

The State Of Uttar Pradesh vs Premlata on 5 October, 2021

Equivalent citations: AIRONLINE 2021 SC 846

Author: M. R. Shah

Bench: A. S. Bopanna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6003 OF 2021

THE STATE OF UTTAR PRADESH & ORS.

.. APPELLANT(S)

VERSUS

PREMLATA

.. RESPONDENT(S)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.09.2018 passed by the High Court of Judicature at Allahabad in Special Appeal Defective (SAD) No.620 of 2018, by which the Division Bench of the High Court has allowed the said appeal and quashed and set aside the judgment and order dated 31.07.2018 passed by the learned Single Judge and consequently has directed the appellants – original respondents to consider the candidature of the respondent herein – original appellant for appointment on compassionate ground in Grade III service, the State of U.P. has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: 2.1 That the deceased employee at the time of his death was posted and serving as Messenger in Police Radio Department of Uttar Pradesh (Class IV) died on 07.11.2014. The respondent herein being widow of the deceased – government servant submitted an application dated 05.12.2014 for appointment on the post of Assistant Operator in Police Radio Department on compassionate ground which was rejected on the ground that she is not fulfilling the requisite eligibility criteria for the said post. That thereafter the respondent submitted another application before the U.P. Police Radio Headquarter, Lucknow for appointment on the post of Workshop Hand on compassionate ground. However as she failed to clear the physical fitness examination conducted on 28.01.2018 for the selection of Workshop employee, her application for appointment as Workshop employee on compassionate ground came to be rejected. Due to unsuccessful in the physical eligibility test on the post of Workshop Hand/Workshop employee, vide letter dated 23.02.2018 of the Police Radio Headquarter, U.P.,

Lucknow, the respondent herein was offered the post below the rank of Workshop Hand i.e. Messenger in Radio Department. Instead of accepting the said post the respondent filed the writ petition before the High Court claiming the appointment on the post of Workshop Hand (Karmshala Karmchari) in Police Radio Department under the provisions of Dying In Harness Rules 1974 (hereinafter referred to as the Rules 1974) on compassionate ground and to direct the appellants to appoint her on the post of Workshop Hand (Karmshala Karmchari) or the post suitable for her in similar cadre. 2.2 By the judgment and order dated 31.07.2018, learned Single Judge of the High Court dismissed the said writ petition on the ground that as the deceased employee was Class IV employee and she has also been offered appointment on a Class IV post, she cannot claim the appointment on compassionate ground on the post of Workshop Hand or on any other suitable Class III post.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the respondent herein preferred the appeal before the Division Bench of the High Court and by the impugned judgment and order the Division Bench of the High Court has set aside the order passed by the learned Single Judge and has allowed the appeal and has directed the appellants to consider the candidature of the respondent herein for appointment on compassionate ground in Grade III service and same be accorded to her if she otherwise does not suffer any ineligibility. By the impugned judgment and order the Division Bench of the High Court has observed that a bare perusal of Rule 5 of the Rules 1974 makes it crystal clear that appointment under Rule 5 is required to be given on a “suitable post” and the term ‘suitable’ in Rule 5 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 Division Bench also observed that the suitability of the aspirant is required to be assessed on the basis of the educational qualification and other eligibilities so possessed by such person. The Division Bench noted that in the case in hand, respondent is having the qualification of Bachelors Degree in Arts as well as Bachelors Degree in Education and therefore qualified for appointment on a post in Grade III.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the State of U.P. and others have preferred the present appeal.

4. Ms. Ruchira Goel, learned Advocate appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case, the Division Bench of the High Court has misinterpreted the Rule 5 of the Rules 1974 by observing that the respondent shall be entitled to appointment on compassionate ground on ‘suitable post’ considering the educational qualification and irrespective of the fact that the deceased employee was working on Class IV post. It is submitted that the Division Bench of the High Court has not properly appreciated the fact that the appellant sought appointment on compassionate ground which cannot be equated with regular post/regular recruitment.

4.1 It is submitted that ‘suitable post’ is required to be linked to the object and purpose of appointment on compassionate ground.

4.2 It is submitted that the object and purpose of providing the appointment on compassionate ground is to meet out the difficulties created on account of sudden death of the sole bread earner and cannot be equated with the regular recruitment/appointment. It is further submitted that 'suitable post' is to be considered considering the post held by deceased employee and it cannot be a higher post. 4.3 It is submitted that 'suitable post' mentioned in Rule 5 of Rules 1974 has to be construed considering the educational qualification of dependent vis-à-vis the post held by the deceased employee.

4.4 It is submitted that in the present case earlier the respondent applied for the post of Sub-Inspector for which the respondent was not possessing the requisite qualification of ITI. It is submitted that even subsequently when she applied for the appointment on compassionate ground on the post of Workshop Hand she did not clear the physical examination test which was required to be cleared as per Uttar Pradesh Radio Adhinasth Sewa Second Amendment Niyamawali, 2005. It is submitted that therefore the respondent was offered next lower post i.e. Messenger, which the respondent refused to accept.

4.5 It is submitted that even as per the Circular dated 24.11.2015, only one opportunity was required to be given for appointment on any post to the dependent of the deceased. It is submitted that in the present case, the respondent failed to avail the opportunity twice. 4.6 It is submitted that the Division Bench of the High Court has erred in holding that the 'suitable post' under Rule 5 of the Rules 1974, would mean any post suitable to the qualification of the candidates.

