



2026:AHC:11377-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 820 of 2025

Banaras Hindu University And 4 Others

.....Appellant(s)

Versus

Nameirakpan Shangbanabi Devi

.....Respondent(s)

Counsel for Appellant(s) : Pooja Agarwal, Sr. Advocate
Counsel for Respondent(s) : In Person

Court No. - 3

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.**

1. Heard Ms. Pooja Agarwal, learned counsel for the respondent University/appellant and Ms. Nameirakpan Shangbanabi Devi, original petitioner (in person).

2. Present intra-Court appeal has been filed by the respondent-University against the order of the learned Single Judge dated 05.02.2025 in Nameirakpan Shangbanabi Versus Banaras Hindu University and 4 others, 2025:AHC:16715 whereby the learned Single Judge has allowed the writ petition filed by the petitioner. The order dated 09.03.2018 refusing to grant Compassionate Appointment to the original petitioner/respondent arising from the unfortunate death of her sister on 28.07.2015, has been set-aside. Further, a positive direction has been issued to deal with and decide the petitioner's application for grant of Compassionate Appointment without treating that application made by original petitioner, time-barred. Challenge has also been raised to the observation made by the learned Single Judge that the Recruitment Rules would have no application.

3. Submission has been advanced by learned counsel for the respondent-University/appellant that the rules regarding appointment on compassionate grounds in the University as approved by the Executive Council on 31.05.2023 refer to and incorporate the eligibility provisions under the Recruitment Rules. Referring to those Recruitment Rules, it has been submitted that the age prescription applicable to the case of the original petitioner is 18 to 33 years including relaxation of 3 years only, considering the fact that she belongs to the category Other Backward Class (in short 'OBC'). The petitioner being born on 01.03.1978, she was 37 years of age on the occurrence of the unfortunate death of her sister. Therefore, she was over age by 4 years beyond the maximum relaxation that may have been granted to her under the

Recruitment Rules.

4. Second, reference has been made to the further resolution of the Executive Council from arising a similar case of a claimant Ms. Madhuri Singh. Thus, the Executive Council of the University resolved-barring cases of widowed spouse or divorcees, age relaxation may not be granted to any claimant beyond the prescription in the Recruitment Rules.

5. Third, in any case, the learned Single Judge has erred in law in reasoning that the Recruitment Rules would have no application to the Banaras Hindu University, Rules Regarding Appointment on Compassionate Grounds in the University (hereinafter referred to as "Compassionate Rules"), inasmuch as, the Eligibility Clause under the Compassionate Rules clearly refers to and makes applicable the Recruitment Rules.

6. On the other hand, the original petitioner/respondent has appeared in person. Today again, on being offered legal assistance, she has declined the same. Accordingly, she has been heard. She would submit that the order of the learned Single Judge merits no interference by this Court. To the extent, the Compassionate Rules provide for grant of age relaxation, the decision of the Executive Council may not dilute or override the operation of the Rules. To the decision in Ms. Madhuri Singh, she would submit that the decision of the Executive Council in the individual facts of that case would have no bearing on her case. As to the applicability of the Recruitment Rules, she would submit, the same may apply only with respect to other eligibilities i.e. excluding as to age-that may be governed by the provisions of the Compassionate Rules.

7. Having heard learned counsel for the parties and having perused the record, before we may offer any consideration to the submissions advanced, it would be useful to extract certain provisions of the Compassionate Rules. The Rules are not numbered. However, there are Clauses referring to 'Object', 'To Whom application', 'Eligibility', 'Saving Clause' and 'Relaxations'. For ready reference the said provisions are quoted below:-

"Object

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a University employee dying in harness or who is retired on medical grounds, thereby having his family in penury and without any means of livelihood, to relieved the family of the University employee concerned from financial destitution and to help it get over the emergency.

To Whom application

To dependent family member of a University employee who:-

- a) dies while in service (including death of suicide); or*
- b) is retired on medical grounds under Rules 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' University employee);*
- c) is retired on medical grounds under Rules 38 of the CCS (Pension) Rules 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 for Group 'D' University employee).*

NOTE:I, "Dependent family Member" means:-

- a) Spouse:or*
- b) Son (including adopted son); or*
- c) Daughter (including adopted daughter);*
- d) Brother or sister in the case of unmarried University employee;*

Wholly dependent on the University employee at the time of death in harness or retirement on medical ground as the case may be.

NOTE II: "University employee" for the purpose of these instructions means a University employee appointed on regular basis and not one working on daily wages or casual or apprentice or ad-hoc or contract or re-employment basis.

NOTE III:- "Service" includes extension in service (but not re-employment) after attaining the normal age of retirement in civil post.

NOTE IV:- "Reemployment" does not include employment of Ex-Servicemen before the normal age of retirement in a Civil Post."

Eligibility

- a) the family is indigent and deserves immediate assistance for relief from financial destitution, and*
- b) Applicant for compassionate appointment should be eligible and suitable for the posts in all respects under the provisions of the relevant Recruitment Rules.*
- c) the date of occurrence of the employee's death shall form the order of*

sequence for consideration of appointment on compassionate ground.

d) The minimum age of eligibility for an appointment on compassionate ground shall be 18 years.

