

A.F.R.

Court No. - 40

Case :- SPECIAL APPEAL DEFECTIVE No. - 380 of 2024

Appellant :- The State of UP and 5 others

Respondent :- Geeta Rani W/O Late Man Singh (Head Constable Civil Police)

Counsel for Appellant :- C.S.C.,Kunal Ravi Singh,S.C.

Counsel for Respondent :- Atipriya Gautam,Devesh Mishra

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Anish Kumar Gupta,J.

(In Re:- Civil Misc. Delay Condonation Application)

1. Heard learned counsel for the parties.
2. Cause shown in the affidavit filed in support of the instant application is to the satisfaction of the Court.
3. Accordingly, the delay in filing the instant appeal stands condoned and delay condonation application is allowed.

(Order on Memo of Appeal)

4. The instant intra-court Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred to as the "Rules, 1952") is being preferred by the appellant-respondent challenging the legality and validity of the judgment and order dated 21.12.2023 passed by the writ Court in **WRIT - A No. - 21105 of 2023 (Geeta Rani Vs. The State of U.P. and 5 Others)**, wherein, learned Single Judge while accepting the ratio has essentially premised its judgment on the basis of the mandate given by a Coordinate Bench of this Court vide its judgment and order dated 22.10.2020 passed in **SERVICE SINGLE No.- 14796 of 2020 (Dharmendra Singh Vs. State of U.P. Thru. Prin. Secy. Home, Lko. & Ors.)** and accorded a last opportunity to the respondent-petitioner to clear the physical efficiency test within a period of 30 days and even if she fails, suitable appointment on compassionate basis shall be accorded to her.

5. Before hearing the rival submissions of the parties, it would be in the fitness of things to reproduce the order dated 21.12.2023 passed by learned Single Judge:-

"Petitioner applied for compassionate appointment on account of her husband late Man Singh dying in harness while working as Head Constable with Civil Police on 02.02.2021 however, while his application was entertained for the post of Sub-Inspector and was directed for the physical efficiency test, he could complete running in excess of 3 seconds to the scheduled time which was prescribed as 16 minutes for 2.4 kms.

Learned counsel for the petitioner submits that in respect of 3 seconds of delay there should be taken a sympathetic consideration because in many of service rules that provide for compassionate appointment relaxations are offered. He submits that in matters of compassionate appointment, the

authorities ought to have taken pragmatic view as these rules are exception to the general rules of recruitment to show compassion towards the bereaved family as sole earning member has met premature death leaving liability behind. However, he submits that given an opportunity, may be as a last one, she would be again participating in the physical efficiency test and if this time she fails, she will not be setting up any further claim for the post and then can be offered any suitable appointment on compassionate basis.

Learned counsel for the petitioner has also relied upon an order of a coordinate Bench of this Court at Lucknow Bench in Service Single No.- 14796 of 2020 decided on 22nd October, 2020.

Learned Standing Counsel submits that the police force requires certain level of physical efficiency and any compromise to the same would not be in the interest in the police force which is involved in policing like civil administration as and when requires qua security of the people. However, he does not dispute that one direction has been issued in a case but submits, that cannot be taken as a binding precedent. He though submits that second opportunity as such could be offered in the discretion of this Court only as he does not dispute that the rules of compassionate appointment are exceptional to the general rules, however, reiterates the principle that there is no vested right to get a post of choice by way of compassionate appointment.

Having heard learned counsel for the respective parties and their arguments raised across the bar, considering the fact that the petitioner has been seeking a compassionate appointment and for which he was directed for physical efficiency test and has just exceeded three seconds to the scheduled time prescribed for running of a candidate as per the rules, the Court takes pragmatic view and directs that one last opportunity may be given to the petitioner to participate in the physical efficiency test.

It is, however, made clear that this will be a last opportunity and no further opportunity will be offered to the petitioner and in the event petitioner fails, she may be offered suitable appointment on compassionate basis.

The above exercise of physical efficiency test will be done within a period of 30 days from the the date of production of certified copy of this order.

With the aforesaid observations and directions, this petition stands disposed of."

