

In Chamber

Case :- SPECIAL APPEAL No. - 367 of 2024

Appellant :- Shiv Dutt Sharma

Respondent :- State of U.P. through its Secretary, Basic Education and 4 others

Counsel for Appellant :- Rajesh Kumar, Rajesh Kumar Mishra, Sr. Advocate

Counsel for Respondent :- C.S.C., Yatindra

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr Yogendra Kumar Srivastava, J)

1. Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Rajesh Kumar Mishra, learned counsel for the appellant, Sri Tej Bhanu Pandey, learned Standing Counsel appearing for the State-respondent and Sri Yatindra, learned counsel for respondent nos.2 to 5.

2. The present special appeal is directed against the judgment and order dated 07.03.2024 passed in Writ-A No.6916 of 2019 (Shiv Dutt Sharma Vs. State of UP and others) whereby the writ petition has been disposed of with certain observations and directions.

3. The basic facts of the case which are available on record indicate that the appellant-petitioner was granted appointment on compassionate grounds on the post of *Chowkidar* in Junior High School, Badagaon, Vikas Kshetra Arnia, District Bulandshahar vide appointment order dated 10.11.1981.

4. On an application dated 06.02.1984, the petitioner was permitted to apply for admission in B.Ed. (Shiksha Shashtri) Course. The petitioner was directed to take admission after seeking sanction of unpaid leave for the purpose, with stipulation that he himself join duties in the same school after expiry of the leave period.

5. In due course of time, the petitioner claims to have been appointed against the post of Assistant Teacher by an order dated 16.08.1986 passed by the District Basic Education Officer, Bulandshahar, in terms of a decision dated 03.07.1986 of the Appointment/Promotion Committee for Teachers of Basic Schools of District Bulandshahar. The appointment order was stated to have been issued on the basis of the qualification shown in the application form of the petitioner.

6. The petitioner continued to serve as Assistant Teacher for about 32 years. However, a few months before the date of his retirement i.e. 31.03.2019, when he was working as Principal at Primary School, Salempur, Pahadgarhi, a notice/order dated 21.12.2018 was issued from the Block Education Officer, Block Arnia stating that the petitioner by concealing the fact relating to his first appointment on compassionate grounds, had obtained the appointment against the post of Assistant Teacher. The petitioner was directed to submit his explanation alongwith evidence in regard to the same failing which it would be presumed that he had nothing to say in the matter, and departmental proceedings would be initiated against him.

7. The petitioner submitted a response to the aforesaid notice on 27.12.2018, wherein no reply was given on the

facts mentioned in the notice and the notice was termed as baseless.

8. The petitioner submitted another reply dated 05.01.2019 stating therein that he had applied for appointment on compassionate grounds as per his educational qualifications; however, he had given appointment on the post of *Chapراسي/Chowkidar*, which was not as per his educational qualifications. It was further submitted that after obtaining permission from the department, the petitioner passed the B.Ed. examination by taking leave without pay and thereafter on the basis of a decision dated 03.07.1986 by the Appointments Committee for Basic Schools, he was given appointment as trained Assistant Teacher, and he took charge on the said post on 16.08.1986. It was stated that he had not concealed any fact from the department and that as he was to attain the age of superannuation on 31.01.2019, and was to retire on 31.03.2019 after completing the academic session, the notice dated 21.12.2018 had no justification.

9. The Basic Education Officer, Bulandshahr upon considering the aforesaid reply, issued an office order dated 08.02.2019 stating therein that the petitioner had been appointed on the post of *Chowkidar* in the Junior High School, Badagaon, Block Arnia, District Bulandshahr and again he was appointed on compassionate grounds on the post of Assistant Teacher at Primary School, Badauli, Block Arnia and he took charge on 16.08.1986. In view of the aforesaid, the petitioner was directed to furnish certain documents within a week. The aforesaid office order dated 08.02.2019 is being reproduced below:-

