

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

OP (CAT).No. 458 of 2010 (S)

AGAINST THE ORDER/JUDGMENT IN OA 898/2009 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 08-06-2010
PETITIONER(S) :

1. THE CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED
KERALA TELECOMMUNICATIONS
THIRUVANANTHAPURAM-695033.

2. THE DEPUTY GENERAL MANAGER (ADMN),
OFFICE OF THE CHIEF GENERAL MANAGER
BHARAT SANCHAR NIGAM LIMITED, KERALA
TELECOMMUNICATIONS.THIRUVANANTHAPURA-695033.

3. TE CHAIRMAN-CUM-MANAGING DIRECTOR,
BHARAT SANCHAR NIGAM LIMITED, NEW DELHI-110 001.

BY SMT.I.SHEELA DEVI, SC, BSNL
RESPONDENT(S) :

RAJESH.S, S/O. (LATE) P.SREEKANTAN,
TC 55/1016, VADAKKE ANANTHA MOOLA VEEDU, NEERAMANKARA
KAIMANAM.P.O, TRIVANDRUM-695040.

R,R-1 BY ADV. SRI.T.C.GOVINDA SWAMY
R,R-1 BY ADV. SMT.KALA T.GOPI

THIS OP (CAT) HAVING COME UP FOR ORDERS ON 19-01-2015,
ALONG WITH OPCAT. 76/2010, OPCAT. 828/2010, OPCAT. 841/2010, OPCAT.
855/2010, OPCAT. 883/2010, OPCAT. 325/2011, OPCAT. 360/2011, OPCAT.
2486/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR,
A.V. RAMAKRISHNA PILLAI &
P.V. ASHA, JJ.**

**O.P.(CAT) Nos.458, 828, 841, 855, 76 and 883 of 2010,
325 and 360 of 2011 and 2486 of 2012**

Dated this the day of 19th January, 2015

ORDER

Ramachandran Nair, J.

These cases have been referred for consideration by a Full Bench, by a Division Bench as per order dated 17.2.2012. In the various original petitions the orders passed by the Central Administrative Tribunal, Ernakulam Bench in favour of the respective applicants (respondents therein) are under challenge. O.P.(CAT) No.2486/2012 is filed by an applicant whose O.A. No.546/2010 was dismissed by the Tribunal.

2. The petitioners, except in O.P.(CAT) No.2486/2012 are respectively the Bharat Sanchar Nigam Limited (for short “BSNL”) and its officers. The main legal issue raised is as to the true effect of the communication of the BSNL dated 27.6.2007 providing a weightage point System for assessment of indigent condition of the applicants for compassionate appointment. The scheme for appointment on compassionate basis is the one framed in the year

1998 and the Central Administrative Tribunal took the view that the applications in these cases having been filed before 27.6.2007, the original scheme of 1998 has to be applied, i.e. as on the date of death of the employee, without reference to the communication issued by the BSNL on 27.6.2007.

3. We reproduce hereinbelow the order of reference made by the Division Bench consisting of Thottathil B. Radhakrishnan and C.T. Ravikumar, JJ.

“Order of reference

Thottathil B. Radhakrishnan, J.

1. This bunch of Original Petitions filed against different decisions of the Central Administrative Tribunal (Ernakulam Bench) raises a common issue of law. Therefore, they are dealt with and heard jointly.

2. Respondents in these matters, who were among the applicants before the Tribunal, had applied to Bharat Sanchar Nigam Limited, for short, “BSNL”, before 27.06.2007 for compassionate appointment.

3. The short issue that arises for consideration is as to the legal effect of the communication issued by BSNL to all the Heads of Telecom Circles on 27.06.2007 *qua* the official memorandum issued in 1998 by the Department of Personnel

and Training in the Ministry of Personnel, Public Grievances & Pensions, which provides for the scheme for compassionate appointment.

4. The Tribunal took the view that the application for compassionate appointment having been filed before 27.06.2007, the scheme of 1998 has to be applied without reference to the communication issued by the BSNL on 27.06.2007.

5. We heard the learned counsel for the establishment and the learned counsel for those who were the applicants before the tribunal.

6. The private respondents, the applicants before the Tribunal, are justified in relying on the decisions of this Court in WP(C) No.36025 of 2009 and Bharat Sanchar Nigam Ltd. V. Tittin[2011 (4) KLT 409] to canvass for the position that this Court has stated that the scheme applicable on the date of the application for compassionate appointment has to apply in preference to any later scheme or modification.

7. The learned counsel for the establishment, the petitioner in this bunch of matters, points out that the aforesaid two decisions stand stayed by the Hon'ble Supreme Court of India. She also points out that the Allahabad Bench of the

Tribunal had, essentially, taken a decision contrary to the contents of the orders impugned in these original petitions. She argues for the position that the precedents cited by the private respondents (applicants) require reconsideration, they not having laid the situational law correctly.

8. *Per contra*, the learned counsel for the employees, who were the applicants before the Tribunal, heavily relied on the aforesaid precedents and argued that the plea of the department is baseless, and further that, those precedents do not require reconsideration. It was pointed out that, merely because the Apex Court had stayed the precedents relied on by the employees, the precedential value of those judgments cannot be ignored by a bench of coequal jurisdiction.

9. Issuance of an order of stay of a judgment by a superior court does not deprive the efficacy and binding nature of that judgment as a precedent before quorums and courts, which are obliged, in the hierarchy of a multi-tier judicial system, to honour and follow that judgment. Therefore, in the fitness of things, this Bench, being one of co-equal jurisdiction with those which rendered the precedents relied on by the employees, is bound by principles of law, judicial propriety and institutional comity to follow the afore-referred precedents. We have no doubt about that.

10. But, on deeper consideration, we find ourselves unable to

agree with the reasoning and the statement of law contained in the aforesaid judgments rendered by the Division Bench of this Court. We proceed to state the reasons for our respectful dissent to the views in **WP(C).No. 36025 of 2009** and **Bharat Sanchar Nigam Ltd. V. Tittin[2011 (4) KLT 409]**.

11. For one thing, it is the settled position of law that compassionate appointment is not a regular method of recruitment. There is no vested right in any person to claim compassionate appointment. Provision for compassionate appointment is a legitimate device founded on compassion and therefore on essentiality, whereby the employer extends a helping hand to provide succor to the unfortunate dependents of an employee who dies in harness. When such exercise relates to public employment governed by Articles 14 and 16 of the Constitution, such extension of succor is essentially one that reduces the source of employment for the open market candidates legitimately meeting with expectation to enter public service. That is why, it has been laid as law that such a measure of help shall be extended only to the really needy.

