

Court No. - 5**Reserved**
A.F.R.**Case :-** WRIT - A No. - 16406 of 2024**Petitioner :-** Satish Chandra**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Sudeep Dwivedi, Sr. Advocate**Counsel for Respondent :-** C.S.C., Saurabh Tiwari**Hon'ble J.J. Munir, J.**

1. The petitioner, Satish Chandra, has applied for the issue of a writ, order or direction in the nature of *mandamus*, commanding the District Inspector of Schools, Kasganj (for short, 'the DIOS') to grant approval to his appointment as a Clerk with the Sant Tulsidas Municipal Inter College, Soron, Kasganj (for short, 'the Institution') made by the Management on 06.03.2024 under the Dying-in-Rules.

2. The Institution is run and managed by the Nagar Palika Parishad, Soron, Kasganj and the Chairman of the Nagar Palika is the *ex officio* Manager thereof. The Institution is governed by the provisions of the Uttar Pradesh Intermediate Education Act, 1921 (for short, 'the Act of 1921') and the Regulations framed thereunder as also Government Orders issued from time to time. Payments of salaries to teachers and other employees working with the Institution are made under the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (for short, 'the Act of 1971'). The petitioner's father, the late Lala Ram, was a peon with the Institution and died in harness on 08.11.2023. The petitioner, being the deceased employee's son, applied for appointment against a suitable post. There are three posts of clerks sanctioned for the Institution, out of which two are occupied with incumbents

working thereagainst. There is a vacancy of one due to Ravi Kumar Parashar's services being terminated by the Management on 08.12.2008. The said order is under challenge before this Court at the instance of Parashar in Writ-A No.7688 of 2009. There is no interim order granted in the said petition. Parashar is scheduled to superannuate in the year 2026 and the post is vacant since the year 2009.

3. The petitioner, being eligible for the post of a clerk, was considered for compassionate appointment in accordance with Regulations 103-107 of Chapter III of the Regulations framed under the Act of 1921. The petitioner made his application on 27.01.2024, upon which consideration followed. After due selection, the petitioner was appointed by the Manager of the Institution by a letter of appointment dated 06.03.2024, appointing him as a Clerk. The petitioner joined his duties on 11.03.2024. On the 30th of March, 2024, the Principal of the Institution addressed a letter to the DIOS, requesting him to include the petitioner's name on the Human Resource Portal for the purpose of payment of his salary. On 12.04.2024, the Chairman of the Nagar Palika Parishad, Soron, Kasganj/ the Manager of the Institution addressed a letter to the DIOS, seeking approval for the petitioner's appointment and further requested him to record the petitioner's name on the Human Resource Portal for the purpose of payment of salary. On the 3rd of May, 2024, the DIOS addressed a letter to the Joint Director of Education, Aligarh and requested him to provide guidance in the matter of approval of appointment to the Clerk's post with the Institution, the petitioner having been appointed on compassionate grounds by the Management and given charge.

4. The Manager of the Institution later, addressed a letter

dated 10.06.2024 to the Joint Director of Education, Aligarh, apprising him of the position regarding the petitioner's appointment on compassionate grounds as also the position of vacancy in the cadre of clerks, the applicability of the Act of 1921 to the Institution as well as the Regulations framed thereunder. The Joint Director of Education, Aligarh Region, Aligarh wrote back to the DIOS, *vide* his memo dated 10.07.2024. It says that the DIOS had sought guidance about the petitioner's appointment on compassionate grounds as a Clerk with the Institution on a supernumerary post. It is remarked that the Institution is governed in the matter of payment of salary by the Act of 1971. Therefore, the DIOS was asked to consider the petitioner's case in accordance with Chapter III, Regulation 105 of the Regulations framed under the Act of 1921. The DIOS by his letter dated 18.07.2024, addressed to the Manager and the Principal of the Institution, directed them to take necessary action in accordance with his letter under reference. A detailed allusion to this letter of the DIOS would be made in the course of this judgment.

