



2026:AHC-LKO:35079

A.F.R.
Reserved on 25.02.2026
Delivered on 15.05.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 7331 of 2007

Dileep Kumar Jaiswal

.....Petitioner(s)

Versus

State of U.P.Thr.Secy Education and 3 Ors

.....Respondent(s)

Counsel for Petitioner(s) : Pt. S. Chandra,
Counsel for Respondent(s) : C.S.C.,

Court No. - 25

HON'BLE AMITABH KUMAR RAI, J.

1. Heard Shailesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the State.
2. By means of the present writ petition, the petitioner has prayed for the following reliefs :

"(i) Issue a Writ, Order, or, Direction in the nature of the Certiorari thereby quashing the impugned order dated 17.10.2007 passed by the District Inspector of Schools District Sultanpur [the opposite party no. 03] and as contained in Annexure No. 11 accompanying the instant Writ Petition.

(ii) Issue a Writ, Order or Direction in the nature of the Mandamus thereby commanding and directing to the Opposite Parties to appoint the

petitioner on the post Assistant Teacher L.T. Grade cadre on compassionate ground and allow the petitioner to work as the Assistant Teacher L.T. Grade cadre in the Ramkali Balika Inter College, District Sultanpur and pay salary.

(iii) Issue a Writ, Order or Direction in the nature of Mandamus thereby commanding and directing to the Opposite Parties to pay salary to the petitioner as the Assistant Teacher L.T. Grade cadre and the Opposite Party No. 03 [the District Inspector of Schools Sultanpur] kindly be directed to accept the Resolution dated 16.07.2007 of the Committee of Management of the Ramkali Balika Inter College, District Sultanpur.”

3. The brief facts of the present case are that the father of the petitioner, namely, late Raja Ram Jaiswal, while working as an Assistant Teacher at Mustquim Inter College, Gyanipur, Sultanpur, died on 26.05.2003. On account of his death, the petitioner applied for compassionate appointment, pursuant to which he was appointed to the post of Peon at Ramkali Balika Inter College, Sultanpur, vide order dated 24.01.2004 passed by the District Inspector of Schools, Sultanpur (hereinafter referred to as “DIOS”).

4. The petitioner joined the post of Peon in the said institution on 30.01.2004. However, prior thereto, he had submitted a letter dated 29.01.2004 addressed to the DIOS, Sultanpur, wherein he claimed appointment to the post of Assistant Teacher, being duly qualified for the said post. Thereafter, on 10.07.2007, the petitioner submitted an application to the Manager of the Institution through the Principal, claiming appointment as an Assistant Teacher on compassionate grounds as per his qualifications. The said application was forwarded by the Principal of the Institution with no objection. Thereafter, the Committee of Management took a decision to appoint the petitioner to the post of Assistant Teacher and referred the matter to the DIOS, Sultanpur for

appointment under Section 16 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as “the Act, 1982”). Subsequently, the petitioner submitted a representation dated 19.09.2007 to the DIOS, Sultanpur, which was rejected vide order dated 17.10.2007, which is under challenge in the present writ petition.

5. Learned counsel for the petitioner, assailing the order dated 17.10.2007, has submitted that Regulations 103 to 107 of Chapter III framed under U.P. Intermediate Education Act, 1921 read with section 3 of the Act, 1982 provide for compassionate appointment to the post of Assistant Teacher. Referring particularly to Regulation 103, it has been contended that a family member of a deceased teacher is entitled to be appointed to the post of Assistant Teacher in the Trained Graduate Grade, provided he possesses the prescribed requisite academic qualifications along with the requisite training eligibility and is otherwise fit for appointment.

6. It has further been submitted that under Regulation 105, the District Committee is the authority competent to deal with the selection for compassionate appointments. However, in the case of the petitioner, the representation has been rejected by the DIOS, Sultanpur. Hence, the decision taken by the DIOS, Sultanpur is without jurisdiction and is non est in the eyes of law.