12. Though different pronouncements by the Apex Court and the different High Courts have repeatedly pointed out the need to confine the extension of such succor only to the needy, by and large, no definite yardsticks were maintained by different departments or institutions. The practice appears

to be that the competent authority, may be a committee, assesses each case and comes to its conclusion as to whether a particular dependent family can be treated as eligible to the benefit of compassionate appointment to any of its member. With the passage of time, different departments including under the Government of India and also other establishments came out with schemes laying down different aspects governing the offer of compassionate appointment to the needy dependents of employees who die in harness. When a scheme is in force, the employer is obliged to make compassionate appointments only in terms of it. Even while making an appointment under a scheme, the fundamental principle that such appointment in public service should be made only to the needy ones, ought not to be ignored. Similarly, the settled principle of law that delayed applications ought not to be considered has also to be remembered. Ear-marking a particular percentage or number of posts or vacancies for compassionate appointments has also obtained judicial approval, as can be seen from the relevant precedents.

13. It is settled law that a recruitment rule can be amended retrospectively. Running along with it is the position that, even upon being selected for appointment and included in a select list, none gets a vested right to be appointed. It has also been held by the Apex Court and the High Courts that if recruitment rules are modified even changing the

qualifications, with retrospective effect, that may stand the test of constitutionality. Therefore, amendment of a rule or scheme under which a recruitment or appointment could be made is a well established and accepted fact. Though *Tittin's case (supra)* does not make any reference to any precedent, in WP(C).No.36025 of 2009(*supra*), the Bench had referred to **SBI v. Jaspal Kaur[(2007) 9 SCC 571]** and **SBI v. Vikas Dubey[(2007) 9 SCC 579]**. In both those cases, the Hon'ble Supreme Court considered situation where new schemes came into force in the establishment in question. In cases where the existing scheme gets amended or clarified, the matters would stand in a different footing. The principles noted above as to the permissibility of variation to the recruitment rules cannot be ignored in such situations.

14. In the case in hand, all that has been done as per the BSNL communication dated 27.06.2007 is to provide a weightage point system for assessment of indigent condition. This, in no manner, amounts to creation of a new scheme. In our view, it only amounts to providing clear and transparent guidelines, rather than leave it to the Committee to consider the applications “in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject”, as provided for in Clause 12(c) of the Scheme of 1998. What has been brought by BSNL through its communication dated 27.06.2007 is only an identifying method to determine the eligible persons

on the basis of a weightage point system. This is, essentially, only clarificatory and supplementary to the Scheme of 1998 which still governs the field subject to such clarification. In this view of the matter, we do not find that the BSNL communication dated 27.06.2007 could be treated as a new scheme to be excluded in considering applications which were received and pending consideration on the date of issuance of the said communication.

15. For the aforesaid reasons, in our view, the ratio of the judgments in **WP(C).No.36025 of 2009** and **Bharat Sanchar Nigam Ltd. v. Tittin[2011 (4) KLT 409]** requires reconsideration.

16. These cases are, therefore, adjourned to the Full Bench.

The office will place these files before the Hon'ble the Acting Chief Justice for orders.”

The Division Bench, in the reference order, was of the view that the ratio of the judgments in W.P.(C) No.36025/2009 and **Bharat Sanchar Nigam Ltd. v. Tittin (2011 (4) KLT 409)** requires reconsideration.

4. We heard learned counsel for the appellants Smt. I. Sheela Devi and Shri K. Kesavankutty and learned counsel for the respondents Shri T.C. Govindaswamy. Shri Mathews K. Philip, Shri

P.V. Mohanan and Shri Rinny Stephen Chamaparambil.

5. For having a clear access to the factual details, we refer to the paper book produced in O.P.(CAT) No.325/2011. We are not referring to the detailed facts in individual cases. The orders impugned in the Original Application show that the applicant's application for compassionate appointment stands rejected for the reason that the high power committee constituted for this purpose after examining his case, found that the net points based on the guidelines would come to less than 55 and therefore in overall assessment, the family of the ex-employee has not been found to be living in indigent condition by the Circle High Power Committee. The details show that the employee expired on 10.3.2007 and the application for compassionate appointment is dated 28.1.2008. The new policy guidelines by BSNL Corporate Office were introduced by letter NO.273-18/2005-Pers-IV dated 27.6.2007.

6. Ext.P2 in the paper book is the copy of the reply statement filed by the petitioners before the Tribunal in O.A. No.485/2010 and at internal page 54 of the paper book the Office Memorandum dated 9.10.1998 providing the scheme for compassionate appointment has

been produced (Ext.P2 (17)). Going by clause 1, the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. Clause 2 deals with the persons to whom it is applicable and clause 3 deals with the authority competent to make compassionate appointment. Clause 4 states that Group 'C' or Group 'D' posts are included for appointment under compassionate appointment scheme. Clauses 5 and 6 deal with the eligibility and exemptions and we extract the said clauses hereinbelow:

“5. ELIGIBILITY

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

6. A. EXEMPTIONS

Compassionate appointments are exempted from

observance of the following requirements:-

- (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange;
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training;

© The ban orders on filling up of posts issued by the Ministry of Finance (Deptt. Of Expenditure).

B. RELAXATIONS

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

(Notes I and II deal with the date for consideration of age eligibility and authority to grant relaxation and they are excluded.) Clause 7 deals with determination/availability of vacancies and going by the same, appointment can be made only against regular vacancies and can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. Going by the sub-clause (e), employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working and it can be given anywhere under the Government of India depending upon

availability of a suitable vacancy meant for the purpose of compassionate appointment. Clause 12 deals with the 'Procedure' and we extract the entire clause hereinbelow:

“12. PROCEDURE

(a) The proforma as in Annexure may be used by Ministries/Departments/Offices for ascertaining necessary information and processing the cases of compassionate appointment.

(b) The Welfare Officer in each Ministry/Department/Office should meet the members of the family of the Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.

© An application for appointment on compassionate grounds should be considered in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject by a committee of officers consisting of three officers - one Chairman and two Members - of the rank of Deputy Secretary/Director in the Ministry/Department and officers of equivalent rank in the case of attached and

subordinate officers. The Welfare Officer may also be made one of the Members/Chairman of the committee depending upon his rank. The committee may meet during the second week of every month to consider cases received during the previous month. The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case.

(d) Recommendation of the committee should be placed before the competent authority for a decision. If the competent authority disagrees with the committee's recommendation, the case may be referred to the next higher authority for a decision.”

Clause 16 is under the heading “General” and sub-clause © therein has been relied upon by the learned counsel for the respondents, which we reproduce below:

“(c) The Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the government servant has received the

benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.”

7. The communication dated 27.6.2007 issued by the BSNL provides the detailed procedure for providing uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment. We extract the said communication hereunder:

“No.273-18/2005-Pers.IV Dated 27.6.2007

To

All Heads of Telecom Circles

Sub: Compassionate Ground appointments (CGA) -
Policy guidelines regarding.