5. Nevertheless, it must be pointed out that for whatever flaws in the petitioner's appointment, that were indicated by the DIOS *vide* his letter dated 22.08.2024, he returned the papers relating to the petitioner's appointment to the Management to take action in accordance with the guidance offered by the Joint Director of Education, Aligarh Region, Aligarh *vide* his letter dated 10.07.2024. Regarding this as inaction in the matter of grant of approval to his appointment, the petitioner has instituted the present writ petition.

6. When the petition came up for admission on 18.11.2024, a very detailed order was passed by this Court, requiring the DIOS to file a personal affidavit. The order dated 18.11.2024

passed by this Court reads:

"1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Sudeep Dwivedi, learned counsel for the petitioner, learned Standing Counsel for the respondents no. 1 to 3 and Sri Saurabh Tiwari, learned counsel for the respondents no.4 & 5.

2. The petitioner has preferred present writ petition inter-alia with the following prayers :-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to give approval and feed data of the petitioner on Human Resources Portal and to pay the salary to the petitioner month to month forthwith and also pay the dues allowances from date of joining dated 11.03.2024 to from the date of actual payment within stipulated period as may be specified by this Hon'ble Court.

(ii) Issue a writ, order or direction in the nature of mandamus commanding to the respondent no.3 to decide the representation dated 29.08.2024 within stipulated period which may be specified by this Hon'ble Court."

3. The facts in brief as contained in the writ petition are that father of the petitioner namely late Sri Lalaram was working on Class-IV post in Sant Tulsidas Myu. Inter College, Soro, Kasganj and while working on the aforesaid post unfortunately he died on 08.11.2023. The petitioner being fully eligible and qualified for the post of clerk made an application for his appointment on compassionate ground, the respondent no.5 namely Sant Tulsidas Myu. Inter College Soro, Kasganj through its Manager, Chairman Nagar Palika Parishad, Soro, Kasganj after considering the entire material of the case issued an appointment of letter to the petitioner appointing him on the post of clerk vide letter of appointment dated 06.03.2024, thereafter on 30.03.2024 Principal of the institution wrote a letter to the District Inspector of Schools, Kasganj/respondent no.3 with a request to include the name of the petitioner on Human Resources Portal for the purpose of payment of salary. Thereafter on 03.05.2024 District Inspector of Schools, Kasganj written a letter to Joint Director of Education, Aligarh requesting to provide guidelines for appointment on the post of clerk to the petitioner, who appointed and join on 11.03.2024 on the said post and doing work regularly from the date of joining. On 01.06.2024, the Chairman, Nagar Palika Parishad, Soro, Kasganj/Officio Manager of the institution has also written and send a letter to the Joint Director of Education, Aligarh and he also stated clear position to the post of clerk in the institution. Thereafter, on 18.07.2024 a letter was written by the respondent no.3-District Inspector of Schools, Kasganj to the Manager/Principal of the institution directing to take action pursuant to the letter dated 18.07.2024.

4. It is argued by learned Senior Counsel that direction given in the letter dated 23.08.2024 written by the respondent no.3 to the Manager of the institution in question is per-se illegal and without any basis. It is further argued that two grounds were taken in the aforesaid, which reads as follows :-

"उपर्युक्त के अतिरिक्त आप अवगत हों कि नगर पालिका परिषद से सम्बद्ध शिक्षण

संस्थान हेतु पत्र व्यवहार एवं अन्य कार्यवाही संस्था प्रबंधक के रूप में किया जाना नियमानुसार है न कि अध्यक्ष नगर पालिका परिषद के पदनाम से। सहायक लिपिक पद पर विभागीय नियमों के अनुसार टंकण की गति के परीक्षण हेतु परीक्षा लिए जाने का न तो कोई साक्ष्य है और न किसी प्रकार का कोई उल्लेख है।

अतः मार्ग निर्देश दिनांक: 19.07.2024 के अनुसार तत्काल आवश्यक कार्यवाही करें।”

5. In so far as first ground is concerned, the Court is of the opinion that this is only hyper technical grounds. The State Authority can not restrain a person to work on compassionate ground. In so far as second ground is concerned, it is argued that there is no such provision in the Act/Rules to pass typing test before any appointment on compassionate ground on the post of clerk.

