

GAHC020002932022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/115/2022

SHRI. JAMES K
S/O LATE KIUKHEAMBA YIMCHUNGER OF KHUMONGSHIR
VILLAGE, R/O SHAMATOR TOWN, TUENSAMG NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2) THE HOME COMMISSIONER
NAGALAND KOHIMA

3) THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

4) THE COMMANDANT
3RD NAP BATTALION TUENSANG NAGALAND

Advocate for the Petitioner : Z. ZHIMOMI

Advocate for the Respondent : Moa Imchen, Sr. Government Advocate (R 1 & 2)
: N. Longkumer (R 3 & 4)

BEFORE
HONBLE MR JUSTICE KARDAK ETE

JUDGMENT & ORDER (CAV)

Date : 05-07-2023

Heard Ms. Z. Zhimomi, learned counsel for the petitioner, Mr. Moa Imchen, learned Senior Government Advocate for respondent Nos. 1 and 2 and Mr. N. Longkumer, learned counsel for respondent Nos. 3 and 4.

2. By filing this petition, the petitioner has challenged the Addendum bearing No. AR-8/8/78 dated 09.04.2019, issued by the Chief Secretary to the Government of Nagaland, whereby, by way of insertion to the Office Memorandum dated 17.09.2015, it provides that compassionate appointment made to Group-C and Group-D post under the scheme shall be strictly in order of date of death and first preference shall always be given to those who have died earlier and who fulfills the other eligibility criteria, And the Seniority List of applicants dated 21.03.2022 for compassionate appointment issued by the respondent Nos. 2 and 3.

3. The petitioner being the eldest son of Lt. Kiukheamba Yimchunger, who died in harness on 28.10.2016, while serving as Havildar at B' Coy Hqr. Shamator, having requisite qualification applied for appointment on compassionate ground to the Director General of Police, Nagaland. By letter No. PHQ (B-DE1/14/2010/1158) dated 30.11.2016, the application was forwarded to the Commandant, 3rd NAP Battalion for necessary action.

4. Having been not considered by the respondent authority even after lapse of three years, and coming to know that so many persons have been appointed as Constables, Computer Operators/Drivers etc. between 13.11.2016 to October, 2019 without considering the case of the petitioner; being aggrieved, the petitioner approached this Court by filing

the writ petition being WP(C)/21/2020 for a direction for appointment on compassionate ground as per the scheme adopted by the State Government *vide* Office Memorandum No. AR-8/8/78 dated 17.09.2015. This Court disposed of the writ petition by an order dated 14.02.2020 directing the respondent No. 3 to consider the case of the petitioner within a period of two months.

5. On being not complied with the direction dated 14.02.2020 passed by this Court, the petitioner filed the contempt petition being COP(C)/24/2020. By an order dated 02.12.2020, this Court directed the alleged contemnor to file affidavit in opposition within two weeks *interalia* indicating year-wise vacancy from the date the petitioner applied for compassionate appointment. Though the affidavit was filed, no vacancy position was indicated by stating that as the Department is processing the case of the petitioner in view of the State Government freezing all appointments with effect from 22.04.2020 there is an unintentional delay. By order dated 22.01.2021 and 08.09.2021, this Court directed the respondents to file the year-wise vacancy arising in Group-C and Group-D service extendable to compassionate appointment with effect from 30.10.2016. With no affidavit so filed, this Court by order dated 27.09.2021 again directed the respondents to file the same on the next date for the fourth time.

6. Ultimately, the respondents filed additional affidavit by annexing letter bearing No. PHQ(B-X)/HC/24/2019/599 dated 13.10.2020 by submitting a List of compassionate appointment applicants consisting of 151 applicants by placing the petitioner at Sl. No. 50 by showing the

date of application of the petitioner as 12.02.2020 instead of 30.11.2016. By order dated 11.02.2022, this Court again directed the respondents to file a detailed affidavit with reference to the status of the petitioner.