Saving Clause

These rules shall come into force from May, 31st, 2003. Any resolutions, Circulars, provisions rules notified earlier shall stand superceded w.e.f., date of the enforcement of the present rules.

Their appointment will be made through Compassionate Committee instead of CBR.

Relaxations:

Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

NOTE: Age eligibility shall be determined with reference to the date of application and not the date of appointment.

Prescribed Proforma available for making application as Appendix:-'A'

Recommendation of the Committee should be placed before the competent authority for a decision. If the competent authority disagrees with the Committee's recommendations, the case may be referred to the next higher authority for a decision."

(emphasis supplied)

8. In contrast, it has been shown that the Recruitment Rules provide for basic age criteria 18-30 years for General Category. It further provides 3 year relaxation in upper age limit of candidate who belongs to OBC Category.

9. The above Compassionate Rules were approved by the Executive Council of the University by its resolution ECR No.204 dated 31.05.2003. Thereafter the Appointments Committee of the University had the occasion to consider the upper age relaxation in the case of Ms. Madhuri Singh. In that it appears that first the Appointments Committee considered another resolution also dated 31.05.2003 (that is also the date on which the Executive Council approved the Compassionate Rules). That resolution to the extent it is relevant is extracted below:-

"RESOLVED FURTHER that the rules framed by the Executive Council at its meeting held on May 31, 2003 based on the Govt. of India

guidelines be followed in letter and spirit and that the relaxation to upper age limit will continue to be governed as per the relevant Recruitment Rules."

10. We also find appended a 'Note', to that resolution of the Appointments Committee. From that it does appear that vide its meeting dated 15.12.2003 the Appointments Committee had resolved that generally children of a deceased University employee may not be considered eligible for grant of appointment after attaining age of 25 years. It also observed that the Compassionate Appointments Committee has consistently granted relaxation of upper age limit in the case of wards of widows of deceased employees had been granted such age relaxation beyond age 25. That appears to be the governing policy of the University. It appears to have consistently denied consideration of upper age relaxation, except in cases of wards of deceased employee.

11. Therefore, the issue to be considered is whether the policy decision of the University governing the exercise of its discretion in matters of upper age relaxation, to cases arising under the Compassionate Rules is in consonance with the law i.e. the Compassionate Rules and the Recruitment Rules. We therefore, examine the Compassionate Rules and the effect caused by the Recruitment Rules.

12. As extracted above, the object of the Compassionate Rules is to grant appointment on compassionate grounds to a dependent family member of a deceased employee where such family member of the deceased employee may face penury, without means of livelihood. Clearly the sister of the original petitioner died in harness. The Compassionate Rules under the heading "To Whom Application", Note:I (d) include sister of an unmarried University employee. Admittedly, the deceased was unmarried on the date of her unfortunate death and the original petitioner is her sister. Therefore, the Compassionate Rules do apply to the original petitioner to the extent the claim made by her was maintainable, in law.

13. As to eligibility, the Compassionate Rules do provide that the original petitioner must be eligible for a suitable post as per the Recruitment Rules. As to eligibility on account of age, the Compassionate Rules specifically provide that the minimum age for appointment on compassionate ground shall be 18 years. That may not be relaxed. However, as to the upper age limit, the Compassionate Rules are specific. They do contemplate grant of upper age relaxation "wherever found to be necessary". By way of clarification the Saving Clause of the Compassionate Rules also nullifies all earlier decisions.

14. Therefore, seen in that light, the Recruitment Rules to the extent they provide description of age eligibility 18 to 30 years for General Category, may apply to the original petitioner, in the first place. However as to upper age

relaxation prescribed therein, there exist two provisions. In the Recruitment Rules such age relaxation may be generally granted to the original petitioner up to 3 years considering that she belongs to OBC Category. At the same time, the Compassionate Rules provide for upper age relaxation upon exercise of discretion in special circumstances, by the appropriate Committee of the University-on the principle "wherever found to be necessary".

15. In face of two conflicting provisions, the more specific provision arising under the Compassionate Rules, which has a direct bearing on and that seeks to fulfill the object of the Compassionate Rules would apply notwithstanding the contrary import of the Recruitment Rules. Suffice to note that the Recruitment Rules are in furtherance of the requirements of Article 16 of the Constitution of India whereas Compassionate Rules are an exception to those Rules and are protected, for reasons of the special purpose of their incorporation. To the extent the exceptional rules provide room for larger discretion to be exercised-to address the spirit of the Compassionate Rules, their full operation may not be cut short by unduly reading the provisions of the Recruitment Rules that have no bearing on the purpose of the Compassionate Rules.

