

**(2006) 09 AHC CK 0265****Allahabad High Court****Case No:** None

Mahendra Kumar Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 5, 2006**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16

**Citation:** (2006) 7 ADJ 309 : (2006) 4 AWC 4126**Hon'ble Judges:** Dilip Gupta, J**Bench:** Single Bench**Final Decision:** Dismissed

### **Judgement**

Dilip Gupta, J.

The petitioner has sought the quashing of the order dated 16.6.2006 passed by the State Government by which the application filed by the petitioner for relaxing the time limit requirement of five years in moving the application for seeking compassionate appointment under the provisions of the U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 (hereinafter referred to as the "Rules") was rejected. The quashing of the order dated 27.6.2006 passed by the Superintendent of Police, Banda communicating the aforesaid order of the State Government has also been sought alongwith the consequential relief of granting appointment to the petitioner on compassionate ground after relaxing the prescribed time limit for making the application.

2. The father of the petitioner, while serving as a Head Constable in U.P. Police, died on 17.7.1987. The petitioner was a minor of about six years at the time of death of his father. He completed his Graduation in the year 2002 and thereafter moved an application on 9.8.2002 before the Superintendent of Police, Banda for providing him appointment on compassionate grounds under the Rules on the post of Sub-Inspector in U.P. Police. The Superintendent of Police, Banda sent a

communication dated 1.2.2003 to the petitioner mentioning therein that it was not possible to refer the case of the petitioner to the State Government for granting relaxation in the time limit. The petitioner, however, directly moved an application before the State Government and by the communication dated 20.8.2004 the State Government required the Senior Superintendent of Police, Banda to forward the necessary information regarding the petitioner in the prescribed proforma. The Superintendent of Police, Banda, then forwarded the particulars but as no decision was taken by the State Government in the said matter, the petitioner filed a writ petition in this Court, being Writ Petition No. 1489 of 2006, which was disposed of by means of the judgment and order dated 10.1.2006 with a direction to the State Government to consider the case of the petitioner for grant of relaxation in the time limit for filing the application under the Rules. The decision of the State Government not to grant relaxation in the time limit was then communicated by the Superintendent of Police, Banda to the petitioner by the order dated 27.6.2006. It is these orders which have been impugned in the present petition.

3. A perusal of the aforesaid order indicates that it was noticed by the State Government that the petitioner's father had died on 17.7.1987 when the petitioner was a minor of only six years and even though he attained the age of majority in the year 1999 but it was after a period of three years that he submitted the application in the year 2002 for seeking compassionate appointment. It also mentions that the petitioner had throughout been receiving the pension as his mother had also died after the death of his father and, therefore, there was no requirement of granting any relaxation in the time limit as compassionate appointment is granted to tide over the immediate financial difficulties faced by the family of the deceased employee.

4. Sri Satya Prakash Pandey, learned Counsel for the petitioner vehemently urged that as the petitioner was a minor of six years at the time of the death of his father, he could not have possibly moved the application for seeking compassionate appointment and as soon as he attained the age of 21 years which was the minimum age requirement for seeking appointment to the post of Sub-Inspector in U.P. Police, he filed the application and, therefore, it cannot be said that there was any delay on the part of the petitioner in moving the application. He further submitted that mere grant of pension to the petitioner cannot be a ground to refuse relaxation in the period prescribed for moving the application and, therefore, the order of the State Government deserves to be set aside.

5. Learned standing counsel, on the other hand, submitted that Rule 5 of the Rules clearly provides that the application for seeking employment on compassionate grounds has to be made within five years from the date of the death of the Government servant and the proviso which empowers the State Government to relax the requirement of time limit if it causes undue hardship in any particular case, cannot be stretched to such an extent so as to provide appointment on

compassionate grounds to even those persons who were only six years of age at the time of death of the deceased employee. He further contended that appointment on compassionate grounds is given to tide over the immediate financial difficulties which the family of the deceased employee may face at the time of his death and, therefore, such appointment cannot be given after a period of 15 years.

6. I have carefully considered the submissions advanced by the learned Counsel for the parties.

7. In order to appreciate the contentions advanced by the learned Counsel for the parties It would first be appropriate to ascertain why compassionate appointment is provided to a member of the deceased employee.

8. The Supreme Court in Commissioner of Public Instructions and Ors. v. K.R. Vishwanath AIR 2005 SCW 4102 dealt at length with the object regarding compassionate ground and observed:

As was observed in [State of Haryana and Others Vs. Rani Devi and Another](#), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant 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 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. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased-employee". In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground If extended to all types of casual or ad hoc employees including those who worked as, apprentices cannot be justified on constitutional grounds. In [Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another](#), it was pointed out that 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. It was noted in [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), that as a rule in public service appointment should be made strictly on the basis of open Invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into

consideration the financial condition of the family of the deceased.

In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Smt. Phoolwati Vs. Union of India and Others, and Union of India (UOI) and Others Vs. Bhagwan Singh, In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely 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, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who - are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased-employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. (emphasis supplied)

9. In Umesh Kumar Nagpal Vs. State of Haryana and Others, the Supreme Court observed:

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 distress and to help it get over the emergency.... For these very reasons, the compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration for such employment is not

a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

(emphasis supplied).

10. The aforesaid decision of the Supreme Court leaves no manner of doubt that though the claim for appointment on compassionate grounds cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India but such a claim can be considered to be reasonable and permissible on the basis of sudden crisis occurring in the family of the employee who dies while in service. The appointment on compassionate grounds, therefore, cannot be claimed as a matter of right but can be claimed only in terms of the Rules or Regulations framed in this regard and that the Courts cannot confer "benediction impelled by sympathetic consideration" de hors the Rules. Such an appointment, therefore, should be immediately provided to a member of the family to redeem the sudden financial crisis in the family.