7. It has further been submitted that after the promotion of one Smt. Girish Kumari Jaiswal, who was working as an L.T. Grade Teacher to the post of Lecturer in Sociology, a vacancy arose on the post of Assistant Teacher. As such, the petitioner ought to have been appointed to the post of Assistant Teacher against the said vacant post. However, while passing the impugned order dated 17.10.2007, the DIOS, Sultanpur failed to take into consideration the relevant material facts and as such, the order dated 17.10.2007 is liable to be set aside and an appropriate direction should be issued for appointing the petitioner to the post of Assistant Teacher on compassionate grounds.

8. Reliance has also been placed on the order dated 22.03.1996 issued by the Director of Education (Madhyamik), Lucknow, which

provide for appointment to the post of Assistant Teacher in the L.T. Grade, as per the candidate's qualifications on compassionate grounds. Reference has also been made to the letter dated 22.09.1997, which is a reminder issued by the Director of Education (Madhyamik), Lucknow to all the DIOSs, whereby certain information was sought in respect of compassionate appointments.

9. Learned Standing Counsel, on the other hand, has submitted that the petitioner was appointed on compassionate grounds vide office order dated 24.01.2004 to a Class IV post and at that point of time, the petitioner possessed the educational qualification of B.A. At that stage, the petitioner was not qualified for appointment to the post of Assistant Teacher, as he was merely a graduate. Subsequently, petitioner acquired the qualification of B.Ed. and also completed his M.A. (English) and thereafter submitted a representation dated 19.09.2007 seeking appointment to the post of Assistant Teacher in the L.T. Grade.

10. It has been submitted by the learned Standing Counsel that the provisions of Regulation 103 would have applied to the petitioner at the relevant point of time for appointment to the post of Assistant Teacher subject to the availability of the post. However, in the case of the petitioner, he lacked qualification for appointment to the post of Assistant Teacher at the relevant time. As such, he was granted appointment to a Class IV post and that too in a different institution from the one in which his father was employed as a Teacher under Regulation 106 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 as no post was available in the institution where his father was working. The said regulation amended vide notification dated 02.02.1995 provides for grant of compassionate appointment in any another institution of the district, if no post is available in the institution where the deceased employee had been working.

11. It has further been submitted that the petitioner was granted appointment vide order dated 24.01.2004 as per his qualifications at the relevant point of time and therefore, he cannot subsequently claim appointment to a higher post after acquiring higher qualifications.

12. The stand of the respondents is that, once the benefit of compassionate appointment has been granted to the petitioner on a Class IV post, he is not entitled to claim compassionate appointment for a second time on a higher post.

13. Having heard learned counsel for the parties and perused the record, the moot question which arises for consideration is whether the petitioner is entitled to grant of compassionate appointment on the post of Assistant Teacher after acquiring higher qualification subsequent to his appointment on compassionate grounds.

14. Compassionate appointment is a concept which has evolved in our service jurisprudence to meet situations where an employee dies while in service. Appointment on compassionate grounds recognizes that the family of an employee who dies in harness is left to fend for itself without the support of the wage earner upon whom it was dependent. It is an exception to the principle of equality of opportunity in matters of public employment, guaranteed under Article 16 of the Constitution, which requires a level playing field for all prospective applicants seeking employment. Appointing a person to public employment under the State or its instrumentalities merely on the basis of relationship with a deceased government servant would violate Articles 14 and 16 of the Constitution, as it would deprive society at large of an equal opportunity to apply for and seek selection to the post in question.

15. Compassionate appointment is, however, accepted as a valid exception to the general rule because its rationale is founded on the principle that there is an inherent public interest in protecting the dependents of employees from the financial destitution which may result from the untimely death of the employee while in service. The exception is, therefore, founded not merely on the existence of a family relationship, but on dependency and financial need arising from the death of the wage earner during service.

16. Being an exception, its contours and ambit are precisely defined and tailored so as to maintain proportionality between the reason for the exception and the means adopted to achieve its purpose.

17. A claim for compassionate appointment can be made only where a policy has been laid down for that purpose and in the absence of any such policy, there can be no right or claim to compassionate appointment. A person appointed on compassionate grounds does not, in that sense, step into the shoes of the deceased employee; rather, he or she is a fresh appointee through direct recruitment, to whom employment is granted on a post or position for which compassionate appointment is available.

