

**Court No. - 36**

**Case :-** WRIT - A No. - 6719 of 2023

**Petitioner :-** Praveen Kumar

**Respondent :-** State Of U.P. 2 Others

**Counsel for Petitioner :-** Vibhu Rai, Dhananjai Rai

**Counsel for Respondent :-** CSC, Shad Khan, Suresh Kumar

**Hon'ble Manjive Shukla, J.**

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondent No.1 as well as Mr. Shad Khan, learned counsel appearing for the Respondents No.2 and 3.

2. Petitioner, through the present writ petition, has challenged the order dated 15.2.2023 passed by the District Basic Education Officer, Kasganj, whereby case of the petitioner for treating him to be regularly appointed with effect from the date of his initial appointment, has been rejected. Petitioner through the present writ petition has also prayed for a direction from this Court thereby commanding the respondents to treat the petitioner's appointment to be a regular appointment from the date of his initial appointment and also to pay the consequential service benefits to him.

3. Facts of the case, in brief, are that the petitioner was initially appointed as Class IV employee on a consolidated pay of Rs.2550/- per month vide appointment order dated 18.8.2004 passed by the Deputy Basic Education Officer, Etah. The petitioner, pursuant to his appointment order dated 18.8.2004 started working on his post and was paid consolidated salary.

4. Thereafter, vide order dated 8.12.2010 petitioner was granted regular pay-scale of Rs.4440-7440/- with grade pay of Rs.1300/- and since then he is receiving salary in the regular pay scale.

5. Petitioner raised his claim before the District Basic Education Officer, Kasganj that his appointment may be treated as regular appointment with effect from the date of his initial appointment i.e. 18.8.2004 and he may be paid the consequential service benefits. Since nothing was done by the District Basic Education Officer, Kasganj, as such petitioner filed Writ-A No.12808 of 2021 and this Court vide order dated 24.9.2021 disposed of the said writ petition with direction to the District Basic Education Officer, Kasganj to consider the petitioner's claim for inclusion of his services rendered between year 2004 to 2010 keeping in view the judgment of this Court rendered in the case of **Ravi Karan Singh Vs. State of U.P and others**, reported in **1999 (3) UPLBEC 2263**.

6. The District Basic Education Officer, Kasganj in compliance of the aforesaid order dated 24.9.2021 passed in Writ-A No.12808 of 2021, has passed an order on 15.2.2023, whereby the claim of the petitioner for treating his appointment on Class IV post to be a regular appointment with effect from the date of his initial appointment, has been rejected. The District Basic Education Officer, Kasganj in his order dated 15.2.2023 has recorded finding that petitioner was given compassionate appointment on 18.8.2004 on consolidated pay and he has been granted regular pay scale vide order dated 8.12.2010 with effect from the date of passing of the said order and therefore, petitioner is not entitled for treating his appointment to be a regular appointment with effect from the date of his initial appointment. The District Basic Education Officer, Kasganj in

his order dated 15.2.2023 has further stated that Director, Basic Education, U.P., Lucknow has issued an order on 17.6.1996, whereby it has been provided that those Class IV employees who were given compassionate appointment on a consolidated pay, will be entitled for regular pay-scale with effect from the date of passing of the order for payment of salary in regular pay-scale and their appointments shall not be treated as regular appointment in regular pay-scale with effect from the date of initial appointment.

7. Learned counsel appearing for the petitioner has submitted that the issue involved in this writ petition has already been decided by this court vide its judgment and order dated **18.8.2015** passed in **Writ Petition No.5112 (S/S) of 2014 (Itwari Lal Vs. State of U.P. and others)** and it has been held by this court that compassionate appointment from the date of initial appointment has to be treated a regular appointment and the concerned candidate is entitled for the payment of salary in regular pay-scale from the date of his initial appointment. It has been further submitted that this court in the aforesaid judgment and order dated 18.8.2015 passed in Writ Petition No.5112 )S/S) of 2014 has relied on the judgment passed by this court in the case of **Ravi Karan Singh Vs. State of U.P and others**, reported in **1999 (3) UPLBEC 2263**. Learned counsel appearing for the petitioner has further submitted that this Court in another judgment passed on **13.12.2019** in **Writ-A No.6717 of 2018 (Pradeep Kumar and 6 others Vs. State of U.P. and others)** has decided the identical issue, which is involved in the present writ petition. Lastly, the learned counsel appearing for the petitioner has relied on the judgment of this court passed on **23.9.2022** in **Writ-A No.15205 of 2022 (Asif Khan vs. State of**

**U.P. and others**), wherein an identical issue, which is involved in the matter of the petitioner, has been decided.

8. On the other hand, the learned counsel appearing for the Respondents No.2 and 3 has argued that petitioner's initial appointment was made on a consolidated pay and thereafter, vide order dated 8.12.2010 he has been given appointment in a regular pay-scale, therefore petitioner is not entitled to his appointment to be treated as a regular appointment in a regular pay-scale with effect from the date of his initial appointment, i.e. with effect from 18.8.2004. Learned counsel appearing for the Respondents No.2 and 3 has further argued that the order dated 17.6.1996 issued by the Director, Basic Education, U.P., Lucknow provides that where the compassionate appointment was given on a consolidated pay and later on regular pay scale has been granted, the candidate will be entitled for payment of regular salary with effect from the date when the order for payment of salary in a regular pay-scale has been passed and further, appointment of the said candidate cannot be treated to be regular with effect from the date of his initial appointment.