“जिला बेसिक शिक्षा अधिकारी, बुलन्दशहर

पत्रांक प्रबन्ध/१५७०७-८/२०१८-१९

दिनांक ०८.०२.२०१९

कार्यालय आदेश

श्री शिवदत्त शर्मा(प्रधानाध्यापक),
प्राथमिक विद्यालय सलेमपुर, पहाड़गढ़ी,
विकास क्षेत्र अरनियां,
जनपद बुलन्दशहर।

आप अपने पत्र दिनांक ०५.०१.२०१९ का सन्दर्भ ग्रहण करें, जिसके माध्यम से आप द्वारा अवगत कराया गया है कि मृतक आश्रित के रूप में विभाग द्वारा आपकी नियुक्ति चौकीदार के पद पर जू०हा० स्कूल, बडागांव विकास क्षेत्र अरनियां में की गयी, जिसमें आपका अभिकथन है कि उक्त नियुक्त पद पर आप द्वारा दिनांक २०.०१.१९८२ को सशर्त योगदान किया था। दिनांक २०.०१.१९८२ के उपरान्त आप द्वारा बी०एड०(व्यवसायिक प्रशिक्षण) प्राप्त करने हेतु विभागीय अनुमति तथा अवैतनिक अवकाश लेकर बी०एड० (व्यवसायिक प्रशिक्षण) उत्तीर्ण किया। पुनः विभाग द्वारा मृतक आश्रित के रूप में आपकी नियुक्ति प्राथमिक विद्यालय बादौली विकास क्षेत्र अरनियां में सहायक अध्यापक के पद पर की गयी तथा आप द्वारा दिनांक १६.०८.१९८६ को कार्यभार ग्रहण किया गया।

अतः उक्त परिस्थिति को दृष्टिगत रखते हुये तत्काल प्रभाव से आपको आदेशित किया जाता है कि आप निम्नांकित अभिलेख एक सप्ताह के अन्दर अद्योहस्ताक्षरी कार्यालय में प्राप्त कराना सुनिश्चित करें।

१. चौकीदार पद हेतु आवेदित पत्रावली की छायाप्रति।
२. चौकीदार पद के नियुक्ति पत्र की छायाप्रति।
३. चौकीदार के पद पर की गयी दिनांक २०.०१.१९८२ की कार्यभार ग्रहण आख्या की छायाप्रति।
४. सशर्त अभिलेख मूल रूप में।
५. बी०एड०(व्यवसायिक प्रशिक्षण) विभागीय अनुमति तथा अवैतनिक अवकाश स्वीकृति आदेश की छायाप्रति।
६. अध्यापक नियुक्ति समिति का निर्णय दिनांक ०३.०७.१९८६ की छायाप्रति।
७. सहायक अध्यापक पद हेतु आवेदित पत्रावली की छायाप्रति।
८. सहायक अध्यापक के पद का नियुक्ति पत्र की छायाप्रति।
९. सहायक अध्यापक के पद पर की गयी दिनांक १६.०८.१९८६ की कार्यभार ग्रहण आख्या की छायाप्रति।
१०. ऐसा कोई आवश्यक अभिलेख जिसे आप देना चाहते हैं।

नोट:- यदि आप द्वारा निर्धारित समयावधि में उल्लेखित अभिलेख अद्योहस्ताक्षरी कार्यालय में प्राप्त नहीं कराये जाते हैं, तो विभागीय कार्यवाही अमल में लायी जायेगी।

ह० अप०
(अम्बरीष कुमार)
जिला बेसिक शिक्षा अधिकारी,
बुलन्दशहर।”

10. A three-member inquiry committee was constituted by an order dated 25.02.2019 of the District Basic Education Officer, Bulandshahar and the petitioner was granted opportunity to submit his written reply/explanation, by

means of a notice/communication dated 18.03.2019, which is being reproduced below:-

“कार्यालय खण्ड शिक्षा अधिकारी विकास क्षेत्र डिबाई।

पत्रांक/ २०१८-१९

दिनांक-१८.०३.२०१९

श्री शिवदत्त शर्मा प्रधानाध्यापक
उच्च प्राथमिक विद्यालय सलेमपुर पहाड़गढी
विकास क्षेत्र अरनियां।

