

1963 Rules, and therefore, the Hon'ble Supreme Court held that it does not invalidate the second marriage of the deceased with respondent no. 1. The deceased had executed a settlement deed between his two wives, both with regard to his movable and immovable properties. Having accepted and acted upon the deed it was not open to the appellant no. 1 to now renegade from the same. The Hon'ble Supreme Court further held that: -

"9. Family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible to the same."

20. The cases relied upon by the learned Counsel for the petitioner do not apply to the facts of the present case and the same do not deal with the effect of Regulation 333 of the Army Regulations.

21. In view of the aforesaid discussions, we do not find any illegality in the order rejecting the claim of payment of family pension to the petitioner. The writ petition lacks merit and the same is dismissed accordingly.

(2025) 1 ILRA 800

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 15.01.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 17483 of 2024

Ashish Yadav

...Petitioner

Versus

Managing Director, U.P.S.R.T.C. & Ors.

...Respondents

Counsel for the Petitioner:

Nikhil Kumar, Vagish Yadav

Counsel for the Respondents:

Mritunjay Mohan Sahai, S.M. Mishra

A. Service Law – Compassionate Appointment - U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 - The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, an unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India. (Para 14)

B. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments. (Para 15)

Appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. This appointment must be done in accordance with the rules for such appointment. The

dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules. (Para 18)

C. One of the mandatory prerequisites for appointments on compassionate ground as contemplated in the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 is that the application for employment should be made within five years from the date of death of the government servant. However, the said provision also empowers the St. Government to dispense with or relax the aforesaid time limit in appropriate cases. The said provision for condonation of delay by the St. Government/competent authority after due application of mind to relevant facts is mandatory in nature. Failure to condone the delay in making the application for compassionate appointment by the St. Government/competent authority after due application of mind to relevant factors will vitiate the appointment. (Para 21)

The mandatory prerequisite of condonation of delay in making the application for compassionate appointment by the competent authority under the Dying-in-Harness Rules, 1974 has been violated. The appointment of the petitioner as a contractual worker was not made under the Dying-in-Harness Rules, 1974. Consequently the petitioner cannot be treated as a regularly appointed employee and is not entitled to benefits claimed by him. Further, the petitioner cannot set up a claim for appointment on compassionate ground at this belated stage under the Dying-in-Harness Rules, 1974. (Para 29)

D. Appointments based on descent or claims of appointment which rest on heredity, are abhorred in the scheme of Articles 14, 15, 16 of the Constitution of India. Delay in making a claim for compassionate ground appointment dilutes the case of immediate financial penury, and consequently negates the entitlement for appointment on compassionate ground. **Appointments on compassionate ground cannot wait for the claimants to attain majority or to enable them to acquire**

additional qualifications and get a better deal in the said appointments. Infact, such grounds militate against claim for appointments on compassionate ground. (Para 23)

In the present case, the petitioner was a minor at the time of the death of his father. No post could have been reserved for him till he attained majority. The delay of almost seven years in making the application for appointment on compassionate ground was never condoned by the St. Government/competent authority under the Dying-in- Harness Rules, 1974. (Para 28)

In the facts of this case, **contractual employment of the said nature cannot be converted into an appointment under the Dying-in-Harness Rules, 1974.** If this course is made permissible it will become a novel device to breach specific statutory provisions. (Para 31)

Writ petition dismissed. (E-4)

Precedent followed:

1. Umesh Kumar Nagpal Vs St. of Har., (1994) 4 SCC 138 (Para 11)
2. Director of Education (Secondary Vs Pushpendra Kumar, (1980) 5 SCC 192 (Para 12)
3. Roopam Mishra Vs St. of U.P. & ors., Writ-A No. 15512 of 2019 (Para 13)
4. Director of Treasuries in Karnataka & anr.Vs Somyashree, Civil Appeal No. 5122 of 2021 (Para 16)
5. Ispita Chakrabarti Vs St. of W.B., (2018) 2 CAL LT 177 (HC) (Para 17)
6. Sri Bijon Mukherje Vs The St. of of W.B. & ors., (2018) 3 CAL LT 136 (HC) (Para 18)
7. Ankita Saha & anr.Vs The St. of W.B. & ors., WPA No. 12287 of 2019 (Para 19)
8. Sanjay Kumar Vs St. of Bihar & ors., 2000 (7) SCC 192 (Para 24)
9. Sonal Laviniya & anr.Vs U.O.I. & anr., 2003 (5) AWC 4070 (Para 25)

10. Shiv Kumar Dubey Vs St. of U.P., 2014 (2) ADJ 312 (Para 26)

Precedent distinguished:

Umesh Kumar Vs St. of U.P., 2017 (9) ADJ 327 (Para 30)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Counter affidavit filed by Shri S.M.Mishra, learned counsel for the respondents and the rejoinder affidavit filed by Shri Nikhil Kumar, learned counsel for the petitioner are taken in the record.

2. The petitioner claims that he is entitled to regular appointment and salary from the date of his appointment as a contractual employee on 25.08.2014.

3. Shri Nikhil Kumar, learned counsel assisted by Shri Vagish Yadav, learned counsel for the petitioner contends that the petitioner was appointed on 25.08.2014 as a contractual employee. In fact his appointment was made under the U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as "Dying-in-Harness Rules, 1974"). Hence he is entitled to regular appointment and salary from the aforesaid date of his appointment.

4. Per contra, Shri S.M.Mishra, learned counsel for the respondents submits that there was a delay of more than five years on part of the petitioner in making an application for grant of appointment on compassionate ground. The delay has not been condoned by the competent authority. The appointment of the petitioner is not made under the Dying-in-Harness Rules, 1974. The petitioner cannot be granted the relief claimed by him.

5. Heard Shri Nikhil Kumar, learned counsel assisted by Shri Vagish Yadav, learned counsel for the petitioner and Shri S.M.Mishra, learned counsel for the respondents.

6. The admitted facts of the case are these. The father of the petitioner died in harness on 10.02.2006. The petitioner turned 18 in the year 2013. He filed an application for grant of appointment on compassionate ground on 05.07.2013. The appointments on compassionate ground in the respondent-corporation are made under the Dying-in-Harness Rules, 1974 as made applicable to the respondent-corporation. Admittedly, the said application was filed more than five years after the death of the father. The aforesaid delay of more than five years has not been condoned by the competent authority in the instant case as contemplated in the Dying-in-Harness Rules, 1974. The petitioner was appointed as a contractual employee in the respondent-corporation on 25.08.2014.

7. The question that arises for consideration in this writ petition is whether the aforesaid contractual appointment of the petitioner was made under the Dying-in-Harness Rules, 1974 and consequently the petitioner is liable to be treated as a permanent employee with effect from the date of his appointment as a contractual employee on 25.08.2014?

8. Appointments to public posts, government services and to various instrumentalities of the State within the meaning of Article 12 of the Constitution of India are governed and regulated by comprehensive provisions contained in the Constitution. The constitutional scheme envisages an open recruitment and a transparent procedure which enables

maximum participation from all the eligible segments of the citizenry at large. The final appointments are made after a fair selection based on competitive merit. While making the said appointments the reservation policy or affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law have to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional Courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional Courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalies in the body of the constitutional law.

9. The compassionate ground appointments to the contrary are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment and other relaxations as well. Appointments under the Dying-in-Harness Rules, 1974, are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and rationalized by service law jurisprudence evolved by Constitutional Courts.

10. The appointments on compassionate ground passed the test of constitutional validity by a slender margin. The sole justification to make compassionate ground appointments is that

the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

11. The Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana**¹ explained the purpose of compassionate in following terms:

"2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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 non-manual 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."

12. A similar sentiment was echoed by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**² :

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision

makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee....."

