

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 40/2016

Uma Shankar Jaiswal Son Of Late Shri Radhey Shyam Mahur,
Presently Residing At 103/26, Sector 10, P, Village And Post
Aawa, Via Dooni, Tehsil Deoli, District Tonk Rajasthan

-----Petitioner

Versus

1. State Of Rajasthan Through The Secretary To The Government, Secondary Education Department, Governm, Government Secretariat, Jaipur Rajasthan
2. Director, Secondary Education, Department Of Secondary Education, Government Of Rajasthan, Bikaner Rajasthan
3. Deputy Director, Secondary Education Department Of Education, Government Of Rajasthan, Ajmer Region, Topdara, Ajmer Rajasthan
4. District Education Officer Secondary Education, Department Of Education, Government Of Rajasthan, Tonk Rajasthan

-----Respondents

For Petitioner(s)	:	Mr. Saransh Saini Mr. Vinod Kumar Sharma Ms. Sanjana Choudhary Ms. Ayushi Singh Mr. Neeraj Kumar Pal
For Respondent(s)	:	Mr. Devansh Sharma, Dy. G.C.

HON'BLE MR. JUSTICE RAVI CHIRANIA

Order

20/04/2026

1. The petitioner has filed the instant writ petition which arises as a second round of litigation. In the first round of litigation, the petitioner approached this Court by filing **S.B. Civil Writ Petition No. 6896/2014** which came to be decided vide order dated 21.08.2014. By the said order, the Co-ordinate Bench of this Court directed the respondents to examine the grievance of the petitioner and permitted him to join as an order of appointment dated 08.09.2008 had already been issued in his favour.

2. Learned Counsel submits that the petitioner submitted his application to the respondents on 05.07.2007 within the prescribed time and respondents processed the same as per prevalent The Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules of 1996 (hereinafter referred to as '**The Rules of 1996**').

3. Learned counsel further submits that after completing all necessary formalities and compliances, the respondents issued an office order for appointment dated 08.09.2008 in favour of the petitioner. Learned Counsel submits that after issuing the said order, the respondent did not permit him to join the service on the ground that his brother had joined Government service. Learned Counsel further submits that at the time of submission of application, no member from the petitioner's family was in the Government service. The petitioner's brother was appointed to a Government service on 28.02.2008, whereas the appointment order in favour of the petitioner was issued on 08.09.2008.

4. Learned counsel submits that compassionate appointment is governed by the Rules of 1996. As per Rule 5 of the Rules of 1996, being relevant, provides that it is to be seen that at the time of the death, no one in the family of the deceased-Government servant is in the employment of the State or in the Government service. Rule 5 of the Rules of 1996 (prior of the amendment of 2015) is reproduce as under:-

"Appointment subject to certain conditions:-(1) When a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these rules shall not

be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the central/any State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government *"at the time of death of the Government servant.

Provided that this condition shall not apply where the widow seeks employment for herself.

(2) Appointment under these rules shall be given on the condition that the person appointed on compassionate ground shall maintain properly the other family members who were dependent on the deceased Government Servant and on furnishing an undertaking in writing that he/she shall maintain properly the other family members who were dependent on the deceased Government Servant. If subsequently, at any time, it is proved that such dependent family members are being neglected or are not being maintained properly by him, the appointment may be terminated by the Appointing Authority after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him to explain why his services should not be terminated."

5. Learned Counsel submits that in view of the Rule 5 of the Rules of 1996, the application was processed and thereafter, the respondent issued the order dated 08.09.2008. However, there was a second condition mentioned in the order that the concerned parent department would make further verification regarding the eligibility conditions before giving the appointment. It is on the

account of this fact that the petitioner was not allowed to join by raising an objection that the brother of the petitioner is already in Government service since 28.02.2008.

6. Learned Counsel submits that in view of Rule 5 of the Rules of 1996 (prior to 2015 amendment), the objection as raised by the respondent is not maintainable as the brother was appointed much after the submission of the application and as per **Rule 5 of the Rules of 1996 the eligibility is to be checked at the time of death or at the time of submission of application.** The eligibility of petitioner was properly checked by the respondents, whereafter the application was forwarded by the parent department to the higher authority. In view thereof, the respondent issued the order dated 08.09.2008 and thereafter, the further objection taken by them is contrary to Rule 5 of the Rules of 1996 and the same is untenable in the eyes of law.

7. In view of the above, learned counsel prayed that the impugned order as issued by the respondents dated 01.06.2011 deserves to be quashed and set aside and the petitioner needs to be given appointment on compassionate basis from the date of order, i.e., 08.09.2008 which was issued by respondents, along with all consequential benefits.

8. **Per contra**, learned counsel for the State firmly objected to the submissions as made and prayed that appointment can not be given to the petitioner on compassionate basis. Learned counsel submits that the brother of the petitioner was appointed on 28.02.2008 and therefore, before issuing the orders of appointment, if any family member is found to be in Government service then, applicant becomes ineligible as per the Rules of

1996. In view thereof, learned counsel seriously objected that appointment cannot be given and despite issuance of order dated 08.09.2028, he was not allowed to join as he was ineligible as per Rule 5 and the order dated 01.06.2011 is not illegal.