It has been decided to bring uniformity in assessment of indigent condition of the family for offering compassionate ground appointment in view of

the following recent developments:-

(A) Advise by Hon'ble Chairman, National Commission for Scheduled Tribes in the meeting held on 20.11.2006 with Secretary (Telecom) and CMD, BSNL that “keeping in view the guidelines issued by Govt. of India, standard guidelines for eligibility for appointment on compassionate grounds may be formulated by the BSNL” and

(b) BSNL Board's decision communicated vide letter No.6-5/2004-EB (Part-I) dated 26.12.2006, wherein “Circle Heads are authorised to create non-executive level posts for offering compassionate ground appointment subject to the policy guidelines to be given by the Corporate Office in this regard.”

2.0 Accordingly, the High Power Committee of the Corporate Office for considering the compassionate ground appointment cases, Headed by Director (HRD), recommended for introduction of a weightage point system, within DOPT guidelines, to bring uniformity in assessment of indigent condition of the family, which has subsequently been approved by the Management Committee of BSNL as per the following:-

(I) To continue with the policy guidelines on compassionate ground appointment, issued by DOPT vide OM NO.14014/94-Estt (D) dated October 9,

1998 and to introduce the weightage point system, as per details given at Annexure -I.

(II) The assessment criteria for recommendation of the indigent condition of the family by the Circle High Power Committee shall be - (a) Cases with 55 or more net points shall be prima-facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate ground appointment and (b) Cases with NET POINTS below 55 (i.e. 54 or less) shall be treated as non-indigent and rejected.

3.0 Keeping in view the provisions of weightage point system, the procedure for processing the cases of compassionate appointment shall now be as below:

(i) The Welfare Officer of the Circle/SSA/Unit will meet the members of the family of the ex-employee immediately after his death/medical invalidation to advise them about provisions of the scheme and assist them in completing necessary formalities in filling up of details in prescribed proforma i.e. Proforma part 'A' (as in Annexure of the DOPT scheme) and other details needed proper weightage point system and verify it with the official records. The office concerned will fill up the proforma Part 'B' as per the existing practice.

(ii) The SSA/Unit concerned will scrutinise the application and prepare check-list according to the weightage point system (proforma enclosed at Annexure II) for the purpose of assessment of indigent condition of the family.

(iii) The Check-list (in the format of Annexure-II), Proforma Part 'A' and Proforma Part 'B' complete in all respects, alongwith supporting details, shall be sent to concerned Territorial Circle for further processing.

4.0 A Circle High Power Committee (CHPC), consisting of Circle Head and two other officers of SAG/JAG-level, nominated by Circle Head, shall consider applications for appointment on compassionate grounds as per weightage point system. In the case with net points 55 or more, the minutes of the Circle HPC will be sent to BSNL Corporate office, along with supporting documents including the check-list, for consideration and decision by Corporate Office. In the case with net points below 55 (i.e. 54 or less), the family will be treated as not living in indigent condition and such compassionate ground appointment request will be rejected by the circle. The applicant will be intimated about rejection of the request, by the concerned circle through a speaking order.

5.0 Where there is a problem in attributing points on

any of the aspects due to peculiar circumstances in any specific case, the same may also be sent to BSNL Corporate Office alongwith supporting documents, including the check-list, for consideration and decision by Corporate Office.

6.0 Any appeal for re-consideration of the already rejected case will also be considered according to the weightage point system. If in any appeal case, net points come to 55 or more, the complete case alongwith check-list may be sent to the Corporate Office for decision.

7.0 The High Power Committee of the Corporate Office will consider and decide the cases, forwarded by Territorial Circles, with the approval of CMD, BSNL.

8.0 The decision taken by the Corporate Office will be initiated to respective circles for further follow up action i.e. informing the candidate about acceptance or rejection or wait listing etc. The procedure with regard to waitlisting and offering of compassionate ground appointment under 5% CGA quota shall remain the same as prescribed vide letter NO.268-101/2002-Pers.IV dated 1.10.2002.”

Under the above, a weightage point system has been introduced and Clause 3 provides the detailed procedure for processing the applications. It shows that the Welfare Officer of the

Circle/SSA/Unit will meet the members of the family of the ex-employee immediately after his death/medical invalidation to advise them about the provisions of the scheme and assist them in completing the necessary formalities in filling up of details in prescribed proforma (Part A) and other details needed for providing weightage point system. The officer concerned will fill up the proforma in Part B. The SSA/Unit concerned will scrutinise the application and prepare check-list according to the weightage point system for the purpose of assessment of indigent condition of the family. The check-list in the format of Annexure II Proforma Part A and Proforma Part 'B' complete in all respects, along with supporting details, shall be sent to concerned Territorial Circle for further processing. Clause 4 will show that the application will be considered by the Circle High Power Committee, the composition of which is provided in that clause. They will have to send to the BSNL Corporate Office the minutes showing the cases with net points 55 or more and cases with net point below 55 will be treated as not living in indigent condition and such compassionate ground requests will be rejected by the Circle. Clause 5 will show that

where there is a problem in attributing points on any of the aspects due to peculiar circumstances in any specific case, the same may also be sent to BSNL Corporate Office along with supporting documents, including the check-list, for consideration and decision by Corporate Office. An appeal is also provided from the order of rejection. There will be a High Power Committee on the Corporate Office level also to consider and decide the cases forwarded by Territorial Circles, with the approval of CMD, BSNL.

8. Learned counsel for the petitioners herein submitted that the applications will have to be considered under the 1998 scheme as against 5% of the vacancies included in Group C and Group D posts. The scheme which was originally framed in 1958 had undergone different changes. What is important as far as the new guidelines is concerned, is only to provide a weightage point system to find out the most eligible applicant. The criteria involved is definite and being specific, there will not be any chance of error and the indigent family which requires immediate appointment will get the benefit. It is submitted that the matter being one of selection and that too, when number of vacancies are limited to 5% of the direct recruitment

quota in an year, every one of the applicants will not get an appointment in an year. The concept of selection is already there under the 1998 scheme. The 2007 guidelines is only an elaboration of the same scheme so as to effectively find out the eligible applicants. It is not at all an introduction of a new scheme by substituting it for the old scheme. It cannot be considered as affecting any vested rights of the applicants for appointment in which case alone the question may have to be considered whether it is introduction of a new scheme or is having any retrospective effect on pending applications. It is therefore submitted that the finding by the Tribunal that the case of the applicants will have to be considered as on the date of filing of the applications/date of death and not with reference to the weightage point system cannot be supported.