9. I have considered the submissions advanced by learned counsels appearing for the parties.

10. I find that this court has already decided the issue involved in the present writ petition and it has been held by this court that compassionate appointment cannot be on a consolidated pay and it has to be a regular appointment in a regular pay-scale, therefore even if a person is appointed on compassionate ground on a consolidated pay, the said appointment will be treated to be a regular appointment in a regular pay-scale with effect from the date of his initial appointment.

11. This court vide its judgment rendered in the case of **Ravi Karan Singh** (supra) has held that appointment under Dying in

Harness Rules has to be treated as a permanent appointment. The relevant portion of the aforesaid judgment passed by this Court is extracted as under:-

*"This petition has come up before us on a reference made by the learned Single Judge by his order dated 19.12.1997. The point involved is very simple, that is, whether an appointment under the Dying in Harness Rules is a permanent appointment or temporary appointment. According to the learned Single Judge, this Court had earlier held that an appointment under Dying in Harness Rules is a permanent appoint vide Budhi Sagar Dubey v. D.O.I.S., (1993) 1 UPLBEC 197; Gulab Yadav v. State of U.P. and others, (1991) 2 UPLBEC 995 and Dhirendra Pratap Singh v. D.I.O.S. & Others. (1991) 1 UPLBEC 427. The learned Single Judge who passed the referring order dated 19.12.1997 disagreed with the above mentioned decisions and hence has referred the matter to a larger Bench.*

*In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments.*

*The petition is disposed of accordingly."*

12. This court has again decided the case of **Itwari Lal** (supra) vide judgment and order dated 18.8.2015, wherein it has been categorically held that order dated 30.1.1996 passed by U.P. Basic Education Board, Allahabad is not applicable in the case of compassionate appointment, whereas in the present matter, case of the petitioner has been rejected relying upon the aforesaid order dated 30.1.1996. The relevant portion of the judgment and order dated 18.8.2015 is extracted as under:-

*"The sole basis of passing of the impugned order dated 4.9.2014 is Government Order dated 30.1.1996 issued by Secretary, Uttar Pradesh Basic Shiksha Parishad, Allahabad. The relevant portion of the said is quoted as under:-*

"मृतक आश्रितों की चतुर्थ श्रेणी के पदों पर नियुक्ति के सम्बन्ध में नवीनतम शासनादेश संख्या-४८०/१५-५-९०-३०-८२ दिनांक २३ मार्च १९९० के पैरा-६ में निम्नवत प्रावधान किया गया है।

"शासनादेश संख्या-२१३७/१५ -५-८१ -४४८/७६ दिनांक २० जनवरी १९८२ के अंतर्गत चतुर्थ श्रेणी के फालतू कर्मचारियों के समायोजन हेतु नई नियुक्तियां न किये जाने का प्रतिबन्ध मृतक आश्रितों की चतुर्थ श्रेणी के नियुक्ति में लागू न होगा।"

उक्त के आलोक में जनपद स्तर पर इकाईवार आवंटित चतुर्थ श्रेणी के पदों को सुनिश्चित करने के उपरांत सीधी भर्ती से। किसी प्रकार की कोई नियुक्ति न करने का निर्देश प्रसारित कर दें और मृतक आश्रितों की चतुर्थ श्रेणी के लिए आवंटित रिक्त पदों के प्रति ज्येष्ठता क्रम में सम्बंधित इकाई के नियुक्ति प्राधिकारी (शिक्षा अधीक्षक/उप विद्यालय निरीक्षक प्रथम) द्वारा नियमानुसार नियुक्तियां की जा सकती है।"

*The Government Order dated 30.1.1996 is not applicable in case of the persons who were appointed on compassionate ground under Dying in Harness Rules, so the action on the part of opposite party no.3 thereby rejecting the claim of the petitioner vide order dated 4.9.2014 in view of Government Order dated 30.1.1996 is void ab initio and without jurisdiction as well as on the ground that compassionate appointment cannot be given on consolidated salary because the same is of permanent nature as held by by a Division Bench of this Court in the case of Ravi Karan Singh ( supra).*

