

been considered is beyond 34 months, therefore, in view of the Government Order dated 16.01.2007 and also in view of the dictum of Hon'ble Apex Court in re; **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others (supra)**, such re-fixation may not be permitted in the eyes of law. Since no recital has been given regarding any undertaking at the time of making access payment to the petitioner, therefore, in view of the dictum of Hon'ble Apex Court in re; **High Court of Punjab and Haryana and Other Vs. Jagdev Singh (supra)** such recovery may not be permitted.

12. Accordingly, the writ petition is allowed. Consequently, the impugned orders dated 06.09.2024 (contained in Annexure No. 1) and 07.09.2024 (contained in Annexure No. 2) are hereby set aside/ quashed.

13. The opposite parties are further directed to release the entire service benefits of the petitioner including pension, gratuity, leave encashment and other applicable benefits, with expedition, preferably within a period of six weeks from the receipt of certified copy of the order of this Court, provided the petitioner has completed all required formalities, failing which the petitioner would be entitled for the interest @ 8% per annum on delayed payment.

14. With the aforesaid observations and directions, the writ petition is **allowed**.

15. No order as to costs.

(2024) 9 ILRA 1406
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.09.2024

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ -A No. 39076 of 2015

Heeraman Prasad ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Ashutosh Kumar Pandey, Sanjeev Singh, Sujeet Kumar Rai

Counsel for the Respondents:

C.S.C.

Service Law – claim for compassionate appointment-rejected-father's post as Sahyogi to the Collection Amin was abolished upon his death-Uttar Pradesh Co-operative Collection Fund and the Amins and other Staff Service Rules, 2002-Rule 5-rules have statutory force-framed by the Governor-Section 130 read with Section 92(A) and Section 92(B) of the U.P. Cooperative Societies Act, 1965-deceased employee-government servant-post's abolition did not preclude offering a compassionate appointment on a suitable Group 'D' post-rejection order quashed-direction to grant compassionate appointment-petition allowed. (paras 10, 12, 14, 15 and 16)

HELD:

Rule 5 clearly stipulates that strength of service of each category of post under the service cadre mentioned under the Rules would be with prior approval of the Government. The rules that have been framed by the Governor taking aid to the provision as contained under Section 130 read with Section 92(A) and Section 92(B) of the U.P. Cooperative Societies Act, 1965, are definitely having statutory force. Number of posts of Sahyogi to the Amin are prescribed to be 90 in the service cadre and it appears that immediately after rules were framed and brought into force, the Government decided to regularize all such Sahyogis working on a temporary basis and so resultantly the order of confirmed appointment was issued in favour of

the petitioner's father on 23rd November, 2002. (para 10)

Thus, there is no quarrel about the status of the vacancy as to be belonging to the government service within the definition of the rules and appointment order issued as a consequence thereof to the father of the petitioner. The plea taken in the counter affidavit vide paragraphs 5 & 6 to the effect that petitioner's father was not a government employee is, therefore, clearly misplaced one. In the entire counter affidavit the appointment order has not been disputed, nor it has been questioned on the ground of being obtained by fraud or by any mischief at the end of petitioner's father. (Para 12)

Insofar as the other plea taken in the order impugned that since cadre in which petitioner's father was appointed became a dying cadre as the word and expression 'otherwise' would relate to all such eventualities including the death of the employee as contemplated under the rules, to treat the post abolished as a consequence thereof, also does not appeal to reason. The dying in harness Rules, 1974 do not provide that a person seeking compassionate should be offered appointment upon such posts only on which the deceased employee was working and, therefore, the appointment could have been offered on any group 'D' post. It is not a case of respondent that no other group 'D' post' available to accommodate the petitioner in the matter of compassionate appointment. (Para 14)

In a judgment of Supreme Court in the case of the St. of Uttar Pradesh & ors. v. Premlata in Civil Appeal No. - 6003 of 2021 decided on 5th October, 2021 the Court has very categorically held that suitability of the posts means that the applicant seeking compassionate appointment should be offered appointment only in the status in which his father was working. For instance, if father was working on a group 'D' post then a dependent should not be offered group 'C' post. The appointment on equivalent post can be made. (Para 15)