7. On 28.02.2022, the respondents placed the impugned Addendum bearing No. AR-8/8/78 dated 09.04.2019, wherein it provides the 'date of death' as preference for compassionate appointment and stated that the name of the petitioner is placed at Sl.No. 50 basing on the impugned Addendum. After perusal of the compiled list, this Court *vide* order dated 28.02.2022 observed that a perusal of the said additional affidavit shows that the petitioner's case is under consideration and at present the petitioner is listed at Sl. No. 50. To the said additional affidavit, a List of compassionate appointment with effect from May 2019 was appended as Annexure-B. A perusal of the said list shows that the petitioner is at Sl.No. 50 in terms with the death of the petitioner's father. It further shows that if the date of the application is to be taken into consideration, the petitioner having submitted his representation on 30.11.2016, the petitioner ought to have been listed as Sl.No. 1 and directed the State counsel to clarify the said aspect of the matter and obtain instruction.

8. Pursuant thereto, the respondent filed another rejoinder affidavit for placing another list of applicants dated 21.03.2022 as updated on 16.03.2022, placing the petitioner even lower at Sl. No. 66.

9. Ms. Z. Zhimomi, learned counsel for the petitioner submits that on perusal of the impugned list dated 21.03.2022 it is clear that the respondent authorities had manipulated the first list dated 13.10.2021, to

the extent of inserting more applicants, received new applicants, added double names etc. to cover up their nefarious activities after this Hon'ble Court questioned the respondents as to why they have listed the names of those who did not even apply for appointment. She submits that the manipulation by the respondents in their impugned list to mislead this Hon'ble Court are quoted herein below:

"(a) *In the impugned compassionate applicant list dated 21.3.2022, the respondents showed afresh having received 20 applications on the same day on 17.01.2022. They were, SL.NO. 2, 4, 6, 10, 17, 21, 25, 30, 35, 46, 58, 60, 72, 77, 80, 105, 135, 247 and 249 whose fathers had expired way back in 1991, 1995, 1996, 2004, 2006, 2007, 2008, 2010 (3), 2011(4), 2011(5), 2013(2), 2014(7), 2015(20), 2016(22 including the petitioner's father), out of which, 16 were shown expired before the petitioner's father in the year 2016, and 4 applications received in 2021 on different dates.*

(b) *In the impugned compassionate list dated 21.3.2022, the Respondents newly inserted 14 persons at SL.NO. 2, 4, 6, 8, 9, 10, 17, 22, 24, 26, 30, 33, 54 60 (SL. NO. 59 missing) thereby, placing the petitioner at SL. NO. 66 from 50 in the first list.*

(c) *Compassionate scheme is limited to spouse, or sons, or daughter only and does not apply to persons at SL. NO. 2, 6, 72, 118, 164, 183 (sisters), 181, 202, 228 (nephew), 193, 204, 224 (cousin), 221 (grandson) and 89, 128, 172, 179, 180, 191, 195, 196, 200, 2014, 233, and 247 (brothers).*

(d) *The relationship of the Applicants at Sl. NO. 54, 133, 245 and 246 has with the deceased is not given and unknown.*

(e) *The petitioner submitted his application on 30.11.16 but in the in the impugned compassionate list dated 21.3.22, date of receipt of the petitioner's application was shown as on 12.2.2020.*

(f) *In the first list dated 13.10.20, out of 151 applicants shown listed, only persons at SL. NO. 6, 18, 28, 31, 40, 46 and 47 were the applicants who applied in 2018 and 2019 after the petitioner.*

(g) *In the first list dated 13.10.20, there were 151 applicants and in the impugned compassionate list dated 16.3.22, raised to 249 where 5 names were added in double. They are Sl.No. 76/77, 113/114, 140/141, 204/205 and 206/207.*

(h) *In the impugned compassionate list dated 21.3.22, persons at Sl. NO. 2, 4,*

12, 17, 19, 21, 25, 28, 30, 35, 36, 46, 60, 68, 69, 72, 73, 77, 80, 85, 87, 96, 110, 115, 128, 130, 133, 135, 138, 142, 159, 189, 217, 221, 234, 241, 244, 245, 246, 247, 248, 249 has no DOB.

