

RESERVED

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 661 of 2014

Petitioner :- Smt. Pancho Devi *alias* Madhvi

Respondent :- State of U.P. and another

Counsel for Petitioner :- Rakesh Kumar, Manoj Yadav, Rajendra Kumar Srivastava, Rajesh Kumar, Sanjeev Kumar Pandey, Shashi Dhar Pandey

Counsel for Respondent :- C.S.C., Manish Goyal, S.P.Singh

Hon'ble J.J. Munir, J.

This writ petition is directed against the order dated 03.09.2013, passed by the District Judge of Firozabad, bearing Administrative Order No. 90 of 2013, rejecting the petitioner's claim for compassionate appointment.

2. The petitioner's husband, the late Mahadev Prasad, was a permanent Class-IV employee in the establishment of the District Court, Firozabad. He met with an accident on 22.03.2011 and died the same day, still in harness. After her husband's demise, the petitioner moved an application before the learned District Judge, Firozabad, seeking compassionate appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (*for short, 'the Rules of 1974'*). The petitioner's application for appointment on compassionate ground lay unattended for a considerable period of time, leaving her with no option but to move this Court by means of Writ-A No. 27883 of 2011, seeking a direction to decide her application. When the said writ petition came on 13.05.2011, learned Counsel for the second respondent informed the Court that the petitioner's application had been rejected by the learned District Judge on 10.05.2011. Taking cognizance of the aforesaid statement made by learned Counsel for the respondents, Writ-A No. 27883 of 2011 was dismissed, with a direction to the learned

District District Judge, Firozabad to supply a copy of the order dated 10.05.2011 to the petitioner. The petitioner received a copy of the order dated 10.05.2011 issued by the Senior Administrative Officer, District Court, Firozabad, rejecting her claim for compassionate appointment.

3. It is the petitioner's case that a committee of two Judges of the Judgeship at Firozabad held the petitioner not entitled to be considered for appointment under the Rules of 1974. The aforesaid opinion was expressed by the committee of two Judges in their report dated 13.04.2011 and the said report was accepted by the learned District Judge, Firozabad *vide* order dated 10.05.2011. A true copy of the report dated 13.04.2011 and a copy of the order of the learned District Judge, Firozabad dated 10.05.2011, approving the said report communicated by the Senior Administrative Officer *vide* memo dated 17.05.2011, is on record.

4. The petitioner's claim for compassionate appointment was rejected by the Committee on ground that the petitioner had passed her Class IVth examination, whereas according the U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 (*for short, 'the Rules of 1955'*), the minimum qualification for appointment as a Class-IV employee is Junior High-school. It is also averred in paragraph no. 11 of the writ petition that the late Mahadev Prasad's mother (Smt. Shakuntala Devi) along with her other son, Tinku Sharma also moved an application before the learned District Judge, Firozabad with the averment that Mahadev Prasad was unmarried and died in harness on 22.03.2011. On the foot of this allegation, appointment under the Rules of 1974 was sought in favour of Tinku Sharma, Mahadev Prasad's brother. The application moved by Smt. Shakuntala Devi and Tinku Sharma also received consideration by the Committee of two Judges in the report dated 13.04.2011. It was opined regarding Tinku Sharma's claim that he is not a family member, as defined under Section 2(c) of the Rules of 1974. It was held that for the

said reason, Tinku Sharma was not entitled to appointment on compassionate grounds.

5. Smt. Shakuntala Devi along with Tinku Sharma filed Writ-A No. 52717 of 2011, challenging the order dated 10.05.2011 passed by the learned District Judge, Firozabad, with a further prayer that Tinku Sharma's case for compassionate appointment be considered in accordance with the Rules of 1974. The petitioner, in assertion of her rights, instituted Writ-A No. 35871 of 2011, also challenging the order dated 10.05.2011/17.05.2011, impugning it regarding the part that has negated her claim. Both the writ petitions aforesaid were connected, heard together and decided by a common judgment and order dated 03.05.2013. This Court *vide* judgment and order dated 03.05.2013, allowed Writ Petition No. 35871 of 2011, to wit, the petition filed by the petitioner and dismissed Writ Petition No. 52717 of 2011 (the one filed by Smt. Shakuntala Devi and Tinku Sharma). This Court directed the learned District Judge, Firozabad to consider the petitioner's claim, within a period of two months of the date of production of a certified copy of this Court's judgment and order.