6. In this view of the matter, it is argued that both grounds taken in the matter is without any basis hence direction be given to the respondent no.3 to give approval and feed date of the petitioner on Human Resources Portal.

7. Learned Standing Counsel placed before this Court instructions dated 17.11.2024 under signature of respondent no.3. It is again stated in the aforesaid instructions that without examining the typing speed of the petitioner, the appointment letter was issued to the petitioner hence writ petition is liable to be dismissed.

8. Heard learned counsel for the parties and perused the records.

9. From perusal of the records it is clear that one of the basic objection has been taken by the respondent no.3 that petitioner was appointed on compassionate ground by the Management of the institution without examining typing speed of the petitioner.

10. It is further argued by Sri Ashok Khare, learned Senior Counsel that there is no such condition either in the Act or in the Rules or in the Government Order issued by the State Government from time to time that before appointment on post of clerk on compassionate ground typing test is a condition precedent.

11. In this view of the matter, respondent no.3 is directed to file personal affidavit within ten days regarding the same. In absence of same, respondent no.3 is directed to appear in person on the next date fixed in the matter.

12. Put up as fresh on 28.11.2024.”

7. In response, a personal affidavit has been filed by the DIOS on 28.11.2024, which was directed by this Court to be read as a counter affidavit, as the learned Standing Counsel waived his right to file a detailed return. Learned Counsel for the petitioner waived his right to file a rejoinder.

8. Issue of notice to the fifth respondent was dispensed with since they are *ad idem* with the petitioner's cause. The petition being ready, it was admitted to hearing, which proceeded forthwith and orders reserved.

9. Heard Mr. Sudeep Dwivedi, learned Counsel for the petitioner, Mr. Saurabh, learned Standing Counsel and Mr. Saurabh Tiwari, Advocate appearing on behalf of respondent No.4.

10. The learned Counsel for the parties centered their submissions on the issue whether it was imperative for the Management, while selecting the petitioner for compassionate appointment and issuing him an appointment letter, to have subjected him to a typing test in order to ascertain his typing speed. This submission on both sides is premised on the provisions of Regulation 103 of Chapter III of the Regulations framed under the Act of 1921, as amended *vide* notification dated 06.12.2022 issued by the State Government in exercise of their powers under Section 16-G of the Act of 1921, more particularly, the first proviso to Regulation 103(1). The aforesaid Regulation, to which allusion would be made in the course of this judgment, makes it mandatory, in case of posts which require knowledge of operation of a computer or possession of typing skill and where the candidate for compassionate appointment does not possess the necessary proficiency in computer operation or typing, to make the appointment contingent upon the candidate earning the necessary CCC Certificate from the DOEACC Society or an equivalent qualification, recognized by the Government, and achieve, along with earning the certificate, a typing speed of 25 words per minute in Hindi and 30 words per minute in English. It is also mandated by the proviso that if a candidate fails to earn the certificate or

achieve the requisite speed within a year, his annual increment shall be withheld and he would have another year to earn the requisite CCC Certificate etc. and achieve the necessary typing speed. It is also provided that if after the further time period of one year granted, the qualification or the speed are not earned or achieved, his service would be terminated.

