

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.02.2013

% **Judgment delivered on: 29.04.2013**

+ **W.P.(C) 1991/2010 and C.M. Nos.3988/2010, 5327/2010 & 12294/2010**

IFCI LIMITED Petitioner

Through: Mr. Dinkar Singh, Advocate

versus

THE GENERAL SECRETARY

ALL INDIA IFC EMPLOYES ASSO.

..... Respondent

Through: Ms. S. Janani, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. By the present writ petition, the petitioner IFCI Ltd. ('IFCI' for short) seeks the quashing of the award dated 16.10.2009 passed by the Central Government Industrial Tribunal No. 1, Karkardooma Courts, Delhi (CGIT) in I.D. No. 7/2006.

2. By the impugned award dated 16.10.2009, the CGIT held that the scheme framed by the petitioner for appointment in clerical & subordinate cadres of dependents of deceased employees of IFCI formulated on 1.1.1979 is subsisting, and directed the petitioner to consider the requests of the 5

dependents of ex-employees of IFCI i.e. Naresh Kumar, Rakesh Kumar, Smt. K. Sampath, Vivek Kumar and Sanjay Kumar Ram for the appointment on compassionate grounds under the said scheme dated 01.01.1979.

3. The background facts may first be noticed. Industrial Finance Corporation of India ('The Corporation' for short) was a statutory corporation incorporated by the Industrial Finance Corporation Act, 1948. The Board of Directors of the Corporation in its meeting held on 31.01.1979 approved the adoption of a scheme for appointment of dependents of deceased employees of the Corporation on compassionate grounds, known as the "*IFCI's Scheme for appointment in Clerical and Subordinate Cadres, of dependents of deceased employee of the Corporation on compassionate grounds*" (hereinafter referred to as the 'Scheme').

4. As per the said scheme, the Board of Directors of the Corporation had discretion to appoint the dependants (as defined in the scheme) of the deceased employees of the corporation against existing vacancies only on compassionate grounds. Admittedly, between 1981 to 1986, 19 dependants of the ex-employees were given appointment in class-III and IV cadre on compassionate grounds.

5. In the year 1985, the Corporation framed a contributory welfare scheme known as "*Disability and Financial Assistance Scheme*" (DFAS). The employees – to get covered under the Scheme, had to subscribe to the Scheme and contribute under the Scheme in terms thereof. The scheme provides additional financial assistance, over and above the normal retrieval benefits viz. provident fund, gratuity, family pension etc. to the next of kin

of the deceased employee of the Corporation. The financial assistance under the DFAS was payable in lump sum, or in monthly payments as may be decided in the corporation. The assistance under DFAS at present is to the extent of Rs. 4000/- p.m. and is payable for a maximum period of 15 years, or till the normal age of superannuation of the deceased employee, whichever is earlier. The assistance under the DFAS ceases from the date any dependent or relative of an employee/retired employee is employed in the Corporation on compassionate grounds.

6. The petitioner submits that to provide timely succour to the families/dependents of the deceased employees and to alleviate their suffering, it also provides additional financial benefits known as “Compassionate Gratuity”. The amount payable towards compassionate gratuity is one month’s pay for every completed years of service or part thereof, in excess of 6 months, subject to minimum of 2 months pay and allowances drawn by the deceased employee at the time of his death, and subject to a maximum of Rs 15000/-.

7. In July 1993, the Parliament repealed the “Industrial Finance Corporation Act 1948” - the effect of which was that the character of the Corporation changed from that of a statutory corporation to a Public Limited Company i.e. IFCI Ltd. (IFCI) in which neither the Government of India nor any of its specifically nominated body has any shareholding.

8. In 1996, the Board of Directors of IFCI appointed an Expert committee to advice the management on the future corporate strategy to be adopted by it for its sustainability in the financial market. The Board of

Directors of IFCI decided not to make any appointment in Class-III and IV cadres which were overstaffed. On 26.03.1999, the Board of Director of the petitioner company decided that no appointments on compassionate grounds shall be made. To achieve optimum manpower utilisation, no further recruitment in Class III and IV cadres was envisaged and there was a complete ban in recruitment to Class III and IV. The petitioner also bought VRS in the year 2000, 2001, 2003/2004 and finally in 2008 to bring down the size of its manpower for its sustainability.