FACTS

6. From the perusal of the record, it transpires that husband of the petitioner namely, Man Singh died in harness while working as Head Constable in Civil Police on 02.02.2021. Thereafter, on account of unfortunate demise of her husband, the petitioner applied for compassionate appointment and her application was entertained by the police department for the post of Sub-Inspector and she was asked to undergo the physical efficiency test. However, the petitioner could not complete the running within the stipulated time as fixed by the Police department. Consequently, she has approached to this Court to consider her claim qua the compassionate appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness. Rules, 1974 (hereinafter referred to as the "the Rules, 1974") for the post of Sub-Inspector as per her qualification by filing Writ A No.2105 of 2023, wherein, the learned Single Judge taking sympathetic view accorded a last opportunity to the respondent-petitioner to clear the physical efficiency test and entitled her for a suitable appointment on compassionate basis in case she fails to qualify in the physical efficiency test.

ARGUMENTS ON BEHALF OF APPELLANT-STATE

7. Mr. Fuzail Ahmad Ansari, learned Standing Counsel for the appellant-State vehemently submitted that the order passed by the learned Single Judge cannot sustain on the ground that claim of the respondent-petitioner was to be considered under the Rules, 1974 and as per the procedure prescribed in the disciplined force, the respondent-petitioner must undergo Physical Efficiency Test, Medical Test etc. In continuance to the same, he submitted that the respondent-petitioner could not be appointed as Sub-Inspector under the Rules, 1974 as she could not fulfill the minimum eligibility criteria, which is prescribed as such, for the Physical Efficiency Test. He submitted that there is no provision under the Rules, 1974 and the Government Order for according further opportunity or chance for completion of physical efficiency test. It has been argued that the respondent-petitioner has appeared in the physical examination out of her own freewill and without any objection and *qua* the same he has also placed reliance upon the declaration form dated 31.12.2022 filled up by the respondent-petitioner for the physical test. The relevant conditions contained in the aforesaid declaration form is reproduced hereinunder:-

" परीक्षा तिथि व समय एव परीक्षा केन्द्र में परिवर्तन सम्बन्धी कोई अनुरोध स्वीकार नहीं किया जायेगा।

दक्षता परीक्षा में विहित पत्रक प्राप्त न कर सकने के कारण असफल हो जाने वाले अभ्यर्थी को दूसरा मौका नहीं दिया जायेगा और स्वास्थ्य के कारण या किसी परीक्षा के लिए अपील स्वीकार नहीं की जायेगी, समय एवं दिनांक में सम्मिलित होने में असफल हो जाने वाले अभ्यर्थी को दूसरा मौका नहीं दिया जायेगा , और स्वास्थ्य के कारण या किसी अन्य आधार परअपील स्वीकार नहीं की जायेगी।

अपरिहार्य कारणों (वर्षा अथवा तकनीकी कठिनाई) से उस तिथि की परीक्षा पूर्णतः अथवा बाधित होने की दशा में बोर्ड द्वारा किसी अन्य तिथि पर परीक्षा आयोजित नहीं की जायेगी।

द्वारा यथासम्भव उपयुक्त चिकित्सक विशेषकर हृदय रोग विशेषज्ञा से अपने हृदय तथा रक्तचाप की जांच कराकर चिकित्सक की राय के अनुसार अपने स्वास्थ्य का व परीक्षा में अथवा पूर्ण जिम्मेदारी पर ही भाग लें। यदि किसी अभ्यर्थी की शारीरिक दक्षता परीक्षा के दौरान स्वास्थ्य सम्बन्धी आकस्मिक समस्या आती है..... नहीं होगी।

घोषणा

मैं (अभ्यर्थी का नाम) गीता रानी पुत्र/पुत्री मानसिक सेवायोजन प्रस्तावक जनपद / इकाई गाजियाबाद प्रमाणित करता हूँ कि मृतक आश्रित के उप निरीक्षक नागरिक पुलिस के पद पर भर्ती हेतु आयोजित इस शारीरिक दक्षता परीक्षा , जिसमें पुरुष अभ्यर्थियों को 4.8 कि०मी० के... में तथा महिला अभ्यर्थियों को 2.4 कि०मी० की दौड़ 16 मिनट में पूरी करनी है, मैं भाग लेने हेतु मैं पूर्ण रूप से स्वस्थ हूँ और इसमें स्वेच्छा से नाम की शारीरिक क्षति / स्वास्थ्य सम्बन्धी अप्रिय घटना घटित होने पर उसके लिये मैं स्वयं जिम्मेदारी होऊंगा / होऊंगी। यह भी कि मेरी पहचान करने आदि के लिए पुलिस भर्ती बोर्ड को मेरे आधार डाटा का उपयोग करने के लिए प्राधिकृत करता /करती हूँ।

