

STATE OF UTTAR PRADESH AND OTHERS

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v.

MOHD REHAN KHAN

(Civil Appeal No. 5212 of 2022)

AUGUST 08, 2022

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

Service Law – Compassionate appointment – Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Tenth Amendment) Rules 2014– r.5(1)(i), proviso to – Eligibility criteria and additional qualifications– Non-fulfillment of additional qualification – Respondent appointed on compassionate grounds, terminated – High Court directed appellants to consider his candidature for appointment to an alternate post – On appeal, held: An employee appointed on compassionate grounds is not granted an exception from the service conditions that have to be complied under the relevant Rules – In the present case, though the respondent possessed the educational qualification prescribed under the Rules, he did not acquire the qualifications prescribed under the provisos to r.5(1)(i) – He ought to have possessed both the eligibility criteria and qualifications to continue in the said post – Having been granted an appointment to the post of Assistant, the respondent was required to fulfill the dual conditions of obtaining a certificate of proficiency in computers (which he did) and to achieve the requisite speed in typing within a stipulated period (which he did not despite two opportunities) – His termination due to failure to clear the typing test was in terms of the stipulation contained in the order of appointment and provisions of r.5(1) – Further, appointment to an alternate post cannot be directed by High Court – View taken by the High Court relying on its earlier decision in Mukul Sagar case is erroneous as it does not lay down correct principle of law, however the appointment which may have been granted in the said case not to be disturbed – Impugned judgment of Division Bench and the judgment of Single Judge set aside – Writ petition filed by respondent before High Court is dismissed, as also in CA No.5213 of 2022.

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- A *Service Law – Compassionate appointment – Rules relating to, interpretation of – Constitution of India – Articles 14, 16 – Held: Rules relating to compassionate appointment must be interpreted bearing in mind that it is an exception to the principle of equality of opportunity – Compassionate appointments provide an entry-level concession – The appointment cannot be used to seek subsequent concessions merely because the appointment was made on compassionate grounds – Any concession subsequently provided, unless the rules stipulate, would be violative of the principle envisaged in Articles 14, 16 – Appointment through compassionate grounds only grants the family of the employee who dies in harness*
- B *an entry into the services, which is one of the many modes of appointment – Once appointed, all the employees irrespective of the mode of appointment are to be treated alike, unless the relevant Rules stipulate otherwise.*
- C *Service Law – Compassionate appointment – Nature, object of – Held: There is no vested right to compassionate appointment – It is an exception to Article 16 which embodies the principle of equality of opportunity in matters of public employment – Compassionate appointment is offered to a person belonging to the family of a deceased employee who has died in harness to tide over the financial crisis resulting from the death of the wage earner of the family – Terms on which compassionate appointment is offered under the rules or scheme governing compassionate appointment have to be complied with– Constitution of India – Article 16.*
- D *Service Law – Compassionate appointment – Appointment to an alternate post – Impermissibility of – Respondent was appointed on a temporary basis in Class III post – Terminated – High Court directed appointment to an alternate post in Class-IV post on compassionate grounds – Held: Appointment to an alternate post cannot be directed by the High Court – This would permit entry into a Class IV post at the expense of others who may be waiting in line for compassionate appointment or for which persons who seek appointment in open competition would be eligible.*

*General Manager, State Bank of India v. Anju Jain,
(2008) 8 SCC 475 : [2008] 12 SCR 576; V. Sivamurthy*

v. *State of AP*, (2008) 13 SCC; *Uttaranchal Jal Sansthan* A

v. *Laxmi Devi*, (2009) 7 SCR 205 : [2009] 9 SCR 791;

State of Jharkhand v. Shiv Karampal Sahu, (2009) 11

SCC 453 : [2009] 6 SCR 63; *Preeti Srivastava v. State*

of MP, (1999) 7 SCC 120 : [1999] 1 Suppl. SCR 249;

State of Gujarat v. Arvindkumar T. Tiwari, AIR 2012

SC 3281 : [2012] 7 SCR 1072 – relied on. B

Mukul Sagar v. State of Uttar Pradesh Decision dtd. 4
July 2018 of the High Court of Judicature at Allahabad
in Writ Petition No. 12737/2018; State of Uttar
Pradesh v. Mohd Rehan Khan Decision dtd. 25 August
2020 of the High Court of Judicature at Allahabad –
disapproved. C

Case Law Reference

[2008] 12 SCR 576	relied on	Para 10	D
[2009] 9 SCR 791	relied on	Para 11	
[2009] 6 SCR 63	relied on	Para 11	
[1999] 1 Suppl. SCR 249	relied on	Para 12	
[2012] 7 SCR 1072	relied on	Para 12	E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5212
of 2022.