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*So keeping in view of the said fact as well as the law laid down a Division Bench of this Court in the case of Ravi Karan Singh ( supra), the impugned order passed by opposite party no.3 liable to be set aside.*

*For the foregoing reasons, the writ petition is allowed and the impugned order dated 4.9.2014 passed by opposite party no.3/ District Basic Education Officer, Sitapur is set aside. The opposite party no.3 is directed to re-examine the matter afresh in the light of the observations made herein above, expeditiously, say within a period of eight weeks from the date a certified copy of this order is produced before him."*

13. This court has also decided **Writ-A No.6717 of 2018 (Pradeep Kumar and 6 others Vs. State of U.P. and others)** vide judgment and order dated 13.12.2019. The relevant portion of the judgment and order dated 13.12.2019 is extracted as under:-

*"In support of his submission, Shri Rai has placed reliance on the judgement passed by the Division Bench of this Court in the case of Ravi Karan Singh vs. State of U.P. 1999 (2) AWC 976, wherein, similar issue has been considered and relying on the judgement passed in Budhi Sagar Dubey vs. D.I.O.S. 1993 ESC 21; Gulab Yadav vs. State of U.P. and others 1991 (2) UPLBEC 995; and Dharendra Pratap Singh vs. D.I.O.S. and others 1991 (1) UPLBEC 427, it has been held that the appointment under the Dying-in-Harness Rules has to be*

*treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment, then it will follow that soon after the appointment, the service can be terminated and this will nullify the purpose of Dying-in-Harness Rules because such appointment is intended to provide immediate relief to the family on the sudden death of the bread earner. Reliance has also been placed on the judgement and order dated 18.08.2015 passed in Service Single no.5112 of 2014 (Itwari Lal vs. State of U.P. through Secy. Basic Shiksha Lko and others), wherein, after placing reliance on the case of Ravi Karan Singh (supra), the writ petition was allowed and the order impugned was set aside. Further direction has been issued to the opposite party no.3 to re-examine the matter afresh in the light of observations made therein within the stipulated period. He has also relied upon the judgement passed in the case of Ravindra Nath Taigor and others vs. State of U.P. and others 2018 (3) ADJ 1641, wherein, it has been observed that the petitioners, who were appointed under Dying-in-Harness Rules in the year 2005 are entitled to be treated at par with all other similarly appointed permanent assistant teachers in basic school, for the purpose of their pension and provident fund benefits and accordingly, the Government Order dated 15.11.2011 has been quashed.*

*The legal and factual position has not been disputed by learned Additional Chief Standing Counsel but at the same time, he contends that initial appointment of the petitioners were on consolidated basis and thereafter they have been regularized on the post and the admissible benefits have been provided to them as such, at this belated stage, this Court should not at all intervene in the matter.*

*In the present case, nothing has been brought on record to indicate or suggest that the posts on which the petitioners have been appointed were not substantively vacant. The law on the issue is settled that appointment under Dying-in-Harness Rules can only be extended against a substantive vacancy and in case there is no vacancy, supernumerary post would be created for such purpose.*

*In the facts and circumstances of the case and in the light of the observations so made in the case of Ravi Karan Singh (supra), Itwari Lal (supra) as well as Ravindra Nath Taigor (supra), the issue is no more res-integra and as such, the Court is of the considered opinion that the services rendered by the petitioners on consolidated salary should be counted as regular service and accordingly, the consequential benefits may also follow.”*

14. This court recently has considered the identical issue which is involved in the present writ petition and has decided **Writ-A No.15205 of 2022 (Asif Khan vs. State of U.P. and others)** vide judgment and order dated 23.9.2022. The relevant

portion of judgment and order dated 23.9.2022 is extracted as under:-

*"The sole basis of passing of the impugned order dated 2.9.2022 is Government Order dated 30.1.1996 issued by Secretary, Uttar Pradesh Basic Shiksha Parishad, Allahabad. The relevant portion of the said is quoted as under:-*

*"मृतक आश्रितों की चतुर्थ श्रेणी के पदों पर नियुक्ति के सम्बन्ध में नवीनतम शासनादेश संख्या-४८०/१५-५-९०-३-८२ दिनांक २३ मार्च १९९० के पारा ६ में निम्नवत प्रावधान किया गया है*

*" शासनादेश संख्या-२१३७/१५/५/८९-४४८/७६ दिनांक २० जनवरी १९८२ के अंतर्गत चतुर्थ श्रेणी के फालतू कर्मचारियों के समायोजन हेतु नयी नियुक्तियां न किये जाने का प्रतिबन्ध मृतक आश्रितों की चतुर्थ श्रेणी के नियुक्ति में लागू न होगा"*

