



2026:AHC:183847-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 16285 of 2022

Ajay Singh Yadav and 25 others

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Along with :

1. **Special Appeal No. 741 of 2026:**
Ratnesh Kumar Singh
Versus
State of U.P. and 3 others
2. **Writ - A No. 9862 of 2025:**
Ranjana Pandey and 31 others
Versus
State of U.P. and 2 others
3. **Writ - A No. 21709 of 2022:**
Ajay Singh Sengar and 11 others
Versus
State of U.P. and 3 others
4. **Writ - A No. 10279 of 2026:**
Sneh Lata Pandey and 40 others
Versus
State of U.P. and 2 others
5. **Writ - A No. 16043 of 2025:**
Remy Tyagi and 13 others
Versus
State of U.P. and 2 others
6. **Writ - A No. 11210 of 2026:**
Vimla Saini and 2 others
Versus
State of U.P. and 2 others
7. **Writ - A No. 3358 of 2025:**
Renu Dubey and 5 others
Versus
State of U.P. and 2 others
8. **Writ - A No. 7243 of 2026:**
Smt Himanshi and 27 others
Versus
State of U.P. and 2 others
9. **Writ - A No. 9786 of 2026:**
Arun Kumar Srivastava and 5 others
Versus

State of U.P. and 2 others

Counsel for Petitioner(s) : Abhinav Gaur, Amrendu Singh, Anil Babu, Chandra Prakash Misra, Diwakar Mishra, Jainendra Pandey, Manish Tiwari, Manoj Kumar Rajbhar, Mohd. Yaseen, Prabhakar Awasthi, Prakash Sharma, Prashant Kumar Pandey, Praveen Kumar, Roopesh Kumar Mishra, Satish Chandra Dubey, Saurabh Tripathi, Shivendu Ojha, Siddharth Khare, Sr. Advocate, Sunil Kumar Mishra, Vibhu Rai, Vijay Singh Sengar, Vivek Saran (elevated)

Counsel for Respondent(s) : C.S.C., C.s.c

Court No. - 29

HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.

(Per Arindam Sinha, J.)

1. The writ petitions are listed under heading 'Supreme Court Expedited Case'. Petitioners are applicants for compassionate appointment being dependants of police personnel, who died in service. Mr. Ashok Khare, learned senior advocate assisted by Mr. Prashant Kumar Pandey, learned advocate appear for petitioners in some of the writ petitions. Mr. Khare had earlier provided us English translation of Government Order (GO) dated 18th September, 2015, subject matter of additional challenge. Dr. Rajeshwar Tripathi, learned advocate, Chief Standing Counsel appears for State.

2. First contention of petitioners is, note appended to rule 5(1) in Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2015 is *ultra vires* articles 14, 15, 16 and 309 in the Constitution. Rule 5(1) and the note are reproduced below.

*"5. **Source of recruitment.** Recruitment to the various categories of posts in the service shall be made from the following sources:*

(1) Sub-Inspector

(i) Fifty per cent by direct recruitment through the Board.

Note- Dependants of personnel of police department

*deceased during service who apply for the post of Sub-Inspector of Police in the dependant of deceased category shall recruited by the Board as per the policy decided by the Government. **Restriction being that every year such posts shall not be more than 5 per cent of the posts to be filled by direct recruitment as against the vacancies arising in the previously sanctioned posts of Sub-Inspector of Police.***"

(emphasis supplied)

3. Mr. Khare submits, there is in place Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 applicable to compassionate appointment in government service. Said Rules do not provide for any limit or cap in respect of such appointments being made. He draws attention to view taken by a Division Bench of this Court on **order dated 27th September, 2021 in Special Appeal no. 204 of 2021 (Ashish Bahadur Singh and 4 others v. State of U.P. and 3 others)**. He points out, the Bench considered impugned note under the Rules. View was that the note appended does not provide reservation of 5% posts for compassionate appointment. Upon taking *suo motu* cognizance, there was direction upon the State Government to revisit the note appended to rule 5(1), to avoid any confusion and unnecessary litigation. The Bench reiterated that compassionate appointment should be governed by the Rules of 1974. Three paragraphs from said order are reproduced below.

*"The Note appended to Rule 5 of the **Rules of 2015 does not provide reservation of 5% posts for compassionate appointment. We are rather surprise to see the Note below Rule 5. The Note below Rule 5 of the Rules of 2015 is of a nature which is creating confusion and seems to be unnecessary.** It is for the reason that in the State of U.P., the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 govern compassionate appointment other than of the departments having **separate rules for it.***

In view of the above, there was no need to provide separate provision in the service rule for compassionate appointment. It is unnecessarily creating confusion thus, a suo moto cognizance is taken by this Court to

issue direction to the State Government to revisit the Note appended to Rule 5 of the Rules of 2015 to avoid any confusion and unnecessary litigation. The compassionate appointment should be governed by the Rules of 1974. Accordingly, while dismissing the appeal, the State Government is directed to revisit the Note appended to Rule 5 of the Rules of 2015 to withdraw it so as to avoid any litigation and confusion in the mind of the officer.

With the aforesaid, special appeal is dismissed."

(emphasis supplied)

He moves on to rely on view taken by another Division Bench of this Court on **judgment dated 7th July, 2023 in Special Appeal no. 126 of 2023 (State of U.P. and 3 others vs. Himanshu Yadav)**. He draws attention to paragraphs 49 to 52. He submits, practice of the employer allowing the applications for compassionate appointment to accumulate over period of four years, to take them up together in applying offending note was commented upon as, the 5% restriction is to be applied where the vacancies are filled every year by direct recruitment, as against the vacancies arising that year in the previously sanctioned posts of Sub-Inspector of Police.