11. Now, both sides have been emphatic about the point whether at the time of recruitment, or so as to speak, selection and initial appointment, the proviso to Regulation 101 (1) obliges the Management of the Institution to undertake, or the candidate appointed on compassionate grounds to undergo a test to establish whether he/ she possesses the requisite typing speed. There is no issue about the petitioner earning the CCC Certificate because he asserts that he already has it and the fact is not disputed either before this Court or in the letter/ order of the DIOS dated 22.08.2024, returning the papers to the Management, relating to the petitioner's appointment.

12. The DIOS by his letter dated 22.08.2024, addressed to the Manager of the Institution, returned the papers relating to the petitioner's selection and appointment, where the material remarks read:

“प्रश्नगत प्रकरण नीतिविषयक होने के कारण वैधानिक मार्गदर्शन हेतु मण्डलीय संयुक्त शिक्षा निदेशक अलीगढ़ को इस कार्यालय के पत्रांक- मा0 / 573-76/2024-25 दिनांक - 30.05.2024 के अनुसार संदर्भित किया गया। मण्डलीय संयुक्त शिक्षा निदेशक अलीगढ़ के पत्रांक-2028-30 / 2024-25 दिनांक: 10.07.2024 के अनुसार मार्गदर्शन दिया गया कि माध्यमिक शिक्षा अधिनियम 1921 के अध्याय-3 की धारा 105 में वर्णित प्राविधानों के अनुसार नियमानुसार आवश्यक कार्यवाही करें। मार्गदर्शन की प्रति आपको भी पृष्ठांकित की गयी। उक्त के सम्बन्ध में इस कार्यालय के पत्र सं 0-2267-69/2024-25 दिनांक: 18.07.2024 के द्वारा भी आपको अवगत कराया गया।

आप द्वारा उक्त मार्गदर्शन के क्रम में कोई कार्यवाही नहीं की गयी है तथा उ०प्र० सरकार शिक्षा (7) अनुभाग सं०-मा० / 3082 / 15-7-8 (4)/75 दिनांक: 12.07.1982 को जारी अधिसूचना का भी संज्ञान नहीं लिया गया है, संज्ञान लेकर कार्यवाही करें।

उपर्युक्त के अतिरिक्त आप अवगत हों कि नगर पालिका परिषद से सम्बद्ध शिक्षण संस्थान हेतु पत्र व्यवहार एवं अन्य कार्यवाही संस्था प्रबंधक के रूप में किया जाना

नियमानुसार है न कि अध्यक्ष नगर पालिका परिषद के पदनाम से। सहायक लिपिक पद पर विभागीय नियमों के अनुसार टंकण की गति के परीक्षण हेतु परीक्षा लिए जाने का न तो कोई साक्ष्य है और न किसी प्रकार का कोई उल्लेख है।

अतः मार्ग निर्देश दिनांक: 10.07.2024 के अनुसार तत्काल आवश्यक कार्यवाही करें। पत्रावली मूलरूप में संलग्न कर प्रत्यावर्तित है।”

(emphasis by Court)

13. Before this Court, learned Counsel for both sides have made their submissions on the premise that the Management are competent not only to appoint, but select a candidate like the petitioner under the Regulations relating to compassionate, which the DIOS has to scrutinize and approve for the purpose of payment of salary under the Act of 1971. These submissions have proceeded on lines that the Management while examining the candidature of a candidate for compassionate appointment have to ensure that he fulfills the necessary qualifications for appointment to a clerical post. This includes the possession of a CCC Certificate and command of the prescribed typing speed in Hindi and English. The objection that has been the subject of issue raised by parties before this Court is that the proviso to Regulation 103 envisaging a time period of one year for a candidate appointed to a clerical post, requiring the knowledge of typing to acquire the prescribed speed, the remarks of the DIOS or the stand before the Court that the Management at the time of selection ought have taken a typing test and determined the petitioner's typing speed is besides the point. This is what the petitioner would submit on the issue.