11. The contention of the learned Counsel for the petitioner is that it is a fit case where the State Government should dispense with or relax the requirement of time limit so that the case of the petitioner can be dealt with in a Just and equitable manner. His contention, therefore, is that the decision of the State Government not to grant him this relaxation is arbitrary.

12. The Supreme Court has time and again dealt with the issue where the applicants who were minor at the time of death of the deceased who died in harness sought appointment on compassionate ground after attaining the age of majority.

13. In [Haryana State Electricity Board and another Vs. Hakim Singh](#), the Supreme Court examined the case of a widow who had applied after a period of 14 years for appointing her son who was only four years old when his father died in harness contending that she could make the application only when her son attained majority. The High Court had allowed the writ petition but while allowing the appeal, the Supreme Court observed:

We are of the view that the High Court has erred in over stretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.

14. In Jaqdish Prasad Vs. State of Bihar and Another, the Supreme Court rejected the case of a minor for giving compassionate appointment after, he attained majority and observed as follows:

It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependant of a deceased Government servant which cannot be encouraged, de hors the recruitment rules.

15. In Haryana State Electricity Board Vs. Naresh Tanwar and Another, the question of providing compassionate appointment to the heir of the deceased employee of the Haryana State Electricity Board was considered. The widow of the deceased employee made an application after 12 years that since her son had attained majority, he should be given employment on compassionate ground. This was rejected and, therefore, she filed a writ petition in the High Court. The High Court allowed the writ petition holding that the compassionate appointment to achieve its purpose cannot be restricted to 3 years and if assistance to the members of the deceased employee is required to be given, the family member must necessarily attain majority and then become eligible to apply for getting appointment. The Supreme Court allowed the appeal and set aside the judgment of the High Court observing:

It has been indicated in the decision of Umesh Kumar Nagpal (supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the, immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdtsh Prasad's case, it has been also indicated that the very object of appointment of dependant of deceased-employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in Government and public sector. The impugned decisions of the High Court therefore cannot be sustained.

16. In Sanjay Kumar Vs. The State of Bihar and Others, the Supreme Court again considered the case for compassionate appointment made by a minor after he attained majority and it was observed as follows:

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 bread earner 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 and Anr. v. Pushpendra Kumar and Ors., (supra). 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.

17. It is in the light of the aforesaid principles laid down by the Supreme Court that the case of the petitioner has to be examined. In paragraph 16 of the petition it has been stated that the father of the petitioner died on 17.7.1987 when he was a minor and his mother also subsequently died. The petitioner has very conveniently avoided giving the date of death of his mother or the reason why she did not seek appointment on compassionate ground if there was any such requirement. The records also indicate that the petitioner had an elder sister who was married. The petitioner has also avoided mentioning her age at the time of death of the father and the reason why she did not seek appointment on compassionate grounds. The family received financial benefits on the death of the deceased employee and on its basis and on the basis of the support provided by the relatives the petitioner pursued his studies and completed his Graduation in Science in the year 2002. It is at this point of time that the petitioner, in order to seek employment, thought it better to avoid the normal procedure of appointment in accordance with the provisions of Articles 14 and 16 of Constitution of India by competing with the rest and after a period of almost 15 years, moved the application for seeking appointment on compassionate grounds by invoking the provisions of the Rules. The time period prescribed for moving the application is five years from the date of the death of the employee. The proviso to Rule 5 of the Rules stipulates 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. The appointment on compassionate grounds is given to tide over the immediate difficulties faced by the family of the deceased and in the instant case when the family had lived comfortably and the petitioner had been continuously receiving education, it cannot be said that financial distress came into

existence after 15 years when he moved the application in the year 2002. To grant any relief to him would be doing violence to the provisions of the Rules and would be clearly contrary to the decisions of the Supreme Court where the cases of the minors had been considered and rejected on the ground that there cannot be a reservation of vacancy till such time as the minor becomes a major. It has also been emphasized by the Supreme Court that a minor cannot claim appointment on the ground unless the Scheme itself envisages that as and when such a minor, becomes a major, he can be appointed without any time consciousness or time limit and that if the family has survived for more than 15 years from the date of the death of the deceased employee, it cannot be said that the family was in distress, which necessitated the appointment on compassionate grounds. In this connection reference may be made to the decision of the Supreme Court in State of J and K and Ors. v. Sajad Ahmed Mir 2006 AIR SCW 3708, the Supreme Court observed:

In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee.

18. The contention of the learned Counsel for the petitioner that the amount of pension paid to the family cannot be taken into consideration for giving compassionate appointment cannot also be accepted. The Supreme Court in Punjab National Bank and Ors. v. Ashwini Kumar Taneja AIR 2004 SCW 4602 : 2004 (4) AWC 2904 (SC) had rejected this contention holding:

One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in Civil Appeal No. 126 of 2004, General Manager (D and P.B.) and Ors. v. Kunti Tiwary and Anr. disposed of on 5.1.2004. It was categorically held that the amounts have to be taken into consideration.

19. The case of the petitioner, when examined in the light of the principles enunciated by the Supreme Court in the above mentioned decisions, leaves no manner of doubt that the decision taken by the State Government not to grant relaxation in the time period specified in the Rules for making the application seeking compassionate appointment does not suffer from any infirmity.

20. The writ petition is, accordingly, dismissed.