

transfer will be considered included in the vacancies notified to the Director and shall be filled by the same selection process. Sub-rule 5, therefore, is intended to deal with the special exigency i.e. creation of vacancy on account of transfer. In what manner transfer is to be effected is otherwise not specified in rule 28.

33. Sub-rule 5 of rule 28, in our considered view, has to be read in conjunction with regulation 55 to 58 of the regulations framed under Chapter III of the Act of 1921. Regulation 58, as amended, clearly provides that transfer would be impermissible against a notified vacancy. This is otherwise the position on account of the Full Bench judgment of this Court in Prashant Kumar Katiyar (supra). Regulation 55 to 58 would, therefore, govern the exigency with which we are presently concerned i.e. transfer of a teacher. Rule 28(5) of the rules of 2023 read with regulation 58 also makes it explicit that transfer would not be permissible against notified vacancies. This interpretation would be consistent with the statutory scheme, inasmuch as any encumbrance in the process of recruitment ought not to be made once the vacancy is notified. We are, therefore, of the view that rule 28(5) in itself is not the enabling provision for the Director to pass an order of transfer independent of the provisions contained under regulation 58, of the regulations framed under Chapter III.

34. The only issue remaining is with regard to the import of Section 31(2) of the Act of 2023. Section 31(2) provides that anything done or any action taken under the Act of 1982 would be treated to have been done under the Act of 2023. The only exigency in which such action would not be saved would be where the Act of 2023 provides for a course inconsistent with what is contemplated under the Act of 1982. The

determination of vacancies and its intimation to the commission virtually commences the process of recruitment in these institutions. Sending of the requisition to the board would, therefore, continue to be saved under the Act of 2023 and the only change would be that now the appointment will have to be made by the commission in place of the board. If any contrary interpretation is adopted it would result in unwanted consequences and impede the object of making substantive appointment. We may also note that the direct recruitment in such institutions was previously regulated by the Act of 1982 and is now to be made under the Act of 2023. The appointment whether is made by board or is made by commission is not material for the present purposes. However, the vacancy once is notified by management the filing up of post has either to be under the Act of 1982 or has to be under the Act of 2023. Such vacancies cannot be allowed to be filled by way of transfer.

35. For the reasons and discussions held above, these special appeals succeed and are allowed. Judgment and order passed by learned Single Judge dated 13.8.2024 is set aside. Writ petitions filed by the appellant also succeeds and are allowed. The orders passed by the Director dated 30.12.2022, dated 16.5.2023 and dated 28.6.2024 are set aside. No order is passed as to costs.

(2025) 5 ILRA 409

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 13.05.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 790 of 2020

Rajan

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sikander Khan, Sudhanshu Pratap Singh

Counsel for the Respondents:

C.S.C., Jagannath Maurya, Mukesh Kumar Kushwaha

A. Service Law – UP Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974 – Rule 2 (a) – Compassionate appointment – Petitioner’s father was muster roll employee – Son’s entitlement – Held, a muster roll employee in the likeness of daily wager and workcharge employee is not a government servant within the meaning of Rule 2 (a) of Rules, 1974 – Petitioner being the son of a muster roll employee is not entitled for appointment on compassionate grounds in the respondent-corporation – *Pavan Kumar Yadav’s case* relied upon – High Court directed to decide petitioner’s representation regarding dues and other entitlement. (Para 7, 8 and 12)

Writ petition disposed of. (E-1)

List of Cases cited:

1. Writ C No. 21057 of 2010; U.P. St. Bridge Corporation Limited & anr. Vs U.P. Rajya Setu Nigam Sanyukt Karmchari Sangh & anr.
2. Pavan Kumar Yadav Vs St. of U.P. & ors.; (2010) 8 ADJ 664 (ALL)

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

1. Heard Shri Sudhanshu Pratap Singh, learned counsel for the petitioner, learned Standing Counsel for the State-respondent No. 1 and Shri J.N. Maurya, learned counsel for the respondents No. 2 and 3.

