

**(2014) 08 AHC CK 0097**

**Allahabad High Court**

**Case No:** Special Appeal No. 748 of 2014

Ramahsray Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Aug. 20, 2014

**Citation:** (2014) 9 ADJ 538 : (2014) 106 ALR 751

**Hon'ble Judges:** Rakesh Tiwari, J; Ashok Pal Singh, J

**Bench:** Division Bench

**Advocate:** R.S. Singh, Advocate for the Appellant

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### **Judgement**

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Rakesh Tiwari and Ashok Pal Singh, JJ.

Case has been taken up in the revised list. None appears for the appellant.

2. The instant appeal has been preferred challenging the validity and correctness of the order dated 29.5.2014 passed in Civil Miscellaneous Writ Petition No. 30934 of 2014, Ramahsray Yadav v. State of U.P. and others. The Judgment and order dated 29.5.2014 is a brief one. The only question for deciding before the Writ Court was as to whether the compassionate appointment can be made after a period of 31 years or not.

3. The appellant-petitioner in the writ petition had claimed compassionate appointment on the ground that his father, who was working as Class-IV employee, in the institution in question, had died in-harness in the year 1983. It appears that the appellant-petitioner, was then a four years old minor. However, he did not press his claim for compassionate appointment even after attaining his age of majority on 3.7.1999. The rules of the Government provide that application for condonation of delay and for compassionate appointment can be made even after a period of five years in certain circumstances showing cogent reasons for the delay, but, that too

does not appear to have been made by the appellant-petitioner.

4. From a perusal of record, the appellant-petitioner appears to have applied for compassionate appointment after a period of about 31 years. The Writ Court relying upon the judgments in [Umesh Kumar Nagpal Vs. State of Haryana and Others,](#) and [Shiv Kumar Dubey and Others Vs. State of U.P. and Others,](#) held that the appellant-petitioner is not entitled for compassionate appointment as making of an application after considerable unexplained delay, the sense of urgency ceases particularly in the case of compassionate appointment. The Writ Court has further held that it is sole liability of the claimant by proving with documentary evidence that the financial crises in the family which existed in 1983 still continues in 2014 to grant appointment on compassionate ground. No material has been placed on record to arrive at such a conclusion.

5. In these circumstances, the writ petition was dismissed giving cause for filing the instant appeal.

6. We have considered the pleadings on record as well as the judgment rendered by the Writ Court and are of the considered view that there is no material on record to prove that the financial crisis in the family of the appellant-petitioner, who was dependent upon his deceased-father, who died in the year 1983 is still in existence requiring for compassionate appointment. There also does not appear any ground either for condonation of inordinate delay after 31 years of the death of a Government servant for issuing mandamus to the authorities to appoint his dependant namely appellant/petitioner on compassionate ground as there is no material before us to establish that the deceased-employee was in indigent circumstances at the time of death of bread earner of the family and family is still under cold penury after lapse of 31 years. The family members of a deceased-employee would not have survived for more than 31 years after his/her death. If they were living in indigent circumstance. Not only the family has survived but the petitioner has also received education upto High School in the year 1995 as appears from copy of his Marksheet and certificate appended with the writ petition.

7. We may also refer to paragraph 29 of the decision rendered in [Shiv Kumar Dubey and Others Vs. State of U.P. and Others,](#) wherein it has formulated the principles in respect of compassionate appointment. The relevant principle applicable in this case are that:

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased-employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State

Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the Government.

8. Therefore, we do not find any cogent reason for issuance of any mandamus for appointment of the appellant-petitioner on compassionate ground. We also find no illegality or infirmity in the impugned order dated 29.5.2014 passed by learned Single Judge. For all the reasons stated above, the special appeal is found devoid of merits and is accordingly dismissed.