quashed. There shall be no embargo upon the petitioner from holding any administrative responsibility whatsoever. The penalty of withholding two increments without cumulative effect is **upheld**.

31. There shall be no order as to costs.

(2025) 5 ILRA 711
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 6273 of 2025

Prince Yadav ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Abhishek Singh, Shashi Bhushan Rai

Counsel for the Respondents:
C.S.C.

Service Law – Compassionate Appointment – Succession Certificate – Requirement in case of rival claims – Validity of claim by children from two marriages.

Held: Succession certificate is not mandatorily required in all cases of compassionate appointment. Where rival claims are set up by heirs from both the first and second wife, children born out of even void/illegal marriage are treated as legitimate under Section 16 of the Hindu Marriage Act, 1955 and have equal right to be considered for compassionate appointment. Authority cannot exclude such children. Impugned order directing petitioner to obtain succession certificate quashed. Matter remanded to competent authority to assess rival claims under Rule 17 of the U.P. Dying-in-Harness Rules, 1974 and offer appointment to the most deserving dependent.

Writ Petition allowed.

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

1. Heard Shri Shashi Bhushan Rai, learned counsel for petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has challenged the order dated 03.01.2025 whereby he has been directed to furnish succession certificate so as to set up a valid claim for compassionate appointment.

3. Learned counsel for petitioner submits that in the matter of compassionate appointment succession certificate is not mandatorily required as has come to be held in the judgment of a Co-ordinate Bench of this Court in ***Shakeel Khan v. State of U.P. and three others Writ A No. 7454 of 2020*** disposed of on 12.10.2020.

4. Meeting the above submissions, learned Standing Counsel Shri Rahul Malviya submits that the judgment would be applicable only in those cases where there is uncontested case and not in the cases where rival claims are set up. It is contended that in the present case from the recitals contained in the letter dated 03.01.2025 itself it is very much clear that the deceased had two wives and there are children born out of the marriage with the first wife as well as the second life. In these circumstances, therefore, when there are rival claims set up by the heirs of both the wives, it would be necessarily required to have succession certificate as it would validate the claim of one of the heirs to be offered compassionate appointment dislodging the claims of others.

5. Having heard learned counsel for respective parties and having perused the records I find that both the issues were born out of the wedlock between the deceased and the first wife Gulabi Devi and second wife Savitri Devi and hence they are ultimately the issues of the deceased employee and there cannot be any quarrel to the legal position that the issues born out of even illegal marriage or void marriage do have a right of succession. This aspect has been dealt with by coordinate Bench of this Court in its judgment in the case of **Shakil Khan (supra)** in the following manner:

"The petitioner was born in wedlock with the first wife. Admittedly, the deceased had two wives. The children of the employee born in wedlock with the second wife, are also liable to be considered as members of same family under dying-in-harness on the same footing as the petitioner in view of law laid down by the Hon'ble Supreme Court in the case of Union of India vs. V.R. Tripathi reported in (2019) 14 SCC 646. The dispute is between the children of both the wives. The Hon'ble Supreme Court considered the rights of the children born in wedlock from the second marriage of the deceased employee, and held as under:

16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage

and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

The order dated 12.6.2020 passed by respondent no.2 is hereby quashed in so far as it directs the petitioner to obtain succession certificate for consideration of his claim for appointment on compassionate grounds. " (emphasis added)

6. The Supreme Court judgment that has been considered by the Co-ordinate Bench deals with the situation where the rivals claims were set up by more than one heirs of the deceased employee and the issue was as to the legitimacy of their respective claims. The Court observed that compassionate appointment cannot be denied to a child even if born out of void marriage. The said judgment has been followed by another co-ordinate Bench in the case of ***Prachi Tripathi v. State of U.P. through Principal Secretary Appointment and two others Writ A No. 1706 of 2024.***

7. Learned Standing Counsel could not dispute that the children born out of void marriage are also having ligitimate claim to the property, succession or heirship of their parents.

8. In these circumstances, therefore, the order passed by the authority namely the Superintendent of Police, Mirzapur dated 03.01.2025 is rendered unsustainable the order is accordingly quashed.

9. The competent authority in the matter namely, Superintendent of Police, Mirzapur is directed to consider the rival claims set up by the heirs of the deceased employee Shiv Shankar Singh giving them opportunity of hearing under Rule l7 of U.P. Dying in Harness Rules, 1974. The competent authority will evaluate and assess the rival claims and will offer appointment to the most deserving and suitable person who was dependent-heir of deceased employee Shiv Shankar Singh at the time of his death.

10. Appropriate reason and speaking order shall accordingly be passed within a maximum period of two months from the production of certified copy of this order.

11. Petition thus, stands allowed with no order as to cost.

(2025) 5 ILRA 713
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2025

BEFORE

THE HON'BLE SHEKHAR B SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ Tax No. 1603 of 2024

M/s Patanjali Ayurved Ltd. ...Petitioner
Versus
Union Of India & Ors. ...Respondents