

Court No. -5

Case :- WRIT - A No. - 15450 of 2024

Petitioner :- Shailendra Kumar

Respondent :- The State Of U.P. And 5 Others

Counsel for Petitioner :- Devesh Kumar Giri, Som Veer

Counsel for Respondent :- C.S.C., Gaurav Bishan

With

Case :- WRIT - A No. - 17760 of 2024

Petitioner :- Shitesh Kumari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Krishna Kumar Chand

With

Case :- WRIT - A No. - 16988 of 2024

Petitioner :- Anupam

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- Bipin Bihari Pandey, C.S.C.

With

Case :- WRIT - A No. - 16636 of 2024

Petitioner :- Deep Mala Kushwah

Respondent :- District Basic Education Officer And 2 Others

Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh, Ram
Ashish Pandey

Counsel for Respondent :- Ajeet Singh, C.S.C.

With

Case :- WRIT - A No. - 18085 of 2024

Petitioner :- Anirudh Yadav

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Aditya Yadav, Himanshu
Bansal, Shivam Yadav

Counsel for Respondent :- C.S.C., Devesh Vikram

Hon'ble Ajay Bhanot, J.

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

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I. Introduction :

(A). Relief Sought:

2. The prayer made in the instant writ petition is to mandamus the respondents to appoint the petitioner as Assistant Teacher on compassionate grounds. The claim for appointment as Assistant Teacher on compassionate grounds has been made by the petitioner on the footing of the Government Orders dated 04.09.2000 and 15.02.2013.

3. The same prayer has been made in the companion writ petitions. All the writ petitions are being decided together since common questions of law arise for consideration therein.

¹ 1998 SCC OnLine All 292

I(B). The issues arising for consideration:

4. The following questions arise for consideration:

A) Whether the prayer of mandamus for appointing the petitioner as a teacher on the footing of the Government Orders dated 04.09.2000 and 15.02.2013 will enforce the Constitution and law or will be in the teeth of the same?

B) Whether the aforesaid Government Orders dated 04.09.2000 and 15.02.2013 are in consonance with Articles 14, 16 of the Constitution of India and the fundamental right to education vested in children by virtue of Article 21A of the Constitution of India and the rights conferred upon children by the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'Right to Education Act, 2009)?

C) Whether the Government Orders dated 04.09.2000 and 15.02.2013 are consistent with the Rule 5 of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as 'Dying in Harness Rules, 1999'²)?

II. Submissions from the Bar:

5. Shri Indra Raj Singh, learned counsel, Shri Som Veer, learned counsel, Shri Siddharth Khare, learned counsel,

² Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 amended as Uttar Pradesh Recruitment of Dependants of Government Servants Dying In Harness (Fifth Amendment) Rules, 1999, dated Lucknow, January 20, 1999

and Shri Aditya Yadav, learned counsel for the respective petitioners have made the following submissions:

(I) The petitioner is entitled for appointment as Assistant Teacher in a Primary School on compassionate grounds in light of the Government Orders dated 04.09.2000 and 15.02.2013.

(II) The aforesaid Government Orders relate to compassionate appointments which are an exception to the general mode of appointments to public posts. Hence the Government Orders dated 04.09.2000 and 15.02.2013 are not liable to examination on the touchstone of Articles 14, 16 and 21-A of the Constitution of India.

(III) In the alternative, the said Government Orders are not violative of Articles 14, 16 and 21-A of the Constitution of India, and do not transgress the provisions of Rule 5 of the Dying in Harness Rules, 1999.

(IV) The petitioner possesses minimum eligibility qualifications for appointment as Assistant Teacher on compassionate grounds under the said Government Orders. A mandamus is liable to be issued to implement the rights of petitioner under the said Government Orders dated 04.09.2000 and 15.02.2013.

6. Shri Kunal Ravi Singh, learned Chief Standing Counsel assisted by Shri Subhranshu Shekhar, learned

Additional Chief Standing Counsel for the respondent-State have made the following submissions:

- (i) The rules of appointment on compassionate grounds are made only for the welfare of employees and are an exception to the general mode of appointment to public post. The Government Orders dated 04.09.2000 and 15.02.2013 are not amenable for testing on the anvil of Article 21-A of the Constitution.
- (ii) In the alternative, it is submitted that the said Government Orders do not contravene the provisions of Articles 14, 16 and Article 21-A of the Constitution.
- (iii) The said Government Orders only supplement the scheme of Rule 5 of the Dying in Harness Rules, 1999 and the two provisions can be harmoniously implemented.
- (iv). Competitive merit of candidates is not examined in the process of making appointments on compassionate grounds. However, all candidates have to possess the minimum eligibility qualifications. Satisfaction of eligibility criteria itself is an index of merit. No further exercise to determine the merit is required in cases of appointment on compassionate grounds.
- (v) The case of the petitioner for appointment on compassionate grounds is liable to be determined in the first instance in particular facts of each case by the

competent authority as per the Government Orders dated 04.09.2000 and 15.02.2013.

7. The above arguments have been adopted by Shri Ajeet Singh, learned counsel, Shri Bipin Bihari Pandey, learned counsel, Shri Gaurav Bishan, learned counsel, Shri Krishna Kumar Chand, learned counsel, Shri Devesh Vikram, learned counsel, for the respective respondent-Basic Shiksha Adhikaris.

8. Shri Kunal Shah, learned amicus curiae and Shri Abhinav Mehrotra, learned amicus curiae have made the following submissions:

(a) The Government Orders dated 04.09.2000 and 15.02.2013 are liable to stand the test of Articles 14, 16 and 21-A of the Constitution against the same for their validity.

(b) The Government Orders dated 04.09.2000 and 15.02.2013 violate Articles 14, 16 and the fundamental right to education vested in children under Article 21-A of the Constitution of India, and the statutory rights conferred upon children under the Right to Education Act, 2009.

(c). The procedure adopted for appointment of teachers on compassionate grounds under the Government Orders dated 04.09.2000 and 15.02.2013 does not test merits of the candidate.

(d). The right of children to quality education can only be realized if most meritorious candidates from open market are appointed as teachers.

(e). The Government Orders dated 04.09.2000 and 15.02.2013 are incompatible with Rule 5 of the Dying in Harness Rules, 1999.

(f). The Government Orders dated 04.09.2000 and 15.02.2013 are ultra vires Articles 14, 16 and 21-A of the Constitution.

III. Constitution and Appointments to Government Post/Services:

9. The Constitution of India contains copious provisions for appointment to government posts/services. Some of the provisions which can be referenced are: Article 14 of the Constitution is the equality clause in the Constitution, Article 15 of the Constitution proscribes discrimination and enables special provisions for socially and economically backward classes and scheduled castes. Article 16 of the Constitution provides for the recruitment to posts in government services and enables reservations for certain classes including SCs, STs and OBCs. Article 309 of the Constitution vests the State with powers to frame service Rules.

10. Constitutional law renderings of the aforesaid provisions hold that the recruitment to government services and posts should be made through a transparent and open process. Recruitment processes under the Constitution for appointment to government posts prise out the best talent to serve the country by enabling widest possible participation of eligible citizens, and selection based on competitive merit. The Constitutional

scheme ensures equality in opportunity to participate in the selection process, provides for representation of various categories of backward classes and scheduled castes and scheduled tribes in government services, and maintains the ascendancy of merit in appointments.

11. Appointments made in pursuance of said recruitment processes ensure an efficient administration which is leavened with social justice and solely geared to service of the citizenry. The recruitment processes undertaken in adherence to Constitutional norms aid the transition of a nation riven with disparities to a republic defined by an egalitarian order.

IV. Appointments on compassionate grounds:

(A). General Principles:

12. The process of appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees.

13. The sole purpose of compassionate ground appointments is to provide immediate financial succour to a family of the deceased government employee which faces sudden financial destitution after the death of the earning member. The compassionate ground appointments are not intended to confer lasting social

status. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

14. Appointments on compassionate grounds give a sheltered entry to the dependants of a deceased employee into government service without the rigors of an open selection procedure. The competitive merit of candidates is of no relevance since the appointments are made without adopting the public selection procedure. Norms of recruitment are completely relaxed for appointment on compassionate grounds. However the law requires the applicants to possess minimum qualifications for the posts.

15. Considering the aforesaid limitations of compassionate ground appointments, it has been held by good authority that there is no vested right to an appointment on compassionate grounds. Further, the right to compassionate ground appointment is derived only from specific provisions in this regard and the same have to be strictly adhered to. An unduly liberal view while interpreting the aforesaid rules may make the appointments vulnerable to reproach by the equality clause of the Constitution.

16. Unlimited appointments on compassionate grounds made without examination of relevant factors as per law or in the teeth of holdings of Constitutional Courts in point will “shear the cloak of legality” from these

appointments and will reduce the said appointments to a class of hereditary appointments. Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment.

IV(B). Case Laws:

17. The narrative has the benefit of cases in point. The purpose of appointment on compassionate grounds was explained by the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana**³. Jurisprudential rationale laid down in **Umesh Kumar Nagpal (supra)** is the locus classicus which provides the sole rationale for compassionate appointments:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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

3 (1994) 4 SCC 138

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.”

18. The same propositions were expounded by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**⁴:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the

4 (1998) 5 SCC 192

general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee.....”

19. A Full Bench of this Court in Shiv Kumar Dubey and others v. State of U.P. and others⁵ set forth the law as under:

“31. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”

20. This Court in **Ashish Yadav v. Managing Director, U.P. State Road Transport Corporation and 2 others**⁶ discussing the purpose of compassionate appointment held as under:

“10.The sole justification to make compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

15. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.”

21. There is consensus among Constitutional Courts in the country on the issue of compassionate appointments. The Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁷ summarized the aforesaid key principles which guide appointments on compassionate grounds by holding :

“10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an exception craved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

22. The paramount importance for granting equal opportunity to all aspirants under the constitutional scheme for government appointments and the exception created by the concept of appointments on compassionate grounds was reiterated by the Supreme Court in **N.C. Santhosh v. State of Karnataka and others**⁸.