(i) *In the impugned compassionate list, person at Sl. NO. 1 (son) DOB 1991 was 8 months old when his father died on 18.8.1991, SL. NO. 8 (wife) DOB 26.8.2002 passed 12th Class was 8 years old, when her husband expired on 8.4.2010, SL. NO. 9 (daughter) was 8 yrs when his father died on 8.4.2010.*

(j) *Person at SL. NO. 38 is now 51 yrs, SL. NO. 64 is 50 yrs, SL. NO. 40 is 46 yrs, SL. NO. 14 is 45 yrs, SL. NO. 6 is 43 yrs (applied in 2022), SL. NO. 62 is 38 yrs (applied in 2009) SL. NO. 7 is 37 yrs, SL. NO. 20, 36 yrs and all over aged for appointments.*

(k) *In the impugned compassionate list dated 21.3.22, apart from those who did not applied, some of the applicants were shown having submitted applications after delay of 32 yrs, 25 yrs, 24 yrs, 18 yrs, 15 yrs, 11 yrs, 10 yrs, 8 yrs, 7 yrs, 6 yrs, 4 yrs and 3 yrs and are time barred."*

She submits that all the illegalities were perpetuated in order to push back the petitioner from Sl. No. 1 or 8 to Sl. No. 66.

10. She submits that by Office Memorandum dated 17.09.2015, a revised compassionate appointment scheme for dependents of deceased Government servants was adopted. Thereafter, the impugned Addendum dated 09.04.2019 has been issued by playing with the livelihood of the petitioner in particular and of the compassionate appointment applicants in general. The respondent authorities have issued the impugned compassionate applicant List dated 21.03.2022 based on the impugned Addendum dated 09.04.2019 providing strictly the date of death as preference for consideration of appointment on compassionate ground and the Addendum being arbitrary, *malafide* and discriminatory, the same is liable to be set aside and quashed.

11. Ms. Z. Zhimomi, learned counsel submits that the scheme of compassionate appointment is to overcome immediate financial difficulties

faced by the family on account of sudden stoppage of the main source of income when a Government servant dies in harness and it is settled law that compassionate appointment cannot be claimed or made after inordinate delays. The respondents have made data of all those who have died in the Department as far as 32 years back and even incorporating those families who did not apply for compassionate appointment. Had it not been the impugned Addendum dated 09.04.2019, the serial number of the petitioner would be at Sl.No. 1. By having recourse to the impugned Addendum dated 09.04.2019, the respondents had issued the impugned list of compassionate appointment applicants whereby the petitioner has been pushed down to Sl.No. 66 which is illegal.

12. She further submits that the impugned Addendum dated 09.04.2019 is put to challenge on the ground that if the date of application be the determining factor for compassionate appointment in general as there is less chances to manipulate the date of death, followed by date of application without delay as per settled law, otherwise giving preference from the date of death *vide* impugned Addendum dated 09.04.2019 has placed the petitioner and other similarly situated in disadvantaged position and compassionate appointment scheme would lose its meaning. She submits that it is settled law that compassionate appointment scheme is not adopted for economically sound families or to wait for those who did not apply, or to reserve vacancy for future appointments as in cases where the dependents are minors. She submits that the respondents are deliberately making appointments without following 50% limit of vacancies arising in a year as provided under the scheme *vide* Office Memorandum dated 17.09.2015. She further submits

that in the impugned compassionate applicants List dated 21.03.2022, the respondents have illegally included persons who do not come within the purview of spouses, or sons, or daughters under this compassionate appointment scheme.

13. Ms. Z. Zhimomi, learned counsel further submits that the impugned List dated 21.03.2022 have been prepared so as to deprive the petitioner of his rightful appointment on compassionate ground. By resorting to the impugned Addendum dated 09.04.2019, the respondent authorities have illegally prepared the impugned compassionate applicants list to appoint their candidates discreetly at their whims and fancies. By virtue of the impugned Addendum, which was issued in good faith, it gave preference to those who have died earlier. However, it has become redundant unless the date of receipt of application is enforced with implementation of 50% vacancy quota for appointment on compassionate ground in all the departments. Finally, she submits that the respondent authorities in preparing the impugned compassionate applicants List dated 21.03.2022 by manipulation on the purported application of impugned Addendum dated 09.04.2019 is against all canons of law of compassionate appointment. Therefore, the learned counsel prays that the impugned Addendum bearing No. AR-8/8/78 dated 09.04.2019 and impugned compassionate appointment applicants List dated 21.03.2022 may be set aside and quashed. And prays for further direction which are as follows:

"(c) Issue fresh Notification declaring "date of application" as the determining factor for giving preference in appointment on compassionate ground.