6. In compliance with this Court's order dated 03.05.2013, the learned District Judge, Firozabad referred the petitioner's case to the Grievance Redressal Committee, headed by the senior-most Additional District Judge along with two other members; both the Additional District Judges posted at Firozabad. Pending consideration of the petitioner's application before the Committee, the U.P. State District Court Service Rules, 2013 (*for short, the Rules of 2013*) came into force with effect from 04.07.2013. The educational qualifications for appointment of Class-IV employees, prior to enforcement of the Rules of 2013, were governed by the Rules of 1955. While under Rule 11 of the Rules of 1955, educational qualifications for direct recruitment to the establishment mentioned a preference for the candidates who had passed their Junior High-school or

equivalent examination and could read and write English characters and figures, there was no imperative of possessing these qualifications in order to maintain a valid candidature. By contrast, under Schedule-B read with Sub Rule-3(3) and 4 of the Rules of 2013, the minimum educational qualification prescribed for the post of lowest grade is a Class VIth certificate.

7. The Committee to whom the petitioner's case was referred were of opinion that under Schedule-B to the Rules of 2013 read together with Rule 3(3) and 4, the petitioner, who had passed her Class 4, is not eligible for any post of Group-D because the prescribed educational qualification was Junior High-school and for the post of a Sweeper-cum-Farrash, it was Class 6. The Committee further opined that according to the law laid down by the Supreme Court in **MGB Gramin Bank vs. Chakrawarti Singh**¹ the Rules of 2013 notified by then shall be applicable. The committee were, therefore, of opinion that the petitioner was not eligible for being appointed to any post in the Civil Court on compassionate grounds. They recommended that the petitioner's application be rejected. The learned District Judge went through the Rules of 2013 and found that the post at serial no.17 in Schedule-B was that of a Sweeper-cum-Farrash, a post that can be filled up by direct recruitment. The minimum qualification shown in the relevant column for the said post was Class VIth. Since the petitioner had passed her Class IVth examination, the Rules of 2013 notified on 04.07.2013 rendered her ineligible for appointment to any post in the Civil Court's establishment. The learned District Judge took note of the fact that this Court, in its judgment and order dated 03.05.2013, while directing a consideration of the petitioner's case, held that the educational qualifications have not been prescribed for the inferior staff in the establishment of the Civil Court. There is only a preference indicated for those holding certain qualifications.

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8. This Court referred to the Rules of 1955 to direct the learned District Judge that he would examine as to whether in the inferior establishments, there is any vacancy, where no educational qualifications are required, seeing the nature of the work, which is to be done by the appointee. It was also remarked that the learned District Judge, while passing the order impugned in Writ Petition No. 35871 of 2011, earlier preferred by the petitioner, had misread and misinterpreted the Rules of 1955. About this part of the remarks of ours in the judgment and order dated 03.05.2013, the learned District Judge said that though he had been directed to reconsider the petitioner's case for compassionate appointment by this Court, observing that there are certain posts in Group-D in the Civil Court establishment, where no educational qualifications are required, the Rules of 2013 had not been notified by that time. Now, the Rules of 1955 have been repealed and substituted by the Rules of 2013, and, according to the latter Rules, the minimum qualification for a post in the Civil Court establishment is a Class VIth certificate. Therefore, the petitioner is not eligible for appointment under the Rules of 2013. The learned District Judge also took into consideration the law laid down by the Supreme Court in the case of **MGB Gramin Bank** (*supra*) to hold that the petitioner cannot say that while considering her application, her case should be considered as per Rules prevailing on the date of her husband's death. It is not that the cause of action arises on the death of an employee in harness. Accordingly, the petitioner's claim came to be rejected by the impugned order dated 03.09.2013, passed by the learned District Judge, Firozabad.