9. Leading the arguments for some of the respondents, Shri T.C. Govindaswamy, learned counsel submitted that really the vested right of the applicants has been affected. By referring to various decisions, he submitted that the crucial date for determination of the eligibility under a particular scheme will be the

date of death of the employee concerned. The learned counsel further submitted that whenever there is an amendment of a scheme after the date of submission of application, it has been consistently been held that the consideration should be based on the date of application. Learned counsel stressed that the object of the scheme is to provide succor to the real eligible family and it should be immediate. The object of the scheme being to help the family which is in financial difficulties, it cannot be deprived, by introducing new standards and new norms. There should be a method by which the applicants should be certain about the procedure and allowing the scheme to be amended or the introduction of fresh norms even while the applications are pending, will adversely affect the interest of all concerned which cannot be justified at all. It is therefore submitted that the view taken by the Tribunal that the new guidelines introduced with effect from 27.6.2007 will not apply to pending applications, is a plausible one. He relied upon the dictum laid down in the following decisions:

“Union of India v. Jinse (WPC No.36025/2009) BSNL v. Tittin (2011 (4) KLT 409), State Bank of India and others v. Jaspal Kaur (2007 (2) SCC (L&S) 578), State

Bank of India and another v. Vikas Dubey and others (2007 (2) SCC (L&S) 585), **Abhishek Kumar v. State of Haryana and others** (2007 (2) SCC (L&S) 308), **Govind Prakash Verma v. Life Insurance Corporation of India and others** (2005 SCC (L&S) 590), **St. Ignatious High School v. State of Kerala** (2005 (3) KLT 1000), **Bhupinder Batra v. U.O.I. and others** (2012 (3) SLR 12 - Punjab and Haryana), **State Bank of India v. Aneesh Antony** (W.A. No.757/2013 of High Court of Kerala), **Sinhu Suresh v. Chairman and Managing Director, BSNL - OA No.1064/2011** and **BSNL v. T.R. Syam Raj** (OP CAT) No.3629/2013)”

10. Shri Rinny Stephen Chamaparambil, learned counsel appearing for some of the respondents also supported the above arguments and relied upon the following decisions:

“**State Bank of India & others v. Jaspal Kaur** (2007 (1) KHC 965 SC; **Krishna Kumari v. State of Haryana & others** (2012 KHC 2971), **Indian Rare Earths Ltd. & another v. Jayabindu K.V. & others** (2013 KHC 614) and **Bhavani Prasad Sonkar v. Union of India & others** {(2011) 4 SCC 209}.”

The decision in **Indian Rare Earths Ltd.'s case** (2013 KHC 614) is particularly relied upon by the learned counsel for the respondents, which held the view that cases will have to be

considered as per the scheme available as on the date of submission of the application. He referred to the various averments contained in the Original Application also in support of the arguments for grant of the appointment.

11. Shri P.V. Mohanan, learned counsel appearing for some of the respondents relied upon the following judgments:

“Balbir Kaur and another v. Steel Authority of India Ltd. and others {(2000) 6SCC 493}, Director General of Posts and others v. K. Chandrashekar Rao {(2013) 3 SCC 310}, State Bank of India and another v. Vikas Dubey and others {(2007) 9 SCC 579} and Soman v. Manager, A.K.M. High School (2013 (2) KLT215 - FB).”

It is submitted that the attempt of the department is to deny the benefit of appointment by relying on unnecessary terms. Our attention is invited by the learned counsel for the respondents to the procedure under clause 12 of 1998 scheme whereby the Welfare Officer of the department will have to meet the members of the family and therefore the details collected by him in the report are already available with the department. It is submitted that the procedure under clause 16(c) is an inbuilt one which also directs an

objective assessment of the financial condition of the family. Special emphasis was made by the learned counsel for the respondents by submitting that sub para (c) insists that while considering a request for appointment, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities and all other relevant factors such as the presence of an earning member, size of the family, age of the children and the essential needs of the family, etc. It is submitted that the same is a foolproof one. Therefore, he submitted that the view taken by the Division Benches in the judgments in W.P.(C) No.36025/2009 and in **BSNL v. Tittin** (2011 (4) KLT 409) is on sound legal principles and what is relevant is to consider the scheme as applicable either on the date of death of the applicant or at least as on the date of application for compassionate appointment and not on the basis of the later scheme.

12. The settled legal principles governing compassionate appointment are also relevant to be noticed in this context. The entire object of the scheme has been succinctly explained by the Apex Court in the oft quoted decision in **Umesh Kumar Nagpal v.**

State of Haryana {(1994) 4 SCC 138}. We quote from paragraph 2 of the said judgment hereinbelow:

“.....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No

other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family, engendered by the erstwhile employment which are suddenly upturned.”

The claim for compassionate appointment is an exception to the method of recruitment in public service. It has been held that the mandate under Articles 14 and 16 of the Constitution of India will have to be followed for the purpose of making appointment and while considering eligible candidates.

13. On the question whether the appointment under compassionate scheme can be claimed as a matter of right by the applicant, there cannot be any iota of doubt, since in a series of decisions the Apex Court held that it is a concession and not a right (**SAIL v. Madhusudan Das** - (2008) 15 SCC 560) wherein, in paragraph 15 it has been held as follows:

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz. That the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right.”

One of the decisions relied upon by the learned counsel for the respondents is **Bhawani Prasad Sonkar v. Union of India and others** {(2011) 4 SCC 209}. In paragraph 20, the Apex Court held that certain factors are to be borne in mind while considering the claim for appointment on compassionate basis and we reproduce the same hereunder:

“(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in

accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time;

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

Therefore, a compassionate appointment can be made only as per the scheme or rules or regulations. Dehors the scheme, no discretion is available for an appointing authority. It cannot be granted as a matter of course by way of largesse, irrespective of the financial

condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

14. The legal question that is raised will have to be addressed on the touchstone of the alleged right, if any, obtained by a claimant by submitting an application for consideration of the claim, viz. either as on the date of death of the breadwinner of the family or as on the date of submission of the application. Importance will have to be given to the question whether an applicant, by submitting an application, acquires a vested right for appointment or even for consideration of the said application unmindful of any amendment of the scheme or the introduction of a new norms. Incidental will be the question whether, if at all an office memorandum is issued like the one herein, it will have any retrospective effect so as to apply to pending applications also and as to whether such parameters are only procedural in nature and cannot be treated as affecting any substantive right.

15. While analysing the 1998 scheme as contained in Ext.P2, it can be seen that 5% of the vacancies under which direct recruitments are being made in an year, have to be filled up by

compassionate appointment in any Group C or Group D posts. Therefore, the appointments are made to regular vacancies meant for the said purpose. As pointed out in the reference order, there are various systems, either by assessment by committees or assessment by competent authorities for the purpose of ascertaining the background of the family and other relevant factors. Clause 12 itself casts a duty on the Welfare Officer to meet the members of the family immediately after the death of the employee, to advise and assist them in getting appointment on compassionate grounds. In fact, clause 12(c) provides for consideration of application by a committee of officers consisting of Chairman and two members of the rank of Deputy Secretary/Director in the Ministry/Department and officers of equivalent rank in the case of attached and subordinate offices. In certain cases the Welfare Officer also will be made a member of the committee depending upon his rank. The exercise that is provided under clause 16(c) obviously is to have a reasonable and proper assessment of the “financial condition” of the family taking into account its assets and liabilities and all other relevant factors such as the presence of an earning member, size of

the family, age of the children and the essential needs of the family, etc.