From the Judgment and Order dated 25.08.2020 of the High Court
of Judicature at Allahabad in Special Appeal Defective No. 169 of 2020. F

With

Civil Appeal No. 5213 of 2022

Ankit Goel, Adv. for the Appellants. G

Danish Zubair Khan, Mohd. Asad Khan, Jayprakash Somani,
Ms. Shobha Somani, Rajnish Kumar, Ms. Binisha Mohanty, Ms. Mamta
Raut, Aayshmaan Vatsayayava, Ms. Asha Sahar, Ms. Manju Jetley, Advs.
for the Respondent.

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- A The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.
1. Leave granted.
2. The appeal arises out of a judgment of a Division Bench of the Allahabad High Court dated 25 August 2020. The Division Bench dismissed the intra-court appeal filed by the appellants against the judgment of a Single Judge of the High Court dated 5 November 2019 directing the appellants to consider the candidature of the respondent for appointment to a Class IV post on compassionate grounds.
- C 3. The father of the respondent was employed by the Government of Uttar Pradesh as a driver in the Office of Economics and Statistics Officer at Shahjahanpur. He died in harness in 2015. The respondent was appointed on a ‘temporary basis’ in the Class III post of a Junior Assistant at the Office of Economics and Statistics, Shahjahanpur. The letter of appointment dated 30 May 2016 stipulates that the respondent has to acquire a typing speed of twenty five words per minute within a year in terms of the condition stipulated in Rule 5(1) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Tenth Amendment) Rules 2014¹. Clause 4 of the letter of appointment is in the following terms:
- E “4. As per the condition stipulated in Rule 5(1) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Tenth Amendment) Rules, 2014, the appointed person is expected to acquire, within one year, the typing speed of 25 words per minute and CCC certificate in computer operation by D.O.E.A.C.C. Society or certificate declared to be equivalent thereto by the Government and in case he fails to do so, then his general annual increment shall be withheld and a further period of one year shall be granted to him to acquire the requisite speed of typing, and if in the extended period also he again fails to acquire the requisite speed in typing, his services shall be dispensed with.”
- F 4. Rule 5 of the Dying in Harness Rules as amended in 2014 by the Tenth Amendment to the Rules, which was notified on 17 January 2014, *inter alia*, contains the following stipulation:
- G 4. Rule 5 of the Dying in Harness Rules as amended in 2014 by the Tenth Amendment to the Rules, which was notified on 17 January 2014, *inter alia*, contains the following stipulation:
- H ¹ “2014 Rules”

“Provided further that in case appointment is to be made on a post for which the knowledge of computer operation and typewriting has been prescribed as an essential qualification and the dependent of the Government servant does not possess the required proficiency in computer operation and typewriting, he shall be appointed subject to the condition that he would acquire the CCC certificate in computer operation awarded by the DOEACC Society or a certificate equivalent thereto from an Institution recognised by the Government together with the required speed of 25 words per minute in typewriting well within one year and, if he fails to do so, his general annual increment shall be withheld and a further period of one year shall be granted to him to acquire the required certificate in computer operation and the required speed in typewriting and if in the extended period also he again fails to acquire the in required certificate computer operation and the in required speed typewriting, his services shall be dispensed with.”

5. The respondent acquired a certificate of proficiency in computers. He failed in his first attempt of the typing test. He was intimated by an OM dated 20 March 2017 that he had a typing speed of only 6 words per minute and had therefore not achieved the requisite speed of 25 words per minute. Thereafter, he was given a second opportunity to clear the typing test on 7 August 2019. On 8 August 2019, it was notified that the respondent did not clear the typing test. On 11 September 2019, the Deputy Director (Economic and Statistics) of Bareilly Division terminated the services of the respondent.