13. This Court in **Roopam Mishra v. State of U.P. and 4 others**³ held as under:

"16. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis".

14. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.

15. The purpose of grant of compassionate ground appointments can be subverted and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.

16. The Supreme Court in the Director of **Treasuries in Karnataka & Anr. v. Somyashree**⁴ emphatically reiterated the well settled position of law of making compassionate appointments in conformity with the norms governing the grant of said appointments by summarizing the law as follows:

"7.....(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."

17. The necessity to strictly adhere to rules relating to compassionate grounds was succinctly summarized by the Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁵. Ipsita Chakrabarti (supra) upon consideration of holdings of various Constitutional Courts held:

"(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim

compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family."

18. Furthermore, the Calcutta High Court in **Sri Bijon Mukherjee v. The State of West Bengal and others**⁶ again stated what is by now the settled position of law that the appointments on compassionate ground must be made only in consonance with the specific rules applicable to the employee :

"26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally

meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules."

19. The judgment rendered by the Calcutta High Court in **Ipsita Chakrabarti** (supra) and **Sri Bijon Mukherjee** (supra) were followed by the Calcutta High Court in **Ankita Saha and Anr. v. The State of West Bengal and Ors**⁷.

20. At this stage it would be apposite to extract the relevant provisions of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 as applicable to this case:

"Rule 5. Recruitment of a member of the family of the deceased. –

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government

or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules, if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) When the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his service may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

21. One of the mandatory prerequisites for appointments on compassionate ground as contemplated in the aforesaid Dying-in-Harness Rules, 1974 is that the application for employment should be made within five years from the date of death of the government servant. However, the said provision also empowers the State Government to dispense with or relax the aforesaid time limit in appropriate cases. The said provision for condonation of delay by the State Government/competent authority after due application of mind to relevant facts is mandatory in nature. Failure to condone the delay in making the application for compassionate appointment by the State Government/competent authority after due application of mind to relevant factors will vitiate the appointment.

22. Rationale for strict enforcement of the aforesaid provision for condonation of delay by the competent authority is supplied by good authorities in point.

23. Appointments based on descent or claims of appointment which rest on heredity, are abhorred in the scheme of Articles 14, 15, 16 of the Constitution of India. Delay in making a claim for compassionate ground appointment dilutes the case of immediate financial penury, and

consequently negates the entitlement for appointment on compassionate ground. Appointments on compassionate ground cannot wait for the claimants to attain majority or to enable them to acquire additional qualifications and get a better deal in the said appointments. Infact, such grounds militate against claim for appointments on compassionate ground.

24. The Supreme Court in the case of **Sanjay Kumar Vs. State of Bihar and Others**⁸ reiterated the purpose of compassionate ground appointments to tide over the sudden crisis resulting from the death of the earner in a family. While in the same breath the reservation of a vacancy to enable such person to attain majority was negated by the Supreme Court by holding thus:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education v. Pushpendra Kumar* [(1998) 5 SCC 192 : 1998 SCC (L&S) 1302 : (1998) 2 Pat LJR 181] . It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There

cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

25. A Division Bench of this Court after citing authorities in point also concluded that financial penury ceases to exist in case an application was made long years after the death of the employee in the case of **Smt. Sonal Laviniya and another vs. Union of India and another**⁹:

"38. The purpose of providing such an employment has been to render the financial assistance to the family, which has lost the bread earner immediately after the death of the employee. If the application has been filed after expiry of 9½ years the element of immediate need stood evaporated and there was no occasion for the respondents to consider the case of the petitioner for such a relief. The observation made by the learned Tribunal are in consonance with the law laid down by the Hon'ble Apex Court and no exception can be taken out."