And/or

Amen/Rectify the impugned Addendum dated 30.4.2019 in particular, Clause-1

by making "date of application" as the determining factor for giving preference in appointment on compassionate ground in consonance with "immediate relief measure".

(d) To make fresh Compassionate appointment application list."

14. To buttress her submissions Ms. Z. Zhimomi, learned counsel has placed reliance on the following judgments:-

(i) Local Administration Department and Another Versus M. Selvanayagam Alias Kumar Avelu, reported in **(2011) 13SCC 42**.

(ii) Haryana State Electric Board Versus Krishna Devi, reported in (2002) 10SCC 708.

(iii) State of Madhya Pradesh and Others Versus Ashish Awasthi, with State of Madhya Pradesh and Others Versus Baalendu Yadav reported in (2022) 2SCC 157.

(iv) Vinod Kumar Versus State of Haryana and Others, reported in (2013) 16SCC 293.

15. On the other hand, Mr. Moa Imchen, learned senior Government Advocate, while raising the maintainability of the writ petition submits that in challenging the validity and legality of the Addendum dated 19.04.2019 whereby it provides that any compassionate appointment must be made in Group- C and D post under the scheme shall be strictly in order of date of death and first preference shall always be given to those who died earlier and who fulfills the eligibility criteria to the revised Office Memorandum dated 17.09.2015, a scheme for compassionate appointment in the State of Nagaland employees who died in harness as a conscious policy decision of the State in the interest of

public welfare, the petitioner does not have any enforceable right to maintain this present petition. The Addendum is made after examining and considering the entirety of the matter that relates to compassionate appointment in the State which is in consonance with the Nagaland Rules of Executive Business and in exercise of the powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India.

16. The learned Senior Government Advocate submits that the petitioner has challenged the impugned Addendum dated 09.04.2019 and the compassionate applicants List dated 21.03.2022 as the petitioner's came to know that as per the list his name appears much below at Sl. No. 66, which obviously the petitioner meant to be appointed on compassionate ground as per the scheme and policy of the State Government. Therefore, this petition has not been filed before this Court with clean heart, clean mind and clean objective. Since there is no infringement of any fundamental right or any other enforceable right of the petitioner, the writ petition is liable to be dismissed at the threshold.

17. Mr. Moa Imchen, learned senior Government Advocate relied on the following judgments:-

(i) **Cannanore District Muslim Educational Assn. Versus State of Kerala**, reported in (2010) 6SCC 373.

18. Mr. N. Longkumer, learned counsel for the respondent Nos. 3 and 4 submits that after the compassionate applicants List dated 20.03.2022 another revised list was published as on 29.03.2022 wherein the name of the petitioner is placed at Sl.No. 65. For examination and

consideration of compassionate appointments a Committee was constituted and the Committee finds that the list prepared as on 29.03.2022 contains some anomalies which were detected and decided to put up in the next meeting. The Committee, on 12.08.2022 thoroughly scrutinized the compassionate applicants list compiled as on 20.03.2022 and decided to come up with fresh list on the basis of the Office Memorandum dated 07.09.2015 and the Addendum dated 09.04.2019. He submits that the case of the petitioner will be considered for appointment if he is found eligible and comes within the zone of consideration.

19. Mr. N. Longkumer, learned counsel submits that the respondents are making appointments strictly in compliance with the Office Memorandum dated 17.09.2015 and List of applicants is being maintained in terms of the Office Memorandum dated 17.09.2015 and the Addendum dated 09.04.2019. He submits that the impugned List which has relied on is not the final list as the same is under consideration.

20. I have considered the submissions advanced by the learned counsel for the parties and also perused the materials on record.