9. The General Secretary of All India Finance Corporation Employee Association (AIIFCEA) vide their letter dated 30.10.2000 raised an industrial dispute regarding the denial of appointment to the dependants of the deceased employees on compassionate grounds.

10. In response, the stand of the petitioner was that it had not been making recruitment of workman staff (Class-III and IV staff) for the last five years in the view of surplus strength in those cadres. It was also their stand that IFCI has not been making compassionate appointments of the kin of the deceased employees, as dispensation in such cases is being offered under the DFAS.

11. The conciliation officer by the report dated 31.01.2002 referred the matter to the appropriate Government for taking their decision. The appropriate Government, on 07.11.2002 refused to refer the dispute for adjudication. Being aggrieved by the decision of the appropriate Government, three dependants of the deceased employees of IFCI filed writ petitions bearing nos. 1925 of 2003, 2128 of 2003 and 3151 of 2003.

12. In these petitions, on 23.12.2005, this Court issued a writ of Mandamus to the appropriate Government to make reference of the dispute raised by the petitioners before it for adjudication.

13. The Central Government, in compliance of the command of the court, made the following reference for adjudication;-

“Whether the demand made by the All India Industrial Finance Corporation Employees Association for appointment of dependants on compassionate grounds by the management of Industrial Finance Corporation of India Limited in respect of 7 employees who died in harness, as contained in their demand letter dated 30th October, 2000 is legal and justified? If not, to what relief the disputant union is entitled?”

14. The CGIT vide the impugned Award dated 16.10.2009 declared that the demand made by the respondent Association for appointment on compassionate grounds in respect of Naresh Kumar, Rakesh Kumar, K Sampath, Vivek Kumar and Sanjay Ram Kumar is legal and justified, and also directed the IFCI to consider their request for appointment on compassionate grounds within a period of 30 days from the date the award becomes enforceable. It was also held that Mahendar Singh was not entitled to appointment on compassionate grounds, as he was overage on the date of his application.

Submissions of the Petitioner:

15. Learned counsel for the petitioner submits that the scheme was a result of the petitioners’ unilateral act. The petitioner was neither enjoined to do so by any law, or by any settlement, or any award or any order of any

court. The petitioner, in support of its submission places reliance on the circular dated 3rd March, 1979. The said circular communicates the approval of the Board of Directors of the Corporation for the appointment of the dependants of deceased employees of the corporation. The petitioner submits that the said letter manifests that the scheme of providing compassionate employment was adopted by the Management/Board of Directors of their own, and the same does not constitute a bipartite settlement between the parties. The submission of the petitioner is that there was no settlement arrived at in the present case as defined in Section 2(p) of the Act of which the Scheme was a result. Learned counsel submits that while passing the impugned Award, the learned CGIT has completely overlooked the legal requirements of a “settlement”, as defined in the Act. Only a settlement arrived at in terms of Section 2(p) of the Act would bind the petitioner management by virtue of Section 19 thereof. Section 2(p) of the Act defines a settlement to mean, “*a **settlement** arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.*”

16. Learned counsel submits that since the learned CGIT has fallen in error on this fundamental premise, the impugned Award cannot be sustained on this short ground.

17. Learned counsel further submits that there were no vacancies in the cadre of Class IV viz. peon cum chowkidar, sweeper etc. Rather, a policy decision had been taken by the Management not to make recruitment in Class III and IV cadres because of overstaffing. The petitioner submits that the Voluntary Retirement Schemes were introduced in the years 2000, 2001, 2003, 2004 and 2008 to bring down the number of employees to the desired level, and around 245 employees belonging to Class III and Class IV cadres opted for the same.

18. The Ld. Counsel also submits that the petitioner is not violating any of the provisions of the Contract Labour (Abolition and Regulation) Act, 1970 (CLRA Act for short) and it is not violating the notification of the Government of India dated 09.12.1976. According to the petitioner, the said notification is almost 30 years old and the same has been amended by the Government of India a number of times. Moreover, when the CLRA Act was enforced, modern buildings with high quality finishes were not conceived. Also, when the said notification was issued, the multi storeyed buildings were not in existence. In April 2000, the petitioner apprised the Government of India about the facts and circumstances to seek exemption in respect of the various provisions of the CLRA Act to the high tech multi storeyed office building of the Petitioner. Ld. Counsel also submits that the building of the petitioner has high quality finishes which require mechanical/specific equipment for cleaning. The cleaning and maintenance is outsourced to a specialized agency having skilled manpower to operate specialized machinery and perform such functions.