Petition allowed. (E-13)

List of Cases cited:

1. Kaushlendra Kuwar Vs Registrar, Cooperative Societies, U.P. Lucknow & ors. in Civil Misc. Writ Petition No.- 44810 of 2011 decided on 5th April, 2007

2. The St. of Uttar Pradesh & ors. Vs Premlata in Civil Appeal No. - 6003 of 2021 decided on 5th October, 2021

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Sanjeev Singh and Sri Ashutosh Kumar Pandey, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. Petitioner before this Court is aggrieved by the decision taken by the respondents under the order impugned dated 23rd February, 2015, whereby claim of the petitioner for compassionate appointment has been rejected solely on the ground that petitioner's father was working as an Aid (Sahyogi) to the Collection Amin and the relevant service rules, namely, Uttar Pradesh Co-operative Collection Fund and the Amins and other Staff Service Rules, 2002 (hereinafter referred to as 'Rules, 2002') very categorically provided that the post of Sahyogi of Amin that were 90 in number stand abolished with the retirement of such Sahyogi of Amin or otherwise. Since father of the petitioner died on 12th May, 2012, according to the respondents, the post also got abolished and as it had become a dying cadre.

3. Assailing the order impugned Sri Sanjeev Singh, learned counsel for the petitioner, in the first instance, has drawn the attention of the Court to the appointment order of the petitioner's father issued to him on 23rd November, 2002, which categorically records that petitioner's father is appointed as Sahyogi in the regular pay scale as admissible in law to

the post in question w.e.f. 30th October, 2002 as a government employee. He further submits that petitioner's father was in the respondent's establishment ever since 1984 when he was initially appointed though he was working only on a temporary basis but with the confirmation in service giving him a permanent post in the employment of Government service, he became a regular Government employee in the year 2002.

4. In such above circumstances, Sri Sanjeev Singh has argued that Uttar Pradesh Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 as were applicable on the date of death of the father of the petitioner will certainly be applicable and even if posts were not there since petitioner had moved an application on 14th June, 2013 seeking appointment as a Class IV employee, petitioner could have been adjusted against any group 'D' post. Still further he submits that if vacancies are not there as per the relevant dying in harness rules, 1974 a supernumerary post could have been created.

5. Learned counsel for the petitioner has also placed reliance upon the judgment of a coordinate Bench of this Court in the case of **Kaushlendra Kuwar v. Registrar, Cooperative Societies, U.P. Lucknow and others** in Civil Misc. Writ Petition No.- 44810 of 2011 decided on 5th April, 2007, a copy whereof has been brought on record as Annexure- 1 to the affidavit filed in support of the misc. application dated 12th December, 2023.

6. Meeting the arguments advanced by learned counsel for the petitioner, learned Standing Counsel has sought to defend the order for the reasons assigned therein. In support of his

argument, he has relied upon paragraph 5 and 6 of the counter affidavit in which it has been stated that petitioner's father was not appointed against any government post as per the amended Rules, 2002. It has also been submitted that merely because the pay fixation was done and an employee would not become a government employee as the payment of salary was made from fund of the district bank. He has also sought to dispute the appointment order issued to the petitioner's father stating therein that he was being offered appointment on a post which belonged to the government service.

