

4. The Chief Secretary of State of U.P. issued an order/letter on 20.05.2021 addressed to the District Magistrates directing them to ensure that family members of the employees of health services, Police, Urban and Rural Administration and other Government Officers who are discharging their duties with dedication to fight with Covid-19 pandemic and had died while discharging their duties be immediately granted ex-gratia amount and one dependent of such employees be provided compassionate appointment as per rules. Accordingly, mother of the petitioner submitted an

application on 03.06.2021 requesting that the petitioner be granted compassionate appointment. The respondent no.2 by order dated 22.07.2021 rejected the claim of petitioner under Dying in Harness Rules on the ground that his mother is employed in Kendriya Vidyalaya which is governed and administered by Central Government.

5. Challenging the aforesaid order, learned Senior Counsel has submitted that the order dated 20.05.2021 issued by Chief Secretary, State of U.P. is explicit and provides that the dependent of deceased employee who had died due to Covid-19 is to be given compassionate appointment in place of deceased employee.

6. Elaborating the said argument learned counsel submits that the language used in Government Order dated 20.05.2021 is explicit and discloses the intention of the Government to give employment to the dependent of the deceased who died due to Covid-19. He further submits that if that was not the intention of the Government, there was no necessity of issuing Government Order dated 20.05.2021 as there was already U.P. Dying in Harness Rules, 1974 providing for compassionate appointment. He further submits that once the Government has framed a policy to provide employment to the dependent of the deceased employee who died of Covid-19, it is bound by the said policy and it is incumbent upon the Government to scrupulously adhere to the Government Order dated 20.05.2021. It is further contended that the notification no. 6/XII/73/Ka-2-T.C-IV dated 22.01.2014 shall be deemed to have been superseded by the order dated 20.05.2021 issued by Chief Secretary, State of U.P. in respect to the employees who died of Covid-19.

7. Per- contra, learned Standing Counsel contends that the object of issuing the Government Order dated 20.05.2021 is to provide immediately ex-gratia payment and compassionate appointment to the dependents of deceased employee who died of Covid-19 as per rules without any delay. He submits that the order dated 20.05.2021 provides that the dependent of the deceased employee should be given compassionate appointment as per rules immediately. He submits that the intention behind issuance of order dated 20.05.2021 to provide immediate succour to the family of the deceased employee died of Covid-19 without any delay since such an employee had dedicated his life to fight with the menace of Covid-19 pandemic. He submits that if the rules permits only then the dependent of the employee is to be provided employment on compassionate ground. He submits that Deputy Secretary of State of U.P. wrote a letter addressed to the Director Social Welfare clarifying that if the case of the petitioner falls within Rule 5 of notification no. 6/XII/73/Ka-2-T.C-IV dated 22.01.2014 only then he may be provided compassionate appointment.

8. I have heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents and perused the record.

9. In order to appreciate the submissions advanced by learned counsel for the petitioner relevant extract of order dated 20.05.2021 issued by Chief Secretary, State of U.P. is reproduced herein as under:

*"समस्त जिलाधिकारी
प्रदेश में कोविड संक्रमण के नियंत्रण एवं
बचाव हेतु स्वास्थ्य सेवाओं, पुलिस, प्रशासन,*

नगरीय एवं ग्रामीण स्थानीय प्रशासन सहित सभी शासकीय अधिकारी व कर्मचारी अपने दायित्वों का निर्वहन कर रहे हैं। इस दौरान अपनी ऊँटनी के समय संक्रमित होने से कुछ कर्मियों की दुःखद मृत्यु भी हुई है। यह सुनिश्चित किया जाए कि ऐसे कर्मियों को तत्काल अनुमन्य अनुग्रह राशि तथा उसके एक आश्रित को नियमानुसार सेवा में रखे जाने की कार्यवाही भी यथाशीघ्र की जानी चाहिए। यदि इस सम्बन्ध में कार्यवाही विभाग/शासन स्तर पर की जानी है तो इस सम्बन्ध में जिलाधिकारी अपनी आख्या भी तत्काल सम्बन्धित विभाग को प्रेषित करना सुनिश्चित करें।

2- समस्त विभागों द्वारा भी ऐसे मामलों में तत्काल अपेक्षित कार्यवाही सुनिश्चित की जाए तथा इसकी सूचना कार्मिक विभाग को भी उपलब्ध करायी जाए।"