कार्यालय जिला बेसिक शिक्षा अधिकारी बुलन्दशहर के कार्यालय आदेश पत्रांक पत्रांक/प्रबन्ध/१६४०४-०८/२०१८-१९ दिनांक २५.०२.२०१९ के द्वारा आपकी नियुक्ति से सम्बंधित प्रकरण की विस्तृत जाँच हेतु जाँच समिति गठन कर जाँच आख्या उपलब्ध कराये जाने हेतु आदेशित किया गया है। आदेश में आप द्वारा मृतक आश्रित के रूप में अनुकम्पा के आधार पर जूँहा० स्कूल, बडागांव विकास क्षेत्र अरनियां जनपद बुलन्दशहर में चौकीदार के पद भर नियुक्ति प्राप्त कर लेने के उपरान्त तथ्यों को छिपाते हुये पुनः सहायक अध्यापक के पद पर प्राथमिक विद्यालय बादौली विकास क्षेत्र अरनियां में नियुक्ति प्राप्त करने का उल्लेख किया गया है। इस प्रकार आपके ऊपर मृतक आश्रित के रूप में एक बार नियुक्ति प्राप्त करने के उपरान्त तथ्य गोपन कर द्वितीय नियुक्ति प्राप्त करने का आरोप है।

अतः आप उक्त आरोप के सम्बन्ध में अपना लिखित पक्ष / स्पष्टीकरण, जिसमें दोनो नियुक्तियों से सम्बंधित आप द्वारा आवेदित पत्रावली, नियुक्ति पत्र, कार्यभार ग्रहण आख्या व अपने बचाव से सम्बंधित अन्य साक्ष्य (यदि कोई हो) पत्र प्राप्ति के तीन दिन के अन्दर पंजीकृत डाक से अथवा स्वयं कार्यालय में उपस्थित होकर प्रस्तुत करना सुनिश्चित करें। आप द्वारा निर्धारित समयावधि के अन्तर्गत प्रस्तुत लिखित पक्ष / स्पष्टीकरण पर परीक्षणोपरान्त नियमानुसार जाँच आख्या जिला बेसिक शिक्षा अधिकारी बुलन्दशहर महोदय को प्रेषित की जायेगी। यदि आप द्वारा अपना लिखित पक्ष / स्पष्टीकरण निर्धारित समयावधि के अन्तर्गत प्रस्तुत नहीं कराया जाता है, तो यह मानते हुये कि आपके ऊपर लगाये गये आरोप सत्य है, तदनुसार जाँच आख्या जिला बेसिक शिक्षा अधिकारी बुलन्दशहर महोदय की सेवा में प्रेषित कर दी जायेगी।

(चन्द भूषण प्रसाद)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र डिबाई

(पुष्पेन्द्र कुमार)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र लखावटी

(प्रकाश चन्द्र)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र अगौता”

(emphasis supplied)

11. The inquiry committee submitted an inquiry report dated 28.03.2019 before the District Basic Education Officer. A copy of the inquiry report was placed before the writ Court alongwith a counter affidavit filed on behalf of the State-respondents. Certain extracts of the aforesaid inquiry report which have been noticed in the judgment of the learned Single Judge, are being reproduced herein below:-

“श्री शिवदत्त शर्मा प्रधानाध्यापक प्राथमिक विद्यालय सलेमपुर पहाड़गढी विकास क्षेत्र अरनियां द्वारा प्रस्तुत आख्या/प्रार्थना पत्रों, पत्रावली में उपलब्ध सेवा पुस्तिकाओं व अन्य साक्ष्यों के आधार पर प्रकरण की जाँच आख्या निम्नवत् है-

०१. श्री शिवदत्त शर्मा द्वारा अपने पिता स्व० श्री राम स्वरूप शर्मा की मृत्यु के उपरान्त मृतक आश्रित के रूप में जूनियर हाई स्कूल, बड़ागांव विकास क्षेत्र अरनियां जनपद बुलन्दशहर में चौकीदार के पद पर की गयी नियुक्ति के क्रम में दिनांक २०.०१.१९८२ को कार्यभार ग्रहण किया गया।