9. Aggrieved, this writ petition has been instituted.

10. A counter affidavit has been filed on behalf of respondent No. 2. The stand taken in paragraph No. 12 of the counter affidavit is that going by the principle laid down by the Supreme Court in **MGB Gramin Bank**, rules in force on the date of consideration of the applicant's case, for

compassionate appointment, would apply, and the applicant has no right to say that the Rules prevailing on the date of death of an employee in harness, that is to say, the date when the cause of action had arisen, ought to be the governing principle. It is pleaded that the Rules of 2013 would govern the rights of the petitioner under which the minimum prescribed qualification for the post of a Sweeper-cum-Farrash is a Class VIth certificate. The petitioner has passed her Class 4 examination, and, is, therefore, ineligible.

11. Heard Mr. Saneev Kumar Pandey, learned Counsel for the petitioner and Ms. Bushra Maryam, learned Special Counsel appearing for the High Court.

12. The crux of the dispute in this matter is : *Whether the rules relating to qualifications on the date the petitioner's husband died would apply to consider her case or those in force on the date that the petitioner's application came to be considered by the Redressal Grievance Committee?* It is no doubt true that there has been some division of opinion in the authorities of the Supreme Court on the point, if the claim for compassionate appointment is to be considered in accordance with the rules or the scheme in force on the date of death of an employee in harness, or a subsequent date, say when the application comes up for consideration before the competent Authority. In **Secretary to Government Department of Education (Primary) and others v. Bheemesh alias Bheemappa**² the issue was whether in case of a compassionate appointment, the Rules governing the right to consideration in force on the date that the death of a Government servant in harness occurs apply or those on a subsequent date, say, when the application for compassionate appointment comes up for consideration before the competent authority. The issue postulates a situation, where the rules for consideration have undergone a change between the date of death in harness and the date on

2 AIR 2022 SC 402

which the dependant's application for compassionate appointment is considered.

13. The facts in **Bheemesh alias Bheemappa** (*supra*) can best be recounted in the words of their Lordships :

"8. Admittedly, the appointment on compassionate grounds in the State of Karnataka is governed by a set of Rules known as Karnataka Civil Services (Appointment on Compassionate grounds) Rules, 1996, issued in exercise of the powers conferred by Section 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978. The Rules as they stood, on the date on which the sister of the respondent died in harness, did not include an unmarried brother, within the definition of the expression "dependant of a deceased Government servant" under Rule 2(1)(a) of the said Rules vis-a-vis a deceased female unmarried Government servant. But it was only by way of an amendment proposed under a draft Notification dated 20.06.2012 which was given effect under the final Notification bearing No. DPAR 55 SCA 2012, Bangalore dated 11.07.2012 that an unmarried brother of a deceased female unmarried Government servant was included within the definition. There is no dispute about the fact that the sister of the respondent died as an unmarried female Government servant, but on 8.12.2010, before the amendment was made to the Rules."

14. The issue, therefore, was if the amended Rules in **Bheemesh alias Bheemappa** that came into force after death of the Government servant there, would have retrospective application and govern the case of the dependant unmarried brother of the deceased unmarried female Government servant, or the amendment would have prospective application from the date it came into force. It was examined and answered by their Lordships thus:

"9. To hold that the amendment will have retrospective application, the High Court as well as the Tribunal relied upon a Judgment of the Division Bench of the High Court of Karnataka in State of Karnataka v. Akkamahadevamma and others, decided on 18.11.2010 in Writ Petition Nos.20914 of 2010 etc.: (Reported in 2011 (2) AIR Kar R 118). But it should be pointed out at the outset that the Judgment of the High Court in Akkamahadevamma arose out of an amendment to the Karnataka Civil Services (General Recruitment) (57th Amendment) Rules, 2000. By the Amendment made on 30.03.2010 to the said Rules, grandson, unmarried granddaughter, daughter in law, widowed daughter and widowed granddaughter were included within the definition of the expression "members of the family" under