21. On examination of the present case, it reveals and conveys a message of serious concern and the apprehension where the State respondents are really not sincere in their effort to implement the scheme ensuring the persons who are deserving of such appointments are not abandoned. It is also a matter of great concern that the process of compassionate appointments appears have been misused to suit the interest of some vested circles. The facts in the present case give an impression that the State respondents are not too serious about it and

allowing applications to gather dust for years and on the basis of the Addendum dated 09.04.2019 certain unacceptable steps seems to have been taken which cannot be permitted and those responsible must be made accountable. It must be remembered that time is always of the essence for making compassionate appointment because the very object of such appointments are to save the family from immediate distress, which normally visits the family with loss of its sole bread earner. The state of affairs would require proper attention and deliberation of the highest executive functionaries in the State. The core consideration in compassionate appointment is about the family in a dire financial situation. The scheme for compassionate appointment which the State Government professed would be defeated if the consideration is not done as per the provisions and if the applicants for such appointments are allowed to remain pending for years together.

22. The scheme which the State Government has adopted is reproduced herein below:

***"Government of Nagaland
Personnel & Administrative Reforms Department
(Administrative Reforms Branch)***

OFFICE MEMORANDUM

No. AR/8/8/78

Dated, Kohima, the 17th September, 2015

Sub:- Revised Compassionate appointment Scheme for State Government employees who die in harness.

In supersession of this Department's Office Memorandum of even number dated 16/01/2012, the Governor of Nagaland is pleased to revise the existing scheme for appointment, on compassionate ground, of family member of the State Government employees who die in harness as per guidelines enumerated below:

2. Appointment on compassionate grounds shall be given only to one of the

following members of deceased employee's family:

(a) spouse, or

(b) son, or

(c) daughter, only.

3. Appointment on compassionate grounds shall be made only on a regular basis to direct recruitment posts and only if regular vacancies meant for that purpose are available in that Department where the deceased Government employee was serving. Applicants shall have no claim to appointment under this scheme in any other Department other than the Department where the deceased employee was serving. However, for the NCS officers, the appointment may be considered under the establishment of the Commissioner, Nagaland, or the Nagaland Civil Secretariat.

4. Compassionate appointments may be made to the posts falling under the combined direct recruitment quota of Group C or D. The ceiling for compassionate appointments of 5% of the direct recruitment vacancies in Group C and Group D posts has been done away with provided such appointments do not exceed 50% of the vacancies during a year. The appointment against such posts for direct recruitment in Group C should be in the entry grade only. Further, appointment against any post for direct recruitment in Group C should be limited to those posts which are outside the purview of NPSC for recruitment.

5. The inter-se seniority of person appointed under this scheme shall be fixed with reference to their date of appointment and their interpolation with the direct recruits/promotes shall be made with reference to their dates of appointment without disturbing the inter-se seniority of direct recruits/promotes.

6. The scheme will be available to family of the deceased employee provided no surviving member of the family holds any regular post in the State Government. The benefit of such appointment shall be available to only one family member. The scheme will be applicable only to dependents of deceased Government servants appointed and serving on regular basis at the time of death and will not be applicable to those working on daily wage or casual or ad-hoc or contract or re-employment/extension/consultant basis. A spouse once appointed under this scheme shall be allowed to continue in service even after re-marriage. Appointments made under this scheme shall not be transferable to any other person in any circumstance and any request for the same shall be invariably rejected.

7. Applicants under this scheme should be eligible and qualified for the posts in all respects under the provisions of the relevant Recruitment Rules. No relaxation in eligibility will be made in any circumstance, except to the extent provided under this scheme. Date of joining by a person appointed under this scheme shall be treated as the date of his/her regular appointment. All Departments shall maintain a waiting list in chronological order for compassionate appointments. An applicant will be given the waiting list number on receipt of the application, if there are no regular posts available.

8. The upper age limit of applicants under this scheme may be relaxed in exceptional cases up to a maximum of 5 years in addition to existing relaxation, if any. The lower age limit shall, however, in no case be relaxed below 18 years

of age.

9. *Appointments under this scheme, irrespective of the appointing authority specified under the rules, shall be made only with the approval of the respective Heads of Administrative Departments with the prior clearance of the Department of Personnel & Administrative Reforms. The Departments should send proposal for appointment on compassionate ground as per the format enclosed.*

10. *All Departments shall amend their respective Service Rules/Recruitment Rules to make a provision for compassionate appointment. Any dispute arising out of the provisions of this scheme or any clarification shall be referred to the Department of P&AR for decision of the Government.*