०२. चौकीदार के पद पर नियुक्ति के समय श्री शिवदत्त शर्मा की शैक्षिक योग्यता स्नातक थी।

०३. इसके उपरान्त आपके कार्यालय (कार्यालय जिला बेसिक शिक्षा अधिकारी बुलन्दशहर)के पत्रांक:प्रबन्ध/१८३६-३७/८६-८७ दिनांक १६.०८.१९८६ के द्वारा श्री शिवदत्त शर्मा की नियुक्ति प्राथमिक विद्यालय बादौली विकास क्षेत्र दनकौर जनपद बुलन्दशहर में सहायक अध्यापक के पद पर की गयी, जिसके क्रम में श्री शिवदत्त शर्मा पुत्र स्व० श्री राम स्वरूप शर्मा द्वारा दिनांक १६.०८.१९८६ को ही प्राथमिक विद्यालय बादौली विकास क्षेत्र दनकौर जनपद बुलन्दशहर में सहायक अध्यापक के पद पर कार्यभार ग्रहण किया गया।

०४. श्री शिवदत्त शर्मा द्वारा अपने प्रार्थना पत्र दिनांक २८.१२.२०१८, जो शिक्षा सचिव महोदय बेसिक शिक्षा विभाग लखनऊ (उत्तर प्रदेश) को सम्बोधित है, में स्पष्ट उल्लेख किया गया है कि "कार्यालय जिला बेसिक शिक्षा अधिकारी बुलन्दशहर के आदेश संख्या ६०३४-८/८३-८४ दिनांक १३.०२.१९८४ के अनुसार मैंने बी०एड० के लिये लिखित अनुमति मांगी थी, जिसमें आदेश हुआ कि श्री शिवदत्त शर्मा, चौकीदार जूनियर हाई स्कूल बड़ागांव को उनके प्रार्थना पत्र दिनांक ०६.०२.१९८४ तथा प्रधानाध्यापक की संस्तुति के आधार पर बी० एड० शिक्षा / शास्त्री में प्रवेश की अनुमति दी जाती है जिसके बाद मैंने वर्ष १९८४ में अनुक्रमांक ११६ अपनी बी०एड० शिक्षा/शास्त्री में प्राप्त की"। श्री शिवदत्त शर्मा द्वारा उक्त से सम्बंधित कोई भी साक्ष्य संलग्न नहीं किया गया है। ५. श्री शिवदत्त शर्मा द्वारा अपने प्रार्थना पत्र दिनांक २८.१२.२०१८, जो शिक्षा सचिव महोदय बेसिक शिक्षा विभाग लखनऊ (उत्तर प्रदेश) को सम्बोधित हैं, में स्पष्ट उल्लेख किया गया है कि "सहायक अध्यापक के पद पर मेरी नियुक्ति मेरे आवेदन पत्र और मेरी योग्यता के अनुसार प्रदान की गयी है,ना कि मृतक आश्रित के रूप में या किसी अन्य कारण का लाभ देकर सहायक अध्यापक के पद पर नियुक्त किया है, यह नियुक्ति प्रार्थी को उसकी योग्यता के मानदंडों को देखकर और मुझे सहायक अध्यापक पद के लिये उपयुक्त एवं योग्यता को देखकर दी गयी"। श्री शिवदत्त शर्मा द्वारा आवेदन से सम्बंधित कोई भी साक्ष्य संलग्न नहीं किया गया है।

उक्त के आधार पर निम्न तथ्य प्रमाणित हो रहे हैं-

०१. श्री शिवदत्त शर्मा द्वारा अपने पिता स्व० श्री राम स्वरूप शर्मा की मृत्यु के उपरान्त मृतक आश्रित के रूप में जू०हा० स्कूल, बड़ागांव विकास क्षेत्र अरनियां जनपद बुलन्दशहर में चौकीदार के पद पर नियुक्ति प्राप्त कर ली गयी।