Explanation-2 of Rule 9. But the amendment so made on 30.03.2010 expanding the definition of the expression "members of the family" was triggered by an Order of the Tribunal which held the unamended rule to be unconstitutional. It is in that context that the amendment made on 30.03.2010 to the Rules issued on 23.11.2000 was held by the High Court to be retrospective in nature. It must also be remembered that the expanded definition was with respect to project displaced persons. The right conferred upon a project displaced person stands on a different footing from the entitlement of a person to seek appointment on compassionate grounds. In any case an amendment brought forth, on the basis of a Judgment of a Court or Tribunal, holding the exclusion of certain categories of persons to be violative of Articles 14 and 16 of the Constitution, may receive an interpretation such as the one proposed by the High Court in Akkamahadevamma. But the same may not be applicable to amendments of the nature that we are concerned with in this case.

10. x x x

11. Be that as it may, Sh. Jayanth Muthraj, learned senior counsel appearing for the respondent pleaded that there are two lines of Judgments of this Court, one taking the view that the Rules/Scheme in force on the date of death of the Government servant would govern the field and the other holding that the Rules/scheme in force on the date of consideration of the claim would govern the field. Unable to reconcile this conflict, a two Member Bench of this Court, by its Order dated 08.02.2019 in State Bank of India v. Sheo Shankar Tewari¹, has referred the matter for consideration by a larger Bench. Sh. Jayanth Muthraj, learned senior counsel therefore made a request that the present appeal may either be placed along with the reference or await a decision on the above reference.

12. But we do not consider it necessary to do so. It is no doubt true that there are, as contended by the learned senior Counsel for the respondent, two lines of decisions rendered by Benches of equal strength. But the apparent conflict between those two lines of decisions, was on account of the difference between an amendment by which an existing benefit was withdrawn or diluted and an amendment by which the existing benefit was enhanced. The interpretation adopted by this Court varied depending upon the nature of the amendment..."

15. The tabulated reference to the six cases in paragraph No. 12, where their Lordships have analysed the seemingly divergent opinions, expressed by their Lordships on the issue in those cases, as to the date with reference to which rules in force for compassionate appointment would apply for consideration of the dependant's case, is omitted for the sake of brevity.

16. There are two other cases considered in **Bheemesh *alias* Bheemappa** that are not alluded to in the table set forth in paragraph no. 12 , where it is observed:

"13. Apart from the aforesaid decisions, our attention was also drawn to the decision of the three member Bench in State of Madhya Pradesh v. Amit Shrivastava. But that case arose out of a claim made by the dependant of a deceased Government servant, who was originally appointed on a work charged establishment and who later claimed to have become a permanent employee. The Court went into the distinction between an employee with a permanent status and an employee with a regular status. Despite the claim of the dependant that his father had become a permanent employee, this Court held in that case that as per the policy prevailing on the date of death, a work charged/contingency fund employee was not entitled to compassionate appointment. While holding so, the Bench reiterated the opinion in Indian Bank v. Promila.

14. The aforesaid decision in Amit Shrivastava (supra) was followed by a two member Bench of this Court in the yet to be reported decision in the State of Madhya Pradesh v. Ashish Awasthi decided on 18.11.2021 : (Reported in AIROnline 2021 SC 1047)."

17. After taking note of the seemingly divergent opinions on the issue, the Supreme Court observed in **Bheemesh *alias* Bheemappa** :

"15. Let us now come to the reference pending before the larger Bench. In State Bank of India v. Sheo Shankar Tewari (supra), a two member Bench of this Court noted the apparent conflict between State Bank of India v. Raj Kumar and MGB Gramin Bank on the one hand and Canara Bank vs. M. Mahesh Kumar on the other hand and referred the matter for the consideration of a larger Bench. The order of reference to a larger Bench was actually dated 8.02.2019.

16. It was only after the aforesaid reference to a larger Bench that this Court decided at least four cases, respectively in (i) Indian Bank v. Promila; (ii) N.C. Santhosh v. State of Karnataka; (iii) State of Madhya Pradesh vs. Amit Shrivastava; and (iv) State of Madhya Pradesh v. Ashish Awasthi. Out of these four decisions, N.C. Santosh (supra) was by a three member Bench, which actually took note of the reference pending before the larger Bench.

