

3. The facts in brief as stated by the petitioner are that the mother of the petitioner, namely Smt. Manju Srivastava was appointed and working on the post of Junior Clerk in the office of Director, Directorate of Electrical Safety, Government of U.P., Regional Office, Lucknow since 1983 and unfortunately died on 28.12.2021. Father of the petitioner was also a government servant and was working on the post of Review Officer in the office of Government Advocate in Lucknow Bench of the Allahabad High

Court and had attained the age of superannuation on 10.10.2022.

4. It is on death of the mother of the petitioner on 28.12.2022 that an application was given to opposite party No.2 seeking compassionate appointment. After due consideration of the case of the petitioner Director, Directorate of Electrical Safety, Government of U.P. rejected the application of the petitioner for compassionate appointment on 6.12.2022. The petitioner being aggrieved of the said order of rejection has preferred a writ petition before this Court bearing writ A No.1427 of 2023 which was allowed by means of judgment and order dated 15.2.2024 and this Court had relied upon the Division Bench judgment in the case of ***Kumari Vanshika Nigam Vs. State of U.P. and 3 others*** passed in Special Appeal No.73 of 2016 and was of the view that respondent No.2 while rejecting the representation of the petitioner had not considered the relevant facts and circumstances necessary for consideration of the application for appointment on compassionate ground and consequently quashed the rejection order dated 6.12.2022 further directing him to reconsider the application of the petitioner.

5. It is in pursuance of the directions of this Court dated 16.2.2024 that the impugned order dated 24.5.2024 was passed by opposite party No.2. Opposite party No.2 while passing the said order had taken into consideration the provisions of Rule 5 (1) of Uttar Pradesh Dying in Harness Rules, 1974 (hereinafter referred to as the Rules of 1974) which provides that 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, 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 applying these rules in the case of the petitioner it was found that his father was working on the post of Review Officer in the office of Government Advocate in Lucknow High Court and the mother was also in government service and consequently the petitioner was not entitled for being appointed on compassionate grounds. It is during pendency of the present writ petition that this Court had passed an interim order on 12.9.2024 giving liberty to opposite party No.2 to revisit the order. Even after revisiting its previous order, the authority opposite party No.2 was of the view that the petitioner could not have been granted the benefit of compassionate appointment considering the bar of Rule 5 (1) of the Rules of 1974.

6. Learned counsel for the petitioner submits that even if father of the petitioner was employed in Government service it would not be a bar for grant of compassionate appointment to the petitioner. He submits that on the date of death of his mother his father was a government servant but on the date of when the application was given by the petitioner father of the petitioner had retired and submits that only in case father of the petitioner was in active service could the bar created under Rule 5(1) operate against the petitioner for grant of compassionate appointment. He has relied upon the judgment of this Court in the case of ***Sumit Kumar Sharma Vs. Union of India and***

others, 2021 SCC OnLine All854 where this Court has held that eligibility condition of an individual have to be considered on the date of considerations of his application. He submits that on the date of submission of his application his father had already superannuated and consequently the rigor of Rule 5 (1) of the Rules of 1974 would not operate against the petitioner.

7. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that appointment on compassionate grounds is not a routine or regular mode of employment but is granted on contingencies of the fact that the government servant has died during harness and to prevent the dependent family members of the government servant to fall into penury the beneficial piece of rules have been made for granting appointment to such an individual. He submits that accordingly the provisions of the Rules of 1974 are as a measure of exception to the regular recruitment and are supposed to be interpreted in a strict manner with regard to the eligibility of the person who has to be considered for appointment under Dying in Harness Rules. He submits that rule 5 (1) clearly creates a bar for appointment on compassionate ground to a person in such a situation where both the parents are in government employment or employed in a corporation governed or controlled by the government. Accordingly, he has supported the impugned orders passed by opposite party No.2 and prayed for dismissal of the writ petition.

8. This Court has given its anxious considerations to the arguments raised by the petitioner as well as by the Standing counsel.

9. The facts in the present case are not disputed in as much as both the parents of

the petitioner were in employment of the State Government and accordingly the issue before this Court in the present controversy is that whether bar under Rule 5(1) of the Rules of 1974 would operate against the petitioner for consideration of grant of compassionate appointment ?

