

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 Premlata, 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

posted as Assistant Sub Inspector at 63 Battalion, CRPF and he died on 18.05.2016 in harness leaving behind his widow wife an petitioner himself as his legal heirs. Petitioner's father was the only bread earner of the family and consequently the petitioner made an application for being appointed under the dying-in-harness rules applicable to the said Organisation, for the posts which have been earmarked for the same.

4. The petitioner was asked to appear for physical test on 13.05.2019, at NOIDA, and which he could not clear and consequently was found unfit for being appointed on the post of constable.

5. Consequently, case of the petitioner was also considered on the post of Hawildar/Ministerial or Assistant Sub-Inspector, but his candidature was again rejected on the ground that he was over age and also because of his marital status.

6. Subsequently, the petitioner was also considered to be appointed on the Post of Driver but the same could not be considered as the petitioner has not submitted any driving license and while rejecting the said the application of the petitioner, it has been stated that they have considered the application for appointment but due to the aforesaid reasons, compassionate appointment cannot be given to the petitioner.

7. It has been submitted by learned counsel for the petitioner that he had made the application for compassionate appointment in the year 2016 and consequently his age as in 2016 should have been considered while considering him for appointment and therefore his

application should not have been rejected on the ground of over age.

8. Heard learned counsel for the parties and perused the record.

9. It has been noticed that age of the petitioner on the date of consideration of his application for compassionate appointment would be a relevant consideration. For compassionate appointment, there are several applications and when ever vacancy is offered to a candidate, his qualifications and eligibility has to be considered according to the post against which he/she is being considered and therefore the age as on the date on which the application is considered would be the relevant date, and not when the application is made.

10. In this connection reference may be made to the observations of Hon'ble Supreme Court in the case of ***The State of Uttar Pradesh and others Vs. Premlata*** in Civil Appeal No.6003 of 2021 as under:-

8.While considering the issue involved in the present appeal, the law laid down by this court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision this court in Civil Appeal No.5122 of 2021 in the case of the Director of Treasuries in Karnataka & Anr. vs. V. Somashree, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this court in N.C. Santhosh vs. State of Karnataka and Ors. reported in (2020) 7 SCC 617, this Court has summarized the principle governing the grant of appointment on compassionate ground as under:

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9.As per the law laid down by this court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1 In the case of **State of Himachal Pradesh and Anr. vs. Shashi Kumar reported in (2019) 3 SCC 653**, this court had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this court in case of **Govind Prakash Verma vs. LIC reported in (2005) 10 SCC 289**, in para 21 and 26, it is observed and held as under:

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But,

before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in **Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]**. The principles which have been laid down in **Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

(**Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]**, SCC pp. 13940, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole

object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, 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. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant 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 purpose. It must be remembered in this connection that as against the 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 are suddenly upturned."

"26. The judgment of a Bench of two Judges in **Mumtaz Yunus Mulani v.**

State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle 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. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in **Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590]** has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

10. Thus as per the law laid down by this court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased."

11. In case, the post offered to the petitioner, according to him, may not be a suitable post, it is open for him to make a

representation to the respondents, who needless to say, would consider the same and dispose of in accordance with law.

12. Also looking into the fact that a very limited number of vacancies are available on which candidates are to be considered for compassionate appointment therefore a very long duration of time may be consumed for an individual's application to be considered and needless to say that eligibility conditions are also a relevant criteria for appointments and have to be fulfilled and therefore the eligibility on the date of consideration of the applications would be relevant, and the petitioner admittedly was overage on the said date.

13. This Court does not find any illegality or infirmity in the impugned order. There is no merit in the arguments raised by learned counsel for the petitioner. Accordingly, present writ petition being devoid of merits is **dismissed**.

14. However, in case there are other vacancies available with the respondents for which physical criteria or age can be relaxed, then it is open for the respondents to consider the case of the petitioner. Let such consideration be made within a period of three months from the date of presentation of a copy of this order and the decision shall be communicated to the petitioner.

15. It is needles to say that any decision by the respondents in the matter of petitioner, shall be taken in accordance with law.