०२. शिक्षक भर्ती नियमावली के अनुसार प्राथमिक विद्यालयों में सहायक अध्यापक के पद पर भर्ती के लिये तत्समय प्रशिक्षण योग्यता के रूप में बी०एड० प्रशिक्षण अर्ह नहीं था, जिसके कारण श्री शिवदत्त शर्मा की सहायक अध्यापक के पद पर सामान्य भर्ती में किया गया चयन नियम विरुद्ध है।

०३. श्री शिवदत्त शर्मा की नियुक्ति मृतक आश्रित के रूप में सहायक अध्यापक के पद पर होना भी नियम विरुद्ध है, क्योंकि इनके द्वारा पूर्व में ही मृतक आश्रित के रूप में चौकीदार के पद पर नियुक्ति का लाभ प्राप्त किया जा चुका है।अतः जाँच समिति की जाँच आख्या आवश्यक कार्यवाही हेतु सेवा में सादर प्रेषित है।

संलग्न – पत्रावली।

(चन्द भूषण प्रसाद)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र डिबाई

(पुष्पेन्द्र कुमार)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र लखावटी

(प्रकाश चन्द्र)
खण्ड शिक्षा अधिकारी
विकास क्षेत्र अगौता"

(emphasis supplied)

12. On the basis of inquiry report and the available facts, the District Basic Education Officer, Bulandshahar, by an order dated 28.03.2019, which was impugned in the writ petition, cancelled the appointment of the petitioner with immediate effect. Certain portions of the aforesaid order which have been noticed by the learned Single Judge in the judgment under appeal are being extracted below:-

“जाँच समिति द्वारा प्रस्तुत जाँच आख्या से स्पष्ट है कि श्री शिवदत्त शर्मा द्वारा अभिलेखों तथा तथ्यों को छुपाकर सहायक अध्यापक के पद पर बी०एड० योग्यता के आधार पर नियुक्ति प्राप्त की जबकि अध्यापक सेवा नियमावली १९८१ भाग ०४- अर्हताये के परन्तुक ८ के अन्तर्गत शैक्षिक अर्हताएँ निम्नवत हैं-

०१ . अध्यापक पद हेतु शैक्षिक योग्यता-माध्यमिक शिक्षा परिषद उत्तर प्रदेश की इंटरमीडिएट परीक्षा या राज्य सरकार द्वारा उसके समकक्ष मान्यता प्राप्त कोई अन्य परीक्षा जिसमें यथास्थिति विज्ञान, गणित, कॉफ्ट या विशिष्ट भाषा का कोई एक विषय रहा हो जिससे उसकी ऐसी परीक्षा में प्रयोजनार्थ परीक्षा ली गयी हो।

०२. प्रशिक्षण अर्हता जिसके अन्तर्गत बेसिक अध्यापक प्रमाण पत्र, हिन्दुस्तानी अध्यापक प्रमाण पत्र, जूनियर अध्यापक प्रमाण पत्र, अध्यापक प्रमाण पत्र या सरकार द्वारा उसके समकक्ष मान्यता प्राप्त कोई अन्य प्रशिक्षण पाठ्यक्रम भी हो।

श्री शिवदत्त शर्मा द्वारा अपने पिता की मृत्यु के उपरान्त वर्ष १९८२ में मृतक आश्रित के रूप में अनुकम्पा के आधार पर चौकीदार के पद पर नियुक्ति प्राप्त करने के उपरान्त वर्ष १९८६ में तथ्यों को छुपाकर तथा अध्यापक पद की आवश्यक अर्हताएँ प्राप्त न होने पर भी सहायक अध्यापक के पद पर नियुक्ति प्राप्त किया जाना अवैधानिक है।

अतः इस कार्यालय के पत्रांक: प्रबन्ध / १८३६-३७/८६-८७ दिनांक १६.०८.१९८६ से श्री शिवदत्त शर्मा द्वारा सहायक अध्यापक (प्राथमिक विद्यालय) के पद की प्रशिक्षण योग्यता न रखते हुये भी सहायक अध्यापक के पद पर प्राप्त की गयी नियुक्ति को तत्काल प्रभाव से निरस्त किया जाता है।”

(emphasis supplied)

13. Aggrieved against the aforesaid order dated 28.03.2019 cancelling his appointment, the petitioner preferred a writ petition which has been dismissed in terms of the judgment under appeal.