Sd/- PANKAJ KUMAR

Chief Secretary to the Government of Nagaland

23. On a bare perusal of the scheme, it appears to be in the nature of welfare and human consideration. It provides that the appointments on compassionate ground shall be given only to one of the members of the deceased employee's family, *i.e.* spouse, or son, or daughter only. It also provides that the appointment on compassionate grounds shall be made only on a regular basis to direct recruitment post only if regular vacancies meant for that purpose are available in the department where the deceased government employee was serving. It further provides that ceiling for compassionate appointment for persons of direct recruitment vacancies in Group C and Group D posts has been done away with provided such appointments did not exceed 50% of the vacancies during the year. It also provides that all the departments shall maintain a waiting list in chronological order for compassionate appointment and the applicant will be given waiting list number on receipt of the application if there are no regular posts available. It further provides that the upper age limit of applicants under this scheme may be relaxed in exceptional cases up to a maximum of 5 years in addition to existing relaxation. It also provides that all the departments shall amend

their respective service rules/recruitment rules to make a provision for compassionate appointment.

24. The State Government has issued an Addendum being No. AR-8/8/78 dated 09.04.2019, which is reproduced herein below:

**"Government of Nagaland
Personnel & Administrative Reforms Department
(Administrative Reforms Branch)**

ADDENDUM

No. AR-8/8/78

Dated, Kohima, the 9th April, 2019

Sub:- Compassionate Appointment Scheme for State Government employees who die in harness and Addendum thereof.

In continuation to this Department's Office Memorandum of even number dated 17th September, 2015, the following conditions are added under the Compassionate Appointment Scheme as under:

1. **Insertion of Para 11.** *Compassionate Appointment made to Group-C and D posts under this scheme shall be strictly in order of date of death and first preference shall always be given against those who have died earlier and who fulfils all other eligibility criteria.*
2. **Insertion of Para 12.** *The responsibility of completing application forms of the next of kin of the deceased shall be with the Department as per the prescribed format.*

Sd/- TEMJEN TOY

Chief Secretary to the Government of Nagaland

Dated: Kohima, the 9th April, 2019"

25. The above Addendum provides that compassionate appointment made to Group- C and D posts under the scheme shall be strictly in order of date of death and first preference shall always be given against those who have died earlier and who fulfils all other eligibility criteria. It also provides that the responsibility of completing application forms of the next of kin of the deceased shall be with the Department as per the prescribed format.

26. It is not disputed that the petitioner is the son of the

Lt. Kiukheamba Yimchunger, who died in harness on 28.10.2016, while serving as Havildar. As the petitioner has submitted his application for appointment on compassionate ground addressed to the Director General of Police, which was forwarded to the Commandant, 3rd NAP Battalion on 30.11.2016, which is in close proximity in time to the death of the father of the petitioner. Even after lapse of three years, when the case of the petitioner was not considered, as so many persons were given appointment to the various posts in the Department without considering the case of the petitioner, the petitioner approached this Court by filing writ petition being WP(C)/21/2020 and *vide* order dated 14.02.2020, this Court has directed the respondent No. 3 to consider the case of the petitioner within two months by allowing the petitioner to submit fresh application along with certified copy of the order which the petitioner has submitted. It is noticed that even after lapse of seven months, since the respondent No. 3 has not complied with the Court's order the petitioner had filed Contempt petition being COP(C)/24/2020, which is pending till date. During the course of proceedings, this Court on various occasions directed the respondents to come up with instruction clarifying the issue, as this Court, on perusal of the affidavit as well as the additional affidavit filed by the respondents, has found no clarity and the stand of the respondents to be vague.

27. The petitioner challenged the Addendum dated 09.04.2019 on the ground that the same is arbitrary and discriminatory in as much as on the basis of the Addendum, which provides that the compassionate appointment shall be strictly in order of date of death and the first

preference shall always be given against those who have died earlier and who fulfils other eligibility criteria, as the respondent authorities have manipulated the list to the extent of inserting more applicants, received new applications, added double names etc. so as to deprive the petitioner and other deserving candidates.