*उक्त के आलोक में जनपद स्तर पर इकाईवार आबंटित चतुर्थ श्रेणी के पदों को सुनिश्चित करने के उपरांत सीढ़ी भर्ती से किसी प्रकार की कोई नियुक्ति न करने का निर्देश प्रसारित कर दें और मृतक आश्रितों की चतुर्थ श्रेणी के लिए आबंटित रिक्त पदों के प्रति ज्येष्ठता क्रम में सम्बंधित इकाई के नियुक्ति प्राधिकारी (शिक्षा अधीक्षक/उप विद्यालय निरीक्षक प्रथम) द्वारा नियमानुसार नियुक्तियां की जा सकती है "*

*The Government Order dated 30.1.1996 is not applicable to case of the persons who were appointed on compassionate ground under Dying in Harness Rules, so the action on the part of opposite party no.3 whereby rejecting the claim of the petitioner vide order dated 4.9.2014 in view of Government Order dated 30.1.1996 is void ab initio and without jurisdiction. Compassionate appointment cannot be given on consolidated salary as the same is of permanent nature as held by by a Division Bench of this Court in the case of Ravi Karan Singh ( supra) which is quoted herein below:-*

*"This petition has come up before us on a reference made by the learned Single Judge by his order dated 19.12.1997. The point involved is very simple, that is, whether an appointment under the Dying in Harness Rules is a permanent appointment or temporary appointment. According to the learned Single Judge, this Court had earlier held that an appointment under Dying in Harness Rules is a permanent appoint vide Budhi Sagar Dubey v. D.O.I.S., (1993) 1 UPLBEC 197; Gulab Yadav v. State of U.P. and others, (1991) 2 UPLBEC 995 and Dharendra Pratap Singh v. D.I.O.S. & Others. (1991) 1 UPLBEC 427. The learned Single Judge who passed the referring order dated 19.12.1997 disagreed with the above*



*mentioned decisions and hence has referred the matter to a larger Bench.*

*In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments.*

*The petition is disposed of accordingly."*

*In view of the admitted facts as attracted to the case of the petitioner as well as the law laid down by the Division Bench of this Court in the case of Ravi Karan Singh (supra), the impugned order passed by respondent No. 3 cannot be sustained and is liable to be set aside."*

15. The appointment under Dying in Harness Rules is always given to the dependent of the deceased government servant to overcome the instant financial crisis suffered by the family due to demise of the government servant and therefore, the said appointment cannot be temporary in nature. The compassionate appointment has necessarily to be permanent as if the said appointment is made temporarily, there will be a threat to the family that any time the said appointment can be cancelled or services can be terminated, therefore, the family of the deceased government servant will never be in peace.

16. This court in the aforesaid judgments has considered the issue involved in this writ petition in detail and it has been held that the compassionate appointment can never be on a consolidated pay and it is always a permanent appointment in a regular pay-scale.

17. The petitioner before this court was appointed on a consolidated pay on 18.8.2004 and later on he has been given appointment in a regular pay-scale with effect from 8.12.2010, therefore in view of the aforementioned judgments of this court, appointment of the petitioner has to be treated permanent in a regular pay-scale with effect from the date of his initial appointment i.e. with effect from 18.8.2004. This court vide order dated 24.9.2021 passed in Writ-A No.12808 of 2021 (Praveen Kumar vs. State of U.P. and others) directed the District Basic Education Officer, Kasganj to consider the petitioner's claim in the light of the judgment of this court rendered in the case of *Ravi Karan Singh* (supra), but District Basic Education Officer, Kasganj without considering the judgment of this court passed in the case of *Ravi Karan Singh* (supra) has passed the order dated 15.2.2023, whereby claim of the petitioner for treating his appointment to be a regular appointment in a regular pay-scale with effect from 18.8.2004, has been rejected. The District Basic Education Officer, Kasganj in his order dated 15.2.2023 has relied upon order dated 30.1.1996 issued by the Secretary, U.P. Basic Education Board, Allahabad and thereby has rejected the claim of the petitioner.

18. The order dated 15.2.2023 passed by the District Basic Education Officer, Kasganj on its face is unsustainable in the eyes of law as this court has already decided the issue in question and has held that compassionate appointment is to be treated as a regular appointment in regular pay scale from the date of initial appointment and further this court vide judgment and order dated 18.8.2015 passed in the case of *Itwari Lal* (supra) has held that order dated 30.1.1996 passed by the Secretary, U.P. Basic Education Board, Allahabad is not applicable in the matters of the compassionate appointment.

19. In view of the aforesaid reasons, this writ petition is allowed. The order dated 15.2.2023 passed by the District Basic Education Officer, Kasganj, is quashed. Respondent No.3 is directed to re-examine the matter afresh in the light of observations made hereinabove and to pass fresh order, expeditiously preferably within a period of two months from the date of service of certified copy of this order.

**Order Date :- 2.8.2023**

Salim