14. Learned Single Judge while dismissing the writ petition has recorded his reasoning and conclusion in the following manner:-

"४. पक्षों के विद्वान अधिवक्ता की बहस को श्रवण किया गया एवं पत्रावली का ध्यानपूर्वक परिशीलन किया गया। वर्तमान प्रकरण में यह अविवादित है कि, याचिकाकर्ता १०.११.१९८१

को मृतक आश्रित के रूप में चौकीदार के पद पर नियुक्ति हुआ और उसके प्रार्थना पत्र पर, अवैतनिक अवकाश पर उसे बी.एड. (शिक्षा शास्त्री) की शिक्षा प्राप्त करने की अनुमति दी गयी। इसके उपरान्त कब उसने चौकीदार के पद से त्याग पत्र दिया और किस प्रक्रिया के अंतर्गत परिषदीय अध्यापकों की नियुक्ति/पदोन्नति समिति ने उसको सहायक अध्यापक के पद पर नियुक्ति कर दिया, इसका पत्रावली पर कोई साक्ष्य नहीं है। यह भी जानकारी नहीं है कि यह नवीन नियुक्ति थी अथवा पदोन्नति। यह भी अस्वीकार नहीं किया जा सकता कि बी.एड, सहायक अध्यापक की अर्हता नहीं है। उसकी अर्हता बी.टी.सी. है जो याचिकाकर्ता के पास नहीं है। अतः वो सहायक अध्यापक के पद के लिए आरम्भ से ही अर्ह नहीं था।"

(emphasis supplied)

15. The learned Judge, held that the appointment of the petitioner was against the rules; however, since he had worked for a period of 32 years and was close to his age of superannuation, the writ petition was disposed of without interfering in the order impugned, by providing that the payments made to the petitioner towards salary and other allowances would not be recovered.

16. Contention of the learned counsel appearing for the appellant-petitioner is based primarily on the assertion that the petitioner having worked on the post of Assistant Teacher for a fairly long period, the cancellation of appointment could not have been ordered at this stage particularly when the petitioner was to retire from service upon attaining the age of superannuation. As regards the lack of the requisite training qualification i.e. BTC, it was urged that at that point of time there was shortage of BTC trained teachers, consequently it was a practice in the basic schools to appoint teachers having a qualification of B.Ed.

17. Controverting the aforesaid submissions learned counsel appearing for the State-respondents and the Basic Shiksha Parishad have argued that the petitioner's appointment as Assistant Teacher was illegal inasmuch as he did not possess the prescribed training qualification at the time of his appointment. It has been pointed out that despite

ample opportunity to produce the relevant documentary evidence in regard to his assertion that he had obtained the B.Ed. degree after obtaining permission from the concerned authority and also to support his claim with regard to his appointment having been validly made by following the due selection procedure under the relevant rules, the petitioner could not adduce any material to demonstrate that his appointment had been validly made or that he possessed the requisite qualification for the post.

18. It is also submitted that the petitioner having once been appointed on compassionate grounds on the post of *Chowkidar/Chapراسي* in a recognized basic school, he could not have obtained appointment again on compassionate grounds on the post of Assistant Teacher.

19. The principal issue, which arises for consideration, is as to whether in the light of the admitted position that the petitioner having not possessed the necessary qualification for the post of Assistant Teacher, the appointment granted to him without following due procedure, could be held to be valid.

20. The other issue, which would arise for consideration, would be as to whether the petitioner, having once availed the benefit of appointment on compassionate grounds on the post of *Chaukidar/Chapراسي*, could claim appointment on the post of Assistant Teacher again on compassionate grounds.