17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an

existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different

dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.

20. Coming to the case on hand, the employee died on 8.12.2010 and the amendment to the Rules was proposed by way of a draft notification on 20.06.2012. The final notification was issued on 11.07.2012. Merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent could not have sought the benefit of the amendment. The Judgment of the Division Bench of the Karnataka High Court in Akkamahadevamma on which the Tribunal as well as the High Court placed reliance, was not applicable to the case of compassionate appointments, as the amendment in Akkamahadevamma came as a result of the existing rule being declared to be ultra vires Articles 14 and 16 of the Constitution."

18. The principle then laid down is that the right to consideration of an appointee for compassionate appointment is to be governed by the rules in force on the date of death of the employee in harness. This interpretation has been favoured, as observed by their Lordships, for reason that adopting a rule of interpretation, which produces different results, depending upon individual action and processes would produce varying results based on the same rights. Therefore, the date of death of an employee in harness, which is not something variable but fixed, has been favoured to determine the right of the dependent for a consideration of the claim for compassionate appointment according to the Dying-in-Harness Rules in force on that date.

19. In this case, there is a further feature to be noticed. In most of the Authorities, where the issue has arisen as to which rule amended or otherwise, or newly introduced would apply to govern a dependant's claim for compassionate appointment, were cases where there was a

change or the introduction of a new Rule to the Dying-in-Harness Scheme or the Dying-in-Harness Rules. In the present case, there is no change at all in the Rules of 1974. The change has come about on account of the Rules relating to eligibility for appointment to a Class IV post in the Civil Court establishment. The further question that may be posed is, if the principle in **Bheemesh alias Bheemappa** would apply to the present case, where there is no change in the Dying-in-Harness Rules or the Scheme, but the criteria of eligibility under the relevant service rules. To the understanding of this Court, this may be a difference of form, but not of substance.

20. Ultimately, the issue is : *What are the whole gamut of Rules that would govern the right of a dependant to seek compassionate appointment after the death of an employee in harness?* Whether the change in Rules affecting the dependant's candidature comes from the Dying-in-Harness Rules or from the recruitment Rules applicable, is of no consequence. It is of no consequence, in the opinion of this Court, for reason that the principle is same that the eligibility for consideration must depend on an interpretation that turns on a determinate and fixed criteria; not on something that is subject to variation by individual action or inaction. If for instance, in the present case, the petitioner's application had been examined in the correct perspective by the learned District Judge, when it was first rejected *vide* order dated 10.05.2011, based on the report of the Grievance Redressal Committee dated 13.04.2011, an order that did not find favour with this Court, the result would have certainly been different. The order dated 03.05.2013 was passed, directing a reconsideration of the petitioner's candidature in accordance with the Rules of 1955, within a period of two months. What if the Grievance Redressal Committee were more prompt and put in a report within a week and the learned District Judge had to pass his orders not on 03.09.2013, but on the some day in the month of June, 2013, or in the first three days of July, 2013? The result of

the petitioner's claim for compassionate appointment would have been very different. It is these vagaries based on individual action or inaction that the interpretation in **Bheemesh *alias* Bheemappa** seeks to eschew.

21. I have taken the same view in a very recent decision in **Bechan Giri vs. Union of India, 2023 (8) ADJ 692**, albeit in the context of the introduction of a scheme for compassionate appointment that came into effect in the respondent's establishment in that case after the date of demise of the employee in harness. But the principle in the said decision, again based on **Bheemesh *alias* Bheemappa**, is the same.

22. No other point was pressed on behalf of either party.

23. In the result, this petition **succeeds** and shall stand **allowed**. The impugned order dated 03.09.2013, passed by the learned District Judge, Firozabad is hereby **quashed**. A *mandamus* is issued to the learned District Judge, Firozabad to reconsider the petitioner's claim for compassionate appointment within a month, in accordance with law and the guidance in this judgment. Costs easy.

Order Date :- October 19, 2023

I.Batabyal / Deepak

(J.J. Munir, J.)