14. Mr. Saurabh, the learned Standing Counsel, on the other hand, asserts that it is to be ascertained in the first instance by the Management while the selecting a candidate for compassionate appointment under Regulations 103 to 107 of Chapter III of the Regulations framed under the Act of 1921, if he/ she possesses the requisite typing speed. The period of

one year, according to Mr. Saurabh, is then the first opportunity to acquire the requisite speed. There is then, according to the learned Standing Counsel, a further opportunity of one year to acquire the prescribed typing speed if at the end of one year, the candidate fails to attain it. At that stage too, a typing test would be necessary. The submission in substance, therefore, is that at the threshold, at the time of selection, it has to be ascertained by the Management if the candidate possesses the requisite typing speed. If he does, there is no requirement of asking him to undergo a further test at the end of one year.

15. In our opinion, this point, though much debatable, is not required to be gone into in this case, and, therefore, left open for consideration in a suitable cause in the future.

16. Here, allusion must be made to the provisions of Regulations 104, 105, 106 and 107 of Chapter III of the Regulations framed under the Act of 1921, as amended *vide* notification dated 6th December, 2022. These read:

“104. किसी मान्यता प्राप्त, सहायता प्राप्त संस्था का प्रबन्धतन्त्र मृत्यु होने के दिनांक से सात दिन के भीतर निरीक्षक को मृत कर्मचारी के कुटुम्ब के सदस्यों की एक रिपोर्ट प्रस्तुत करेगा जिसमें मृत कर्मचारी का नाम, धृत पद, वेतनमान, नियुक्ति का दिनांक मृत्यु का दिनांक नियोजक संस्था का नाम उसके कुटुम्ब के सदस्यों के नाम, उनकी शैक्षिक प्रशिक्षण अर्हताएं यदि कोई हों, और आयु का विवरण भी दिया जायेगा। निरीक्षक अपने द्वारा रखे जाने वाले रजिस्टर में मृतक की विशिष्टियाँ दर्ज करेगा।

105. विनियम 103 में निर्दिष्ट मृत कर्मचारी के कुटुम्ब का कोई सदस्य सम्बन्धित निरीक्षक को यथास्थिति, प्रशिक्षित स्नातक श्रेणी में अध्यापक या शिक्षणेत्तर संवर्ग के किसी पद पर नियुक्ति के लिए आवेदन करेगा। आवेदन पत्र पर समिति द्वारा विचार किया जायेगा और यदि समिति उसकी नियुक्ति की संस्तुति करे तो निरीक्षक मान्यता प्राप्त, सहायता प्राप्त उस संस्था के, जिसमें आवेदक को नियुक्त किया जाना है, प्रबन्ध तन्त्र को आवेदन-पत्र विनियम 106 और 107 के अनुसार नियुक्ति आदेश जारी करने के लिये भेजेगा।

समिति में निम्नलिखित होंगे—

1. निरीक्षक अध्यक्ष
2. जिला विद्यालय निरीक्षक के कार्यालय में लेखाधिकारी सदस्य

3. जिला बेसिक शिक्षा अधिकारी सदस्य

106. मृत कर्मचारी के कुटुम्ब के सदस्य की नियुक्ति उसकी शैक्षिक अर्हताओं के अनुसार प्रशिक्षित स्नातक श्रेणी में या किसी शिक्षणेत्तर पद पर यथासम्भव उसी संस्था में की जायेगी जहाँ मृत कर्मचारी अपनी मृत्यु के समय सेवारत था। यदि ऐसी संस्था में प्रशिक्षित स्नातक श्रेणी में किसी अध्यापक या शिक्षणेत्तर संवर्ग में कोई पद रिक्त न हो तो उसकी नियुक्ति जिले की किसी अन्य मान्यता प्राप्त, सहायता प्राप्त संस्था में जहाँ ऐसी रिक्ति हो की जायेगी-