⁷ (2018) 2 CAL LT 177 (HC)

⁸ (2020) 7 SCC 617

N.C. Santhosh (supra) while citing the cases in point reaffirmed that such appointments did not create any vested right and also held that adherence to the criteria for such appointments is a mandatory requirement in law:

“13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *SAIL v. Madhusudan Das* [*SAIL v. Madhusudan Das*, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in *SBI v Raj Kumar* [*SBI v. Raj Kumar*, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in *MGB Gramin Bank v. Chakrawarti Singh* [*MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

17. The above discussion suggest that the view taken in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on *Canara Bank v.M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik v. State of Karnataka* [*Uday Krishna Naik v. State of Karnataka*, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648] , it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in *State of H.P. v. Shashi Kumar* [*State of H.P. v. Shashi Kumar*, (2019) 3 SCC 653 : (2019) 1 SCC

(L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.”

23. Absence of a vested right, mandate of the constitutional scheme of recruitment and the need to strictly adhere to the rules governing the grant of appointment on compassionate grounds was also emphasized by the Supreme Court in the **Director of Treasuries in Karnataka and another v. Somyashree**⁹ :

“7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized 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.”

24. The purpose and limitations of appointments on compassionate grounds including the need to avoid conferring benefits merely on sympathetic considerations alone were reiterated by the Supreme Court in **State of Haryana and another v. Ankur Gupta**¹⁰. In **Ankur Gupta (supra)** it was clearly observed that the appointments on compassionate grounds are not source of recruitment and do not unduly interfere in the rights of other persons who are eligible for appointment against that post:

“6. As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of [Articles 14](#) and 16. Appointment on compassionate ground cannot be

10 (2003) 7 SCC 704

claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr.* (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in [Umesh Kumar Nagpal v. State of Haryana and Ors.](#) (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it

is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.”

25. More recently the Supreme Court in **Tinku v. State of Haryana and others**¹¹ summed up the position of law settled over the years:

“12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.

15. The purpose, therefore, of such policies is to give immediate succour to the family. When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government of Haryana cannot be said to be in any case unjustified or illogical, especially when compassionate appointment is not a vested right.”

26. Lately in **Canara Bank v. Ajitkumar G.K.**¹² the Supreme Court elaborated the need for assessing the suitability on certain posts, the requirement of

11 2024 SCC OnLine SC 3292

12 2025 SCC OnLine SC 290

determining financial hardship and the caution of not merely giving one post for another post while making compassionate appointments:

“33. The next sub-issue, which cannot be overlooked, is this. The scheme of 1993 envisages assessment of the suitability of the claimant for compassionate appointment. As has been laid down in several decisions of this Court, noted above, the clauses forming part of the policy/scheme 30 for compassionate appointment have to be followed to the letter. Without the respondent having been subjected to a suitability test, the Division Bench plainly fell in error in directing the respondent’s appointment in the category of clerk relying on the decision in *Canara Bank* (supra). It is of some significance that even *Canara Bank* (supra) did not order appointment but required reconsideration of the claim.

44. As pertinently held in *B. Kishore* (supra), indigence of the dependants of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Article 14 and 16 of the Constitution. Also, judicial decisions abound that in deciding a claim for appointment on compassionate grounds, the financial situation of the deceased employee's family must be assessed. In a situation otherwise, the purpose of the scheme may be undermined; without this evaluation, any dependent of an employee who dies while in service might claim a right to employment as if it is heritable.

45. The ratio decidendi of all these decisions have to be read in harmony to achieve the noble goal of giving succour to the dependants of the employee dying-in-harness, who are genuinely in need, and not with the aim of giving them a post for another post. One has to remember in this connection the caution sounded in *Umesh Kumar Nagpal* (supra) that as against the destitute family of the deceased there are millions of other families which are equally, if not more, destitute.”

27. The rationale for grant of compassionate ground appointments and various safeguards to prevent abuse of the process of compassionate ground appointments have been incorporated in the constitutional law

jurisprudence. The said holdings of the Constitutional Courts shall be read into the provisions for grant of appointment on compassionate grounds.

V.Statutory/Legal Framework:

V(A). Rules 5 of the Dying in Harness Rules, 1999 : Scope

28. The relevant Rules and government orders which govern the appointment on posts of Assistant Teachers on compassionate grounds are the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as ‘Dying in Harness Rules, 1999’¹³) and the Government Orders dated 04.09.2000 and 15.02.2013.

29. Rule 5 of the Dying In Harness Rules, 1999 is extracted hereunder:

“Rule 5. Recruitment of a member of the family of the deceased. -

(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 or a 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 purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in a relaxation of the normal recruitment rules, if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

¹³ Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 amended as Uttar Pradesh Recruitment of Dependants of Government Servants Dying In Harness (Fifth Amendment) Rules, 1999, dated Lucknow, January 20, 1999

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) When the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his service may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

(emphasis added)

30. Rule 5 of the Dying in Harness Rules, 1999 which contemplates grant of appointment on compassionate grounds was enacted in exercise of power vested under Article 309 of the Constitution of India. Rule 5 of the Dying in Harness Rules, 1999 contemplates grant of suitable employment on a post by the Government, provided the applicant /candidate fulfills the educational qualifications required for the post and is otherwise qualified for government service.

31. The statute has provided "suitable employment on a post" in Rule 5 of the Dying in Harness Rules, 1999 as

the legal standard/yardstick to guide the process of appointments on compassionate grounds.

32. It is noteworthy that the Dying in Harness Rules, 1999 employs the phrase “be given a suitable employment on a post”, and not the words “given an appointment on a post on the basis of eligibility”. “Suitable employment” is distinct from mere eligibility for appointment. Eligibility simply prescribes minimum qualifications for appointment to a post. The phrase “suitable employment” is of a much wider ambit. Eligibility in itself may not ensure suitability, though suitability presupposes eligibility among other things.

33. The phrase “suitable employment” in Rule 5 of the Dying in Harness Rules, 1999 is an aggregate of several factors. The meaning of “suitable” in the Black’s Law Dictionary is “fit and appropriate for their intended purpose”.

34. Rule 5 of the Dying in Harness Rules, 1999 mandates that an enquiry by the competent authority into the nature of “suitable employment on a post” should precede the grant of compassionate appointment. The said process requires consideration of the various elements which are comprised in “suitable employment on a post”.

35. Judicial authorities in past have examined few aspects of “suitable employment on a post”. One set of

authorities rendered by this Court posited that the possession of eligibility qualifications by the dependant is the sole criteria which will determine the suitable post. [Reference: **Special Appeal Defective No.620 of 2018 (Smt. Premlata v. State of U.P. and 3 others)**]

36. While turning down the aforesaid view the Supreme Court in **State of Uttar Pradesh and others v. Premlata**¹⁴ opined that the qualifications will not be the singular criteria for appointment on compassionate ground and the post held by the deceased is a relevant consideration:

“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 dependants 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.

10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of the 1974 Rules and has held that “suitable post” under Rule 5 of the 1974 Rules 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-à-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 dependant 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 dependant/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 breadearner. 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.”

37. A learned Single Judge of this Court in **Deepanshu v. State of U.P. and 2 others**¹⁵ has referred the following substantial questions of law to the Larger Bench:

“(i) Whether "suitable appointment" in terms of qualifications as given under Rule 5 of the 1974 Rules would mean that if a dependent of a deceased Government employee is qualified to hold a class III post, a supernumerary Class-III post should be created for him and he be given appointed, more so when it has been held by Hon'ble Supreme Court that a dependent of a deceased employee when he claims compassionate appointment is asking for an exception to be carved out for him against the normal rules governed by Article 14 and 16 of the Constitution for equality of opportunity in matters of public employment?

(ii) Whether the Coordinate Bench decision in Writ-A No. 10149 of 2021, 'Sameer Pandey vs. State of U.P. has correctly appreciated the observations of the Full Bench in Shiv Kumar Dubey (Supra)?

(iii) Whether the direction in Sameer Pandey (Supra) could have been given for ignoring the Government Order dated 18.05.2017, when it is settled law that compassionate appointment can be offered only in accordance with the Scheme including Government Order, if any, issued by the Government. The Government Order dated 18.05.2017 was not challenged in Writ-A No. 10149 of 2021 and the Authorities could not be issued any Mandamus to act against the provisions of the Scheme/Government Orders?”

38. The controversy at hand revolves around a yet completely different facet of “suitable employment on a post” in Rule 5 of the Dying in Harness Rules, 1999.

15 (Writ-A No.10832 of 2022)

39. What needs to be determined in the facts and circumstances of this case is the manner in which institutional needs and purposes relating to the post are liable to be factored in while determining the nature of “suitable employment on a post” under Rule 5 of the Dying in Harness Rules, 1999.

40. The line of enquiry into “suitable employment on a post” under the Rule 5 of the Dying in Harness Rules, 1999 will thus commence with the consideration of public purpose and institutional needs served by the post in question. This will include analysis of obligations cast by the Constitution and the laws upon the State to realize the rights of the citizens which are discharged through the said post. The nature of duties attached to the post and their impact on fundamental rights of citizens will then be examined. The degree of expertise or knowledge base and skill sets required to execute the said post will also be part of this process.

41. In the course of this exercise it will also have to be seen whether the institutional needs and public purpose will be fulfilled by waiving the constitutionally sanctioned process of open recruitment and appointment by competitive merit for the said post. As a corollary the consequences of making an appointment on the said post through a restricted process without the criteria of merit will also be assessed.

42. The said process of determining “suitable employment on a post” gives precedence to institutional needs over individual claims for appointment on the said post.

43. The said enquiry under Rule 5 of the Dying in Harness Rules, 1999 will determine whether the said post is tenable by compassionate ground appointments or not. However, in case a post is not found suitable for compassionate ground appointment, the process of enquiry under Rule 5 of the Dying in Harness Rules, 1999 will not come to a stand still. Alternative avenues of employment will be explored, and appropriate posts for “suitable employment” will be identified through the said process.