28. On close scrutiny of the impugned compassionate applicants List dated 21.03.2022, it reveals that many applicants/kin of the persons who died even after 30 years back has been allowed to submit their applications, the kin who are not eligible to be appointed on compassionate appointment as per the scheme dated 17.09.2015 has also been inserted in the list. In the impugned compassionate applicants list dated 21.03.2022, the respondents have included 25 persons, who doesn't come within the purview of spouse, or sons, or daughters under the compassionate scheme, 4 names without the status of relationship with the deceased, 5 double names entered, received 20 new applications on the same day on 17.01.2022, whose fathers had expired way back in 1991, 1995, 1996, 2004, 2006, 2007, 2008, 2010(3), 2011(4), 2012(5), 2013(2), 2014(7), 2015(20), 2016(22 including the petitioner's father), out of which, 16 were shown expired before the petitioner's father in the year 2016, and 4 applications received in 2021 on different dates, inserted 14 new persons in the impugned list, 42 persons without date of birth, one person was 8 months old when his father died on 18.08.1991, a wife who passed 12th Class was 8 years old when her husband expired, 7 persons over aged and from 3 years to 31 years in making application and over aged for appointments to service.

29. On the examination of the materials on record, it reveals that the respondents have acted illegally by preparing a compassionate applicant list whereby the kin of the persons who died years ago have been allowed to submit their applications basing on the Addendum dated 09.04.2019. Since the Addendum dated 09.04.2019 was issued after the petitioner has submitted his application way back on 30.11.2016, the Addendum dated 09.04.2019 could not have been applied to the case of the petitioner as the same would be prospective in its application.

30. This Court finds the impugned Addendum dated 09.04.2019 which provides two more provisions namely, the compassionate appointment made to Group- C and Group-D posts under the scheme shall be strictly in order of date of death and first preference shall always be given against those who have died earlier and who fulfils all other eligibility criteria and the responsibility of completing the application forms of next of kin of the deceased shall be with the department as per the prescribed format to be reasonable one and appears to have been issued in order to fill up the gap in the Revised scheme date 17.09.2015. However, the manner of implementation of the provisions of the Addendum in the present case is unacceptable and needs to be deprecated in as much as in the name of implementation of the said Addendum, list has been prepared whereby strangely, the kin of persons who have died in 1991, 1996 etc. have been allowed to submit their applications in the year 2022, which is evident from the record resulting in deprivation of the genuine/deserving candidates like the petitioner.

31. This Court finds sufficient force on the submission of the learned counsel for the petitioner that such an act of manipulation in preparing the list in the garb of implementing the impugned Addendum cannot stand good on record. Having found the impugned Addendum dated 09.04.2019 a reasonable one, this Court is not inclined to interfere with the same. However, the manner in which the respondents have sought to implement the provisions of the said Addendum dated 09.04.2019 warrants interference of this Court as the action lead to defeat the whole purpose of the scheme of compassionate appointment.

32. It is settled proposition of law that appointment on compassionate ground cannot be claimed as a matter of right. It is only for meeting immediate unexpected hardship which is faced by the family by reason of death of sole bread earner. When appointment is made on compassionate ground, it would be kept confined only to the purpose it seeks to achieve, idea being not to provide endless compassion.

33. It is also settled position of law that the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision-making process. Interference with the order of the administrative authority is permissible when it is found to be arbitrary, irrational and unreasonable the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court conferred in subjective terms are in good faith

and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect. There is no absolute bar in exercising judicial review in the matter of policy if it is arbitrary, unreasonable and discriminatory.

34. In the case of **Local Administration Department and Another Versus M. Selvanayagam Alias Kumar Avelu**, reported in (2011) 13SCC 42, the Hon'ble Supreme Court held which is quoted herein below:

"12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

In the case of **Haryana State Electric Board Versus Krishna Devi**, reported in (2002) 10SCC 708, the Hon'ble Supreme Court held as follows:

"7. As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court.

8. In view of the above settled position of law and as the application was filed

after eight years of the death of her husband, we are of the opinion that the impugned order is not sustainable. If the impugned order is allowed to stand, the purpose of making appointment on compassionate ground would frustrate. Consequently, the impugned order is set aside and the appeal is allowed. No costs."

In the case of **State of Madhya Pradesh and Others Versus Ashish Awasthi, with State of Madhya Pradesh and Others Versus Baalendu Yadav** reported in (2022) 2SCC 157, the Hon'ble Supreme Court held as follows:

"5. As per the settled proposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

6. In Indian Bank v. Promila, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in State of M.P. v. Amit Srivas. It is required to be noted that in Amit Srivas the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.