31.12.22

गीता रानी

प्रति हस्ताक्षरित

ह०/अस्पष्ट

कार्यालयाध्यक्ष के हस्ताक्षर

नाम/पदनाम के मुहर व दिनांक

मोहर/अस्पष्ट

// सत्य प्रतिलिपि //

(emphasis supplied)

8. In this backdrop, learned Standing Counsel for the appellant-State submitted that once the respondent-petitioner participated in the physical examination without any objection and that too, out of her own freewill and failed therein, then she could not turn around and ask for second chance.

9. Learned Standing Counsel has further placed reliance upon the Clause 2 (5) of the Government Order dated 18.09.2015, which clearly provides that only one chance will be offered to the applicants, who are inclined to be appointed under the compassionate appointment. The aforesaid G.O. dated 18.09.2015 was not under challenge before the learned Single Judge. Hence, learned Single Judge erred in law in according the second chance to the petitioner, which is, in fact, not available to the candidates claiming compassionate appointment.

10. Learned Standing Counsel for the appellant-State in support of his submission has further placed reliance upon the judgment and order dated 05.10.2021 passed by Hon'ble the Apex Court in **Civil Appeal No.6003 of 2021 (The State of Uttar Pradesh & Ors. Vs. Premlata)** reported in **AIR 2021 SC 4984** and submitted that, in fact, the petitioner was not liable to be offered the post of Sub-Inspector, which is higher post than the post of Head Constable on which her husband was admittedly discharging his duties and hence, she could have been offered the post of Constable or any other post lower than that. In this regard, he has also relied upon the interpretation given by the Hon'ble Apex Court to the term "suitable post" under Rule 5 of the Rules, 1974. The relevant portion of the aforesaid order is reproduced hereinunder:-

"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.**

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."**

(emphasis supplied)

11. To elaborate his submissions he has placed reliance upon the judgment and order dated 02.08.2022 passed by Hon'ble the Apex Court in **Civil Appeal No.- 5038 of 2022 (Suneel Kumar Vs. State of U.P. & Ors.)** reported in AIR 2022 SC 5416. The relevant portion of the aforesaid order is reproduced hereinunder:-

"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."

12. Learned Standing Counsel has also placed reliance upon the judgment and order dated 04.03.2022 passed by a Division Bench of this Court in **SPECIAL APPEAL No.- 363 of 2019 (State of U.P. and 2 Others Vs. Ashif Ali)** which also dealt with a similar issue of providing second chance to a candidate claiming compassionate appointment. The relevant portion of the aforesaid order is reproduced hereinunder:-

"15. Consequently, we find that the learned Single Judge was not justified in directing the appellants to conduct a fresh physical efficiency test of the writ petitioner and consider his claim for compassionate appointment afresh particularly in view of the fact that the Rules and Government Orders governing the issue do not permit any second attempt to a candidate who has failed the physical test in the first attempt. The appeal is allowed. The judgment and order dated 30.8.2018 passed by the learned Single Judge allowing the writ petition with cost is set aside. The writ petition stands dismissed."

13. Referring to the order passed by the learned Single Judge, he submitted that the learned Single Judge while considering the matter has heavily relied upon the ratio laid down by another Single Bench in an order dated 22.10.2020 passed in **Service Single No. - 14796 of 2020 (Dharmendra Singh Vs. State of U.P. Thru. Prin. Secy. Home, Lko. & Ors.)** which itself contained that it will not be treated as "a precedent". The same is extracted hereinunder:-

"On 06.10.2020 the following order was passed by this court. Today Shri Ranvijay Singh Additional Chief Counsel has informed the court on the basis of instructions that in the physical endurance test a distance of 4.8 k.m. was to be run by the petitioner in 30 minutes but he completed same in 30.01 minutes i.e. he overshot the time limit only by one second. This is precisely the case of the petitioner that he should be given one more opportunity considering the fact that he is being considered for appointment on compassionate basis.