19. Placing reliance on *Union Bank of India vs. M.T Latheesh (2006) 7 SCC 350 and Savitri Devi vs. Union of India.*, the Ld. Counsel for the petitioner submits that the dependants are receiving financial benefits under other schemes as well. Hence, they are not entitled to claim compassionate employment. The petitioner also provided the details of the dependants and the benefits received by them.

<i>Sl. No.</i>	<i>Name of the dependants</i>	<i>Name of the deceased employee</i>	<i>Date of death of the employee</i>	<i>Remarks</i>
1.	<i>Naresh Kumar (son)</i>	<i>Late Sh. Banarasi Ex-Peon (DRO)</i>	<i>26.04.1996</i>	<i>Employee died 2months before the date of superannuation i.e 30.06.1996. Being CPF optee not eligible for pension. Financial assistance under the DFA scheme was not availed by her.</i>
2.	<i>Rakesh Kumar (son)</i>	<i>Late Shri Pratap Singh Ex-Subedar (HO)</i>	<i>18.04.1997</i>	<i>Family pension of Rs. 3815/- is being paid at present. Earlier the family pension was paid at an enhanced rate upto 18.04.2004(Rs. 4947/- last</i>

				<i>drawn). Financial assistance under the DFA scheme was not availed by her.</i>
3.	<i>Mahender Singh (son)</i>	<i>Late Sh. Jai Narain Singh Ex-Peon (HO)</i>	<i>07.06.1993</i>	<i>Employee died 11 months before the date of superannuation i.e. 31.05.1994. Being CPF optee not eligible for pension. Financial assistance under the DFA scheme was not availed by her.</i>
4.	<i>Mrs. Renuka Sampath (wife)</i>	<i>Late Sh. K.Sampath, Ex-Assistant (Chennai)</i>	<i>08.04.1998</i>	<i>Family pension of Rs. 4065/- is being paid at present. Earlier the family pension was paid at an enhanced rate upto 08.04.2005(Rs 5485/- last drawn). In addition financial assistance of Rs. 4000/- pm is also being paid to her under the DFA scheme till the</i>

				<i>date of superannuation.</i>
5.	<i>Vivek Kumar (son)</i>	<i>Late Sh. Bhagwaan Dass Ex- Assistant (DRO)</i>	<i>19.11.1998</i>	<i>Family pension of Rs. 4518/- is being paid at present. Earlier the family pension was paid at an enhanced rate upto 18.11.2005 (Rs. 5458/- last drawn). Financial assistance under the DFA scheme was not availed by her.</i>
6.	<i>Sanjay Kumar Ram (son)</i>	<i>Late Sh. C.L. Ra Ex- sweeper (Kolkata)</i>	<i>15.05.2000</i>	<i>Family pension of Rs. 3491/- is being paid at present. Earlier family pension was paid at an enhanced rate upto 15.05.2007 (Rs. 5062/- last drawn). In addition, financial assistance of Rs. 4000 pm is also being paid to her under the DFA scheme.</i>

20. The Ld. Counsel also submits that the petitioner, after 1996, has not appointed anyone on compassionate grounds. Reliance is also placed on the

minutes of meeting dated 26.03.1999 of the meeting of the Board of Directors of IFCI, wherein the management recorded that after due consideration of Memorandum no. 209/98-99 dated 15 March, 1999 on the subject, and in the light of the changed environment, it is not in favour of making any new appointments on compassionate grounds.

21. Placing reliance on, *A.P.S.R.TC and ors. Vs. Kaiser Begum (1998) 9 SCC 398* and *Eastern Coalfields Ltd. vs. Anil Badyakar and Ors. (2009) 13 SCC 112* and the ld. Counsel submits that the claimant cannot claim compassionate appointment as a matter of right.