प्रतिबन्ध यह है कि यदि जिले की किसी मान्यता प्राप्त, सहायता प्राप्त संस्था में कोई रिक्ति तत्समय विद्यमान न हो तो उस संस्था में जहाँ मृतक अपनी मृत्यु के समय सेवारत था, नियुक्ति प्रशिक्षित स्नातक श्रेणी के अध्यापक के या चतुर्थ श्रेणी के शिक्षणेत्तर पद के प्रति किसी अधिसंख्य पद के प्रति तुरन्त की जायेगी। ऐसे अधिसंख्य पद को इस प्रयोजन के लिये सृजित किया गया समझा जायेगा और उसे तब तक जारी रखा जायेगा जब तक कोई रिक्ति उस संस्था में या जिले की किसी अन्य मान्यता प्राप्त, सहायता प्राप्त संस्था में उपलब्ध न हो जाये और ऐसी स्थिति में अधिसंख्य पद के पदधारी द्वारा की गई सेवा की गणना वेतन निर्धारण और सेवा निवृत्ति लाभों के लिये की जायेगी।

107. उस मान्यता प्राप्त, सहायता प्राप्त संस्था के प्रबन्धतन्त्र द्वारा, जिसको विनियम 105 के अधीन निरीक्षक द्वारा आवेदन-पत्र भेजा गया या आवेदन पत्र को प्राप्ति के दिनांक से एक माह की अवधि के भीतर निरीक्षक को सूचना देते हुए नियुक्त पत्र जारी किया जायेगा।"

17. The deceased employee, Lala Ram passed away on 08.11.2023, leaving behind him a dependent family, including the petitioner, his son. There is little doubt in view of the date of the employee's demise that the Regulations 103-107 of Chapter III aforesaid would apply, as amended by the notification dated 06.12.2022. These have been quoted hereinbefore. A perusal of the entire scheme for selection and appointment under the Regulations aforesaid is encapsuled in Regulations 104-107. The Regulations aforesaid envisage a complete scheme for compassionate appointment and the power to select a candidate on compassionate ground does not at all vest with the Management of the Institution, where the deceased employee was serving.

18. Regulation 104 casts an obligation upon the management or the principal or the headmaster of a recognized and aided institution, where the deceased employee was serving, to

intimate within seven days of his death in harness by a report to the District Inspector of Schools the factum of his death. Apart from it, the report aforesaid shall convey information, which would mention the deceased's name, the post held by him, his pay scale, the date of his appointment, the date of his death, the name of the employer-institution, the name of the deceased's family members, their educational qualifications and ages. The District Inspector of Schools is obliged to maintain a register, wherein particulars relating to the deceased employee sent to him through report by the management/ principal of the institution, as the case may be, shall be recorded.

19. Regulation 105 provides that one family member of the deceased would then apply for appointment as an assistant teacher or a Class-III employee. The aforesaid application shall be placed before a Committee, comprising three members, to wit, the District Inspector of Schools, who would be its Chairman, the Finance and Accounts Officer (Secondary Education) and the senior most Principal of the Government Inter College/ Government Girls Inter College, both of whom would be members. The Committee as aforesaid would consider the application for compassionate appointment and make recommendation for appointment of the applicant to the institution, where he is entitled to be appointed in accordance with the provisions of Regulation 106. The management or the principal or the headmaster, as the case may be, would then issue a letter of appointment in favour of the applicant for compassionate appointment.

20. Regulation 106 provides that as far as possible the family member of the deceased would be appointed in the same institution, where the deceased was employed. If there is no position of an assistant teacher or a Class-III employee

available with the said institution, the family member may be appointed in any other institution in the district, wherever a vacancy exists. In the further event of there being no vacancy in the district in any institution, the District Level Committee, above described, would refer the matter to the Regional Level Committee and that Committee would recommend appointment of the candidate in any institution in the Region, wherever a suitable vacancy exists. It is also provided that if there is no vacancy in the entire Region, or if the applicant for compassionate appointment desires an appointment in some other Region, the matter would be referred to the Directorate of Education (Secondary), where it would be considered by a Committee, again comprising three members. This Committee would be headed by the Additional Director of Education (Secondary) as its Chairman and would have two other members, whose particulars are mentioned by reference to their office in the second proviso to Regulation 106. After consideration of the matter by the Committee at the Directorate Level, they would send the matter to the District Level Committee, wherever a suitable vacancy is there. This decision would be taken after securing information about the position of vacancies across the State.