*Considering the fact of the case as the petitioner exceeded the time limit only by one second, ends of justice require that he be given one more opportunity by the opposite parties to undergo the physical endurance test. It should be conducted within two weeks of receipt of this order, based on which the candidature of the petitioner for compassionate appointment shall be considered. **This order shall not be treated as a precedent as it has been passed in peculiar of facts of the present case.***

Petition is disposed of in the aforesaid terms."

(emphasis supplied)

14. He further submitted that the aforesaid order dated 22.10.2020 passed by the learned Single Judge was assailed by the State in the intra-court appeal i.e. **SPECIAL APPEAL DEFECTIVE No. -84 of 2021 (State of U.P. Thru. Prin. Secy. Home Lko. & Ors. Vs. Dharmendra Singh)**, wherein the Division Bench of this Court has proceeded to observe that the order passed by learned Single Judge was based upon equity and not to be treated as a precedent, even though, the order passed by learned Single Judge was affirmed and the Special Appeal was dismissed vide judgment and order dated 11.2.2021. Thereafter, against the appellate order, the State Government has preferred a Special Leave to Appeal before the Hon'ble Apex Court being **Special Leave to Appeal (C) No(s). 7554/2021 (State of U.P. & Ors. Vs. Dharmendra Singh)**, wherein, Hon'ble Apex Court was pleased to dismiss the same making an observation to the effect that issue of law shall remain open and the judgment of the Division Bench shall not be operated as a precedent. The order passed by the Hon'ble Apex Court is reproduced hereinunder:-

"Having regard to the facts and circumstances of this case, we do not deem it necessary to interfere with the impugned judgment and order in exercise of the power under Article 136 of the Constitution of India.

The special leave petition, is accordingly, dismissed.

We, however, make it absolutely clear that the issue of law shall remain open and the judgment of the Division Bench shall not operate as a precedent."

(emphasis supplied)

15. Learned Standing Counsel has also drawn our attention to the order dated 21.11.2023 passed by learned Single Judge in **WRIT - A No.19265 of 2023 (Anil Kumar and 2 Others Vs. State of U.P. and 3 Others)**, wherein, learned Single Judge has disposed of the writ petition extending the benefit to the petitioners, therein, under Clause 2(5) of the Government Order dated 18.09.2015. The aforesaid order is reproduced hereunder:-

"1. Heard Sri Vijay Kumar Pandey, learned counsel for the petitioner as well as learned Standing Counsel.

2. Petitioner sought appointment on compassionate ground as Constable as he is intermediate qualified. However, in the he could not qualify in the Physical Efficiency Test.

3. Learned counsel for the petitioner submits that he is entitled to the benefit as given by this Court in the case of Jitendra Singh and another vs. State of U.P. and 3 others, Writ A No. 16436 of 2022.

4. Learned Standing Counsel submits that in the above regard he has obtained instructions and in view of the provisions as contained under the Government Order dated 18.09.2015 petitioner can be adjusted against any other post, if he applies afresh within three months. The provision as contained in para 5 of the instructions is reproduced hereunder:

"5. यह कि प्रश्नगत भर्ती शासनादेश दिनांकित: 18.09.2015 के प्रावधानों के अन्तर्गत संपन्न की गयी थी , जिसके प्रस्तर-2(5) में निम्नवत है:-

"किसी भी पद पर मृत पुलिस कर्मियों के आश्रित के रूप में भर्ती हेतु किसी भी अभ्यर्थी को नियमानुसार एक ही अवसर प्रदान किया जायेगा, अगर वह इस हेतु प्रदान किये गये अवसर में किसी भी कारण से , उस पद के लिए निर्धारित प्रक्रियानुसार सेवायोजन पाने में असफल रहता है, तो उसे किसी निम्न पद पर सेवायोजन हेतु ऑफर दिया जायेगा और वह यदि 03 माह के अन्दर अन्य किसी पद पर सेवायोजन हेतु आवेदन नहीं करता है , तो यह समझा जायेगा कि वह पुलिस विभाग में किसी भी पद पर सेवायोजन पाने का इच्छुक नहीं है।"

5. In view of the above, it is hereby provided that since the petitioner has failed in physical efficiency test for the post of Constable, it will remain open for the petitioners to apply afresh for any other post in the police department which may be offered to him as per their eligibility.