6. The respondent instituted a writ petition under Article 226 of the Constitution before the High Court of Judicature at Allahabad seeking to quash the order dated 11 September 2019 terminating the employment of the respondent and a mandamus directing the petitioners to reinstate him in service. It was the contention of the respondent that while he was taking the typing test, the computer system had malfunctioned, and that the termination order was issued without issuing a show cause notice. By a judgment dated 5 November 2019, a Single Judge of the High Court relied upon an earlier decision in **Mukul Sagar v. State of Uttar Pradesh²³** where a Single Judge of the Allahabad High Court held that

² Writ Petition No. 12737/2018 decided on 4 July 2018

³ Writ Petition No 12737/2018 decided on 4 July 2018

- A though the employee appointed on compassionate grounds would have to be terminated from the Class III post in terms of Rule 5 of the 2014 Rules for non-fulfillment of the prescribed qualifications, the authorities could have considered the claim for appointment to a Class IV post. It was observed that such an interpretation would be in consonance with the objective of compassionate appointment. The Single Judge disposed of the writ petition with the direction that the termination of the respondent be revisited in view of the observations made in **Mukul Sagar** (supra) and to pass a fresh order within two months. The Single Judge directed as follows:
- C "In the facts and circumstances, noticed above, this writ petition also stands disposed of with a direction upon the respondent no. 3 to revisit the issue, keeping in view the observation made by this Court in the aforesaid order dated 4.7.2018, and pass a fresh order, within a period of two months from the date of presentation of certified copy of this order. The order impugned in this petition shall remain subject to the fresh orders to be passed by the authority concerned."
- E 7. The Division Bench of the Allahabad High Court dismissed the appeal on 25 August 2020 observing that the respondent has already been terminated from service and that the Single Judge had only directed that the case of the respondent be reconsidered for appointment on compassionate grounds afresh on a post in Class-IV cadre.
- F 8. We have heard Mr Ankit Goel, counsel appearing on behalf of the appellant and Mr Danish Zubair Khan and Mr Jayprakash Somani, counsel for the respondents.
- G 9. The appointment order of the respondent stipulated that he would be required to obtain a certificate in regard to knowledge of computers and to pass the typing speed test with a speed of 25 words per minute within a prescribed period. The proviso to Rule 5(1) of the 2014 Rules which has been extracted above provides that if a candidate fails to achieve a typing speed of 25 words per minute within a year, the annual increment would be withheld and a further period of one year would be granted to the candidate to acquire the requisite speed. If a candidate fails to do so within the extended period, the Rules provide that his services shall be dispensed with. A similar stipulation operates in regard to obtaining a certificate of proficiency in computers. The
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termination of the services of the appellant due to his failure to clear the typing test was hence in terms of the stipulation contained in the order of appointment as well as the provisions of Rule 5(1) of the 2014 Rules.

10. The direction of the High Court that the respondent be considered for a Class IV post is not consistent with the provisions of law. There is no vested right to compassionate appointment. Compassionate appointment, it is well settled, is an exception to Article 16 of the Constitution which embodies the principle of equality of opportunity in matters of public employment.⁴ Compassionate appointment is offered to a person belonging to the family of a deceased employee who has died in harness to tide over the financial crisis resulting from the death of the wage earner of the family. The terms on which compassionate appointment is offered under the rules or scheme governing compassionate appointment have to be complied with.

11. The respondent sought appointment as an Assistant in the office of Economics and Statistics and was granted such an appointment. An employee who has been appointed on compassionate grounds is not granted an exception from the service conditions that have to be complied under the relevant Rules. Rules relating to compassionate appointment must be interpreted bearing in mind that it is an exception to the principle of equality of opportunity.⁵ Compassionate appointments provide an entry-level concession. The appointment cannot be used to seek subsequent concessions merely because the appointment was made on compassionate grounds. Any concession subsequently provided, unless the rules stipulate, would be violative of the principle envisaged in Articles 14 and 16 of the Constitution. Appointment through compassionate grounds only grants the family of the employee who dies in harness an entry into the services, which is one of the many modes of appointment. Once appointed, all the employees irrespective of the mode of appointment are to be treated alike, unless the relevant Rules stipulate otherwise. Rule 5(1)(i) of the 2014 Rules stipulates that for a person to be appointed to a post on compassionate grounds, he should fulfill the prescribed educational qualification. The relevant extract of rule 5 reads as follows:

⁴General Manager, State Bank of India v. Anju Jain, (2008) 8 SCC 475; V. Sivamurthy v. State of AP, (2008) 13 SCC 730

⁵Uttaranchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205; State of Jharkhand v. Shiv Karampal Sahu, (2009) 11 SCC 453.