4.7 Making the above submissions, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Shri Shashank Singh, learned Advocate appearing on behalf of the respondent. It is submitted that in the facts and circumstances of the case, the Division Bench of the High Court has rightly interpreted Rule 5 of the Rules 1974, would mean any post suitable to the qualification of the candidate. 5.1 It is submitted that in the present case the Division Bench of the High Court has not directed to appoint the respondent as Workshop Hand, but has directed to consider the case on any other suitable post as Grade-II looking to the qualification of the respondent.

5.2 It is vehemently submitted that as such Circular dated 24.11.2015, issued by the DGP, Uttar Pradesh, granting only one opportunity for appointment on compassionate ground on any post to the dependent of the deceased, and in case such dependent fails to avail the opportunity, such person shall be offered appointment on any other lower rank within a period of three months shall not be applicable to the facts of the case on hand as the respondent applied prior to the said circular. It is submitted that therefore the conditions in the said circular in relation to grant of one opportunity shall not be applicable to the respondent herein. 5.3 It is further submitted that while determining 'suitability' under the provisions of Rules 1974, Rule 5 of the said rules laying down qualification requirements ought to be read harmoniously with Rule 8 of the Rules 1974 that the candidate ought to be able to maintain minimum standards of work and efficiency.

5.4 It is submitted that a hyper-technical approach ought not to be adopted in cases of compassionate appointments. It is submitted that so far as the compassionate appointments are concerned such appointments are exempted from the requirements of ordinary/normal recruitment procedure. 5.5 It is further submitted that there is no bar for appointment of a dependent at a higher post than was held by the deceased. It is submitted that Rule 5 of Rules 1974 provides that the appellant may be given a suitable employment in government service on a post except the post within the purview of the Uttar Pradesh Public Service Commission in relaxation of the normal recruitment rules.

5.6 It is submitted that even the respondent ought not to be denied the appointment as Workshop Hand on the ground that the respondent failed to pass the physical test. It is submitted that the suitability of a post may be determined on the basis of educational qualification and/or other criteria. It is submitted that it is true that as per the provisions of law once a post is accepted on account of compassionate appointment, no right may be claimed to further or later apply for a higher post. It is submitted that however the facts in the present case are peculiar. The specialized post of Workshop Hand requires, in addition to requisite educational qualification, a physical test also to be passed. It is submitted that the respondent's failure to pass the physical test makes her ineligible for this particular post. However, the post of Messenger being offered is disproportionate to her educational qualifications. Therefore, the respondent may be considered for an alternate or suitable post within Grade III wherein such specific recruitment of the physical test may not be applicable as the down gradation of the post would render her educational qualification futile. 5.7 Making the above submissions and relying upon the decision of this court in case of Phoolwati (Smt) vs. Union of India and Others reported in 1991 Supp (2) SCC 689, it is requested to dismiss the present appeal.

6. Heard the learned counsel for the respective parties at length.

7. The respondent's husband was serving as Messenger (Class IV/Grade IV post) in Police Radio Department. He died on 07.11.2014. The respondent-widow of the deceased – government servant submitted an application on 05.02.2014 for appointment on the post of Assistant Operator which was not considered as she was not fulfilling the requisite eligibility criteria required for the post of Assistant Operator. That thereafter she made an application for the appointment on compassionate ground on the post of Workshop Hand which is a Grade III post on 19.02.2015. She was granted the opportunity for appointment on said post, however, she could not pass the physical eligibility test conducted for the said post and thereby as a result of her failure in physical eligibility test, she could not be granted the appointment on the post of Workshop Hand on compassionate ground. Still by order dated 23.02.2018, the respondent was offered the post below the rank of Workshop Hand i.e. Messenger in Radio Department, which she refused and the respondent insisted that she must be appointed on the compassionate ground on the post of Workshop Hand or equivalent post of Grade III looking to her educational qualification. The learned Single Judge dismissed the writ petition. However, the Division Bench by the impugned judgment and order has directed to consider the case of the respondent for appointment on compassionate ground on the post of Workshop Hand or any equivalent post in Grade III looking to her qualification and on interpretation of Rule 5 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. The aforesaid is the subject matter of appeal before this court.

8. While considering the issue involved in the present appeal, the law laid down by this court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision this court in Civil Appeal No.5122 of 2021 in the case of the Director of Treasuries in Karnataka & Anr. vs. V. Somashree, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this court in N.C. Santhosh vs. State of Karnataka and Ors. reported in (2020) 7 SCC 617, this Court has summarized the principle governing the grant of appointment on compassionate ground as under: □

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. As per the law laid down by this court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1 In the case of State of Himachal Pradesh and Anr. vs. Shashi Kumar reported in (2019) 3 SCC 653, this court had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this court in case of Govind Prakash Verma vs. LIC reported in (2005) 10 SCC 289, in para 21 and 26, it is observed and held as under: □“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

(Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , SCC pp. 139-140, para 2) “2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. 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 a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.” “26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

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 □ I or Class □ 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.

.....J. (M. R. SHAH)J. (A. S. BOPANNA) New Delhi,
October 05, 2021.