7. Having heard learned counsel for the respective parties and having perused the records, I find that the petitioner's father though was appointed in the year 1984 in a temporary capacity but was later on came to be offered confirmed appointment on the post of Sahyogi to the Collection Amin on 23rd November, 2002 along with two other persons. The name of petitioner's father appears on serial No.- 2 of the appointment order. The entire appointment order for better appreciation as has been brought on record as Annexure - 3 to the writ petition is reproduced hereunder:

"आदेश

उत्तर प्रदेश सहकारी संग्रह निधि तथा अन्य कर्मचारी सेवा नियमावली, 2002 के नियम-6 में निहित व्यवस्था के अनुसार निम्न विवरण के सहयोगी को वेतनमान 2550-55-2660-60-3200 में दिनांक 30.10.2002 से सरकारी सेवा में नियुक्त किया जाता है। इनकी पारस्परिक वरिष्ठता वाद में यथा विधि निर्धारित होगी:-

मांक	ब्र	ना	पदनाम	नाम जनपद
1	म	2	3	4
1.		सर्वश्री राम प्रकाश सिंह	सहयोगी	गाजीपुर

2.	उपेन्द्र नाथ राम	सहयोगी	गाजीपुर
3.	ओम प्रकाश तिवारी	सहयोगी	गाजीपुर

सहकारी सेवा में 30.10.2002 से तैनात होने के पश्चात् इन पर उत्तर प्रदेश सरकारी संग्रह निधि तथा अन्य कर्मचारी सेवा नियमावली 2002 तथा उत्तर प्रदेश सरकारी कर्मचारी आचरण नियमावली 1956 तथा उत्तर प्रदेश सरकार द्वारा जारी सभी आदेश लागू होंगे।

ह०

(हृदयराम चौरसिया)

उप निबन्धक,

सहकारी समितियाँ, उ०प्र०,

वाराणसी मण्डल,

वाराणसी।

कार्यालय उप निबन्धक, सहकारी समितियाँ, उ०प्र०,
वाराणसी मण्डल, वाराणसी।

पत्रांक: 4235-39/क्षेत्रीय संग्रह-लेखा/ दिनांक:
नवम्बर 23, 2002”

8. The language in which the appointment order is issued, clearly demonstrates that petitioner's father was appointed in pay scale Rs.2550-55-2660-60-3200 w.e.f. 30th October, 2002 in government service and also it was provided that seniority will be determined later on.

9. Coming to the service rules aid of which has been taken by both learned counsel for the petitioner and learned Standing Counsel, namely U.P. Cooperative Collection Fund and the Amins and other Staff Rules, 2002, I find that the post of Sahyogi to the Collection Amin was a cadre post and posts were 90 in number as sanctioned though the rules declared it to be a dying cadre as the post would stand abolished in the event government servant retired or otherwise. Rule 5 of Part-II of the

Rules, 2002 for better appreciation are reproduced hereunder:

“5.(1) *The strength of the service and of each category of posts therein shall be such as may be determined by the Registrar with the prior approval of the State Government.*

(2) *The strength of the service and of each category of posts therein shall until orders varying the same are passed under sub-rule (1) be as given in the Schedule below.*

Schedule

Sl. No.	Name of the post	No. of Post	Remark
1	Amin	206	Three posts in each district however in district having less than three tehsils, two post in each district.
2	Sahyogi's of Amin	90	The post falling vacant due to retirement or otherwise shall cease to exist.
3	Amin on Commission	2689	The post falling

	basis		vacant due to retirement or otherwise shall cease to exist.
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(3). The Appointing Authority may leave unfilled or the Government may hold in abeyance any vacant post without thereby entitling any person to compensation or the Government may create such additional permanent or temporary posts as it may consider proper."

10. Rule 5 clearly stipulates that strength of service of each category of post under the service cadre mentioned under the Rules would be with prior approval of the Government. The rules that have been framed by the Governor taking aid to the provision as contained under Section 130 read with Section 92(A) and Section 92(B) of the U.P. Cooperative Societies Act, 1965, are definitely having statutory force. Number of posts of Sahyogi to the Amin are prescribed to be 90 in the service cadre and it appears that immediately after rules were framed and brought into force, the Government decided to regularize all such Sahyogis working on a temporary basis and so resultantly the order of confirmed appointment was issued in favour of the petitioner's father on 23rd November, 2002.

11. It is pertinent to mention here that appointment was offered to the petitioner's father on 30th October, 2002 w.e.f. the date of enforcement of the rules with the publication of the same in the Gazette.