21. Regulation 107 mandates that when a recognized and aided institution receives an application for appointment from the District Inspector of Schools in favour of a candidate for compassionate appointment, that institution would be obliged to issue an appointment letter in favour of the candidate within a month of receipt of the communication from the District Inspector of Schools.

22. The entire scheme of Regulations 104-107 of Chapter III of the Regulations framed under the Act of 1921 does not at all

authorize the management of the institution, where the employee, who died in harness, was working, to recommend any compassionate appointment, much less make it and afterwards seek approval of the District Inspector of Schools, as done in the present case. The procedure envisaged under Regulations 104-107 has to be followed for such an appointment to be made, where the management and the principal of the institution have no role, except to comply with the instructions of the District Inspector of Schools, in turn issued, on the basis of the recommendations of the concerned Committee. In this connection, reference may be made to **Anand Kumar Tripathi v. State of U.P. and others, 2012 (1) ADJ 286**, where this Court held:

"9. A perusal of Regulation 103 discloses that the appointment on compassionate ground is to be made on a post suitable to the qualification of the candidate. The Regulation 104 provides for the role of the management. According to Regulation 104, the Management within seven days from the date of the death of the employee, has to submit a report to the District Inspector of Schools giving such details of the deceased - employee and his family members as are noted in the regulation. Upon receipt of this report, the District Inspector of Schools has to enter the details in a register. Regulation 105 provides for an application by the member of the family of the deceased-employee thereby seeking appointment. This application has to be made before the District Inspector of Schools. Thereafter, the application with all the relevant papers is to be placed before a District Level Committee, which consists of the District Inspector of Schools, the Accountant in the office of the District Inspector of Schools and the District Basic Education Officer of the concerned district. Upon recommendation of this Committee, the District Inspector of Schools has to forward the application for appointment to the Management concerned for issuing necessary appointment order in accordance with Regulations 106 and 107. Regulation 106 provides that the dependent of the deceased-employee would be given appointment in the same Institution where the deceased-employee was working and in case there

is no vacant post in the said institution then the appointment is to be provided in any other recognized/ aided institution of the District. The Proviso to Regulation 106 states that where there is no vacant post in the entire District then a supernumerary post in Class IV shall be created for the candidate. Regulation 107 provides for the time limit within which the exercise of issuing the appointment order is to be carried out.

10. Having considered the aforesaid provisions that deal with the compassionate appointments in recognized / govt. aided Intermediate Colleges, I am of the considered opinion that the Management of a college has no say with regard to the post on which a dependent of a deceased-employee is to be appointed. The role of the Management is only to forward the necessary information, as is required by Regulation 104 of Chapter III of the Regulation framed under the U.P. Intermediate Education Act, 1921. The District Level Selection Committee constituted under Regulation 105 is the body that decides the post on which a candidate is to be appointed after taking into account his or her qualification/and the vacancy available for appointment."

23. This then being the position of the law, if the petitioner had applied to the Management for consideration of his case *vide* application dated 27.01.2024, that occasion should not have arisen. The Management of the Institution should have reported the matter with all necessary particulars to the DIOS under Regulation 104 and the DIOS ought have processed the claim after entering it in the prescribed register. The Chairman of the Nagar Palika Parishad, who is the Manager of the Institution, certainly had no right to issue the letter of appointment dated 06.03.2024 to the petitioner and then send papers to the DIOS for his approval. The letter of appointment issued to the petitioner is contrary to the scheme of the provisions of Regulations 104-107 of Chapter III of the Regulations framed under the Act of 1921. It does not confer upon the petitioner any right. It is void. Being void, any kind of approval to it, even if given, would not imbue it with life. There

was no occasion for the DIOS to have sought directions from the Joint Director of Education. He ought have entered the petitioner's particulars in the register, processed the claim and placed it before the Committee, envisaged under Regulation 105 for their consideration. This would be followed by necessary direction for appointment to whichever institution these had to be issued.