10. From a bare perusal of Rule 5(1) it is clear that wherever the spouse of the deceased government servant employed under Central or State Government or Corporation, owned or controlled by the Central or State Government, he cannot avail of the provisions of compassionate appointment. In the present case, clearly on the date of death which would be relevant date for consideration of the case of the petitioner for grant of compassionate appointment father of the petitioner was employed in the office of Government Advocate of this Court and in such a situation, the petitioner was clearly disentitled for being granted the benefit of compassionate appointment.

11. This Court in the case of *Sumit Kumar Sharma* (Supra) was considering the eligibility conditions of the applicant pertaining to age of the applicant for appointment and accordingly it is in those circumstances it was held that individual's application has to be considered and all the eligibility conditions on the date of consideration of the said application. In that case the issue before this Court was as to whether the applicant was over-aged on the date of consideration and it is in those circumstances that this Court was of the view that on the date his application was considered he had exceeded the age prescribed for appointment to the said post. Accordingly, the facts of the said case were distinguishable from the issue in the present as in the present case the case of the

petitioner would be fully guided and controlled by the provisions of Section 5 (1) of the Rules of 1974. Undoubtedly, the bar of the aforesaid rule would operate against the petitioner in as much as both of the parents of the petitioner were in government service.

12. It is to be seen that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointment on merits. The basic premise behind compassionate appointment is the word 'compassion'. It is to be provided when the family of the deceased employee is deprived of the means of livelihood and its object is to enable the family to get over the sudden financial crisis.

13. In the aforementioned case, the mother of the petitioner is also a government servant and thereby the family is not deprived of means of livelihood. The provision of compassionate appointment cannot be misused to see employment under the central government or State government or any corporation owned by them.

14. While dismissing similar petitions, Hon'ble the Apex court has elaborated the purpose of compassionate appointment in various cases which clarifies the object behind such appointments.

15. In *Director of Education (Secondary) & Anr. vs. Pushpendra Kumar & Ors.*, reported in (1998) 5 SCC 192, the Supreme Court has held:

"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 dependents 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 of 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 dependent of a deceased employee."

16. In *Commissioner of Public Instructions & Ors. Vs. K.R. Vishwanath*, reported in (2005) 7 SCC 206, the following principles were laid down by the Supreme Court:

"...the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the

deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such a claim is considered as reasonable and permissible on the basis of sudden crisis, occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.....High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments."

17. Accordingly we do not find any infirmity in the impugned orders dated 24.5.2024 and 6.12.2022. The petition being devoid of merits is **dismissed**.

(2024) 10 ILRA 166

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.10.2024

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.

THE HON'BLE DONADI RAMESH, J.

Writ A No. 7743 of 2019

**Justice Vinod Chandra Misra ...Petitioner
Versus**

State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Prakash Chandra Shukla, Sri V.K. Singh, Sr.
Advocate

Counsel for the Respondents:

C.S.C.

A. Service Law – UP St. Law Commission Act, 2010 – Section 4 – UP St. Law Commission (Salaries and Allowances and Conditions of Service of Chairperson) Rules, 2011 – Rules 4, 5 & 14 – Pension – Retired from the post of Chairman of UP St. Law Commission – Entitlement of interest on delayed payment – Held, payment of pension is a statutory right arising from services rendered. That right existed from before. Since there was no conduct offered by the petitioner as may have delayed the computation and payment of higher pension to which he was entitled and since there never existed any legal impediment or doubt in that payment, we find the stand of the St. Government untenable insofar as interest has not been paid on arrears of correct pension computed with delay. The St. must compensate for the loss of time in making the due payment – High Court issued direction to pay interest @ 8%. (Para 22 and 42)

B. Service Law – High Court Judges (Salaries and Conditions of Service) Act, 1954 – Sections 2(g), 2(gg) & 17A – Family pension – Entitlement of the spouse of retired Chairman of Law Commission – Held, under the Judges Act and the Judges Rules 'family pension' is included in 'pension' entitlement – 'Pension' payable to a Chairperson of a St. of Law Commission necessarily includes within it the 'family pension' that may become payable to the spouse of such Chairperson, if that contingency arises – Held further, while the petitioner demitted office as a Judge of this High Court, he became entitled to receive and is receiving higher pension than payable to a retired Judge of a High Court by virtue of his having served as a Chairperson of the St. Law Commission, upon application of Section 4(5) of the Act read with Rules 4(5) of the Rules read with the Judges Act and the Judges Rules – Spouse of the petitioner may not be treated differently with respect to the payment of family