12. Thus, there is no quarrel about the status of the vacancy as to be belonging to the government service within the definition of the rules and appointment order issued as a consequence thereof to the father of the petitioner. The plea taken in the counter affidavit vide paragraphs 5 & 6 to the effect that petitioner's father was not a government employee is, therefore, clearly misplaced one. In the entire counter affidavit the appointment order has not been disputed, nor it has been questioned on the ground of being obtained by fraud or by any mischief at the end of petitioner's father.

13. In such circumstances, therefore, to hold the petitioner's father was not working on a government post seems to have been made under some confusion at the end of the respondents while deciding the representation/ application of the petitioner seeking compassionate appointment.

14. Insofar as the other plea taken in the order impugned that since cadre in which petitioner's father was appointed became a dying cadre as the word and expression 'otherwise' would relate to all such eventualities including the death of the employee as contemplated under the rules, to treat the post abolished as a consequence thereof, also does not appeal to reason. The dying in harness Rules, 1974 do not provide that a person seeking compassionate should be offered appointment upon such posts only on which the deceased employee was working and, therefore, the appointment could have been offered on any group 'D' post. It is not a case of respondent that no other group 'D' post' available to accommodate the petitioner in the matter of compassionate appointment.

15. In a judgment of Supreme Court in the case of the **State of Uttar Pradesh & others v. Premrata** in Civil Appeal No. - 6003 of 2021 decided on 5th October, 2021 the Court has very categorically held that suitability of the posts means that the applicant seeking compassionate appointment should be offered appointment only in the status in which his father was working. For instance, if father was working on a group 'D' post then a dependent should not be offered group 'C' post. The appointment on equivalent post can be made. Vide paragraphs 10.2, 10.3 & 11 the Court held thus:

"10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of Rules 1974 and has held that 'suitable post' under Rule 5 of the Rules 1974 would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. 'Suitable post' has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate

ground and the regular appointment. In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class-II or Class-I post and the deceased employee was working on the post of Class/Grade-IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.

10.3 In the present case as observed hereinabove initially the respondent applied for appointment on compassionate ground on the post of Assistant Operator in Police Radio Department. The same was not accepted by the Department and rightly not accepted on the ground that she was not fulfilling requisite eligibility criteria for the post of Assistant Operator.

Thereafter the respondent again applied for appointment on the compassionate ground on the post of Workshop Hand. The case of the respondent was considered, however, she failed in the physical test examination, which was required as per the relevant recruitment rules of 2005. Therefore, thereafter she was offered appointment on compassionate ground as Messenger which was equivalent to the post held by the deceased employee. Therefore appellants were justified in offering the appointment to the respondent on the post of Messenger. However, the respondent refused the appointment on such post.

11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the 'suitable post' under Rule 5 of the Dying In Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground."

16. In such circumstances, therefore, I am of the considered view that petitioner could have been offered any group 'D' post in the establishment of the respondent.

17. Thus, the order impugned rejecting the claim of the petitioner for compassionate appointment cannot be sustained in law and, accordingly, the order dated 23rd February, 2015 (Annexure - 7 to the writ petition) is hereby quashed.

18. The appointment order to the petitioner on the compassionate basis shall be issued by the respondents within maximum period of 30 days from the date of production of certified copy of this order if otherwise there is no legal impediments.

19. It is clarified that petitioner's claim will not be rejected on any technical ground including the ground that appointment is to be offered after five years of the death of the deceased employee.

20. There will be no order as to cost.

(2024) 9 ILRA 1412
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.09.2024

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Revision No. 4562 of 2024

Sanjeev Nayan Mishra **...Revisionist**
Versus
State of U.P. & Ors. **...Opposite Parties**

Counsel for the Revisionist:

Ayush Mishra, Prabha Shanker Mishra,
 Vinay Kumar Tiwari

Counsel for the Opposite Parties:

G.A.

Criminal Law –Code of Criminal Procedure, 1973 - Section 397/401 - order rejecting discharge application challenged- -Section