

**(2011) 08 AHC CK 0063**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 46792 of 2011

Shyam Kishore Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 17-08-2011

**Acts Referred:**

**Citation :** (2011) 9 ADJ 139 : (2011) 6 AWC 5488 : (2011) 131 FLR 419

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Hon"ble Rajes Kumar, J.—The petitioner is the son of the deceased employee, who was serving in the Police Department he died on 10.12.1992. At that time, the petitioner was 9 years old. It appears that the mother of the petitioner moved an application in the year 1996 claiming the appointment of her son. It is informed by the authority concerned that whenever her son becomes major the claim will be considered. Though the petitioner became major in the year 2001 but he moved an application for compassionate appointment on 15.12.2008, the application has been rejected by the State Government on the ground that it has been moved beyond time after 17 years from the date of death of his father. It has also been observed that the mother of the petitioner is getting pension and there are other members of the family. The appointment on compassionate ground is made to meet the immediate financial crisis arising due to the death of the employee. Considering the entire facts and circumstances, it was found that there is no justification to relax the time limit under the proviso to Rule 5 of the U.P. Recruitment of Dependents of Government Servant Dying-in-Harness Rules, 1974.

2. Heard learned counsel for the petitioner and learned Standing Counsel.

3. The matter relating to compassionate appointment is now being settled by the Apex Court. Some of the judgements of the Apex Court are referred herein

above.

4. In *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, the Supreme Court in the matter of appointment of the petitioner as Clerk in the office of Director General, Border Road observed that, "purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant".

5. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, the Supreme Court held that while giving appointment in public service on compassionate ground, it is to be remembered that the appointment is in relaxation to the general rules. One such an exception is made in favour of the dependants of the employee dying-in-harness and leaving his family in penury and without any means of livelihood on pure humanitarian consideration, the public authority has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provisions of the 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. The Supreme Court further held, "the posts in Class-III and IV are the posts in non-manual and manual categories and hence they alone can be offered on compassionate ground, the object being to relieve the family, of the financial destitution and to hold it get over the emergency. The provisions of employment in such lower posts by making an exception to the Rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. Relief against destitution. No other posts are expected or required to be given by the public authorities for the purposes. It must be remembered in this connection that as against 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 has suddenly upturned. In para 6 the Supreme Court held that compassionate appointment cannot be granted after a laps of 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.

6. In *Haryana Public Service Commission Vs. Harinder Singh and Another*, the Supreme Court held that in compassionate appointment, on the death of a defence personnel killed in 1991 Indo-Pak War, the respondent, when he sought appointment was Civil Engineer gainfully employed at the time though on contract, held, that whole idea of reservation is that those, who are dependent for their survival on men, who have lost their lives or become disabled in the

service of nation, should not suffer. A person who was gainfully employed could not be termed as dependent of ex-serviceman.

7. In *Sanjay Kumar Vs. The State of Bihar and Others*, the Supreme Court relying upon *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, held that the compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner, who has left the family in penury and without any means of livelihood. The applicant was minor, when he made his first application and was not eligible for appointment. There cannot be reservation of a vacancy till such time such petitioner become major, after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to seek that family gets immediate relief. The petitioner was 10 years old, when his mother died while she was working as Excise Constable. The Supreme Court did not find merit in the SLP against the decision of the High Court in which the writ petition was dismissed and the judgment was affirmed by the Division Bench.

8. In *General Manager (D & FB) and others v. Kunti Tiwary and another*, (2004) 3 UPLBC 2534 (SC): (2004) 7 SCC 721, the Supreme Court did not find any error in the decision of the bank which had taken a view that financial condition of the family was not penurious or without any means of livelihood. The compassionate appointment was denied on the ground that it could not be said that the respondents were living hand to mouth.

9. In *Union Bank of India and Others Vs. M.T. Latheesh*, the Supreme Court held that the dependent of the deceased employee of the bank making an application under the scheme for appointment made in 1997, it is not automatically become entitled to get compassionate employment nor does the possession of relevant qualification create any vested right in his favour to get appointed to a post specified by the scheme. His right is limited to get preferential treatment against the general principal of appointment subject to the discretion of the bank.

10. In *Kendriya Vidyalaya Sangathan and Others Vs. Shri Dharmendra Sharma*, once again the Supreme Court reminded that the Court cannot direct compassionate appointment contrary to the policy. The Kendriya Vidyalaya Sangathan decided not to make Group-D appointment and to award work to contractors. It could not be compelled to make compassionate appointment contrary to its policy.

11. In the case of *Mumtaz Yunus Mulani v. State of Maharashtra and others*, 2008 (2) ESC 273 (SC), the Apex Court has held that the claim for compassionate appointment was made after 12 years of the death of the deceased. The claim on compassionate ground has been denied. It has been observed that it is a settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme by the State or the Public Sector Undertaking is to see that the

dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

12. In the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, the Apex Court has held as follows :

Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of Rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

13. In view of the law laid down by the Apex Court, I do not find any merit in the petition. The writ petition fails and is dismissed.