2. The petitioner claims that he is entitled to be appointed on compassionate grounds in the respondent-corporation. The father of the petitioner was engaged as a

muster roll employee in the respondent-corporation who died in harness.

3. The status of the petitioner's father as a muster roll employee was also noticed by this Court in **Writ C No. 21057 of 2010 (U.P. State Bridge Corporation Limited and another vs. U.P. Rajya Setu Nigam Sanyukt Karmchari Sangh and another)** and the companion writ petition. The father of the petitioner was a party to the aforesaid writ petitions.

4. The specific pleadings in regard to the status of the petitioner's father as a muster roll employee made by the respondents have not been traversed in the rejoinder affidavit or from the records.

5. In this wake, the Court comes to a conclusion that the father of the who died on 06.06.2016 was a muster roll employee.

6. The entitlements of the dependants of muster roll employees to appointment on compassionate grounds arose for consideration before the learned Full Bench in **Pavan Kumar Yadav vs. State of U.P. and others** reported at **(2010) 8 ADJ 664 (ALL)**. The learned Full Bench has held as under:-

"1. A daily wager and workcharge employee employed in connection with the affairs of the Uttar Pradesh, who is not holding any post, whether substantive or temporary, and is not appointed in any regular vacancy, even if he was working for more than 3 years, is not a 'Government servant' within the meaning of Rule 2 (a) of U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974, and thus his dependants on his death in harness are

not entitled to compassionate appointment under these Rules. "

7. A muster roll employee in the likeness of daily wager and workcharge employee is not a government servant "within the meaning of Rule 2 (a) of the U.P. Recruitment of Dependants of Government Servant (Dying in Harness) Rules, 1974

8. The law laid down by the learned Full Bench in **Pavan Kumar Yadav (supra)** shall also be applicable to muster roll employees. The petitioner being the son of a muster roll employee is not entitled for appointment on compassionate grounds in the respondent-corporation.

9. The prayer made by the learned counsel for the petitioner for grant of appointment on compassionate ground is declined.

10. After the order was dictated, Shri Sudhanshu Pratap Singh, learned counsel for the petitioner submits that some of the dues and entitlements of the petitioner's late father have not been disbursed. The same may be released to the petitioner and other legal heirs of the deceased employee.

11. Shri J.N. Maurya, learned counsel for the respondent-corporation□ fairly submits that any such claim of the petitioner is liable to be processed by the respondents in a reasonable period of time.

12. In this wake, the writ petition is disposed of□ with the following directions:-

i) The petitioner shall submit an application for various dues to which he

and other legal heirs claims entitlements to the respondent No. 3.

ii) The respondent No. 3 shall decide the aforesaid representation of the petitioner within a period of four months from the date of receipt of a certified copy of this order along with a fresh copy of the representation.

(2025) 5 ILRA 411

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 23.05.2025

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Writ A No. 3653 of 2001

Rajendra Prasad Tripathi ...Petitioner
Versus
Hindustan Aeronautics Limited
...Respondent

Counsel for the Petitioner:

Sampurnanand Shukla, Abhinav Nath Tripathi, Amrendra Nath Tripathi, Anurag Tyagi, D.K. Srivastava, S.K. Tripathi, Subodh Kumar Verma, Vishal Singh

Counsel for the Respondent:

P.K. Sinha

Constitution of India, Article 226 - Certified Standing Orders of Hindustan Aeronautics Limited, Clauses 3, 19(ii), 26, 27 - Termination for Unauthorized Absence - Petitioner, a permanent workman (Clerk-cum-Typist), challenged the termination order dated 26/28.02.1991 for unauthorized absence from 01.10.1990, struck off under Clause 19(ii) of the Standing Orders, and sought reinSt.ment. Petitioner claimed illness, sent multiple letters via Under Postal Certificate (not registered), and argued that termination required disciplinary enquiry under Clauses 26 and 27, not Clause 19(ii), which was inapplicable to permanent workmen, citing *Chandu Lal vs. Pan American World Airways*. Respondent countered that