10. The order dated 20.05.2021 is distinct and provides in unequivocal terms that the dependent of an employee died of Covid-19 shall be given compassionate appointment expeditiously without any delay as per rules. It further provides that as the decision is to be taken at the level of State Government, therefore, the concerned District Magistrate shall forthwith submit report to the concerned department/administration of State Government and all departments shall forthwith ensure the action on said recommendation to provide compassionate appointment. Thus, it is clear that the Government Order dated 20.05.2021 has been issued only to provide immediate relief to those employees who died of Covid-19 and had dedicated their lives to a social cause in fighting against Covid-19 pandemic. Thus, it can safely culled out from the reading of Government Order dated 20.05.2021 that it only provides preferential treatment to the dependents of

deceased employee who died of Covid-19 from other deceased employees who had died in normal circumstances. Thus, the submission of learned counsel for the petitioner that once an employee died due to Covid-19, his dependent has to be given employment on compassionate ground is misplaced as the order dated 20.05.2021 is specific and unambiguous which clearly stipulates that the dependents of such an employee shall be given preference over the dependant of other deceased employees as per rules.

11. So far as the two judgments relied upon by the learned counsel for the petitioner in *Smt. Deepa Vashishtha Vs. State of U.P. and another, (1996) 1 UPLBEC 54 and Home Secretary, U.T. of Chandigarh and Anr. Vs. Darshjit Singh Grewal & Ors., JT 1993 (4) S.C. 387* are concerned, it is true that these judgments have elucidated that once the Government has issued a policy, it must adhere to the said policy, and if the Government deviates from the policy framed by it, then it must record reasons for doing so. But in the instant case, the order dated 20.05.2021 is specific and clearly provides that the dependents of deceased employee died of Covid-19 shall be given appointment as per rules.

12. In the instant case, it is admitted that the mother of the petitioner is employed in Kendriya Vidyalaya which is governed and administered by Central Government and Rule 5 of U.P. Dying in Harness Rules, 1974 excludes the dependent of an employee for compassionate appointment whose husband and wife, as the case may be, is employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a

State Government. Thus, Rule 5 of U.P. Dying in Harness Rules, 1974 clearly bars the appointment of the petitioner on compassionate ground.

13. Thus, for the reasons given above, the writ petition lacks merit and is, accordingly, *dismissed*. However, there shall be no order as to costs.

(2022)02ILR A911

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 02.12.2021

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-A No. 17061 of 2021

Sumit Kumar Sharma **...Petitioner**
Versus

U.O.I. & Ors. **...Respondents**

Counsel for the Petitioner:

Sri Pradeep Kumar, Sri Krishna Nand

Counsel for the Respondents:

A.S.G.I., Sri Vivek Tripathi

A. Service Law - Compassionate appointment-dying in harness-candidate appointment rejected-father of the petitioner died in harness leaving behind his widow and son/petitioner-petitioner found unfit for post of constable on the ground that he was over age and also because of his marital status-petitioner was also considered for driver post but he failed to submit his driving license-thus the age as on the date on which the application is considered would be the relevant date, and not when the application is made-compassionate appointment is an exception to the general rule-the compassionate ground is a concession and not a right-Hence, no illegality in the impugned order.(Para 1 to 13)

B. The 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. (Para 10)

The writ petition is dismissed. (E-6)

List of Cases cited:

1. St. of U.P. & ors. Vs Premrata, Civil Appeal No. 6003 of 2021

2. H.P. & anr. Vs Shashi Kumar (2019) 3 SCC 653

3. Govind Prakash Verma Vs LIC (2005) 10 SCC 289: 2005 SCC (L&S) 590

4. Mumtaz Yunus Mulani Vs St. of Mah. (2008) 2 SCC (L&S) 1077

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Pradeep Kumar Kashyap, learned counsel for the petitioner as well as Sri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Sri Vivek Tripathi, learned counsel for the respondents.

2. Learned counsel for the petitioner submits that by means of present writ petition, petitioner has assailed the order dated 12.05.2021, passed by the Inspector General of Police, Central Reserve Police Force, Central Command, Vibhuti Khand, Gomati Nagar, Lucknow, whereby candidature of the petitioner for compassionate appointment on one of the various posts in the CRPF have been rejected.

3. It is next submitted by learned counsel for the petitioner that his father was