

**A.F.R.**

Neutral Citation No. - 2024:AHC:14662

**Court No. - 33**

**Case :-** WRIT - A No. - 19344 of 2023

**Petitioner :-** Arpit Shukla

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Kamal Kumar Keshewani

**Counsel for Respondent :-** C.S.C., Aditiya Kumar Singh, Manu Saxena

**Hon'ble Neeraj Tiwari, J.**

1. Heard learned counsel for the petitioner, learned standing counsel for the State-respondents and Sri Manu Saxena, learned counsel for the respondent nos. 4 & 5.

2. Present petition has been filed with the following prayers:-

*"(a) Issue, a writ or direction in the nature of certiorari to quash the impugned communication letter dated 26.9.2023 (Annexure No.1) issued by Respondent no.4-Chairman, Nagar Palika Parishad, Faridpur, Bareilly whereby refused to grant the appointment on Class-III post.*

*"(b) Issue, a writ, order or direction in the nature of mandamus commanding and directing the respondent authorities to appointment the petitioner on the post of Clerk (Class-III) under the Dying-In-Harness Scheme on account of the death of his father or according to this qualification as possible as earliest."*

3. Brief facts of the case are that father of petitioner was working as Class-IV employee at Nagar Palika Parishad, Faridpur, Bareilly. During the course of service, father of petitioner died on 31.7.2022. After his death, petitioner has submitted an application for appointment as Class-III employee on compassionate ground, which was rejected. His appointment has not been considered, therefore, petitioner has filed an application before the District Magistrate upon which ADM has sought instruction from the respondent no.4, which was replied by him vide impugned letter dated 26.9.2023. In the said letter, it is mentioned that no post is vacant for Class-III employee and further in light of Government Order dated 17.6.2014, dependent of deceased has no right to claim particular position or place and it is the discretion of appointing authority to pass appropriate order warranted in the facts and circumstance of the case. Though, the

letter dated 26.9.2023 was not communicated to petitioner, but coming to know that his claim has been rejected at the end of respondent No. 4 vide letter dated 26.09.2023, he has challenged the same by filing present petition.

4. Learned counsel for the petitioner submitted that in case post is vacant, it is required on the part of respondents to create supernumerary post for Class-III employee and grant appointment. He has placed reliance upon the judgment of Apex Court in the case of ***Sushma Gosain vs. Union of India reported in 1989 (4) SCC 468*** as well as Division Bench of this Court in the case of ***Smt. Premlata vs. State of U.P. and others passed in Special Appeal Defective No. 620 of 2018*** and ***Rule 5 of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974*** (hereinafter referred to as Rules, 1974) and submitted that petitioner is entitled for appointment on the post for which he is having qualification.

5. Sri Manu Saxena, learned counsel for the respondent nos. 4 & 5 has vehemently opposed and submitted that in light of Government Order dated 17.6.2014, petitioner has no right to claim particular post. He next submitted that State Government has challenged the judgment of Division Bench of this Court given in ***Smt. Premlata (Supra)*** before the Apex Court and Apex Court has reversed the judgment with specific finding that mere qualification cannot be a ground for appointment on higher post than the post held by the deceased employee. He also pointed out that it is not the case of petitioner that post of Class-III is vacant rather respondents are having specific case that post of Class-III employee is not vacant, which is also not disputed by the petitioner.

6. He further submitted that again the similar issue came up before the Apex Court in the matter of ***Suneel Kumar vs. State of U.P. and others reported in AIR 2022 SC 5416*** and Apex Court has taken specific view that supernumerary post cannot determine the scope of the words "suitable employment." He firmly submitted that in both the cases, Rule 5

of Rules, 1974 has been interpreted, which was subject matter of Division Bench of this Court in the case of *Smt Premlata (Supra)*, therefore, under such facts and interpretation made by Apex Court, petitioner is not entitled for appointment on Class-III post on compassionate ground.