6. It is accordingly provided that in the event petitioners make an application within four weeks from today, the same shall be considered and disposed of in the light of provisions as contained under the Government Order dated 18.09.2015 and quoted herein above. Petitioners, if held entitled for any other post, the same shall be offered within 30 days from the date of decision to be taken by the authority.

7. With the aforesaid observations and directions, this petition stands disposed of."

ARGUMENTS ON BEHALF OF RESPONDENT-PETITIONER

16. Learned counsel for the respondent-petitioner vehemently opposed the instant appeal and submitted that learned Single Judge has rightly passed the order on equity and essentially in respect of only 3 seconds of delay, the authorities must

take sympathetic consideration, especially in the backdrop that the matter relates to compassionate employment and as such, the appeal is liable to be dismissed.

17. The learned counsel for the respondent-petitioner has drawn our attention to the judgement of **Dharmendra Singh** (supra) and submitted that the learned Single Judge has exercised his equity jurisdiction under Article 226 of the Constitution of India and as such, relying upon the same ratio the learned Single Judge has committed no error in exercising equity in favour of the respondent-petitioner and granting another opportunity to her in the present case.

ANALYSIS

18. We have heard the learned counsel for the parties and perused the material on record and have carefully considered the judgements cited by the learned Advocates.

19. The present matter relates to compassionate appointment in a disciplined force i.e. police force and under the relevant provisions of the Rules, no relaxation in physical examination is accorded even to the direct recruits and if they do not complete the race in the specific time, they are not selected hence no relaxation is available or to be extended qua the candidate seeking compassionate appointment, who even have a subsequent chance to claim the next lower post within the three months. In the present matter, admittedly, the admit card was issued by the State-appellant for physical test, which took place on 04.01.2024 and she had participated in the physical examination without any objection, compulsion or duress and with her own consent and freewill, which is crystal clear from the declaration form dated 31.12.2022 filled by her. In such admitted situation, in case, she failed in physical efficiency test then under the compassionate employment, she could not ask for a second chance to undergo the physical efficiency test again.

20. Surprisingly, in the present matter, the husband of the petitioner was working as Head Constable and she was allowed to participate for an appointment under the compassionate employment on the higher post to which her husband was holding i.e. on the post of Sub Inspector. The said offer could not be accorded to the petitioner-respondent in view of the law laid down by the Apex Court in the case of **Premlata** (supra) and **Suneel Kumar** (supra). Even on this score she was not eligible to be appointed as Sub-Inspector. Moreover, she failed in the physical efficiency test.

21. No such provision could be placed by the counsel for the respondent-petitioner before us, which contemplates for providing another chance to clear the physical efficiency test. Whereas, in another matter, the learned Single Judge, on the similar facts, has already disposed of the matter in the light of the Clause 2(5) of the the Government Order dated 18.09.2015. For ready reference, the aforesaid Clause 2(5) of the G.O. dated 18.09.2015 is reproduced hereinunder:-

"किसी भी पद पर मृत पुलिस कर्मी के आश्रित के रूप में भर्ती हेतु किसी भी अभ्यर्थी को नियमानुसार एक ही अवसर प्रदान किया जायेगा, अगर वह इस हेतु प्रदान किये गये अवसर में किसी भी कारण से, उस पद के लिए निर्धारित प्रक्रियानुसार सेवायोजन पाने में असफल रहता है, तो उसे किसी निम्न पद पर सेवायोजन हेतु ऑफर दिया जायेगा और वह यदि 03 माह के अन्दर अन्य किसी पद पर सेवायोजन हेतु आवेदन नहीं करता है, तो यह समझा जायेगा कि वह पुलिस विभाग में किसी भी पद पर सेवायोजन पाने का इच्छुक नहीं है।"

22. It is not in dispute that the judgement relied upon by the learned counsel for the respondent-petitioner in the case of **Dharmendra Kumar** (supra) itself contained that it shall not be treated as a precedent. Although the Special Appeal and the Special Leave Petition filed by the State were dismissed but while dismissing the SLP the Apex Court also made it absolutely clear that the issue of law shall remain open and the judgement of the Division Bench shall not operate as a precedent.