4. Regarding GO dated 18th September, 2015, subject matter of his client's additional challenge, Mr. Khare draws attention to clauses 3 to 5 under paragraph 2. The clauses from English translation of the GO are reproduced below.

"(3) If the number of candidates applying under the category of dependents of deceased employees is more than the number of posts reserved for the deceased dependents category, then the candidates will be required to appear in an objective type test and the final select list will be prepared on the basis of marks obtained with reference to the number of posts earmarked for that category.

(4) Before giving appointment to a dependent of deceased employee, the physical efficiency test, test of qualification/ standards and the objective type test would be conducted by the Recruitment Board.

(5) A candidate can be given only one opportunity for being recruited against a post as a dependent of deceased employee of the police department. In case he does not get selected for such posts on any ground then he would be offered a lower post for appointment in case he does not submit an application for about against such lower post within a period of 3 month it would be presumed that he is not desirous of compassionate appointment."

(emphasis supplied)

He submits, by subjecting candidates for compassionate appointment to objective type test, the purpose of giving such appointment on compassionate ground is lost. Furthermore, a candidate subjected to such situation would be construed to have availed one and only opportunity for recruitment on compassionate ground. This restriction is unreasonable and militates against the object of compassion.

5. Dr. Rajeshwar Tripathi, learned advocate, Chief Standing Counsel appears for State and relies on view taken by an earlier Division Bench of this Court on **judgment dated 29th April, 2019 in Writ A no. 12844 of 2018 (Ankur Gautam and Another v. State of U.P. and 2 others)**. Reproduced below are some of the relied upon passages.

"Now considering the aforesaid offending provisions vis-a-vis the legal position as stated above, we find that the aforesaid Rules/provisions are not in conflict with any statutory or constitutional provision and at the same time are neither arbitrary or discriminatory, they are rather fair and reasonable. They only places a reasonable restriction on compassionate appointment for the reason that if a very large number of posts/vacancies are allowed to be filled up on compassionate basis circumventing the competitive process it would deprive the candidates of the open market from getting recruited and a stage would come when almost all vacancies would stand filled up without adopting the statutory provision of holding a competitive examination. Therefore, necessity to fix an upper limit for filling vacancies through compassionate appointment is not unreasonable or arbitrary.

The condition to face the objective test is limited only in the event when

there are large number of candidates seeking compassionate appointment in comparison to the limited posts meant to be filled up on compassion so that best of them may be selected and appointed. It only provides for inter se selection amongst those claiming compassionate appointment. The said selection in no way compels the candidates for compassionate appointment to face competition with those seeking regular direct appointment. Thus, it in no way offends the object of compassionate appointment.

It must be remembered that there is always a presumption in favour of Constitutionality or the validity of a subordinate legislation. It is the burden upon the person attacking the validity of the legislation to establish that it is invalid. The petitioners herein this petition have not pleaded specifically as to how the aforesaid provisions offends Articles 14 and 16 of the Constitution of India and as such have failed to discharge their burden in this regard.

In view of the above, we are of the opinion that note appended to Rule 5 (1) of the aforesaid Rules as regards the maximum number of persons to be given compassionate appointment in a year and the condition referred to above of the Government Order dated 18.9.2015 to subject the candidates for compassionate appointment to objective test in case their number exceeds the number of vacancies required to be filled up on the basis of compassion, are in no way unfair and unreasonable or violative of Articles 14 and 16 of the Constitution of India."

He submits, the point is no longer *res integra*.

6. View taken in **Himanshu Yadav** (supra) can be interpreted as deprecation of allowing the vacancies for compassionate appointment to accumulate, as in that case, for period of four years. The view includes the Bench having said that the restriction can be applied on the recruitment undertaken every year. We have not been shown that the Bench had occasion to consider view taken in **Ankur Gautam** (supra). In it, there was clear view taken upholding validity of the note appended to rule 5(1).

7. Regarding additional challenge to GO dated 18th September, 2015, in

addition to view taken with regard thereto in **Ankur Gautam** (supra), we are of opinion that where there are more applications for compassionate appointment than vacancies available to accommodate them, State having resorted to procedure of selection amongst them by requiring the candidates to appear in objective type test instead of ascertaining suitability on basis of greater necessity of compassion or entitlement to compassion as against someone relatively better off, such procedure cannot be seen as unreasonable. In the exercise of evaluating who amongst the candidates are entitled to compassionate appointment, as more in need of compassion, it is bound to give rise to controversy and dispute. Subjecting such candidates to objective type test, on the other hand, will not bear occasion for one candidate to complain that the other was given backdoor appointment. The element of competition cannot be totally eliminated even in the matter of grant of compassionate appointment, where there are more candidates than number of the vacancies.

8. We must deal with contention of petitioners based on **Ashish Bahadur Singh** (supra). It was an order passed dismissing the special appeal preferred by writ petitioners. Their petition challenging notification dated 11th October, 2019, whereby 29 posts were notified for appointment on compassionate ground, had been dismissed. The special appeal was also dismissed. Furthermore, it is clear to us from above reproduced paragraphs of the order that the limit/cap of 5% was viewed as not having provided reservation for compassionate appointment and in that context, the direction was issued. Submission of petitioners that the State Government has not taken steps is not a contention that aids petitioners' claim to the reliefs.

9. For reasons aforesaid, the writ petitions are **dismissed**.

(Arindam Sinha,J.)

(Satya Veer Singh,J.)

September 2, 2026
Mohini