 31.05.2014 passed by the Principal of Isabella Thoburn college denying him the benefit of compassionate appointment be quashed and appropriate directions be also issued to the respondents for consideration his case for appointment on compassionate grounds against a non-teaching post in the institution.

3. The petitioner's father-late Sri Ram Bahadur was working in the Institution on the post of Lab Peon who, unfortunately, died in harness on 14.8.2011. The petitioner is said to be the eldest son in the family of deceased employee and other family members, namely his mother and younger brother are dependents on him. The petitioner accordingly made an application to the authorities of the institution seeking compassionate appointment stating therein that his mother and the younger brother have consented to the prayer of the petitioner that he be given benefit of compassionate appointment. Therefore, the said application

was considered by the Principal of the Institution who rejected the same vide order dated 31.5.2014 which is under challenge in this writ petition.

4. The reason indicated by the Principal rejecting claim of the petitioner while passing the impugned order dated 31.5.2014 is that the Government order dated 21.11.1995 provides that dependent of the deceased employee would submit his application to the Director of Higher Education for appointment against non-teaching post and further that the said application is to be considered by the Committee. The impugned order, however, states that the Government order dated 21.11.1995 provides that the provisions contained therein have no application on the aided institution established and run by a minority community.

5. There is no dispute that Isabella Thoburn College is an institution established, run and managed by a minority community.

6. What needs to be examined in this case is as to whether, the benefit of compassionate appointment which otherwise is available to dependent of a deceased employee working in the non Government aided degree colleges, will be available in case the institution is established and run by a minority community.

7. The aforesaid issue is no more res-integra and stands settled by judgment and order of this Court in the case of St. Andrew's College Association, Gorakhpur and another v. State of U.P. another (2003 Alld. CJ. 1647).

8. Relying on the said judgment of this Court in the case of Ansar Hussain v. State of U.P. and others Writ Petition No. 2787 (S/S) of 2013, decided on 15.5.2013, this Court has allowed the claim of dependent of a deceased employee who prior to his death was employed in a basic school run and managed by a minority community. This Court in the aforesaid case of Ansar Hussain (supra) has extended the benefit of the observations made by this Court in the case of St. Andrew's College (supra).

9. Yet, another Division Bench of this Court in the case of Committee of Management Forbes Intermediate College, Faizabad Vs. State of U.P. and others has held that minority institutions are not outside the purview of Regulation 103 and 107 of the Regulation framed under U.P. Intermediate Education Act.

10. In so far as appointment against Class-III and IV posts is concerned, in view of the aforementioned judgments of this Court, I do not have any slightest hesitation to hold that the benefit of compassionate appointment to one family member of the deceased employee, which is otherwise available in case of non-government aided degree college as per the Government order dated 21.11.1995, will also be available in case of a degree college established, run and managed by any minority community. Thus, the impugned order passed by the Principal of the Institution concerned on 31.9.2014 cannot be permitted to be sustained any further. The writ petition, thus, deserves to be allowed.

11. The petition is, thus, allowed and the impugned order dated 31.5.2014

passed by the Principal of the Institution, as contained in Annexure-1 to the writ petition, is hereby quashed.

12. The respondent nos. 3 and 4 are directed to consider the claim of the petitioner in terms of the Government order dated 21.11.1995 and process his application by sending the same to the Director of Higher Education who will place the matter before the Committee constituted for the said purpose comprising of the Director of Higher Education, the Accounts Officer of Regional Higher Education Officer and the Principal of the Institution concerned. The said Committee shall, thus, consider the case of the petitioner and require the management of the Institution concerned to issue appointment order, if the petitioner is eligible for appointment against non-teaching post in the Institution.

13. It is to be borne in mind that while considering the case of the petitioner, in case non-teaching post in the Institution is not available, the Government order dated 21.11.1995 clearly provides that the dependent of the deceased employee shall be appointed in any other degree college and in case no such post is available in any other degree college, he shall be appointed by creating a supernumerary post in the Institution itself which will continue till availability of vacancy against the post in which his appointment is to be proposed and made.

14. The Court's attention has also been drawn to an order dated 19.04.1996 whereby one such compassionate appointment in the case of Smt. Fakhrun Nisa was made by the Director of Higher Education. The said order granting approval to appointment of Smt. Fakhrun Nisa is on record as Annexure-7 to the writ petition. The appointment of Smt. Fakhrun Nisa was made with the respondent nos. 3 and 4.

15. The petitioner would make a fresh application to the respondent no.4 within ten days from today. If any such application is received, the same shall be forwarded to the Director of Higher Education who shall constitute the committee as envisaged in the Government order dated 21.11.1995, which shall consider the claim of the petitioner in accordance with law. On consideration of the claim of the petitioner by the Committee, appropriate directions shall be issued by the Director of Higher Education. The aforesaid exercise shall be completed by all the authorities concerned within a period of three months from the date an application to the Committee of Management of the Institution is made by the petitioner seeking his compassionate appointment under this order.

16. There will be no order as to costs.