21. In the case of **State of Rajasthan Vs. Umrao Singh**¹, it was held that once a person is granted compassionate appointment and he accepts it, the right to claim further

1 (1994) 6 SCC 560

appointment on a higher post under the same scheme is extinguished. Relevant paragraphs of the said judgment are reproduced as under:-

“8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. **On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”.** Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

9. Since both the sides relied on *Naresh Kumar Bali's* case [(1994) 4 SCC 448 : 1994 SCC (L&S) 909 : (1994) 27 ATC 611 : JT (1994) 4 SC 184] , we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under: (SCC p. 452, para 15)

“Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. *Thus, the appointment on compassionate ground as per the scheme had been completed.*”

(emphasis supplied)

22. A similar view was also taken in **State of Haryana Vs. Naresh Kumar Bali²**; paragraph 15 thereof is as under:-

“15. We have set out the factual background in full. The letter of the respondent's mother dated 3-8-1988 categorically states that her son (respondent) was willing to be appointed as a clerk. It was on that the appointment letter, extracted above, came to be issued. **Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for**

2 (1994) 4 SCC 448

the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed. The claim for appointment as Inspector was never made earlier. The High Court without even analysing the circumstances under which the seven persons mentioned in its judgment came to be appointed as Police Officers (ASI or Inspector), straight away has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning. The positive finding ought to have been given whether the case of the respondent was comparable with those of the seven and then a finding of discrimination ought to have been rendered.”

(emphasis supplied)

23. In **Krishna Kumar Pandey Vs. State of MP³**, it was held that seeking further or upgraded appointment under the scheme of compassionate appointment leads to ‘endless’ compassion which is against the spirit of such scheme. Relevant paragraphs of the said judgment are reproduced as under:-

“5. Now petitioner's grievance is that since petitioner is Higher Secondary pass, therefore, he should be given appointment on a Class III post like Ward Boy, Patwari, Registration Clerk, etc. in terms of the circular of General Administration Department dated 18-8-2008.

6. Law in this regard is well settled that there cannot be an endless compassion. Once petitioner accepted appointment on compassionate basis on a Class IV post then, he cannot seek upgradation of his appointment after accepting appointment on a Class IV post and, therefore, in the light of the judgment of Hon'ble Supreme Court in case of *State of Rajasthan v. Umrao Singh*, (1994) 6 SCC 560, wherein it is held that **once a compassionate appointment was given and accepted, the right to such appointment held stood exhausted. Second consideration for a higher post is not warranted.** Therefore, prayer for grant of compassionate appointment on a higher post after accepting compassionate appointment on a Class IV post, cannot be granted to the petitioner.”

(emphasis supplied)

24. In a similar set of facts in the case of **D. Dinesh Chandra Sharma Vs. District Inspector of Schools⁴**, it has been observed that eligibility for a higher post like

3 (2023) SCC OnLine MP 7036

4 (2000) SCC OnLine All 861

Assistant Teacher is separate from the compassionate appointment process and it must adhere to the requisite qualification and selection rules. It was stated thus:-

“6. After hearing learned counsel for the petitioner at length and going through the entire documents filed along with the affidavit, we are of the view that when the father of the petitioner died petitioner was legally entitled to get an appointment on compassionate ground and he was rightly appointed as an assistant clerk as he was qualified for that post only having qualification of intermediate only. **The law on compassionate ground is very clear. It is for the purpose of giving financial assistance to the dependents and the family members of the deceased who was a bread earner and died during the course of his employment.** It is apparent from the order passed by the District Inspector of Schools, Meerut, dated 24 April 1998, that the officer concerned considered the relevant rules and law reported in 1996 (2) L.L.N. 225 (vide supra), wherein it has been clearly held that **no person is entitled to claim the benefit under dying-in-harness rules more than once. Therefore, it cannot be said that the petitioner was entitled to get benefit of dying-in-harness rules for second time when he became qualified for the post of assistant teacher.** We are of the view that the case of the petitioner is fully covered by the decision quoted above and the judgment of the learned Single Judge does not require any interference in special appeal.”

(emphasis supplied)

25. The question as to whether once compassionate appointment is accepted, can there be a second consideration on a higher post under the same right was considered in the case of **Ashwani Kumar Gautam Vs. State of Uttar Pradesh**⁵, and it was held that accepting a post on compassionate ground, even if it is a lower post, concludes the entitlement to any subsequent claim for a higher post under the same scheme.