- A “5. (1) In case a Government servant dies in harness after the commencement of these rules, and the spouse of the deceased Government servant is not already employed under the Central Government, the 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 purpose, be given a suitable employment in Government Service on a post except 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) **(emphasis supplied)**
- D 12. Rule 5(1)(i) prescribes an entry level *eligibility* criteria. The first proviso to Rule 5 prescribes an additional qualification if appointment is made to a post for which knowledge of computers and typing are prescribed as an essential qualification. This *qualification* must be acquired by the appointee within the time period stipulated in the Rules.
- E Though the respondent possessed the educational qualification prescribed under the Rules, he did not acquire the qualifications prescribed under the provisos to Rule 5(1)(i). This Court has in the past explained the relevance of both the eligibility criteria and additional qualifications.⁶ The respondent ought to have possessed both the eligibility criteria and qualifications to continue in the said post. Having been granted an appointment to the post of Assistant, the respondent was required to fulfill the dual conditions of obtaining a certificate of proficiency in computers (which he did) and to achieve the requisite speed in typing within a stipulated period (which he did not despite two opportunities). Appointment to an alternate post cannot be directed by the High Court.
- F This would permit entry into a Class IV post at the expense of others who may be waiting in line for compassionate appointment or for which persons who seek appointment in open competition would be eligible.

⁶ Preeti Srivastava v. State of MP, (1999) 7 SCC 120; State of Gujarat v. Arvindkumar T. Tiwari, AIR 2012 SC 3281

13. The view which was taken by the High Court relying on its earlier decision in **Mukul Sagar** (supra) was plainly erroneous. We, however, clarify that while we have held that the decision in **Mukul Sagar** (supra) does not lay down correct principle of law, the present judgment should not be construed as a direction to the State to disturb the appointment which may have been granted to the petitioner in **Mukul Sagar's** case. A

14. For the above reason, we are unable to subscribe to the view of the Single Judge and of the Division Bench in appeal in the present case. B

15. The appeal is allowed by setting aside the impugned judgment of the Division Bench dated 25 August 2020 and the judgment of the Single Judge dated 5 November 2019. The writ petition instituted by the respondent before the High Court shall in the circumstances stand dismissed. C

16. Pending applications, if any, stand disposed of. D

Civil Appeal No 5213 of 2022

(Arising out of SLP (C) No 5524 of 2021)

1. Leave granted.

2. The respondent's mother was employed as a Senior Assistant at the office of Arth Eevam Sankhya Adhikari, Mathura. She died in harness in the year 2015. The respondent applied for appointment on compassionate grounds and was offered appointment to the post of Junior Assistant. The appointment order dated 30 May 2016 draws attention to Rule 5(1) of the 2014 Rules. The respondent failed the typing test on 16 March 2017 and 17 July 2019. By an order dated 31 July 2019, the services of the respondent were terminated. The respondent filed a writ petition⁷ challenging the order of termination and seeking the relief of reinstatement. The Single Judge of the High Court in his judgment dated 21 November 2019 relied upon the earlier decision in **Mukul Sagar v. State of Uttar Pradesh** and directed the petitioners to revisit the issue. The Division Bench by its judgment dated 2 September 2020 dismissed the Special Appeal⁸ preferred by the State of Uttar Pradesh relying upon its decision in Special Appeal Defective No 169 of 2020⁹. F G

⁷ WP (Civil) No. 18189 of 2019

⁸ Special Appeal Defective No 168 of 2020

⁹ State of Uttar Pradesh vs Mohd Rehan Khan dated 25 August 2020 H

- A 3. Since the decision which has been relied upon by the Single Judge and the decision of the Division Bench in *Mohd Rehan* have been disapproved in the above decision, the present appeal shall stand allowed by setting aside the judgment of the Division Bench dated 2 September 2020 and the judgment of the Single Judge dated 21 November 2019. The writ petition filed by the respondent before the High Court shall stand dismissed.
- B 4. The appeal is allowed in the above terms.
5. Pending applications, if any, stand disposed of.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.