16. Therefore, what is important while considering the 1998 scheme is that there will be a selection based on the relevant factors, to find out the eligible applicants. Since the appointment is only as against 5% of the vacancies, even in the case of candidates succeeding after the selection, it cannot be said that everyone will get the benefit of appointment. It is clear from clause 7(f) that if sufficient vacancies are not available in any particular office to accommodate persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment. Therefore, there are possibilities of certain candidates being left out as having failed to fulfil the relevant criteria, viz. penury, from the families who are having good financial background.

17. What is relevant, therefore, is to consider the fact that when there is an element of selection, can any applicant at that

stage, contend for the position that he has got a vested right for appointment. If only the vested right can be claimed either with regard to the date of death or date of consideration, an applicant can successfully ward off the applicability of any amendment to the scheme to his or her application.

18. We find from a judgment of the Apex Court that the relevant principles in that regard have been laid down in extenso. We refer in this context to the judgment in **State Bank of India and another v. Raj Kumar** {(2010) 11 SCC 661}. The Apex Court has laid down certain general principles therein which we summarise below:

(a) The claim for compassionate appointment is traceable only to a scheme framed by the employer and there is no right whatsoever outside such scheme.;

(b) An appointment under the scheme can be made only if the scheme is in force and not after its abolition or withdrawal;

© In such case when a scheme is abolished, any pending application seeking appointment will also cease to exist unless

saved; and

(d) Mere filing of an application will not by itself create a right in favour of the applicant.

(e) There are three basic requirements to claim appointment under the scheme: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme for compassionate appointment; and (iii) availability of posts, for making such appointment.

(f) If any scheme provides that immediately on the death of an employee, a specified family member will be automatically appointed without any of the aforesaid requirements, it can be presumed that the scheme gives an automatic right in favour of a family member for appointment on such death. In such cases the scheme at the time of death will apply. If a scheme provides that there is a requirement of an application without any need to fulfil any eligibility criteria, whether any vacancy exists or not, then also the scheme will create a right in favour of an applicant and the

scheme that was in force at the time when the application was filed, will apply.

(g) In the other cases where there is a need to file an application and there are eligibility conditions to be fulfilled and the appointment will be subject to availability of vacancies, the applicant's right is only to be considered for appointment. There will be need to verify the antecedents of the applicant and the financial capacity of the family. In such cases, the applicants are not having any vested right and the scheme that is in force as on the date of consideration will be applicable.

19. The Apex Court also held that since the compassionate appointment is only a matter of concession, the employer may abolish the scheme or even modify the same at any time depending upon the policies. These principles have been analysed in paragraphs 8 to 13 of the judgment which we reproduce below:

“8. It is well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation

providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the

death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.

10. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quot, even if he fulfils all the eligibility criteria; and the selection is made of the post deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the

applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.”

20. Our attention has been invited to various judgments by the learned counsel on both sides, in support of their contentions. The

Central Administrative Tribunal has also relied upon certain decisions of the Apex Court to find in favour of the applicants. Since it is contended by the learned counsel for the respondents, (except in O.P.(CAT) No.2486/2012 wherein the applicant himself is the petitioner) that the authorities have no power to refer to the new guidelines at all in respect of the pending applications, our endeavour will be to refer to the facts of those decisions and the findings thereon, to understand the legal points discussed.

21. The first of the decisions relied upon by Shri T.C. Govindaswamy, learned counsel appearing for some of the respondents, is **State Bank of India and others v. Jaspal Kaur** {(2007) 9 SCC 571}. The facts of the case along with the findings thereon will have to be gone into in detail since the learned counsel for the respondents relied upon this decision to contend that only the scheme as on the date of death of the breadwinner of the family alone can govern.

22. Paragraph 2 of the above judgment shows that the scheme framed by the Government of India, Ministry of Finance is dated 7.8.1996. Based on the scheme, the Indian Banks Association

issued a circular on 23.8.1996 suggesting to all public sector banks, certain amendments to the scheme on compassionate appointment while taking into account the financial condition of the family, the family pension, gratuity, proceeds of LIC, etc., which should be taken into consideration. The Bank, viz. the appellant before the Apex Court framed a scheme for appointment based on the above guidelines and the Central Board of the Bank approved it on 16.11.1996. On 1.8.1999 the Record Assistant (Cash & Accounts) in the Dhab Wasti Ram, Amritsar Branch, Shri Sukhbir Inder Singh passed away. His widow applied for compassionate appointment on 5.2.2000 which was rejected by the competent authority on 7.1.2002 after considering the financial position of the family. This was challenged in Civil Misc. Writ Petition No.3077/2002 before the High Court, which ordered reconsideration of the case. After considering the financial condition of the family, again the request was declined on 5.3.2004 by the Deputy General Manager of the Bank and the final decision of the competent authority declining the request is dated 3.4.2004. This was challenged again before the Punjab and Haryana High Court in W.P.C.No.9629/2004 which was

allowed, and the judgment was challenged before the Apex Court by the Bank. On the merits, it was contended by the Bank that the financial position of the family does not warrant such compassion and the view taken by the High Court was assailed. The respondent also contended that a later scheme was formulated by the Bank on 18.8.2005 which was not complied with by the Bank while declining the claim on compassionate ground. After advertng to various aspects, the Apex Court found that on the merits of the claim, the order passed by the Bank could not have been interfered with. Finally, in paragraph 26 while referring to the 2005 scheme, it has been held as follows:

“26. Finally in the fact situation of this case, Shri Sukhbir Inder Singh (late), Record Assistant (Cash & Accounts) on 1.8.1999, in the Dhab Wasti Ram, Amritsar Branch, passed away. The respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 5.2.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4.8.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a

scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of the deceased is Rs.5855 only, which is less than 40% of the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water.”

It is clear from the said paragraph that the Apex Court has not finally pronounced anything on a question like the one raised herein, i.e. whether while the application is pending, if any further norms are prescribed, it could be applied or not. We find from the said paragraph that the Apex Court was of the view that the application filed by the widow was on 5.2.2000 and the High Court erred in applying the scheme formulated on 18.8.2005. In fact, going by the facts stated in paragraph 4 of the judgment, it can be seen that the request of the widow was rejected by order dated 3.4.2004 which was under challenge before the High Court. Paragraph 16 of the judgment will show that the counsel for the respondent relied upon the scheme dated 18.8.2005 and contended that that was not complied with by the Bank. It is in that context the above quoted observations were made by the Apex Court and it is clearly a case

where the Apex Court, on the factual aspects of the case, has entered into a finding against the respondent therein and no legal principles touching a general question have been laid down as argued by the learned counsel for the petitioners herein.