Submissions of Respondent:

22. Learned counsel for the Respondents AIIFCEA submits that the Management has engaged persons on contract basis for the job of sweeping, cleaning, dusting and watch and ward duties inside its office premises. However, the jobs of cleaning, sweeping, dusting and watch-and-ward of office premises are perennial in nature and demand permanent appointment. The engaging of persons on contract basis by the petitioner is to circumvent the labour laws. Such contractual engagements are prohibited by the Ministry of Labour, Govt. of India vide notification dated 09th December 1976.

23. Ld. Counsel also submits that the appointment of the dependents of the deceased employees of the corporation on compassionate grounds is a service condition as per the provision of the bipartite settlement dated 05th September, 1990, entered into between IFCI and the respondent Union, wherein it was agreed that the “*Welfare schemes of the corporation shall be*

re-modelled to bring them at par with the schemes prevalent in the Industrial Development Bank of India (IDBI) and the revised schemes shall be made operative by the 1st January, 1991 and during the interregnum, the existing schemes in this regard shall continue to operate.”

24. Ld. Counsel submits that the Management had adopted the scheme of appointment of dependants of the deceased employees on compassionate grounds as a result of collective bargaining and the same was not a unilateral act of the management. In support of her submission, learned counsel places reliance on the letter dated 19.09.1979 issued by the Deputy General Manager Shri M.N Khushu. In the said letter, the management stated *“We have already met the following demands of the association, while the rest of the demands made in the said charter of demands are under our consideration.”* The said letter also included an assurance to make suitable provisions in the Promotion Rules for creating job opportunities for the dependants of the employees who die in harness and in this connection Adm. Circular no. 9/79 dated 3 March, 1979 has already been issued.

25. In support of her submission, the counsel places reliance on Clause 8(2) of the DFAS, which provides that the assistance under the scheme will cease from the date any dependant or relative of the employee is employed in the corporation on compassionate grounds. This clause indicates that the DFAS contemplated making of compassionate appointments by the management even after the implementation of the said DFAS.

26. It is also the submission of the Ld. Counsel for the Respondent that the Management cannot unilaterally withdraw the Scheme for providing

compassionate appointment without complying with Section 9A r/w 4 Schedule of the Industrial Disputes Act, 1947 (the Act) as the same is a service condition.

27. Having considered the rival submissions and perused the impugned Award & the record, I am of the view that impugned Award cannot be sustained and is liable to be set aside. Section 9A of the Act reads as follows:

“9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty- one days of giving such notice:

Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.”

28. The fundamental flaw in the impugned Award appears to be that the learned CGIT has proceeded on the basis that the parties arrived at a binding

settlement where under the Scheme was implemented by the Management. A perusal of the impugned Award shows that the Industrial Finance Corporation Employees' Association served a charter of demands on 16.4.1977 on the Management. One of the demands related to grant of compassionate appointment to the dependents of the employees of the management dying in harness. A perusal of the record shows that the Board of Directors of the petitioner management, in its meeting held on 31.01.1979 approved the adoption of the Scheme with effect from 01.01.1979. The impugned Award also shows that on 18.09.1979, a letter was written by the President of the Union to the Management, wherein the Union emphasised on resumption of talks on the charter of demands. In response, the union was informed that the Management had already issued circular No. 9/1979 on 03.03.1979 formulating the scheme and implementing the same with effect from 01.01.1979. The learned CGIT, on the basis of the response of the petitioner management concludes that the Scheme had been adopted at the instance of the Union and, consequently, it was a binding settlement as it was a result of collective bargaining.

29. I have already noticed hereinabove the definition of expression, "settlement" as contained in Section 2(p) of the Act. For an agreement to be a "settlement" within the meaning of the Act, either the same should have been arrived at in the course of conciliation proceedings, or if not so arrived at during conciliation proceedings, it should be a written agreement between the employer and the workman, which should have been signed by the parties thereto in the prescribed manner, and a copy thereof should have been sent to the officer authorised – in this behalf, by the appropriate

government and the conciliation officer. It is not even the respondent's case that the Scheme was a part of settlement arrived at in the course of conciliation proceedings, or that it is contained in a written agreement between the petitioner-Management and the respondent Union. It is also not the respondent's case that the requirements of section 2(p) with regard to signature and lodgement of the settlement with the authorised officer or the conciliation officer has been complied with.