44. At this stage it would be apposite to examine the contention of the State that welfare of dependants of the deceased employee is the sole basis of making compassionate ground appointments to the exclusion of all other aspects.

45. By adopting this approach the respondents have strayed far away from their constitutional obligations and duties, and the same is reflecting in disorganized priorities of the respondents.

46. The Constitutional order of priorities of the State are these. Upholding of the Constitution and realization of fundamental rights of citizens is the avowed goal of

government. Strengthening the capacity of the government to achieve these goals by recruiting the most meritorious talent by the constitutionally sanctioned manner of recruitment comes next in the scale of importance. Welfare of employees inheres in a model employer and a welfare State. However, the welfare measures like grant of compassionate appointments cannot be made at the cost of the first two objectives.

V(B). Government Orders dated 04.09.2000 and 15.02.2013:

47. The Government Orders dated 04.09.2000 and 15.02.2013 adopt the Dying in Harness Rules, 1999 for making compassionate ground appointments in the Education Department. Further, the Government Orders dated 04.09.2000 and 15.02.2013 specifically provide for appointment on the post of teachers on compassionate grounds.

48. The Government Order dated 04.09.2000, relaxed qualifications for appointment as teachers on compassionate grounds. Opportunity was given to fulfill training qualifications even after grant of appointments. However, the Government Order dated 15.02.2013 while providing for appointment as teachers on compassionate ground has recalled the aforesaid relaxations in the Government Order dated 04.09.2000ⁱ. The Government Order dated 15.02.2013ⁱⁱ contemplates strict compliance of the criteria for educational qualification while making

such appointments. The Government Orders dated 04.09.2000 and 15.02.2013 are appended as Appendix I and II.

49. Briefly put the Government Orders dated 04.09.2000 and 15.02.2013 provide for possession of minimum qualification for the post of teachers as the only requirement for grant of appointment as teachers on compassionate grounds. The provisions do not prescribe any procedure or criteria for determination of merit of the applicants for appointment as teachers on compassionate grounds.

50. The tenor of the Government Orders dated 04.09.2000 and 15.02.2013 is that a virtual entitlement for appointment as a teacher on compassionate grounds is created once the dependant-claimant of the deceased-employee possesses the minimum eligibility qualifications for the said post.

VI. Constitutional and Statutory Setting:

VI(A). Children: Constitutional Rights, Duty of State and Role of Courts:

51. Children are the most precious assets of a nation, but also a most vulnerable class of the human species. Children are incapacitated from challenging their circumstances.

Constitutional Provisions:

52. The special provisions under the Constitution of India for holistic development, welfare and protection of

children under the Constitution were noticed by this Court in **Rajiv Kumar v. State of U.P.**¹⁶:

“20. The constitution makers understood the special needs of children and envisaged a distinct place for children in the Constitution. The children are constituted into a separate class of citizens under the Constitution. Various provisions devoted to the child in the text of the Constitution attest the paramount importance accorded to the welfare of the child in our Constitutional scheme.

21. The relevant provisions of the Constitution of the India in this regard are extracted hereunder:

22. Article 15(3) of the Constitution of India enables the State Government to make special provisions for children. The provision states thus:

"15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

23. Article 21(a) of the Constitution of India elevates the rights of education of children between 6-14 of age to a fundamental right.

24. It is noteworthy that free and compulsory education for children is also mentioned as a directive principle for formation of State Policy. Article 45 of the Constitution of India states thus:

"45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

25. Article 21(a) and Article 47 of the Constitution of India state thus: "21(A) The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

26. Article 39(e) and Article 39(f) of the Constitution of India acknowledge the vulnerability of the child against the exploitation and moral and material abandonment. The provision also affirms the realization of the incapacity of children to defend themselves against such adverse situations and contemplate a role of the State to create opportunities and facilities to enable the children to develop in a worthy manner.

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not

forced by economic necessity to enter avocations unsuited to their age or strength;

39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Duty of State:

53. The Constitution has also cast an iron clad obligation on the State to fulfil the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and de facto a guardian of children.

54. A clear and direct responsibility cast on the State to provide quality education to children is borne out from the words of Article 21A of the Constitution of India.

55. The State alongwith teachers were identified as key actors who influence the right of children to education by the Supreme Court in **Society for Unaided Private Schools of Rajasthan v. Union of India and another**¹⁷:

"5. Education is a process which engages many different actors: the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These actors influence the right to education."

Role of Courts:

56. The procedure for compassionate appointments invariably shields the said appointments from public sight and even knowledge. There is little possibility of the children understanding the consequences of dilution

17 (2012) 6 SCC 1

of merit in appointment of teachers on their right to education much less challenge the same. The Courts cannot idly watch the violation of fundamental rights of the children to education. Constitutional law contemplates a proactive role of Courts in these circumstances. Cases in point can be profitably referenced.

57. The Supreme Court in **Ashoka Kumar Thakur v. Union of India and others**¹⁸ also emphasized the special duties of the Courts while upholding the Right to Education Act, 2009:

“482.....It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.”

58. Uninterrupted vigilance by Constitutional Courts over the rights of children was reinforced by this Court in **Smt. Rekha v. State of U.P.**¹⁹ by holding as under:

“81. Constitutional oversight on the rights of children is perpetual, and the courts are permanent guardians of children. A old writer made the following observations as regards the role of law and duties of instruments of law towards children:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian.”

18 (2008) 6 SCC 1

19 Criminal Misc. Bail Application No.25993 of 2024

VI.(B). Article 21-A of the Constitution of India & the Right of Children to Free and Compulsory Education (RTE) Act, 2009:

“If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be”

~Thomas Jefferson

59. Education is the bulwark of a nation’s freedom and the engine of economic prosperity. Education has assured the survival of human civilization and holds the promise of success of human kind.

60. Since the first recordings of Indian thought the significance of learning has been a constant part of our civilizational consciousness. Article 21A of the Constitution has made education an irrevocable feature of the constitutional conscience. Article 21A vests the fundamental right to education in all children. The Right to Education Act, 2009 provides a detailed mechanism for implementation of the aforesaid right.

61. The paramount importance of “quality education” for children in our constitutional scheme is manifested in the Parliament’s Statement of Objects and Reasons for Article 21-A of the Constitution:

“....The Constitution of India in a directive principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age group gained

momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfil this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. In order to fulfil this goal, it is felt that an explicit provision should be made in the part relating to fundamental rights of the Constitution.

2. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third Amendment) Bill, 1997 was introduced in the Parliament to insert a new article, namely, Article 21-A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the Parliament Standing Committee on Human Resource Development and the subject was also dealt with in its 165th Report by the Law Commission of India.

3. After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of the Parliament, the proposed amendments in Part III, Part IV and Part IV-A of the Constitution are being made which are as follows:

4. The Bill seeks to achieve the above objects.”

62. The Supreme Court while interpreting the scope of Article 21A of the Constitution in **Ashoka Kumar Thakur (supra)** embedded the goal of quality education in constitutional law:

“490. The article seeks to usher in “the ultimate goal of providing universal and *quality* education”. (emphasis supplied) Implied within “education” is the idea that it will be quality in nature. Current performance indicates that much improvement needs to be made before we qualify “education” with “quality”. Of course, for children who are out of school, even the best education would be irrelevant. It goes without saying that all children aged six to fourteen must attend school and education must be quality in nature. Only upon accomplishing both of these goals, can we say that we have achieved total compliance with Article 21-A.

491. Though progress has been made, Parliament's observation upon passing Article 21-A still applies : the goal of providing universal and quality education “... still remains unfulfilled”.

634. An inversion in priorities between higher and primary/secondary education would make compliance with Article

21-A extremely difficult. It is not suggested that higher education needs no encouragement or that higher education should not receive more funds, but there has to be much greater emphasis on primary education. Our priorities have to be changed. Nothing is really more important than to ensure total compliance with Article 21-A. Total compliance means good quality education is imparted and all children aged six to fourteen regularly attend schools.”

63. Similarly Section 3 of the Right to Education Act, 2009 has to be read in accord with Article 21A of the Constitution and the holdings of Constitutional Courts in regard to right of children to quality education. When examined in that light, it is safe to hold that the right of children to education under the Right to Education Act, 2009 envisages quality education and no less.

VI(C). Role of Teachers:

64. Teachers are revered in Indian traditions and venerated in Indian constitutional law. Teachers have a decisive role in imparting education and play an indispensable part in inculcating values among the children.

65. Knowledge imparted by teachers creates avenues for further advancement, while values imbibed from teachers anchor young minds in sterling character traits. Best teachers always strive to ignite the passion for learning, and aspiration for service among their students. Teachers are role models for their students and for the society at large. Students of impressionable age are greatly influenced by their teachers who are regarded as torchbearers of virtue and paragons of learning. Teachers

prepare the students to become dutiful citizens and to assume the mantle of leadership of the nation.

66. The Supreme Court in **Avinash Nagra v. Navodaya Vidyalaya Samiti and others**²⁰ recalled both scriptures and thought of our country which accord pride of place to teachers and made the elevated role of teachers part of the constitutional discourse by holding :

“9. On the functions of a teacher, at p. 133, according to Dr Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. A good teacher, therefore, according to Dr Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be a self-confident learned man. The teacher, therefore, is the primary functionary to transmit the intellectual and ethical values to the young. He should encourage the attitude of free enquiry and rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual development but also has the obligation to attend to his moral, emotional and social growth as well.

10. Mahatma Gandhi, the Father of the Nation has stated that “a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them”. Shri Aurobindo has stated that “it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks”. Dr S. Radhakrishnan has stated that “we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must

20 (1997) 2 SCC 534

inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is *andhakaraniridhata gurur itya bhidhiyate*. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?” Swami Vivekananda had stated that “the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis”.

11.....Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs....”

VI(D). Teachers and realization of Article 21A of the Constitution of India:

67. In the course of securing the fundamental right of children to quality education the constitutional courts found that appointment of meritorious teachers is integral to the ecology of Article 21-A of the Constitution of India. In fact the constitutional goal of quality education of children cannot be achieved without appointing the best qualified and most meritorious teachers. The appointment of meritorious teachers and quality education to children are enmeshed so completely that the two cannot be disentangled. The discussion will be fortified by high authorities in point.