9. Heard learned counsels for the both the parties.

10. This Court considered the Rules of 1996, most specifically Rule 5 which provides for consideration of the application, according to which, at the time of the death of the Government servant, no one in the family should be in the Government services or even at the time of submission of application, as same would be the disqualification for consideration on compassionate basis under the Rules. Admittedly, the father of the petitioner expired on 06.06.2007 and the application was submitted on 05.07.2007.

11. The Rule 5 of the Rules of 1996 specifically deals with the issue that no one in the family of the deceased-employee should be in Government service at the time of the death or at the time of submission of the application. Admittedly, at that time, no one in the family was in the Government service and the entire family was dependent on the deceased Government servant. The Rules of 1996 were later on amended and **the amendment was made in Rule 5 in the year 2015 notified by way of notification dated 08.04.2015 which provides that at the time of appointment, no one in the family should be in Government service.** Admittedly, this amendment came into effect from the year 2015, whereas the application was filed in the year 2007. The amended Rule 5 of the Rules of 1996 reads as under:-

"5. Appointment subject to certain conditions: -

(1) When a Government servant dies while in service one of his/her dependents may be considered for appointment in Government service subject to the condition that employment under these rules shall not be admissible in cases where the spouses or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the central/any State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government **"at the time of death of the Government servant or at the time of appointment of the dependent."**

Provided that this condition shall not apply where the widow seeks employment for herself.

(2) Appointment under these rules shall be given on the condition that the person appointed on compassionate ground shall maintain properly the other family members who were dependent on the deceased Government Servant and on furnishing an undertaking in writing that he/she shall maintain properly the other family members who were dependent on the deceased Government Servant. If subsequently, at any time, it is proved that such dependent family members are being neglected or are not being maintained properly by him, the appointment may be terminated by the Appointing Authority after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him to explain why his services should not be terminated.

12. For the assistance of this Court, both the learned counsel for the petitioner cited a recent judgment passed by the Hon'ble Supreme Court in **Malaya Nanda Sethy v. State of Orissa and Ors.** reported in **(2024) 15 SCC 766**, wherein the Hon'ble Supreme Court capture the issue of application of the rules and

held that the consideration for appointment on compassionate basis has to be made on the basis of rules prevalent at the time of submission of the application. In the case of **Malaya Nanda Sethy (supra)**, the Supreme Court specifically said that at the time of the submission of the application, the Rules of 1990 were in force and therefore, the application should be considered in accordance with the same. The relevant para of the judgment is reads as under:-

"9. We have heard the learned counsel for the respective parties at length. We have noted that there is a conflict of view, as to whether the scheme/rules in force on the date of death of the government servant would apply or the scheme/rules in force on the date of consideration of the application on compassionate grounds would apply. There are divergent views and the conflict of opinion in different decisions of this Court. However, keeping the said question aside, for the reasons stated hereinbelow, we are of the opinion that in the peculiar facts and circumstances of the case, the appellant herein shall be entitled for appointment on compassionate ground as per the 1990 Rules, which were applicable at the time when the deceased employee died and the appellant herein made an application for appointment on the death of his father i.e. in the year 2010."

13. The Hon'ble Supreme Court further held in the **Malaya Nanda Sethy (supra)** that respondents cannot take benefit of their own fault in not giving timely appointment to the objection as raised and therefore, held that the petitioner is entitled for the compassionate appointment in terms of the Rules of 1990 on the basis of the application submitted in the year 2010. The relevant

para of the judgment **Malaya Nanda Sethy (supra)** reads as under:-

"12. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.

13. In view of the above discussion and for the reasons stated above, the impugned judgment and order [Malaya Nanda Sethy v. State of Orissa, WP (C) No. 28023 of 2021 sub nom State of Odisha v. Yagyansis Ray, 2021 SCC OnLine Ori 2362] passed by the High Court is hereby quashed and set aside. The respondents are directed to consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk. The aforesaid exercise shall be completed within a period of four weeks from today. However, it is observed that the appellant shall be

entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

14. In view of the above, both the learned counsels are in agreement that the amendment is not applicable to the present case and as per the provisions of Rules as was in existence in 2007, there was no one in the family who was in Government service at the time of death and also at the time of submission of the application, therefore, the respondent rightly processed the application and issued the order dated 08.09.2008 for appointment of the petitioner, however, their act of taking objection regarding the family member, being in Government service by way of the order dated 01.06.2011 appears to be highly arbitrary, unjustified and in violation of applicable (pre-amended) Rule 5 of the Rules of 1996.

15. In view of the above, the writ petition is allowed and the impugned order dated 01.06.2011 and 04.08.2015 is hereby set aside. The respondents are directed to give appointment to the petitioner under the Rules of 1996 (pre-amended) in terms of order dated 08.09.2008 within a period of 30 days from the date of passing of this order without further objection, unnecessary and unwanted delay.

16. The petitioner is held entitled to all notional and consequential benefits from 08.09.2008 and actual benefits from the date of joining the said post.

17. All pending application(s), if any, also stands disposed of.

(RAVI CHIRANIA),J