7. I have considered the rival submission advanced by the learned counsel for the parties and perused the record, Rule 5 of Rules, 1974 as well as judgments relied upon by the parties. Facts of this case are undisputed. The only issue before the Court is interpretation of judgements as well as Rule 5 of Rules, 1974 relied by both the parties.

8. To appreciate the present controversy, Rule 5 of Rules 1974 is being quoted hereinbelow:-

*[5. Recruitment of a member of the family of the JAGDISH KUMAR harness after the commencement of these rules and Reason: the spouse of the deceased Government servant 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, 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 a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules, if such person-*

*(i) fulfils the educational qualifications prescribed for the post,*

*(ii) is otherwise qualified for Government service, and*

*(iii) makes the application for employment within five years from the date of the death of the Government servant:*

*Provided 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.*

*(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.] [5A. Recruitment of member of the family of Police/P.A.C. Personnel who dies in May, 1973.-*

*Notwithstanding anything contained to the contrary contained in Rule 5 or in any other rule, the provisions of these rules shall apply in the case of members of the family of twenty-two police or per Provincial Armed Constabulary personnel who died as a result of disturbances in May, 1973, as they apply in the case of a Government servant during dying in harness after the commencement of these rules.]*

9. Rule 5 of Rules, 1974 was interpreted by Division Bench of this Court in the matter of **Smt. Premlata (Supra)** and Court has opined that suitable appointment means appointment commensurate to the qualification.

10. I have perused the judgment of Apex Court in the case of **Sushma Gosain (Supra)**. Relevant paragraph of the said judgment are quoted hereinbelow:-

*“9. We consider that it must be stated unequivocally that in all claims for 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 appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”*

11. This judgment of Apex Court does not deal with the interpretation of Rules 5 of Rules, 1974 as well as suitable employment. It only says that claim for appointment on compassionate ground there should have been delay and in case of unavailability of post, supernumerary post should be created to accommodate the applicant. Here, the post of class-IV is available in light of Government Order dated 17.6.2014, same has been offered to petitioner, which was refused by petitioner only on the ground that he is having higher qualification. Facts of the case is entirely different and not applicable in the case of petitioner.

12. I have also perused the judgment of Division Bench of this Court in the case of **Smt. Premlata (Supra)**. Relevant paragraph of the said judgment are quoted hereinbelow:-

*"A bare perusal of Rule 5 of the Rules of 1974 makes it crystal clear that appointment under Rule 5 aforesaid is required to be given on a suitable post. The term 'suitable' in Rule 5 aforesaid pertains to suitability of the person who desires for appointment and it has nothing to do with the post held by the deceased Government Servant. The suitability of the aspirant is required to be assessed on basis of the educational qualification and other eligibilities so possessed by such person. In the case in hand, the appellant-petitioner is*

*having the qualification of Bachelors Degree in Arts as well as Bachelors Degree in Education.*

*Looking to the qualification aforesaid, appellant-petitioner is suitable to be employed on a post in Grade-III and there is no just and valid reason for not employing her in the grade aforesaid. Suffice to mention that it is not the case of the appellant-petitioner that no Class-III post is available in the entire Department of Police of Uttar Pradesh.*

*In view of it, we are of considered opinion that learned Single Bench erred while rejecting the writ petition on the count that the husband of the appellant-petitioner was working in Class-IV cadre and, therefore, appointment in Class-IV cadre is justified."*

13. Division Bench of this Court has taken view that suitable employment means appointment commensurate to the qualification. Court has also opined that there is vacancy of Class-III post, therefore, same has to be taken to petitioner in that case.

14. Facts of the present case are slightly different to the case relied upon. In the present case, post of class-III is not vacant, therefore, facts of the present case is not similar with the judgment and order of Division Bench of this Court passed in the matter of ***Smt. Premlata (Supra)***.