26. The need for strict compliance of Dying-in-Harness Rules, 1974 and consequences of delay in filing applications for appointment under Dying-in-harness Rules and allied issues were posed to a Full Bench of this Court in the case of **Shiv Kumar Dubey Vs. State of U.P.**¹⁰ For ease of reference, the relevant parts of **Shiv Kumar Dubey (supra)** are reproduced hereunder:

"29. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

[emphasis supplied]

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

[emphasis supplied]

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the

family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

[emphasis supplied]

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

[emphasis supplied]

(viii) Provisions for the grant of compassionate appointment do not constitute a

reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family." (emphasis supplied)."

27. While condoning the delay in making of application for grant of appointment under the Dying-in-Harness Rules, 1974, the State Government (or the competent authority) is under a bounden obligation of law to consider the matter in light of the aforesaid holdings of constitutional courts.

28. The facts of the case enumerated earlier may now be seen in light of the authorities in point discussed above. The petitioner was a minor at the time of the death of his father. No post could have been reserved for him till he attained majority. The delay of almost seven years in making the application for appointment on compassionate ground was never condoned by the State Government/competent authority under the Dying-in-Harness Rules, 1974.

29. The mandatory prerequisite of condonation of delay in making the application for compassionate appointment by the competent authority under the Dying-in-Harness Rules, 1974 has thus been violated. The appointment of the

petitioner as a contractual worker was not made under the Dying-in-Harness Rules, 1974. Consequently the petitioner cannot be treated as a regularly appointed employee and is not entitled to benefits claimed by him. Further, the petitioner cannot set up a claim for appointment on compassionate ground at this belated stage under the Dying-in-Harness Rules, 1974.

30. Reliance placed on the judgement rendered by this Court in **Umesh Kumar v. State of U.P.**¹¹ is misconceived. The judgement is distinguishable on facts. In the case of Umesh Kumar (supra) this Court has specifically observed that the respondents had not taken a stand that more than five years had elapsed from the date of death of his father. In the instant case the petitioner has been non suited on the solely footing that there was a delay of more than five years in making the application for appointment and that the delay has not been condoned by the competent authority. Furthermore, the judgement in **Umesh Kumar (supra)** was rendered in the context of a ban purportedly imposed on appointments on compassionate ground by the Government Order dated 11.07.2003. The ban is not an issue in the instant case.

31. In the facts of this case, contractual employment of the said nature cannot be converted into an appointment under the Dying-in-Harness Rules, 1974. If this course is made permissible it will become a novel device to breach specific statutory provisions.

32. The Managing Director of the UPSRTC shall cause an enquiry to be conducted as to how appointments of this nature are being made only as a device to overreach and violate the provisions of the

Dying-in-Harness Rules, 1974. Appropriate action will be taken thereafter as per law.

33. The writ petition is dismissed.

(2025) 1 ILRA 811

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 22.01.2025

BEFORE

**THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE PANKAJ BHATIA, J.
THE HON'BLE MOHD. FAIZ ALAM KHAN, J.**

Criminal Reference No. 1 of 2024

**In Re- Procedure To Be Followed In
Hearing Of Criminal Appeals ...Applicant
Versus
State of U.P. ...Respondent**

Counsel for the Applicant:

Suo Moto, Apoorva Tewari, Ayush Tandon, Alok Mishra, Nadeem Murtaza, Naved Ali, Rajat Gangwar, S M Singh Royekwar, Vikas Vikram Singh

Counsel for the Respondent:

G.A.

(A) Criminal Law – Criminal Procedure Code, 1973 – Sections 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 86, 341, 349, 372, 374, 377, 378, 390 & 446 - Allahabad High Court Rules, 1952 - Rule 18, 22 & 41 - Criminal Reference - in an appeal against acquittal while summoning the accused person under Section 390 Cr.P.C. coercive process even of the nature of bailable warrant or non-bailable warrant may be issued against the appellant having regard to the peculiar facts and circumstances of each case but it may not be construed to mean that in each and every appeal against acquittal the accused person must be summoned in variably by issuing bailable or non-bailable warrants and in an appropriate case summons may also be issued and in appeal against conviction wherein an