18. Hon'ble the Supreme Court, in the case of **Umesh Kumar Nagpal v. State of Haryana and Others** reported in **(1994) 4 SCC 138** opined that the whole object of granting compassionate appointment is to enable the family to tide over the sudden financial crisis and such relief is granted to the dependent family members of the deceased employee to save them from destitution. Paragraph 2 of the said judgment is reproduced hereinbelow:

"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 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."

19. The issue which requires consideration in the present case is whether a dependent family member of a deceased employee, after having been appointed to a post on compassionate grounds, can subsequently seek appointment from the employer to a higher post. In this regard, the issue as to whether a second option can be exercised by the dependent family member of a deceased employee, after the first option for compassionate appointment has already been exercised and the dependent has joined the post to which such appointment was granted, was considered in the case of **State of Rajasthan v. Umrao Singh** reported in (1994) 6 SCC 560.

20. Hon'ble the Supreme Court, in the case of **Umrao Singh (supra)** has held that once the right to be considered for appointment on compassionate grounds has been consummated, any further or second consideration for appointment to a higher post on compassionate grounds would not arise. Paragraph 8 of the said judgment is reproduced hereinbelow:

"Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-

Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion". Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

(Emphasis supplied)

21. During the course of arguments, learned counsel for the petitioner referred to the judgment passed in **Special Appeal No.955 of 2007 "Anjani Pratap Singh v. State of U.P. and Others"**, decided by a Division Bench of this Court vide judgment and order dated 28.11.2007.

22. The reliance placed by learned counsel for the petitioner is misconceived, as the facts and circumstances of the present case are quite distinct. In the case of **Anjani Pratap Singh (supra)**, a recommendation had been made for appointment to a Class III post at the time of compassionate appointment. However, instead of granting appointment to a Class III post, the appointment was made to a Class IV post. In those circumstances, the Division Bench interfered and directed that the appointment be given on a Class III post.

23. In the present case, the petitioner was granted compassionate appointment to a Class IV post in a different college, as there was no vacant post available in the institution where the petitioner's father was

working at the time of his death. The compassionate appointment was granted to the petitioner in accordance with his qualifications and he was not qualified at the relevant point of time for appointment to the post of Assistant Teacher. This fact is not in dispute.

24. It is the petitioner's own case that after being granted compassionate appointment in 2004, he acquired additional qualifications of B.Ed. and M.A. (English) and subsequently made a representation seeking compassionate appointment to the higher post of Assistant Teacher. Thus, the benefit of the judgment rendered in the case of **Anjani Pratap Singh (supra)**, which is based on a different set of facts, cannot be extended to the case of the petitioner.

25. Recently, the issue also came up for consideration before the Hon'ble Supreme Court in **Civil Appeal No.12640–12643 of 2025, titled The Director of Town Panchayat and Others v. M. Jayabal and Another**, decided on 12.12.2025. In the aforesaid case, compassionate appointment was initially granted on the post of Sweeper and thereafter a claim was made for appointment to a higher post, which was allowed by the High Court directing the department to grant appointment to the higher post of Junior Assistant. The judgment was challenged before a Division Bench, which also affirmed the order of the learned Single Judge and thereafter the matter was challenged before the Hon'ble Supreme Court. Paragraph 12 of the said judgment is reproduced hereinbelow:

“Keeping in view the core objective behind appointment on compassionate basis, as has been discussed in a catena of judgments of this Court, it is well settled that compassionate appointment is a relief against immense financial hardship caused by the sudden and unforeseen loss of the earning member of a family. In such event, when a dependant family member of the deceased employee is provided appointment on compassionate basis, it is done in order to ensure

that the family members are not subjected to impoverishment. Therefore, such appointment which is arising out of exceptional circumstances, cannot be used as a ladder to climb up in seniority by claiming a higher post merely on the basis that he/she is eligible for such post.”

(Emphasis supplied)

26. In view of the aforesaid settled position of law as indicated hereinabove, this Court is of the considered view that once a dependent of a deceased employee is granted compassionate appointment, there cannot be second/further consideration for appointment to a higher post on compassionate ground. Accordingly, the order dated 17.10.2007 passed by the District Inspector of Schools, Sultanpur does not suffer from any infirmity or illegality and hence no interference is called for and the instant writ petition is **dismissed**.

27. No order as to costs.

(Amitabh Kumar Rai,J.)

15.05.2026

Mahesh