10. For the reasons stated in the judgment and order in Civil Appeal No. 6903 of 2021, the impugned judgment and order passed by the Division Bench of the High Court in Writ Appeal No. 2003 of 2019 also deserved to be quashed and set aside as in the present case also, the Division Bench of the High Court has directed the appellants to consider the case of the respondents for appointment on compassionate ground applying the subsequent scheme/circular and though under the scheme/circular prevalent on the date of death of the deceased employee, who at the relevant time was serving on work charge establishment, also deserves to be quashed and set aside and consequently, the present appeal is also allowed."

In the case of **Vinod Kumar Versus State of Haryana and Others**, reported in (2013) 16SCC 293, the Hon'ble Supreme Court held as follows:

"24. The matter can be looked at from another angle as well. In those cases where courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be reviewed by the courts are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision-making process. Interference with the order

of the administrative authority is permissible when it is found to be irrational, unreasonable or expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court conferred in subjective terms are in good faith and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect.

25. *The decision of the administrative authority must be related to the purpose of the enabling provisions of the rules or statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorized end, such decisions can be set aside as arbitrary and unreasonable. Likewise, when action taken is ultra vires, such action/decision has not legal basis and can be set aside on that ground. When there are rules framed delineating the powers of authority as well as the procedure to be followed while exercising those powers, the authority has to act within the limits defined by excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. This was so explained in Shri Sitaram Sugar Co. Ltd. V. Union of India in the following manner:*

'51. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. In the words of Lord Macnaghten in Westminster Corpn. V. London and North Western Railway Co.:

'... It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.'

In Barium Chemicals Ltd. V. Company Law Board, this Court states:

'60. ... Even if [the statutory order] is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.'

In Renuagar, Mukharji, J., as he then was, states:

'86. ... The exercise of power whether legislative or administrative will

be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.'

52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or general principles of the law of the land or it is so arbitrary or unreasonable that no fair-minded authority could ever have made it.'"

In the case of **Cannanore District Muslim Educational Assn. Versus State of Kerala**, reported in (2010) 6SCC 373, the Hon'ble Supreme Court held as follows:

"19. The High Court while rejecting the Writ Petition upheld the government's right to change its policy and also opined that the government cannot be tied to any policy. After coming to this conclusion, the High Court held that in the context of the changed policy of the government, it is not proper for the Court to interfere.

20. This Court is of the opinion that so far as the right of the government to change its policy is concerned, the High Court's conclusion is correct. The High Court is equally right in holding that the government cannot be tied down to any policy. But unfortunately, the High Court did not examine the impact of the government policy on the admitted facts and circumstances of the case. This Court is of the opinion that High Court especially the Writ Court cannot take a mechanical or strait jacket approach in this matter."

35. The Hon'ble Supreme Court has summarized the principles governing the grant of appointment on compassionate ground in **State of Karnataka -versus- V. Somyashree** reported in (2021) 12 SCC 20, which are as follows:

1. That the compassionate appointment is exception to general rule.
2. That no aspirant has a right to compassionate appointment.
3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Article 14

and 16 of the Constitution of India.

4. The appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of eligibility criteria as per policy.

5. The norms prevailing on the date of consideration of the application should be the basis for consideration of claim of compassionate appointment.

36. In view of the above discussions and the law enunciated by the Hon'ble Supreme Court, this Court is of the considered view that the Addendum dated 09.04.2019 as such needs no interference as this Court finds it to be a reasonable one. However, the manner in which the impugned Addendum dated 09.04.2019 has been sought to be implemented is unacceptable, and the consequent impugned Seniority List dated 21.03.2022 purportedly based on the Addendum, therefore, is not sustainable. Accordingly, impugned Seniority List dated 21.03.2022 is hereby set aside and quashed.

37. In the result, this writ petition is partly allowed and disposed of with a direction to the respondent authorities to strictly follow with the provisions of the Office Memorandum dated 17.09.2015 Scheme for compassionate appointment in the State and the Addendum dated 09.04.2019, which is to be implemented and followed prospectively, and to compile and publish a fresh compassionate appointment applicants list.

No order as to the costs.

JUDGE

Comparing Assistant