68. The significance of competence of teachers to discharge their duties to give quality education to children was underscored in **Avinash Nagra (supra)** thus:

“11..... The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.”

(emphasis supplied)

69. The Supreme Court in **Susmita Basu and others v. Ballygunge Siksha Samity and others**²¹ underlined that the noble profession of teaching is not merely an employment avenue by holding :

“5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.”

(emphasis supplied)

21 (2006) 7 SCC 680

70. In **State of Maharashtra v. Vikas Sahebrao Roundale and others**²² the Supreme Court declined to lower standards of teachers' training in view of the importance of intellectual capabilities and skills of a teacher to bring about excellence in education:

“12..... The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”

71. The endeavours of the State to secure the best teachers by prescribing high examination levels was linked to the right to quality education under Article 21A by the Supreme Court in **Ram Sharan Maurya and others**

v. **State of U.P. and others**²³ by setting forth the following proposition of law :

“68. While answering the first question, we therefore conclude that the fixation of cut-off at 65-60% in ATRE 2019 was perfectly valid and justified. Considering the large number of candidates who appeared at ATRE 2019 as well as the nature and difficulty level of the examination, the cut-off was designed to draw the best available talent. The endeavour on part of the State in attempting to secure the best of the teachers was therefore fully justified. It needs no emphasis that the right to education guaranteed in terms of Article 21-A of the Constitution would envisage quality education being imparted to the children which in turn, would signify that the teachers must be meritorious and the best of the lot. Any process which applied equally to all the candidates and was designed to garner the best talent, cannot be called arbitrary or irrational.”

(emphasis supplied)

72. The recruitment of best qualified teachers for providing quality education was emphasized by the Supreme Court in **Devesh Sharma v. Union of India and others**²⁴:

“22. Free and compulsory education for children becomes meaningless if we make compromise on its “quality”. We must recruit the best qualified teachers. A good teacher is the first assurance of “quality” education in a school. Any compromise on the qualification of teachers would necessarily mean a compromise on the “quality” of education. Jacques Barzun, the American educationalist and historian, in his seminal work *Teacher in America*, says “teaching is not a lost art, but the regard for it is a lost tradition” [Barzun, Jacques. “Profession : Teacher”. *Teacher in America*, published by Little Brown 7 Co. in association with Atlantic Monthly Press, 1945, pp. 3-13.] . Though this comment was for the state of higher education in America, it is equally relevant here on the treatment of Primary education in our country, as it emerges from the facts before us.

60.A child has come to face a “teacher”, so to speak, for the first time in a classroom. It is the beginning of a journey for the child student and therefore world over great care is taken in laying down proper foundations in these formative years. Well-qualified and trained teacher in elementary school is an extremely vital aspect.....”

(emphasis supplied)

23 (2021) 15 SCC 401

24 (2023) 18 SCC 339

73. Most importantly the Supreme Court in **Devesh Sharma (supra)** cautioned against the tendency to treat appointments of teachers as sources of mere employment as against providers of quality education:

“49. The pedagogical skills of a teacher must be given a very high priority. But our priority seems to be different. It is not to impart “quality” education, but to provide more job avenues to BEd trained candidates, as this seems to be the only reason for their inclusion, in presence of overwhelming evidence that BEd course is not a suitable course for primary classes.”

(emphasis supplied)

74. The preceding discussion clearly establishes the live nexus between the merit of teachers appointed and the quality of education imparted, and that appointment of the most meritorious teachers is the imperative prerequisite of realization of fundamental rights of children guaranteed under Article 21A of the Constitution, and to effectuate their rights under the Right to Education Act, 2009.

VII. Interplay of Constitutional Law, Statutory Provisions and Government Orders:

75. The appointment of teachers on compassionate grounds creates an inevitable interplay of the Government Orders dated 04.09.2000 and 15.02.2013 with Rule 5 of the Dying in Harness Rules, 1999, Articles 14, 16 and 21A of the Constitution of India, Right to Education Act, 2009, and constitutional law holdings. The said Government Orders cannot escape the scrutiny of Articles 14, 16 and 21A of the

Constitution, or evade the regime of the said statutes and constitutional law holdings.

VII(A). Article 21A of the Constitution of India, the Right to Education to Free and Compulsory Education Act, 2009 and the Government Orders dated 04.09.2000 and 15.02.2013 :

76. The question that arises is whether the regime created by the Government Orders dated 04.09.2000 and 15.02.2013 for appointment of teachers on compassionate grounds is conducive to the realization of the fundamental right vested in children under Article 21A of the Constitution of India or is destructive of the fundamental right of children to education?

77. The scope of the fundamental right of education vested by virtue of Article 21A of the Constitution of India and also conferred by the Right to Education Act, 2009 has been discussed at length in the preceding part of the narrative.

78. Briefly put the fundamental right to education envisages quality education for all children. Quality education is possible only if appointment of most meritorious teachers is ensured.

79. The best talent for appointment as teachers can be extracted only through an open and transparent process of public recruitment as per the constitutional mandate of Articles 14 and 16 of the Constitution of India. The aforesaid selection based on competitive merit ensures

that the most meritorious candidates are appointed as teachers, and the rights of children to quality education are fruitfully realized.

80. To the contrary the procedure for appointment of teachers on compassionate grounds is a closed one and provides for sheltered entry to a select few. The said process does not allow participation from the public at large. Consequently best talent from the open market is precluded from applying for appointment.

81. Eligibility or possession of minimum qualifications for being appointed as teachers is in effect the sole criteria for appointment on compassionate grounds under the aforesaid Government Orders dated 04.09.2000 and 15.02.2013.

82. Eligibility for appointment as teachers merely prescribes the minimum threshold qualification for holding the post or participation in an open selection. Eligibility in itself does not determine merit. In fact eligibility is the start point of the process to determine merit. Constitutional processes of recruitment (as discussed earlier) are the most reliable methods to select the most meritorious from all eligible candidates for appointment as teachers. The argument of the State to the effect that eligibility is in itself the determinant of merit is accordingly rejected.

83. There is another fact which needs a look in. The large scale mushrooming of colleges ill-equipped, understaffed and unrecognised educational institutions has been noticed by the Supreme Court. [Ref: **Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM B.Ed. College v. National Council for Teachers' Education and others**²⁵]

84. There are vast gaps in competence and huge variations in the merit of the degree holders from such institutions. Appointing degree holders from deficient colleges as teachers without filters which test competence or systemic checks which determine merit is fraught with serious consequences.

85. Merit of candidates tested by constitutional processes of recruitment is not a factor for consideration while making appointments on compassionate grounds under the said Government Orders dated 04.09.2000 and 15.02.2013. The said process under the Government Orders dated 04.09.2000 and 15.02.2013 invariably compromises the quality of teachers, inevitably degrades the standard of teaching, and finally negates the fundamental rights of children to quality education.

86. Degradation in the quality of teachers by faulty appointment processes and consequent decline in standard of teaching cannot be brooked if the fundamental right of children under Article 21A of the Constitution is to be realized, and the obligations of the

25 (2012) 2 SCC 16

State to bring the rights of children under the Right to Education Act, 2009 are to be faithfully discharged.

VII.(B). Competing claims for appointment as teachers on compassionate grounds and Fundamental Rights of children of Right to Education under Article 21A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009:

87. The claims made under the Government Orders dated 04.09.2000 and 15.02.2013 for appointment as teachers on compassionate grounds have to reckon with the fundamental right to education guaranteed to children by virtue of Article 21-A of the Constitution and the statutory right vested in children under the Right to Education Act, 2009.

88. The right to education has been irretrievably vested in children by virtue of Article 21A of the Constitution of India, and permanently embedded in the constitutional law holdings of the Supreme Court. Furthermore, the right of children to education is also a statutory right created by the Right to Education Act, 2009. The importance of education and the position of children in our constitutional scheme has been highlighted in the preceding part of the narrative.

89. In comparison appointment of teachers on compassionate grounds is not a vested right and is subservient to the fundamental right of children to quality education. The fundamental right of children to

quality education in the constitutional scheme shall prevail over the claim of the applicants for appointment on compassionate grounds.

90. Similarly the institutional needs for most proficient teachers selected from a public recruitment process will have primacy over the personal claims for appointment as teacher on compassionate grounds.

91. The issue of competing rights and claims has also engaged attention of Constitutional Courts. The cases in point will fortify the discussion. In **Modern Dental College & Research Centre and others v. State of M.P. and others**²⁶ the Supreme Court held as under:

“173. Right to be treated fairly and to get admission through a non-arbitrary, non-discriminatory, fair and transparent procedure is a fundamental right of the students under Article 14. Any law which creates an artificial classification between private unaided institutions and other institutions and creates a disparity in the matter of admission whereby a meritorious student could be denied admission to pursue higher education in a private unaided institution solely because such institution has an unfettered right to choose its own students without following a uniform and transparent admission procedure would be violative of the rights of the aspiring students guaranteed under Article 14. Right of the students to admission in private unaided medical colleges is a right of equality in opportunity. On many occasions, this has led to a conflict between fundamental rights of private educational institutions on the one hand and the rights of students and public at large on the other. However, the law is now settled. In such cases where there is a conflict between fundamental rights of two parties, this Court in para 59 in *Sharda v. Dharmpal* [*Sharda v. Dharmpal*, (2003) 4 SCC 493] held that only that right which would advance public morality or public interest would prevail. In para 39 in *Kureshi Kassab case* [*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534], this Court held that when a fundamental right clashes with the larger interest of society, it must yield to the latter. The interest of citizens or section of community, howsoever important, is secondary to the interest of the nation and public at

26 (2016) 7 SCC 353

large and of the right of the students to avail opportunity of merit-based admission in professional unaided educational institutions would advance the public interest and as such the rights of the students would prevail over the rights of the private unaided professional educational institutions.”