15. Apart that, State Government has challenged the judgment of Division Bench of this Court passed in the matter of ***Smt. Premlata (Supra)*** and Apex Court has reversed the said judgment with detailed finding. Relevant paragraph of this said judgment is being quoted hereinbelow:-

*"10. Thus as per the law laid down by this court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.*

*10.1 Applying the law laid down by this court in the aforesaid decisions and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the submissions on behalf of the respondent and the interpretation by the Division Bench of the High Court on Rule 5 of Rules 1974, is required to be considered*

*10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of Rules 1974 and has held that 'suitable post' under Rule 5 of the Rules 1974 would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. 'Suitable post' has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment. In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class II or Class I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.*

*10.3 In the present case as observed hereinabove initially the respondent applied for appointment on compassionate ground on the post of Assistant Operator in Police Radio Department. The same was not accepted by the Department and rightly not accepted on the ground that she was not fulfilling requisite eligibility criteria for the post of Assistant Operator. Thereafter the respondent again applied for appointment on the compassionate ground on the post of Workshop Hand. The case of the respondent was considered, however, she failed in the physical test examination, which was required as per the relevant recruitment rules of 2005. Therefore, thereafter she was offered appointment on compassionate ground as Messenger which was equivalent to the post held by the deceased employee. Therefore appellants were justified in offering the appointment to the respondent on the post of Messenger. However, the respondent refused the appointment on such post.*

11. *In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the 'suitable post' under Rule 5 of the Dying In Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground.*

12. *In view of the above for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the Division Bench of the High Court dated 14.09.2018 in Special Appeal Defective (SAD) No.620 of 2018 is hereby quashed and set aside. Consequently the writ petition preferred by the respondent before the learned Single Judge being Writ Petition No.16009 of 2018 stands dismissed and the order passed by the learned Single Judge dated 31.07.2018 dismissing the writ stands restored. No costs.*

16. This issue was again before the Apex Court in the matter of **Suneel Kumar (Supra)**. Relevant paragraph of the said judgment is quoted hereinbelow:-

*"10. At the same time, as far as the question relating to the entitlement as it were of the appellant to be considered to the post of Gram Panchayat Officer is concerned, it is without doubt a post borne in Class-III. The father of the appellant was working as a Sweeper borne in Class-IV post. We have noticed the view taken by this Court in Premlata (supra). In other words, the law as declared is to the effect that the words "suitable employment" in Rule 5 must be understood with reference to the post held by the deceased employee. The superior qualification held by a dependent cannot determine the scope of the words "suitable employment".*

*11. It is clear that the Annexure P-1 does not represent statutory Rules. We do not think we should be persuaded to take a different view as things stand. We cannot eclipse the dimension that the whole purport of the scheme of compassionate appointment is to reach immediate relief to the bereaved family. In such circumstances, the meaning placed on the words "suitable employment" bearing in mind the post held by the deceased employee cannot be said to be an unreasonable or incorrect view."*

17. Apex Court had twice interpreted the Rule 5 Rules 1974 as well as suitable employment as referred herein. Apex Court has clearly held that "suitable employment" in Rule 5 must be construed with the post held by the deceased employee and not by the higher qualification held by the dependent. View of the Apex Court is that compassionate appointment shall not be given upon a higher post than the post held by the deceased employee. Therefore, as on date, law of land is that legal heir cannot be

given appointment on compassionate ground to a post higher than the post held by the deceased employee.

18. Now coming to the present case. Undisputedly father of petitioner was working on the Class-IV post and after his death, he has been offered employment on the post of Class-IV, which was refused by him on the ground that he is having qualification for the post of Class-III. Therefore, in light of interpretation of Rule 5 of Rules 1974 made by the Apex Court as well as this Court, petitioner is not entitled for the post of Class-III on compassionate ground.

19. Accordingly, the writ petition lacks merit and is **dismissed**. No order as to costs.

20. However, this order does not preclude the petitioner to file application for appointment on Class-IV post. In case any such application is filed by petitioner, same shall be considered and decided in accordance with Rules, 1974 as well as law laid down by this Court.

**Order Date :- 30.1.2024**

Junaid