24. Now, since that was not done and guidance from the Joint Director was sought, the Joint Director of Education was not wrong in asking the DIOS to proceed in accordance with Regulation 105. In fact, he was absolutely right. At that stage too, the DIOS should have proceeded under Regulation 105 and after collecting necessary particulars relating to the petitioner, caused it to be laid before the Committee under Regulation 104, of which he is himself the Chairman. Sadly, he did not do that. When he received the letter of appointment for approval etc. from the Institution along with papers, he found faults with it on the ground that the petitioner had not been subjected to the necessary typing test for ascertainment of his speed, and on that ground refused approval and sent the matter to the Management *vide* his order dated 22.08.2024. The sole direction in that order, that is sound, is that the DIOS has required, towards the tail-end of the order, the Manager of the Institution to act in accordance with the instructions of the Joint Director of Education carried in his memo dated 10.07.2024. This would oblige the Manager to report on the necessary particulars about the deceased to the DIOS. As soon as the Manager would do that, the obligation of the DIOS under Regulations 104 and 105 would commence. For judging the suitability of the petitioner for appointment to a Class-III post, it would be the Committee constituted under Regulation 105, who

would have to undertake the necessary exertions. If it involves a typing test, it is for them to ensure it. However, this is with the remark that passing the typing test at the time of initial recruitment, even if the requisite typing speed is not there, is not a precondition. There is complete provision for the purpose made in Regulation 101 (1) of the Regulations of Chapter III framed under the Act of 1921. The District Level Committee would do well to bear that in mind, so far as the petitioner's case goes. The petitioner has a right to be considered for compassionate appointment, but cannot be granted relief in the terms that he has prayed. The relief would have to be suitably moulded to give effect to the petitioner's rights, otherwise well-founded.

25. In the circumstances, a *mandamus* is issued to the Manager of the Institution/ Chairman, Nagar Palika Parishad, Soron, Kasganj to report with all particulars within seven days of receipt of this order, death of the petitioner's father to the DIOS. The DIOS will then proceed in accordance with Regulations 104 and 105 to place the petitioner's case for consideration before the Committee, envisaged under Regulation 105. The Committee will take a decision relating to the petitioner's appointment as a Class-III employee with whichever institution they find it feasible in accordance with the Regulations in force. The Committee's decision shall be taken within a month of receipt of the particulars from the Manager of the Institution. Immediately upon the recommendations of the Committee being made, the necessary instructions shall be issued by the DIOS to the Manager/ Principal/ Headmaster of whichever institution it is decided to appoint the petitioner. The institution concerned, to whomsoever the instructions/ directions are issued by the DIOS, shall proceed to appoint the

petitioner within a month of receipt of such instructions. It shall be the duty of the DIOS to ensure that this *mandamus* of ours is carried out punctiliously and without fail.

26. This writ petition is **allowed** in terms of the aforesaid orders.

27. There shall be no order as to costs.

28. Let this order be communicated to the Manager, Sant Tulsidas Municipal Inter College, Soron, Kasganj, the Chairman, Nagar Palika Parishad, Soron, Kasganj through the learned Civil Judge (Sr. Div.), Kasganj by the Registrar (Compliance). The order would also be communicated to the Joint Director of Education, Aligarh Region, Aligarh through the learned Civil Judge (Sr. Div.), Aligarh by the Registrar (Compliance).

Order Date :- 04.12.2024
Anoop

(J.J. Munir)
Judge