92. The Supreme Court in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others**²⁷, held as under:

“39....“(1) The courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people, which the legislature, in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. This Court while acting as a sentinel on the *qui vive* to protect fundamental rights guaranteed to the citizens of the country *must try to strike a just balance between the fundamental rights and the larger and broader interests of society* so that when such a right clashes with a larger interest of the country it must yield to the latter.

(para 5)

VII(C). Rule 5 of the Dying in Harness Rules, 1999, Government Orders dated 04.09.2000 and 15.02.2013 and Article 14 and 16 of the Constitution of India:

93. There is another and no less important angle to the controversy. As discussed earlier the enquiry under Rule 5 of the Dying in Harness Rules, 1999 requires identification of posts for appointment on compassionate grounds.

94. In the facts and circumstances of the instant case, the following relevant parameters under Rule 5 of the Dying in Harness Rules, 1999 for determining “suitable employment on the post of teacher” have already been examined in the judgement:

27 (2005) 8 SCC 534

- (i) The role and duties discharged by teachers towards students and nation.
- (ii) The nature and scope of the fundamental rights to education vested in children by virtue of Article 21-A of the Constitution and the rights under the Right to Education Act, 2009.
- (iii) The role of teachers bringing the aforesaid rights to fruition.
- (iv) The consequences of relaxed recruitment norms and waiving of the regular recruitment process on the quality of teachers.
- (v) The impact of appointing teachers merely on basis of eligibility and without consideration of merit on the fundamental right of children to quality education and the society at large.

95. The preceding narrative establishes that Rule 5 of the Dying in Harness Rules, 1999 does not countenance compassionate ground appointments on the posts of teachers on compassionate grounds.

96. The Government Orders dated 04.09.2000 and 15.02.2013 prevent the said enquiry by preemptively providing for appointment of teachers on compassionate grounds without consideration of relevant factors contemplated in Rule 5 of the Dying in Harness Rules, 1999. The Government Orders dated 04.09.2000 and

15.02.2013 directly obstruct the implementation of the mandate of Rule 5 of the Dying in Harness Rules, 1999.

97. The Government Orders dated 04.09.2000 and 15.02.2013 are in direct and irreconcilable conflict with the mandate of Rule 5 of the Dying in Harness Rules, 1999. Statutory powers vested by Rule 5 of the Dying in Harness Rules, 1999, cannot be curbed by Governments Orders dated 04.09.2000 and 15.02.2013. The government orders will have to yield to the statutory provision.

98. The narrative has the benefit of authorities in point. The Full Bench of this Court after relying on various authorities of the Supreme Court in **Vijay Singh and others v. State of U.P. and others**²⁸ held as under:

“4. It is settled legal proposition that executive instructions cannot override the statutory provisions. (Vide B.N. Nargajan Vs. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma Vs. State of Rajasthan & ors., AIR 1967 SC 1910; Union of India & ors. Vs. Majji Jangammya & ors., AIR 1977 SC 757; B.N. Nagarajan & ors. Vs. State of Karnataka & ors., AIR 1979 SC 1676; P.D. Agrawal & ors. Vs. State of U.P. & ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. & ors. Vs. Vishwa Nath & ors., AIR 1987 SC 2111; State of Maharastra Vs. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishananiah & ors. Vs. Union of India & ors., AIR 1990 SC 166; Comptroller & Auditor General of India & ors. Vs. Mohan Lal Mehrotra & ors., AIR 1991 SC 2288; State of Madhya Pradesh Vs. G.S. Dall & Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights Vs. Union of India & ors., AIR 1998 SC 431; C. Rangaswamaeah & ors. Vs. Karnataka Lokayukta & ors., AIR 1998 SC 96.).

5. Executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any

force of law; while statutory Rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U.P. & ors. Vs. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu Vs. M/s. Hind Stone etc., AIR 1981 SC 711).

8. In Ram Ganesh Tripathi Vs. State of U.P., AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/ order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under:-

"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

9. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory Rules cannot be set at naught by the executive fiat."

99. The posts which are not tenable by compassionate appointments under Rule 5 of the Dying in Harness Rules, 1999 can only be filled by the public recruitment processes as contemplated under Articles 14 and 16 of the Constitution of India.

VIII(A). Abuse of Compassionate Appointment:

100. The wide expansion of the scope of compassionate grounds appointments in the teeth of the holdings of constitutional law has not gone unnoticed by the constitutional Courts.

101. This Court in **Ashish Yadav (supra)** held as under:

"14. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent

with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.”

102. A Full Bench judgement of the Andhra Pradesh High Court in **Government of Andhra Pradesh, General Administration, Department, Hyderabad, and others v. D. Gopaiah and others**²⁹ had drawn the red lines after noticing the abuse of the process of making compassionate grounds appointments in an indiscriminate manner. Familiar and ingenuous devices like Government Orders were created to grant government appointments as largesse, and to avoid appointments by the constitutional mode of recruitment to government posts. The overreach of the law laid down by the Supreme Court was looked askance in **D. Gopaiah (supra)**.

103. The observations of Andhra Pradesh High Court in **D. Gopaiah (supra)** were also affirmed by the Supreme Court in **National Institute of Technology and others v. Niraj Kumar Singh**³⁰ by holding as under:

“19. In *Govt. of A.P. v. D. Gopaiah* [(2001) 6 An LT 553 : (2002) 93 FLR 12 (AP) (FB)] , a Full Bench of the Andhra Pradesh High Court noticing the aforementioned judgment, opined : (An LT p. 555, para 8)

“8. By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent.

29 2002 (2) L.L.N. 484

30 (2007) 2 SCC 481

Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception.” It was further stated : (An LT p. 556, paras 11-14)

“11. The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about gross abuse of the schemes and inherent lack of safeguards.

12. Before further advertng to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which stricto sensu violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the non-governmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

13. The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the officer concerned or acted on pressure of the employees' unions.

14. The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs.”

104. The law has set its face against creation of such contrivances to make back door entries in public employment for the benefit of serving employees and creating a monopoly in their favour by treating government jobs as a largesse.

105. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and others**³¹ relied on a Division Bench Judgement of the Punjab and Haryana High Court wherein the learned Division Bench saw through the devices evolved by the Railways “to make backdoor entries in public employment” which brazenly “militated against equality in public employment” and held thus:

“22. The Union Ministry of Railways introduced a scheme called the “Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff”²⁰ . It allowed drivers and gangmen aged between 50 and 57 years to voluntarily retire after completing 33 years of service (later reduced to 20 years). After retirement, a “suitable ward” of the retired employee would be considered for employment.

23. The Division Bench in Kala Singh (supra) was seized of a writ petition concerning an employment dispute related to the LARSGESS but where the LARSGESS was not under challenge. Speaking for the Division Bench, Hon’ble Surya Kant, J. (as His Lordship then was) observed that the scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution and is a device evolved by the Railways to make backdoor entries in public employment and brazenly militates against equality in public employment. While dismissing the writ petition and directing the Railways to stop making any appointment, the Division Bench also directed that the Railways should revisit the same keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. An application seeking recall of the order of the Division Bench was dismissed. The order of the Division Bench having been challenged before this Court, a

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coordinate Bench declined to interfere. In view of the observations made by the High Court, the Railway Board terminated the scheme.”

106. Insistence for appointment as a teacher on compassionate grounds reflects more a quest for permanent social status, and less a claim for relief from immediate financial destitution.

107. At the institutional level compassionate ground appointments on posts of teachers is not promotion of employee welfare, but appeasement of vested interests. The Government Orders dated 04.09.2000 and 15.02.2013 manifest a culture of entitlement, and not an ethos of service among employees of the education department. The Government Orders dated 04.09.2000 and 15.02.2013 are a deliberate construct to place the appointments of teachers beyond the reach of Articles 14, 16 and 21-A of the Constitution of India.

VIII(B).Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah: Relevance

108. The Government Order dated 04.09.2000 references the judgements rendered by this Court in **Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others**³² The said reference to the judgement rendered in **Sanjeev Kumar Dubey (supra)** in the Government Order dated 04.09.2000 is misconceived, misleading and redundant.

109. A learned Single Judge of this Court declared that Section 16(2) of the Uttar Pradesh Secondary Education

Service Commission Act, 1982 which provided for grant of compassionate appointment on teaching posts were ultra vires and unconstitutional in **Sanjeev Kumar Dubey (supra)**.

110. The learned Division Bench of this Court in **Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others** rendered in **Special Appeal No.426 of 1998**³³, reversed the judgement of the learned Single Judge and upheld the constitutionality of the aforesaid provisions.

111. The holding of the learned Division Bench of this Court in **Sanjeev Kumar Dubey (supra)** is not relevant to the instant controversy for various reasons. Firstly the provisions pertaining to grant of compassionate ground appointment in the instant case are entirely different. Secondly Rule 5 of the Dying-in-Harness Rules, 1999 was not in issue in **Sanjeev Kumar Dubey (supra)** with the long passage of time since the Division Bench rendered the judgement of **Sanjeev Kumar Dubey (supra)**, substantial changes have occurred in the Constitution and the laws. Incorporation of Article 21A of the Constitution and the Right to Education Act, 2009 happened after the Division Bench judgement in **Sanjeev Kumar Dubey (supra)** is the third fact which distinguishes the said judgement from the facts of this case. Fourthly constitutional law propositions in point have also materially changed after the **Sanjeev Kumar Dubey (supra)**.

112. The law is well settled on the point that a perfectly valid legislation may in course of time, become unconstitutional and discriminatory and open to challenge.

113. In **Motor General Traders and another v. State of Andhra Pradesh and others**³⁴ the Supreme Court held that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and can be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution.

“22. In all these cases while it is true that no provision was actually struck down, there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution. This is a sufficient answer to the contention that if at the time when the Act was enacted Section 32(b) of the Act was not unconstitutional, it cannot at any time thereafter be challenged on the ground of unconstitutionality.”