16. Second, the Compassionate Rules come into play on occurrence of unknown events. A sudden misfortune may visit the family of a deceased employee, irrespective of the age composition of his family members. While seeking appointment by competing at a public examination the Recruitment Rules apply providing for a different principle to provide equal opportunity to all citizens, the Compassionate Rules and such provisions wherever they exist, aim to address the sudden financial hardships that arise owing to the loss of sole breadwinner of a family. Therefore, to us, no undue reliance may be placed on the provisions of Recruitment Rules to defeat the object of the Compassionate Rules. At the same time, if age relaxation as contemplated under both Rules is given free play that is one in the realm governed by Article 16 of the Constitution of India and the other to the exception thereto, there would be no conflict between the two sets of rules.

17. Examined in that light, the resolution of the Executive Council as has been shown to us by learned counsel for the University, is of no avail. Any decision taken in that light by the Executive Council limiting the exercise of discretion by the relevant Committee dealing with the Compassionate Rules would remain unenforceable being outside its jurisdiction and domain and plainly being contrary to the Compassionate Rules itself. To the extent the Compassionate Rules having statutory force, the Executive Council that has approved the same may not chose to not enforce any part of it without the said Compassionate Rules itself being amended. Here no amendment has been made to the Compassionate Rules.

18. Consequently, we are of the opinion that the decision of various Committees of the University and the Executive Council providing that no age relaxation may be granted except in the cases of widows, divorcees of deceased employees, and their wards may be uninformed with reason. It presumes that in all other cases of death in harness, there would be no financial hardship and, therefore, there would be no justification to grant age relaxation. That presumptuous reasoning is deficient. It seeks to restrict/obstruct the exercise of discretion under Compassionate Rules to all class of family members of a deceased employee, except widows and divorcees. That is impermissible under Compassionate Rules. It would prevent the appropriate Committee of the University to exercise discretion based on the individual hardships involved in individual cases, against the mandate of the Compassionate Rules. To that extent, that administrative decision of the Executive Council is contrary to the legislative prescription under Compassionate Rules as it seeks to exclude the application of mind by the appropriate Committee of the University to a class of cases-involving dependents of deceased employees not being wards of widows of deceased employees. In the absence of any legislative basis, the administrative decision that restricts the full application of Compassionate Rules, is impermissible and undesirable.

19. Compassionate Appointment by very nature looks to heal the extreme financial hardships that arise on the family of an unsuspecting employee for reason of sudden death of such employee. It is therefore, not permissible to assume that merely because the dependent family members of such a deceased employee would be of age more than the upper age prescribed under the Recruitment Rules, they would face no financial hardships or would not merit compassionate consideration, as a class. It defies logic and plain common sense. If accepted it may lead to absurd results and may in fact defeat the very object of the Compassionate Rules.

20. In view of the above discussion, we are in agreement with the view taken by the learned Single Judge to the extent it has been reasoned that the application made by the original petitioner/respondent for grant of Compassionate Appointment deserves to be considered in accordance with the provisions of the Compassionate Rules. The exercise of discretion to grant relaxation of the upper age limit under those Rules is to be exercised by the competent Committee on its own/ independent consideration to the facts of the original petitioner, on the statutory principle-to "grant upper age relaxation wherever found necessary". In exercise of that discretion, the competent Committee of the University and the confirming/approving authorities may not colour their decision making to the prescription of upper age limit under the Recruitment Rules. Thus, the factors of dependency, financial hardship-

indicating presence or risk of indigency, financial destitution or like (unfortunate) circumstances and other relevant considerations springing entirely on the own application of the Compassionate Rules, alone may be relevant.

21. Having said that we are unable to subscribe to the further view expressed by the learned Single Judge that the Recruitment Rules have no application to Compassionate Rules inasmuch as, as noted above, under the Eligibility Clause under the Compassionate Rules itself, on the issue of eligibility (other than age), the Recruitment Rules have been made applicable. That effect caused in the law cannot be avoided just as it cannot be over relied for the purpose of grant of upper age relaxation.

22. Maintaining the above balance we cannot confirm the direction as issued by the learned Single Judge to consider the claim of grant of Compassionate Appointment to the original petitioner/ respondent, without examining the issue of delay.

23. In view of the above, instant intra-Court appeal is **disposed of** with the direction upon appellant no.5, Compassionate Appointment Committee, Banaras Hindu University, Varanasi through its Chairman to pass appropriate order first consider the request of the original petitioner to grant upper age relaxation in accordance with Compassionate Rules, without applying the principle of the Recruitment Rules as to age relaxation. Thereafter, the claim of the original petitioner to grant Compassionate Appointment be considered in accordance with her eligibility arising on the merits of her claim wherein the issues of dependency, financial hardship and other material circumstances applicable to compassionate appointments, be fully considered in terms of the Compassionate Rules. Such decision may be made within a period of one month from today.

24. We part with the hope that considerations of compassion and not the fate of this litigation will govern the outcome of the above application. The period of delay that may have been experienced during pendency of this litigation may be ignored for that purpose. Also, the reasoning of this order may apply prospectively and may not require the University to revisit its decisions already made, in other cases.

January 16, 2026
S.P.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)