“10. The question which arises in this appeal for consideration is **whether once compassionate appointment is accepted, can there be a second consideration on a higher post under the same right.**

11. It is an admitted fact that the appellant accepted the offer, of appointment against a Class-III post and pursuant thereto, he joined the service on 18th February, 1994. **We are, therefore, of the considered view that the appellant, having accepted**

the compassionate appointment against a Class-III post, his right to be considered under the Act/Regulations is exhausted. The appellant, at the most, was entitled to be considered for giving compassionate appointment. It does not give him indefeasible right to claim appointment against his choicest post. Therefore, we are of the considered view that the appellant cannot now apply or pursue to reconsider his claim under the same provision for giving a higher position keeping in view his qualification.

12. Again in the case of *State of M.P. v. Ramesh Kumar Sharma*, 1994 Supp (3) SCC 661 : AIR 1994 SC 845 : (1994 AIR SCW 218), the Apex Court has held that a person claiming compassionate appointment has no right to any particular post of his choice.

13. In view of the exposition of law by the Apex Court, it stands concluded that once an incumbent accepts the post offered to him under the Rules or Regulations governing compassionate appointment, the right extended to him under the said Rules or Regulations, stands exhausted and there cannot be any second consideration for the said right.”

(emphasis supplied)

26. The petitioner, having not possessed the requisite training qualification, i.e. BTC for being considered for appointment on the post of Assistant Teacher is not disputed.

27. In a similar set of facts, the question with regard to the requirement of possessing basic qualifications for the post of Assistant Teacher was examined in the case of **Mohd. Sartaj Vs. State of Uttar Pradesh**⁶ and, it was observed that in a case where, admittedly, the appellant did not hold the training qualification to be appointed to the post of Assistant Teacher as prescribed under the relevant rules, the orders cancelling the appointment could not be faulted.

28. The position in law with regard to non-entitlement of appointment on compassionate grounds more than once, is fairly well settled. The petitioner was, therefore, not entitled to claim the benefit of appointment on the post of Assistant Teacher on compassionate grounds, having availed the said

⁶ (2006) 2 SCC 315

benefit earlier. The legal position regarding the other point that once the basic qualifications for the post in question, are not fulfilled, no claim can be made for appointment, also needs no further elaboration, as it is well settled that in case where the basic qualifications are lacking, the person concerned cannot claim a right for appointment to the post in question.

29. The fact with regard to the petitioner, having been granted ample opportunity to produce material to demonstrate that his appointment on the post of Assistant Teacher had been made after following the due procedure, is not disputed.

30. Learned Single Judge has taken due note of the fact that despite opportunity, the petitioner could not adduce any evidence to demonstrate that his appointment on the post of Assistant Teacher had been made after following the relevant statutory rules. It has also been taken note of that the petitioner did not possess the essential training qualification for being appointed on the said post, a fact which, at no stage, was disputed by the petitioner.

31. Having regard to the aforesaid discussion, we are of the view that the order dated 28.3.2019, cancelling the appointment of the petitioner as Assistant Teacher cannot be faulted on both counts, i.e, (i) the petitioner, having admittedly not possessed the requisite training qualification as prescribed under the relevant rules for being considered for appointment on the post of Assistant Teacher; and (ii) the petitioner, having earlier been appointed on compassionate grounds on the post of *Chaukidar/Chaprasi*, the said right to claim appointment on compassionate ground stood

exhausted and it would not open to the petitioner to seek appointment to the post of Assistant Teacher again on compassionate grounds.

32. The fact that the petitioner had worked for a fairly long period, has been duly taken note of by the learned Single Judge and accordingly while disposing of the writ petition without interfering in the order impugned, it has been provided that the payments made to the petitioner towards salary and other allowances would not be recovered.

33. The judgment of the learned Single Judge, is based on an appreciation of the facts and the material on record and, after recording cogent reasons. We are not persuaded to take a different view in the matter.

34. The appeal is devoid of merit and is, accordingly, **dismissed**.

Order Date :- 16.1.2025

Shahroz/RKK/-

(Dr Y K Srivastava, J) (V K Birla, J)