114. Similarly while considering the varies of the Rent Control Act the Supreme Court in **Malpe Vishwanath Acharya and others v. State of Maharashtra and another**³⁵ acknowledged that while the statute may have been justified at the time of the enactment, with passage of time it may become arbitrary and illegal:

“15. The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now?”

34 (1984) 1 SCC 222

35 (1998) 2 SCC 1

“29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent — the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context.

30. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the courts not merely because the legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others.”

115. More recently the concept of transformative constitutionalism was asserted by the Supreme Court in **Joseph Shine v. Union of India**³⁶ while examining the changes in the judicial approach to adultery:

“4. When we say so, we may not be understood that precedents are not to be treated as such and that in the excuse of perceptual shift, the binding nature of precedent should not be allowed to retain its status or allowed to be diluted. When a constitutional court faces such a challenge, namely, to be detained by a precedent or to grow out of the same because of the normative changes that have occurred in the other arenas of law and the obtaining precedent does not cohesively fit into the same, the concept of cohesive adjustment has

36 (2019) 3 SCC 39

to be in accord with the growing legal interpretation and the analysis has to be different, more so, where the emerging concept recognises a particular right to be planted in the compartment of a fundamental right, such as Articles 14 and 21 of the Constitution. In such a backdrop, when the constitutionality of a provision is assailed, the Court is compelled to have a keen scrutiny of the provision in the context of developed and progressive interpretation. A constitutional court cannot remain entrenched in a precedent, for the controversy relates to the lives of human beings who transcendently grow. It can be announced with certitude that transformative constitutionalism asserts itself every moment and asserts itself to have its space. It is abhorrent to any kind of regressive approach. The whole thing can be viewed from another perspective. What might be acceptable at one point of time may melt into total insignificance at another point of time. However, it is worthy to note that the change perceived should not be in a sphere of fancy or individual fascination, but should be founded on the solid bedrock of change that the society has perceived, the spheres in which the legislature has responded and the rights that have been accentuated by the constitutional courts. To explicate, despite conferring many a right on women within the parameters of progressive jurisprudence and expansive constitutional vision, the Court cannot conceive of women still being treated as a property of men, and secondly, where the delicate relationship between a husband and wife does not remain so, it is seemingly implausible to allow a criminal offence to enter and make a third party culpable.”

VIII(C).Suo moto consideration of vires by Courts:

116. Before concluding it needs to be mentioned that admittedly no challenge has been laid to the Government Orders dated 04.09.2000 and 15.02.2013 which provide for appointment of teachers on compassionate grounds. However, the petitioner has rested his case entirely on the aforesaid offending Government Orders. The absence of specific challenge to the vires of the aforesaid Government Orders will not prevent this Court from suo moto examining the constitutionality of the provisions, and the consequences of granting the prayer of

mandamus upon the respondents on the basis of the same.

117. As a matter of procedural propriety the State Government was put to adequate notice regarding the constitutionality of the aforesaid Government Orders. The State was also given an ample opportunity to present their defence of the same. The counter affidavit has also been filed on behalf of the State in the connected writ petition. The submissions on behalf of the State have been duly considered.

118. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) (supra)** reaffirmed the powers of the superior Courts to suo moto take up the issue of vires for consideration by holding:

“39. The contention, though attractive at first blush, makes no impression. The ratio of the decision in Prakash Chand (supra) will have no application in a case of the present nature. The Division Bench, which passed the impugned order, did have the authority to hear the intracourt appeal. The subject matter out of which the challenge emerged was covered by the roster set by the Chief Justice. It was not a case where the Division Bench heard a petition where the vires of a law was under challenge at the instance of a suitor. Instead, the Division Bench exercised its inherent powers upon suo motu taking up the point of vires for consideration and decision. As has been held in *Indian Bank v. Satyam Fibres (India) (P) Ltd.*, which has been affirmed by a Bench of three Judges in *State (NCT of Delhi) v. K.L. Rathi Steels Ltd.*, inherent powers are powers which are resident in all courts, especially of superior jurisdiction and though these powers do not spring from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour, such power is necessary for the orderly

administration of the justice delivery system by the courts. In addition, we hold that inherent power can also be exercised to do what is just keeping in mind what the justice of the case before the court demands.

40. Judged on the anvil of the said decisions, exercise of the inherent powers of a court in a given case over which it has jurisdiction cannot, therefore, be seen as limited by the roster set by the Chief Justice of the High Court.”

IX. Conclusions and Directions:

119. In the wake of preceding discussion, the following conclusions are being recorded and corresponding directions are being issued to the State Authorities:

(A). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are held to be ultra vires Articles 14, 16 and 21-A of the Constitution of India.

(B). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are violative of Section 3 of the Right to Education Act, 2009 which vests the right of free and compulsory education in children.

(C). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are in conflict with the mandate of Rule 5 of the Dying in Harness Rules, 1999.

(D). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they provide for appointment on the posts of teachers on compassionate grounds are struck down. The State Government is accordingly directed to forthwith cease the implementation of the Government Orders dated 04.09.2000 and 15.02.2013.

(E). The matter is remitted to respondents-authorities. The claim of the petitioner shall be considered by the respondents-authorities for appointment on compassionate grounds to any other post as per law and in line with the observations made in this judgement. The decision shall be taken by the respondents-authorities within a period of three months from the date of receipt of a certified copy of this order.

120. The writ petition is finally disposed of.

121. Registry is directed to send a copy of this order to the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow.

Order Date :- 16.4.2025

Ashish Tripathi

i X.APPENDIX:

Appendix-I

Government Order dated 04.09.2000:

लखनऊ : दिनांक 04 सितम्बर, 2000

विषय-उत्तर प्रदेश बेसिक शिक्षा परिषद के अन्तर्गत सेवारत शिक्षकों/शिक्षणेत्तर कर्मचारियों की सेवाकाल में मृत्यु हो जाने की स्थिति में उनके आश्रितों के सेवायोजन के सम्बन्ध में।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या-1095/15-5-95-30/82, दिनांक 02 फरवरी, 1996 के अन्तर्गत उत्तर प्रदेश बेसिक शिक्षा परिषद के अधीन सेवारत शिक्षकों/शिक्षणेत्तर कर्मचारियों की सेवाकाल में मृत्यु हो जाने पर उनके एक आश्रित को परिषद के अधीन सेवायोजन के सम्बन्ध में व्यवस्था की गयी थी। मा० उच्च न्यायालय, इलाहाबाद में योजित रिट याचिका संख्या-41564/1997 संजीव कुमार दुबे बनाम जिला विद्यालय निरीक्षक, इटावा व अन्य में माननीय न्यायालय द्वारा पारित आदेश दिशांक 27-04-1998 के अनुशीलन में जारी शासन के आदेश संख्या-1634/15-11-98-1499 (8)/77, दिनांक 08 जनवरी, 1999 द्वारा मृतक आश्रित सेवायोजन के सम्बन्ध में निर्गत सभी शासनादेश अतिक्रमित हो जाने के फलस्वरूप बेसिक शिक्षा परिषद के अधीन सेवाओं में मृतक आश्रित सेवायोजन की व्यवस्था उक्त तिथि से बाधित रही है।

2. इस बीच माननीय उच्च न्यायालय के उपर्युक्त निर्णय दिनांक 27-04-1998 के विरुद्ध संजीव कुमार दुबे द्वारा दायर अपील संख्या-26/98 में माननीय उच्च न्यायालय की दो सदस्यीय न्यायपीठ ने अपने आदेश, दिनांक 01 फरवरी, 2000 द्वारा माननीय उच्च न्यायालय के पूर्ववर्ती निर्णय दिनांक 27-04-1998 को निरस्त कर दिया है। माननीय उच्च न्यायालय की दो सदस्यीय पीठ द्वारा प्रश्नगत मामला सम्बन्धित पीठ को माननीय न्यायालय की संविक्षाओं के आलोक में पुनर्विचार हेतु संदर्भित किया गया है।

3. उक्त के अनुक्रम में शासन द्वारा माननीय न्यायालय की संविक्षाओं की भावना व प्राथमिक शिक्षा की गुणवत्ता को बनाये रखने की आवश्यकता को अनुभव करते हुए सम्यक् विचारोपरान्त उ० प्र० बेसिक शिक्षा परिषदीय शिक्षकों/शिक्षणेत्तर कर्मचारियों की सेवाकाल में मृत्यु हो जाने पर उनके परिवार के एक आश्रित को निम्नलिखित शर्तों एवं प्रतिबन्धों के अधीन सेवायोजन का अवसर प्रदान किये जाने का निर्णय लिया गया है:-

(1) उ० प्र० सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती (पाँचवा संशोधन) नियमावली 1999, के प्रावधानों के अनुसार ही बेसिक शिक्षा परिषद की सेवा के शिक्षण /शिक्षणेत्तर कर्मचारियों का सेवाकाल में मृत्यु हो जाने पर मृतक कर्मचारी का पति या पत्नी (जैसी भी स्थिति हो) केन्द्रीय सरकार या किसी राज्य सरकार या केन्द्रीय सरकार या किसी राज्य सरकार के स्वामित्वाधीन या उनके द्वारा नियंत्रित किसी निगम के अधीन पहले से सेवायोजित न हो तो उसके कुटुम्ब के ऐसे एक सदस्य को, जो केन्द्रीय सरकार या, राज्य सरकार या केन्द्रीय सरकार या राज्य सरकार के स्वामित्वाधीन या उनके द्वारा नियंत्रित किसी निगम के अधीन पहले से सेवायोजित न हो। इस सम्बन्ध में मृतक आश्रित आवेदनकर्ता से शपथ पत्र प्राप्त करने के उपरान्त ही उसके सेवायोजन पर विचार किया जायेगा।