23. **State Bank of India and another v. Vikas Dubey and others** {(2007) 2 SCC (L&S) 585} is a case where an application for compassionate appointment submitted before the Bank was rejected which was never challenged. Under a new scheme the respondent submitted a representation for reconsideration which was rejected. The same was challenged before the High Court and the Division Bench directed reconsideration of the matter under the earlier scheme prevalent as on the date of death of the father after holding that under the new scheme the respondent had no case. It was held by the Apex Court that as the earlier order rejecting consideration under the old scheme was not challenged by the respondent, the said issue cannot be reopened. The above judgment will not advance the case of the applicants and it was rendered on the particular fact situation of the case.

24. In **Abhishek Kumar v. State of Haryana and others**

{(2007) 2 SCC (L&S) 308} the facts show that the appellant's father expired on 10.2.2001 and an application was filed by the appellant within two weeks of the date of his death, which was rejected. This was challenged before the High Court. The rejection was on the ground that in the District to which he applied there was no existing vacancy. Before the High Court the State relied upon a later scheme dated 28.2.2003 and relying upon the same, the High Court dismissed the writ petition. The Apex Court allowed the appeal.

Paragraph 5 of the judgment is important which we extract below:

“The appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001. Evidently, in the State of Haryana a Statewise list is maintained. In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. It was the District Magistrate who came in the way and refused to provide for the post.”

It will show that a State-wise list was maintained by the State of

Haryana, under which the appellant was entitled to obtain an appointment and he was offered such an appointment also. The denial was made by the District Magistrate and not by the Government. In paragraph 7 it was further held that “when a Statewise list is prepared, it does not lie in the mouth of a authority-in-charge, be it a District Magistrate or any other officer, to disobey the order passed by a higher authority. Furthermore, there might not be any post available at Karnal but there cannot be any doubt or dispute that such a post would be available in some other district within the State of Haryana as otherwise such an appointment could not have been made.” The facts are telling and cannot have any parallel with the details available in these cases. Therein, the right of the party concerned had matured into inclusion in a State-wise list based on which he was offered appointment by the State also.

25. Govind Prakash Verma v. Life Insurance Corporation of India and others (2005 SCC (L&S) 590) is a case where the Apex Court took the view that going by the scheme which applied to the party therein, compassionate appointment cannot be refused on the ground that any member of the family had received the benefits

admissible to legal representatives of the deceased employee as benefits to the service they get on the death of an employee. The question considered is different.

26. St. Ignatius High School v. State of Kerala (2005 (3) KLT 1000) is by a Division Bench of this Court. Rule 51-B of Chapter XIV-A of Kerala Education Rules, 1959 enables the dependent of an aided school teacher dying in harness, to claim employment. An application was filed on 25.7.1990 by the daughter consequent on the death of her mother on 21.4.1990, who was a teacher in the school managed by the appellant. The Manager did not consider the request. Paragraph 1 of the judgment shows that the District Educational Officer, after considering the claim in the light of the objections raised by the Manager, directed the Manager to give employment in the next arising vacancy. Even though it was challenged before the Government, that was rejected and the Government had also directed appointment of the applicant. These orders were challenged by the Manager in O.P.No.22066/2001. The disobedience of the Manager to give appointment resulted in further directions by the statutory

authorities as also by the Government which were also challenged by the Manager in O.P.No.5502/2002 and both the original petitions were dismissed. Writ appeals were filed by the Manager which were considered by the Division Bench.

27. The Manager relied upon the fact that on 16.6.1991 the dependent got married. This contention was answered in paragraph 8 by stating that as on the date of application she was not married and her eligibility has to be decided with reference to the date of death of her mother or at the latest by the date of her application. An applicant cannot wait unendingly, expecting that the manager will once concede to the request, to marry. Therefore, the question was whether marital status will affect her claim. There was no change in the rules. The above observation was made on the peculiar facts of the case and no general legal principles have been laid down therein.

28. **Bhupinder Batra v. Union of India and others** (2012 (3) SLR 12 (P & H) is by a Division Bench of Punjab & Haryana High Court. The scheme under consideration in this case is dated 9.10.1998 framed by the Government of India. The father of the

applicant died on 31.7.2002. An application for compassionate appointment was made on 13.6.2003. The claim was rejected by order dated 8.9.2008 which showed that it was considered under the provisions of the scheme dated 9.10.1998 as also in accordance with BSNL Head Quarters letter dated 27.6.2007. In paragraph 11 the Division Bench held, as to the scope and applicability of the letter dated 26.7.2007 issued by the BSNL whereby the weightage point system has been introduced, that “there is no doubt as regards the settled proposition of law that it is the policy which was prevalent on the date of the death of the bread earner that has to be applied for considering the case of compassionate appointment. Any subsequent policy would not hold the field.” The Division Bench further held that the letter dated 27.6.2007 does not supercede the policy dated 9.10.1998, but what is relevant is the question whether the weightage point system can have retrospective operation. It was held that letter dated 27.6.2007 introducing weightage point system cannot operate retrospectively and be applied in the case of the petitioner whose father was died on 31.7.2002 and he having put in his request for compassionate appointment in the year 2003 itself,

that is at the point of time when the letter dated 27.6.2007 introducing weightage point system had not even seen the light of the day. It was held that the application will have to be considered without applying the weightage point system.

29. We are of the view that the Bench did not, in the said decision, consider whether any vested right of the applicant has been affected by introduction of the weightage point system. The broad view taken that the date of death of the breadwinner has to be applied, cannot therefore be accepted.

30. Certain decisions of this Court have also been relied upon. The first one is the judgment of a Division Bench of this Court in W.A. No.757/2013 . The short issue considered is whether the family had sufficient funds at its disposal and the learned Single Judge directed reconsideration of all aspects after making a fresh enquiry which was challenged by the Bank in the appeal. The Bank contended that the family of the deceased employee could not be termed as indigent since certain financial benefits have been granted consequent on his death. The Division Bench was of the view that the various aspects pointed out by the

applicant that the family is living in penury, have not been considered by the Bank and therefore did not interfere with the judgment of the learned Single Judge. This will not help the applicants herein to advance their case in any manner.