23. In the opinion of the Court, the orders passed by the writ court, appellate court and the Apex Court in the case of **Dharmendra Kumar** (supra) is not binding precedent. It would be apt to have a glance of definition of "precedent":-

"As per Black's law dictionary, 'precedent' means an adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law."

Salmond: -Precedent is, 'in a loose sense, it includes merely reported case law which may be cited & followed by courts.' In a strict sense, that case law which not only has a great binding authority but must also be followed.

Keeton: - Judicial precedent is a judicial decision to which authority has in some measure been attached.

24. The origin of the term 'precedent' is from a Latin term called '*stare decisis*' which became the doctrine of legal precedent. The term '*stare decisis*' refer to courts looking at similar or historical case as a guide to take a judgement in future, it means to stand by the decided cases. This doctrine is mentioned in the Article 141 of the Constitution. It is used in all courts and in all legal issues. The doctrine of precedent is expressly incorporated in India by Article 141 of the Constitution of India, 1950. Article 141 provides that the decisions of the Supreme Court are binding on all courts within the territory of India. Although there is no express provision, but by convention the decisions of a High Court are binding on all lower courts within the territorial jurisdiction of that High Court. Similarly, a decision of a higher Bench, is binding on the lower Bench.

25. With the evolution of law, the concept of precedent gained new dimensions and it came to be classified as 'binding precedents', 'persuasive precedent', 'original precedent' and 'declaratory precedent'. Binding precedents are also known as authoritative precedents. These precedents are bound to be followed by a lower court or other equivalent courts once a judgment is made whether they approve it or not. Persuasive precedents include decisions taken by an inferior court that a higher

court or any other court is not obliged to follow. It depends on the court to decide whether to consider it or not. An original precedent are those judgements where the court has never taken a decision in a case and it has to use its own discretion to reach to a conclusion. A declaratory precedent is application of existing precedent in a particular case. A declaratory precedent involves declaring an existing law and putting into practice, hence it does not help in creating new law.

CONCLUSION

26. In the aforesaid facts and circumstances, we are of the opinion that the learned Single Judge committed an error in law in following the ratio of an order, passed by another Bench of same strength which itself contained that the order shall not be treated as 'precedent'.

27. In view of the ratio laid down by Hon'ble the Apex Court in **Premalata** (supra) and **Suneel Kumar** (supra), the petitioner was not liable to be offered the post of Sub Inspector. Moreover, once having failed the physical efficiency test, no second chance for qualifying the same could have been offered to a candidate claiming compassionate appointment. As such, the order impugned cannot be sustained and accordingly, the same is **set aside**.

OBSERVATIONS OF THE COURT

28. Before parting, this Court deems it fit to observe that the appointment under the compassionate scheme is not meant to be an alternate source of recruitment. It is essentially to reach immediate succor to a bereaved family. In other words, the sudden passing away of a government servant creates a financial vacuum and it is to lend a helping hand to the genuinely needed members of the bereaved family that an appointment is provided. It is never meant to be a source of conferring any status or an alternate mode of recruitment.

ORDER BY THE COURT

29. In view of the above, it is provided that as the respondent-petitioner has failed to qualify in the physical examination for the post of Sub-Inspector, it will remain open for her to apply afresh seeking compassionate appointment on any other suitable post in the Department, which may be offered to her as per her eligibility and suitability. It is also provided that in the event the respondent-petitioner makes any such application within four weeks from today, the same shall be considered and disposed of in view of the observations made hereinabove as well as taking into account the Government Order dated 18.09.2015 within next three weeks. If the petitioner is considered entitled for any other post by the department, the same shall be offered to her within a period of 30 days' from the date of decision to be taken by the authority.

30. With the aforesaid observations, the instant special appeal stands **disposed of**.

31. There shall be no order as to costs.

Order Date :- 15.5.2024

Sachin