30. Reference may also be drawn to the Fourth Schedule to the Act. The said Schedule enlists the condition of service – for change of which, notice is to be given. Section 9(A) of the Act provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without giving 21 days notice to the workman likely to be affected by the change in the prescribed manner, unless the change is effected in pursuance of a settlement or Award, or where the workmen likely to be affected by the change are persons to whom the rules mentioned in Section 9(A) [proviso (b)] are applicable. A perusal of the Fourth Schedule shows that a change in the Scheme applicable for making compassionate appointments is not one of the conditions of service for which a prior notice under Section 9(A) is required to be given.

31. Merely because the Management may have formulated the Scheme on the demand of the workers' union would not elevate the status of the Scheme to that of a binding settlement under the Act.

32. Section 19, insofar as it is relevant reads as follows:

“19(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.”

33. For Section 19 to apply, the settlement has to be one in terms of the definition contained in the Act. Since the Scheme in question is not a settlement as defined in the Act, it cannot be said that the said Scheme shall continue to bind the petitioner-Management unless the provisions contained in Section 19 are complied with. It is clear that the Scheme was formulated by the Management unilaterally – though on the demand of the workers union. It did not attain the status of a binding settlement as the conditions in Section 2(p) of the Act are not satisfied. On this short ground, the impugned Award is liable to be set aside.

34. From the record, it is clear that the petitioner Management faced financial crisis, inter alia, on account of the excessive staffing. It is also clear that the petitioner – Management decided to get rid of the excess work force by resort to Voluntary Retirement Scheme on repeated occasions. In such circumstances, the decision of the petitioner to not make compassionate appointments cannot be faulted. The decision to do away with the Scheme

for compassionate appointments cannot be said to be irrational or arbitrary decision. I may now look at the individual cases of five dependents, in respect of whom, the CGIT has directed consideration of their cases for compassionate appointment.

35. Shri Naresh Kumar is the son of late Shri Banarasi, ex-Peon (DRO). Late Shri Banarassi died on 26.04.1996 i.e. two months before the date of his superannuation on 30.06.1996. In my view, in any event, it would defeat the objective of the Scheme if the dependent son, daughter or widow of the deceased workman is granted employment on compassionate basis in a case of this kind. The deceased employee had served practically for the entire tenure that he could have served. It is not a case where the deceased employee can be said to have died leaving behind small children who may still be receiving education. An employee who has reached nearly the age of superannuation before his death would, in the normal course, have settled the affairs of his/her children. Moreover, by the time the reference was answered by the learned CGIT on 16.10.2009, nearly 13 and a half years had passed. The purpose of grant of compassionate appointment is to provide immediate succour to the family of the deceased. Obviously, the said objective did not survive by the time the impugned Award came to be passed.

36. In the case of Shri Rakesh Kumar son of late Shri Pratap Singh, ex-Subedar (HO), the position is that late Shri Partap Singh died on 18.04.1997. His family was drawing family pension of Rs. 4,947/- up to 18.04.2004 i.e. for about 7 years till after the death of late Shri Partap Singh. Thereafter, the family pension stood reduced to Rs. 3,815/-. In this case as well, the

direction issued by the learned CGIT to consider his case came to be passed on 16.10.2009 i.e. nearly 12 and a half years after the demise of late Shri Partap Singh when the objective of providing compassionate appointment did not survive.

37. Smt. Renuka Sampath, widow of late Shri K. Sampath, ex-Assistant who died on 08.04.1998 was drawing family pension of Rs. 5,485/- up to 08.04.2005 i.e. for the first 7 years which stood reduced to Rs. 4,065/- thereafter. She was also drawing the additional financial assistance of Rs. 4,000/- per month under the DFA Scheme up to 31.12.2012, which was the normal date of superannuation of late Shri K.Sampath, had he not died in harness. Therefore, for the first 7 years, she was drawing an amount of nearly Rs. 9,500/- per month. It could not be said that her income from family pension and from the additional financial assistance was not sufficient at the relevant time. Even in her case, the direction for consideration of her case for compassionate appointment came nearly 11 and a half years after the demise of late Shri K.Sampath, by when the said objective did not survive.