31. The next decision is also by a Division Bench of this Court in O.P.(CAT) No.832/2012 wherein the order passed by the Central Administrative Tribunal in O.A. No.874/2011 was upheld. Therein, the Tribunal had observed, after considering the merits of the matter, that certain aspects were wrongly applied and found that the awarding of marks was arbitrary and that the applicant is entitled to get more than 54 marks. This was not interfered with by the Division Bench in the original petition filed before this Court.

32. The judgment of another Division Bench in O.P.(CAT) No.3629/2013 confirms the order passed by the Central Administrative Tribunal in O.A. No.1064/2011. Therein, the assessment under the new guidelines dated 27.6.2007 and the net score awarded was the subject matter considered. The findings of the Tribunal are on the merits of the matter which were not interfered with by the Division Bench. No legal questions were

involved.

33. Now we will come to the decisions relied upon by Shri Rinny Stephen Chamaparambil. **Bhawani Prasad Sonkar's case** {(2011 (4) SCC 209} is the important one to be considered. That was a case where the appellant's father was declared medically unfit as decategorised employee after a medical examination, but was found fit in Category B-1 and below. The Standing Committee decided to retire him without offering him any alternate employment as stipulated in the service rules. The retirement order is dated 30.8.1999. He was working under the Railway and the Compassionate appointment scheme framed by the Railway Board is by circular dated 22.9.1995. Such appointment is permissible where a Railway employee become medically decategorised for the job he was holding and no alternate job is accepted by the employee and he chooses to retire from service. Another circular dated 29.4.1999 of the Railway Board specified that in the light of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 such employees should become incapacitated from holding the post

they were currently holding, but found eligible for retention in service in posts corresponding to lower medical category, and shall be offered alternative employment in the posts for which they are found suitable. An application was filed by the appellant's father on 1.9.1999 to give appointment to his son. This was replied by the Railway Board by stating that since the appellant's father was found to be fit for working in the lower category and has opted for voluntary retirement, the father being decategorised, the request for compassionate appointment to his ward cannot be entertained. On 29.11.2001, the General Manager (Personnel), Gorakhpur issued a letter stating that in case of employees who opted for voluntary retirement after 29.4.1999, the cases of wards of only totally incapacitated employees would be considered for appointment on compassionate grounds. Based on the same also, a reply was given to the appellant's father stating that the application for appointment to his son on compassionate ground was not found fit for consideration. The challenge of the said order before the Central Administrative Tribunal was unsuccessful and the writ petition filed before the High Court also suffered the same fate. The matter was

taken in appeal before the Apex Court. The contention raised by the learned counsel for the appellant was that as no alternative job was offered to the appellant's father, even though he was found medically fit in Category B-1, the respondents were obliged to appoint the appellant. After referring to the object of compassionate appointment scheme, in paragraph 20 of the judgment (we have quoted it already in the earlier part of this judgment), the factual matrix was considered in paragraphs 21 to 24 which we extract below:

“21. Tested on the touchstone of these broad guidelines governing appointment on compassionate ground, we are of the opinion that the appellant has made out a case for such appointment. It is manifest that in terms of the Circular dated 29.11.2001 only those employees, who have been totally incapacitated from performing any service after 29.4.1999 were entitled to seek compassionate employment for their wards. In the instant case, the appellant's father retired on 30.8.1999 i.e. After 29.4.1999, but was not offered alternative employment in terms of the Circular dated 29.4.1999.

22. The Circular/Letter dated 29.11.2001 on which reliance was placed while rejecting the appellant's claim

has to be understood in its correct perspective. Evidently, it seeks to limit the benefit of compassionate employment to only those incapacitated employees who had been retired after 29.4.1999, as in the case of employees who were found fit for performing services in a lower category, the Circular dated 29.4.1999 would be applicable, and the Railway was bound to offer alternative employment to such employees. It flows therefrom that after 29.4.1999, those employees who did not accept the alternative employment, and opted for voluntary retirement could not be given the benefit of compassionate employment for their wards.

23. In the instant case, the respondents have not placed any material on record to establish that the appellant's father was offered any alternative employment in terms of the Circular dated 29.4.1999. On the contrary, it appears that the Standing Committee recommended his retirement. Having denied the appellant's father the benefit of Circular dated 29.4.1999, the respondents cannot claim that the Circular dated 29.11.2001 was applicable to the appellant's father, disentitling him from seeking employment on compassionate ground for his son as he was not totally incapacitated and had sought voluntary retirement. It is clear from the retirement order dated 30.9.1999 that the appellant's father was retired from service pursuant to the

recommendation of the Standing Committee.

24. In the light of the fact that the Circular dated 29.11.2001 was not applicable in the case of the appellant's father, inasmuch as the benefit of the 29.4.1999 circular was not extended to him, and he was made to retire from service, we are of the opinion that the earlier Circular dated 22.9.1995 is applicable in the instant case. Consequently, the appellant would be entitled to employment on compassionate ground as the said circular contemplates compassionate employment for the wards of those employees who have been medically decategorised, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being decategorised, the appellant's father had opted for voluntary retirement.”

The Apex Court found that the appellant's father retired on 30.8.1999, i.e. after 29.4.1999 on which date the circular was issued by the Railway Board obliging the authority to offer alternative appointment. It was held that the circular dated 29.11.2001 even though was issued restricting the compassionate employment to wards of those totally incapacitated employees who had retired after 29.4.1999, as per circular dated 29.4.1999 the Railway was bound to

offer alternative employment to employees who were found fit for service in the lower category and only in respect of those employees who did not accept the alternative employment after 29.4.1999 and opted for voluntary retirement, the benefit of employment cannot be given. It was therefore held in paragraph 23 that the circular dated 29.11.2001 could not be allowed to operate to deny the appointment, as the appellant's father was denied the benefit of circular dated 29.4.1999. Finally, it was held in paragraph 24 that the circular dated 29.11.2001 was not applicable in the case of the appellant's father.

34. Therefore, on the special facts of the case where the appellant's father was denied alternate employment and was retired from service, it was held that the circular dated 29.11.2001 was not applicable. The said special facts of the case have gone in favour of the appellant.

34. In **Director General of Posts and others v. K. Chandrashekar Rao** {(2013) 3 SCC 310} also, the scheme framed by the Government of India under memorandum dated 9.10.1998 came up for consideration. Under it, the appointment could be made

upto a maximum of 5% of the vacancies falling under direct recruitment in Group C and Group D posts, as we have already noticed. Another memorandum was issued on 16.5.2001 by the DoPT based on the policy of the Government of India that fresh recruitment should be limited to one per cent of the total strength of civilian staff. In the meanwhile, the Special Circle Relaxation Committee approved the names of the candidates in the category of compassionate appointment on the basis of 5% of the existing vacancies occurring in the years 2000, 2001 and 2002 and 69 names were approved and the respondent was informed about the approval of his name for appointment to Group D post and he joined on 22.8.2002. But later, 48 candidates were terminated including the respondent before the Apex Court on the ground that 48 names were in excess of the quota. The Central Administrative Tribunal allowed the application. The High Court also approved the order passed by the Tribunal. The Apex Court considered in detail the purpose of the scheme providing for compassionate appointment. The Office memorandum dated 16.5.2001 and its import was also examined, whereby the Government insists that fresh appointment

should be limited to 1% of the total staff strength. In fact, the DoPT issued a clarification on 4.7.2002 on the guidelines for compassionate appointment to Group C and Group D posts, clarifying that 5% quota for compassionate appointment is to be worked out under the policy stated in the office memorandum dated 16.5.2001. Again, another clarification was issued on 14.6.2006 clarifying O.M. Dated 16.5.2001.