(2) उत्तर प्रदेश बेसिक शिक्षा परिषद के शिक्षकों/शिक्षणेत्तर कर्मचारियों के ऐसे मृतक आश्रित जो बेरोजगार हो और नियमों के अन्तर्गत निर्धारित न्यूनतम शैक्षिक एवं प्रशिक्षण योग्यता रखते हों तथा अन्य प्रकार से परिषद की सेवा हेतु अर्ह हों, को परिषदीय प्राथमिक विद्यालयों के सहायक अध्यापक/अध्यापिका के पद पर अथवा परिषद के अधीन शिक्षणेत्तर तृतीय श्रेणी के सबसे नीचे के पद पर अथवा चतुर्थ श्रेणी के पद पर विहित योग्यता/प्रशिक्षण योग्यता के आधार पर सेवायोजन हेतु आवेदन करने पर भर्ती के सामान्य नियमों/ प्रक्रिया को शिथिल करते हुए परिषदीय सेवा में उपयुक्त सेवायोजन पर विचार किया जायेगा।

(3) समय-समय पर यथा संशोधित उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के अनुसार अर्ह मृतक आश्रित को सहायक अध्यापक/अध्यापिका के पद पर आवेदन करने के दिनांक से यथा सम्भव तीन माह के अन्दर सेवायोजन की सुविधा जनपद स्तर पर रिक्त पद अथवा पद रिक्त न होने की स्थिति में अधिसंख्य पद के विरुद्ध प्रदान की जायेगी।

(4) ऐसे मृतक आश्रित जो सेवायोजन हेतु आवेदन-पत्र प्रस्तुत करने की तिथि को सहायक अध्यापक के पद हेतु सेवा नियमों में विहित शैक्षिक अर्हता रखते हों, परन्तु प्रशिक्षण अर्हता नहीं रखते/पूरी नहीं करते, को अप्रशिक्षित अध्यापक के रूप में सेवायोजन हेतु आवेदन करने पर यथा सम्भव तीन माह के अन्दर सेवायोजन की सुविधा प्रदान की जायेगी। ऐसे मृतक आश्रित को सेवायोजन के बाद सम्बन्धित जनपद के जिला शिक्षा एवं प्रशिक्षण संस्थान में प्रारम्भ होने वाले बेसिक अध्यापक प्रमाण-पत्र (बी०टी०सी०) प्रशिक्षण पाठ्यक्रम के आगामी पहले बैच में प्रशिक्षण हेतु प्रवेश दिया जायेगा। मृतक आश्रित के रूप में प्राथमिक विद्यालय में सहायक अध्यापक/अध्यापिका के पद पर नियमित नियुक्ति प्रदान करने के लिए उनको (बी०टी०सी०) प्रशिक्षण पाठ्यक्रम सफलतापूर्वक पूर्ण करना अनिवार्य होगा। प्रशिक्षण अवधि में उन्हें अप्रशिक्षित अध्यापक के रूप में नियत वेतन, जैसा कि शासन द्वारा समय-समय पर निर्धारित किया गया हो, देय होगा। बेसिक अध्यापक प्रशिक्षण पाठ्यक्रम में उत्तीर्ण होने के बाद ही प्राथमिक विद्यालय में सहायक अध्यापक के पद पर नियमित नियुक्ति प्रदान की जायेगी।

नियुक्त प्राधिकारी एवं जिला शिक्षा एवं प्रशिक्षण संस्थान का यह दायित्व होगा कि वह अप्रशिक्षित अध्यापक के रूप में सेवायोजित मृतक आश्रित अभ्यर्थियों के सेवारत प्रशिक्षण की व्यवस्था उनके सेवायोजन के बाद प्रारम्भ होने वाले पहले प्रशिक्षण सत्र में सुनिश्चित करेंगे।

ऐसे मृतक आश्रित को जो उपर्युक्त सेवारत प्रशिक्षण को निर्धारित अवधि में सफलतापूर्वक पूर्ण करने में असफल रहते हैं, के लिए यह विकल्प उपलब्ध रहेगा कि वह चतुर्थ श्रेणी के पद के सोपेक्ष्य नियुक्ति हेतु आवेदन करें अथवा प्रशिक्षण उत्तीर्ण करने तक अप्रशिक्षित अध्यापक के रूप में नियत वेतन पर बने रहे, किन्तु प्रतिबन्ध है कि ऐसे सेवारत बी०टी०सी० प्रशिक्षणार्थियों को सामान्य बी०टी०सी० पाठ्यक्रम के प्रशिक्षणार्थी की भांति ही बी०टी०सी० पाठ्यक्रम की

अनुपूरक परीक्षा हेतु विहित नियमों के अनुसार अवसर अनुमन्य होंगे किन्तु यदि अभ्यर्थी तब भी बी०टी०सी० के अंतिम परीक्षा उत्तीर्ण करने में विफल रहते हैं, तो ऐसे अभ्यर्थी के लिए चतुर्थ श्रेणी के पद के सापेक्ष नियमित नियुक्ति के अतिरिक्त अन्य कोई विकल्प शेष नहीं रहेगा। अतः ऐसे अभ्यर्थी जो बी०टी०सी० परीक्षा में अंतिम रूप से विफल रहते हैं, को सहायक अध्यापक पद के लिए अभ्यर्थन स्वतः निरस्त समझा जायेगा और बी०टी०सी० परीक्षा में अंतिम रूप से असफल होने के माह के आतिम कार्य दिवस से अप्रशिक्षित अध्यापक के रूप में भी उनकी नियुक्ति स्वतः समाप्त समझी जायेगी, किन्तु ऐसे अभ्यर्थी यदि चतुर्थ श्रेणी के रिक्त/ अधिसंख्य पद के सापेक्ष सेवायोजन की प्रार्थना करते हैं, तो उस पर विचार किया जा सकेगा।

(5) ऐसे मृतक आश्रित जो सम्बन्धित कर्मचारी की मृत्यु के दिनांक को मृतक आश्रित के रूप में सेवायोजन के लिए न्यूनतम शैक्षिक अर्हता इण्टरमीडिएट अथवा उससे अधिक रखते हों और बेसिक शिक्षा परिषद के अधीन अधीनस्थ स्तरों पर लिपिक के सम्बन्ध के सबसे नीचे के पद पर सेवायोजन के लिए अन्यथा अर्ह हो, को सम्बन्धित जनपद में लिपिक के रिक्त पद के सापेक्ष सम्बन्ध में सबसे नीचे के पद पर सेवायोजन प्रदान किया जायेगा।

जनपद में रिक्त लिपिक के पद पर मृतक आश्रित के रूप में सेवायोजन के लिए प्राप्त समस्त आवेदन-पत्रों को प्रथम आगत प्रथम प्रदत्त के आधार पर पंजीकृत किया जायेगा तथा विभाग में रिक्त होने वाले पदों के सापेक्ष प्रथम आगत प्रथम प्रदत्त के नियम का पालन सुनिश्चित करते हुए सेवायोजन प्रदान किया जायेगा। नियुक्ति प्राधिकारी तदुसार मृतक आश्रित अभ्यर्थियों की सूची को प्रत्येक माह के प्रारम्भ में अपने कार्यालय के सूचना पटल पर प्रदर्शित करेंगे और प्रत्येक माह होने वाली रिक्ति के सापेक्ष सेवायोजित मृतक आश्रित कर नाम प्रदर्शित करते हुए उक्त सूची को तदुसार संशोधित कर अगले माह के प्रारम्भ में अद्यावधित संशोधित सूची कार्यालय के सूचना पटल पर प्रदर्शित करते रहेंगे। तृतीय श्रेणी के रिक्त पद के सापेक्ष मृतक आश्रित सेवायोजन के लिए प्रत्येक अभ्यर्थी के नाम नियुक्ति प्राधिकारी के कार्यालय में पंजीकृत होने की तिथि से पाँच वर्ष की अवधि पूरी होने के माह के अंतिम कार्य दिवस एक यदि प्रथम आगत प्रथम प्रदत्त के सिद्धान्त के अनुसार सेवायोजन हेतु श्रेणी तीन की रिक्ति उपलब्ध नहीं होती तो सम्बन्धित अभ्यर्थी का नाम पंजीकृत अभ्यर्थियों की सूची से निकाल दिया जायेगा और उस स्थिति में सम्बन्धित अभ्यर्थी उक्त सुविधा पाने के लिए पात्र नहीं रह जायेंगे, किन्तु इस अवधि से पूर्व यदि श्रेणी चार के रिक्त पद / अधिसंख्य पद के सापेक्ष सेवायोजन हेतु अपना संशोधित आवेदन पत्र नियुक्त प्राधिकारी के कार्यालय में पंजीकृत करा लें, हो उस पर विचार किया जायेगा।

मृतक आश्रित परिवार को कठिन परिस्थितियों को दृष्टिगत रखते हुए यदि कोई अभ्यर्थी लिपिक सम्बन्ध के पद की रिक्ति के सापेक्ष सेवायोजन में सम्भावित विलम्ब को दृष्टिगत रखते हुए यदि तत्काल सेवायोजन की आवश्यकता अनुभव करता हो तो नियुक्ति प्राधिकारी के लिए ऐसे अभ्यर्थियों के सम्बन्ध में चतुर्थ श्रेणी में रिक्त या अधिसंख्य पदों के सापेक्ष मृतक आश्रित के पुनरीक्षित आवेदन पत्र प्रस्तुत करने पर सेवायोजन करने का अधिकार होगा। यहां यह स्पष्ट किया जाता है कि एक बार मृतक आश्रित के रूप में प्रदत्त सेवायोजन की सुविधा पर पुनर्विचार का कोई अवसर नहीं रहेगा।

(6) ऐसे मृतक आश्रित जिनकी न्यूनतम शैक्षिक योग्यता जूनियर हाईस्कूल है, को बेसिक शिक्षा परिषद के जनपद स्तरीय कार्यालय में रिक्त पद अथवा परिषदीय विद्यालयों में चतुर्थ श्रेणी के रिक्त या अधिसंख्य पद पर सेवायोजन की सुविधा प्रदान की जायेगी। जनपद स्तरीय कार्यालय के सम्बन्ध में अधिसंख्य पद के विरुद्ध मृतक आश्रित सेवायोजन अनुमन्य नहीं होगा।