38. In the case of Shri Vivek Kumar, son of late Shri Bhagwaan Dass, ex-Assistant (DRO), who died on 19.11.1998, family pension of Rs. 5,458/- was drawn for the first 7 years i.e. up to 18.11.2005, where after it continues to be paid @ Rs. 4,518/-. In his case as well, the direction to consider his case for compassionate appointment has come to be issued nearly 11 years after the demise of late Shri Bhagwaan Dass.

39. In the case of Shri Sanjay Kumar Ram, his father late Shri C.L.Ram, ex-Sweeper, passed-away on 15.05.2000, the family drew family pension @ Rs. 5,062 for the first 7 years i.e. up to 15.05.2007. They also drew additional financial assistance of Rs. 4,000/- per month under the DFA Scheme up to 31.05.2012 i.e. the date on which late Shri C.L.Ram, would have superannuated had he been alive. For the first 7 years, the family of late Shri C.L.Ram received income of over Rs. 9,000/- per month and thereafter continued to receive income of nearly Rs. 7,500/- per month. These incomes could not be said to be insufficient to tide over the financial crisis caused by the demise of the deceased workman. The direction to consider the case of Shri Sanjay Kumar Ram for compassionate appointment came nearly nine and a half years after the demise of late Shri C.L.Ram, by when the objective of making compassionate appointment had served itself up.

40. However, I do not agree with the petitioner's submission that by the introduction of the DFAS, the Scheme in question ceased to exist. As pointed out by learned counsel for the respondent, the DFA Scheme itself postulated that the benefit there under shall cease upon the grant of compassionate appointment. The DFA Scheme was, therefore, to run in tandem with the Scheme in question, and was not made to substitute the same.

41. So far as the allegations with regard to breach of the provisions of the Contract Labour Regulation Act are concerned, in my view, the same did not fall for consideration before the learned CGIT. The learned CGIT was required to answer the reference with regard to appointment of dependents

of the deceased employees of the petitioner – Management on compassionate grounds. No dispute was raised by the respondent-Union with regard to employment of contract labour by the petitioner – Management, and no reference was made in that regard. It is well settled that the Industrial Tribunal derives its jurisdiction from the reference made by the appropriate Government, and its jurisdiction is limited to answering the reference as made to it. If the respondent- Union was desirous of either seeking amendment of the reference as made, or seeking any further reference on the aspect of the breach of the provisions of the Contract Labour Regulation Act, it was open to the respondent's – Union to take appropriate steps in that regard. In my view, the observations made in the impugned Award with regard to the alleged breach of the Contract Labour Regulation Act were uncalled for, and made without jurisdiction. The said observations cannot be sustained.

42. The observation made by the learned CGIT that the Scheme was never withdrawn by the management is contrary to the record. The Scheme was withdrawn by the Management by the Board Resolution dated 26.03.1999. The said resolution reads as follows:

“The Board considered the Memorandum No. 209/98-99 dated the 15th March, 1999 on the subject. The Board after due consideration and in the light of changed environment was not in favour of any new appointment on compassionate grounds.”

43. In ***A.P.S.R.T.C. and others Vs. Kaiser Begum***, (1998) 9 SCC 398, the respondent had applied for compassionate appointment, even though there were no vacancies. The High Court directed that a post should be created by

the petitioner if there are no vacant posts, so that the respondent could be appointed on compassionate grounds. The Supreme Court set aside this decision of the High Court by holding that the High Court could not have given such a direction which was contrary to the existing Scheme of providing appointments on compassionate grounds. The case of the petitioner is that it did not have any vacancy for appointment of the 5 dependents in question, as, at the relevant time it was overstaffed with class III and class IV employees. This is evident from the fact that the petitioner repeatedly had to resort to voluntary retirement Scheme to reduce its work force as a part of its financial restructuring to sustain itself.

44. The Supreme Court in *M/s Eastern Coalfields Ltd. Vs. Anil Badyakar & Ors.*, (2009) 8 SCALE 474, has held that compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time, and after the crisis is over. In that case, the employee had died in harness in the year 1981. The provisional appointment granted to the dependent was cancelled on the ground that after nearly 12 years from the date of death of the employee, such an appointment could not have been offered. The Supreme Court upheld that decision of the employer.

45. For all the aforesaid reasons, the writ petition is allowed and the impugned Award is set aside leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

APRIL 29, 2013

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