(7) अधिसंख्य पद भविष्य में रिक्त होने वाले पदों के सापेक्ष समय-समय पर समायोजित किये जायेंगे। नियुक्ति प्राधिकारी जनपद को इकाई मानते हुए रिक्त/ अधिसंख्य पदों के विरुद्ध मृतक आश्रितों को सेवायोजित करेंगे। जनपद के कार्यालयों में किसी भी अधिसंख्य पद के विरुद्ध नियुक्तियां नहीं की जायेंगी। अधिसंख्य पद के पदधारी द्वारा की गयी सेवा की गणना वेतन निर्धारण और सेवानिवृत्त लाभों के लिए की जायेगी।

(8) मृतक आश्रित द्वारा सम्बन्धित कर्मचारी के मृत्यु के दिनांक से पाँच वर्ष के भीतर सेवायोजन के लिए आवेदन प्रस्तुत किया जा सकता है, परन्तु जहाँ राज्य सरकार को यह समाधान हो जाये कि सेवायोजन के लिए आवेदन करने के लिए नियत समय सीमा से किसी विशिष्ट मामले में अनुचित कठिनाई होती है वहाँ वह अपेक्षाओं को जिन्हें वह मामले में न्याय संगत और साम्यपूर्ण रीति से कार्यवाही करने के लिए आवश्यक समझे, अभिमुक्त या शिथिल कर सकती है। नियमों में इस आशय की अभिमुक्ति/ शिथिलीकरण के सम्बन्ध में प्रस्ताव सम्बन्धित नियुक्त प्राधिकारी द्वारा शिक्षा निदेशक (बे०) के माध्यम से शासन को प्रेषित किये जायेंगे।

(9) उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती से सम्बन्धित समय-समय पर संशोधित नियमावली की व्यवस्थाओं के अधीन उत्तर प्रदेश बेसिक शिक्षा परिषद के कर्मचारियों के मृतक आश्रित का तात्पर्य मृतक शिक्षण/ शिक्षणोत्तर कर्मचारी के पुत्र, अविवाहित अथवा विधवा पुत्री, पत्नी अथवा पति से होगा।

(10) मृतक आश्रित के रूप में सेवायोजन के लिए न्यूनतम आयु सीमा जैसा कि संबंधित सम्बन्ध के सेवा नियमों में विहित है, होगी।

4- राज्यपाल उत्तर प्रदेश बेसिक शिक्षा अधिनियम, 1972 (उत्तर प्रदेश अधिनियम संख्या-34, सन् 1972) की धारा-13 की उपधारा (1) के अन्तर्गत यह आदेश देते हैं कि उपर्युक्त निर्णय के अनुसार कार्यवाही सुनिश्चित की जाये।

5- यह आदेश दिनांक 08-01-1999 से प्रभावी माना जायेगा।

6- यह आदेश वित्त विभाग के अशासकीय संख्या आई०एफ० ए०-1490/दस/2000, दिनांक 29-08-2000 में प्राप्त उनकी सहमति से निर्गत किये जा रहे हैं।।

ii Appendix -II

Government Order dated 15.02.2013:

पत्रांक: बे.शि.नि./5338-15435/2012-13

दिनांक 15.2.2013

विषय- उत्तर प्रदेश बेसिक शिक्षा परिषद के नियंत्रणाधीन संचालित कार्यालय/विद्यालय में कार्यरत कर्मचारी/शिक्षकों के आश्रितों की नियुक्ति के सम्बन्ध में।

महोदय,

कृपया शासनादेश संख्या 95/79-5-2013-01(1)/13 दिनांक 11 फरवरी, 2013 का संदर्भ ग्रहण करने का कष्ट करें जिसके माध्यम से शासन द्वारा निर्देशित किया गया है कि शासनादेश संख्या -5193/15-5-2000-400(222)/99 दिनांक 4-9-2000 के अन्तर्गत उ.प्र. बेसिक शिक्षा परिषद के अधीन सेवारत शिक्षकों/शिक्षणेत्तर कर्मचारियों की सेवाकाल में मृत्यु हो जाने पर मृतक के परिवार को तत्कालिक राहत देने के उद्देश्य से मृतक के एक आश्रित को परिषद के अधीन संचालित विद्यालय/कार्यालय में कतिपय शर्तों पर प्रतिबन्धों के अधीन सेवायोजन का अवसर प्रदान किये जाने की व्यवस्था की गयी है, परन्तु मृतक आश्रित के सेवायोजन में विलम्ब होने के कारण प्रायः मा० न्यायालय, मा० समितियों आदि के समक्ष विषम स्थितियों का सामना करना पड़ता है। अतः शासन स्तर पर निर्णय लिया गया है कि अभियान चलाकर जनपदीय कार्यालयों में मृतक आश्रित के सेवायोजन के लम्बित प्रकरणों की समीक्षा की जाय तथा निर्धारित समय के अन्दर प्राप्त मृतक आश्रित के आवेदन पत्रों के निस्तारण की कार्यवाही 31 मार्च 2013 तक सुनिश्चित कर ली जाय। यदि नियुक्ति प्राधिकारी द्वारा मृतक आश्रित के सेवायोजन की कार्यवाही बिना किसी युक्तियुक्त कारण के नहीं की जाती है अथवा प्रकरण को अनावश्यक रूप से लम्बित रखा जाता है तो सम्बन्धित के विरुद्ध नियमानुसार अनुशासनिक कार्यवाही किये जाने पर विचार किया जायेगा।

2- अतः उक्त दिशा निर्देशों का कड़ाई से पालन करते हुए मृतक आश्रित को सेवायोजित किया जाने सम्बन्धी प्रकरणों का समयबद्ध रूप से निस्तारण किया जाये तथा दिनांक 31 दिसम्बर 2012 तक प्राप्त मृतक आश्रित के लम्बित/निस्तारित प्रकरणों की सूचना निर्धारित प्रारूप पर दिनांक 15 अप्रैल 2013 तक प्रत्येक दशा में शासन/परिषद कार्यालय को उपलब्ध कराना सुनिश्चित किया जाय।

अतः शासनादेश के अनुपालन में निम्नानुसार कार्यवाही सुनिश्चित करें-

1- दिनांक 28 फरवरी 2013 तक अपने जनपद के समस्त सहायक बेसिक शिक्षा अधिकारियों को निर्देशित करें कि ऐसे मृतक कर्मचारी जिनकी मृत्यु के पांच वर्ष पूरे नहीं हुए हैं उनके परिवारजनों से सम्पर्क कर यह सूचित करें कि मृतक के परिवार के एक आश्रित यदि मृतक आश्रित कोटे में नियुक्ति चाहता है तो अपने शैक्षिक, वारिस, मृत्यु प्रमाणपत्र, पारिवारिक सदस्यों के अनापत्ति के साथ सहायक बेसिक शिक्षा अधिकारी के माध्यम से जिला बेसिक शिक्षा अधिकारी कार्यालय से सम्पर्क करें।

2- जिला बेसिक शिक्षा अधिकारी ऐसे मृतक आश्रितों के आवेदन पत्र प्रत्येक दशा में 5 मार्च 2013 तक अपने कार्यालय में अवश्य प्राप्त कर लें और नियुक्ति हेतु प्राप्त आवेदन पत्रों को मृतक आश्रित पंजिका में क्रमानुसार नियुक्ति पत्र दिनांक 31 मार्च तक 2013 तक अवश्य निर्गत करें।

3- यदि मृतक आश्रित भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से स्नातक उपाधि या सरकार द्वारा उसके समकक्ष मान्यता प्राप्त उपाधि के साथ-साथ उत्तर प्रदेश मान्यता प्राप्त प्रशिक्षण संस्थान से अध्यापन प्रशिक्षण पाठ्यक्रम (बी.टी.सी. या विशिष्ट बी.टी.सी.) के साथ-साथ उत्तर प्रदेश सरकार द्वारा संचालित अथवा भारत सरकार द्वारा संचालित अध्यापक पात्रता परीक्षा उत्तीर्ण हो तभी उसकी नियुक्ति मृतक आश्रित कोटे में सहायक अध्यापक के पद पर की जाय। अन्यथा की स्थिति में मृतक आश्रित कोटे में सहायक अध्यापक के पद पर नियुक्ति कदापि न की जाय।

4- यदि मृतक आश्रित कम से कम इण्टरमीडिएट उत्तीर्ण है तथा परिषदीय कार्यालयों में कनिष्ठ लिपिक का पद रिक्त है तभी मृतक आश्रित कोटे में लिपिक के पद पर नियुक्ति की जा सकती है।

5- यदि परिषदीय कार्यालय में पद रिक्त न हो तो अथवा मृतक आश्रित की योग्यता कम से कक्षा-8 उत्तीर्ण हो तो और यदि परिषदीय विद्यालयों/कार्यालयों में चतुर्थ श्रेणी का पद रिक्त न हो तो भी अधिसंख्य पद के प्रति मृतक आश्रित कोटे में चतुर्थ श्रेणी के पद पर नियुक्ति की जा सकती है।

6- यदि मृतक आश्रित मृतक की मृत्यु के 5 वर्ष बाद आवेदन करता है तो जिला बेसिक शिक्षा अधिकारियों द्वारा इस तथ्य की पुष्टि अवश्य करनी चाहिए कि कहीं पूर्व में मृतक के किसी आश्रित को मृतक के कोटे में नियुक्ति तो नहीं दी गयी है। इस तथ्य की पुष्टि करने के बाद ही जिला बेसिक शिक्षा अधिकारी मृतक आश्रित का आवेदन पत्र परिषद कार्यालय को अग्रसारित किया जाय।

7- जिला बेसिक शिक्षा अधिकारी दिनांक 31 दिसंबर, 2012 तक प्राप्त मृतक आश्रित के लम्बित/निस्तारित प्रकरणों की सूचना निर्धारित प्रारूप पर दिनांक 15 अप्रैल, 2013 तक प्रत्येक दशा में शासन/परिषद कार्यालय को अवश्य उपलब्ध करायें।

कृपया उपरोक्तानुसार कार्यवाही सुनिश्चित करें।

Order Date :- 16.4.2025

Ashish Tripathi