35. The issue was analysed in the light of the factual aspects in paragraph 24 thus:

“.....Neither the memorandum dated 16.5.2001 nor the memorandum dated 4.7.2002 stated that the restrictions sought to be imposed were applicable retrospectively or even retroactively, since “the rights of these persons had been settled, the respondent and others had been appointed to the posts and they had already worked in their respective posts before the notice of termination were issued to them at the end of year 2004. No data or material has been placed by the Government before us even to support the contention that under the effect of the instructions of the year 1998, these persons were appointed in excess of the posts provided under the Scheme. Both these office memorandums were expected to operate prospectively and

thus the rights which had been settled could not be resettled. The stand of the appellant that it was a discrepancy or an error does not stand to any reason and must be rejected. It is also undisputed before us that the appointments of the respondent and others were made on the basis of the vacancies existing against the year 2000 when the instructions of 1998 were in operation, free of any restriction.”

The significant finding rendered by the Apex Court is that neither the memorandum dated 16.5.2001 nor the memorandum dated 4.7.2002 stated that the restrictions sought to be imposed were applicable retrospectively or even retroactively, since “the rights of these persons had been settled, the respondent and others had been appointed to the posts and they had already worked in their respective posts before the notice of termination were issued to them at the end of year 2004.” (emphasis supplied by us) The Apex Court also noted that with regard to the question whether they were appointed in excess of the posts, no details were placed by the Government before the Court. Therefore, in the light of the fact that the rights which have been settled, cannot be unsettled, it was held that the crucial memorandum is in operation retrospectively.

These findings are therefore significant in the context of this case also. It is also clear from the said paragraph that the appointments were made in respect of the vacancies in the year 2000. After referring to the memorandum dated 14.6.2006 it was held that the same amends the restrictions placed by the memorandum dated 16.5.2001.

36. Finally, in paragraph 29 after noticing that the appointment had already been made and relief has been given to the family, it was held thus:

“The spirit of the scheme was to provide relief to the family members of the deceased persons and thus on the yardstick of social justice, such relief cannot be withdrawn on the ground of some alleged discrepancy which has not been supported by any data, is unreasonable and therefore, even unsustainable. The appellants must state appropriate reasons and provide the expected data on record if they expect the court to come to a different conclusion.”

Therefore, the fact that the appointments have been made and the person has already started working and the rights have been settled was the significant one which was considered.

37. We find from paragraph 26 that the Apex Court did not

approve the view of the Tribunal that the memorandum dated 16.5.2001 frustrated the very object of the scheme for compassionate appointment. It was held that those are matters of the domain of the policy consideration and for valid and proper reasons the State can frame its policy without violating Articles 14 and 16 of the Constitution. We extract the relevant portions from paragraph 26 herein:

“..... As already noticed, both the matters are policy matters of the State and for valid and proper reasons, without infringing the spirit of Articles 14 and 16 of the Constitution, the State can frame its policy, where it is for economic reasons, least such decision would be open to judicial review to that extent. In the present case, there is some ambiguity created by issuance of office memorandums dated 16.5.2001 and 14.6.2006 and the enforcement of the former vide office memorandum dated 4.7.2002 in relation to the implementation of Compassionate Appointment Scheme of 1998. Thus, it is not only desirable but necessary that the competent authority should issue comprehensive guidelines squarely covering the issue, but they cannot tamper with the existing rights of the appointees.”

This decision also therefore turned on the special facts of the case.

38. The next decision is by a Full Bench of Punjab and Haryana High Court in **Krishna Kumari v. State of Haryana and others** (2012 KHC 2971) wherein the Full Bench held that the policy in force at the time of death of the deceased employee would be applicable for deciding case of dependents for appointment on compassionate basis. Therein, the petitioner's husband expired on 23.2.1995 and by application dated 5.5.1995 an employment on compassionate ground to her son was sought who was only aged 7 years old. In 2005 again an application was filed stating that the son is aged 17 years, which was rejected. The rejection was on the reason that under the new policy dated 3.8.2006 there is no provision for employment and the petitioner was at liberty to opt for financial assistance which will be considered by the department. This was challenged before the High Court and the matter came up for consideration by the Full Bench on a reference. To support the argument that the scheme as on the date of death will apply, great reliance was placed on the judgment in **Bhawani Prasad Sonkar's case** {(2011) 4 SCC 209} and the respondents relied upon various

decisions including the judgment of the Apex Court in **Raj Kumar's case** {(2010) 11 SCC 661}. The Full Bench, from paragraph 8 onwards considered the dictum laid down in Raj Kumar's case (supra) especially paragraph 8 which we have quoted already. Then, reference was made to **Bhawani Prasad Sonkar's case** (supra) and after referring to the principles governing compassionate appointment as contained in paragraph 20 of the said judgment the Full Bench, in paragraph 9 chose to follow the judgment in **Bhawani Prasad Sonkar's case** {(2011) 4 SCC 209} and the reasoning is clear from paragraph 9. We extract the relevant portion from paragraph 9 hereunder:

“9. In view of above judgment of the apex court and principles laid down therein, it is clear that the employer is within its powers to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general rule, power of the government or public authority to frame policy to offer compassionate employment has been accepted by the courts in the interest of justice and to meet sudden crisis which befalls the family when an employee dies in harness or is incapacitated. The

question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In *Raj Kumar's case* (supra) decided by the apex Court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in *Bhawani Prasad Sonkar's case* (supra) the apex court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are floated with a view to provide immediate relief to families of deceased employees to meet the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at

that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognized as an exception to the general rule for offering public employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to *Umesh Kumar Nagpal v. State of Haryana and Others*, 1994 (4) SCC 138, wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution.”

We are of the view that Bhawani Prasad Sonkar's case (supra) was decided by taking the view that the appellant's father who was decategorised, was not offered an alternate employment as provided in the circular. This distinction is important.

39. The next decision relied upon by the learned counsel for the respondents is by a Division Bench of this Court in **Indian Rare Earths**

Ltd., Mumbai and another v. Jayabhindu K.V. And others (2013 KHC 614). Therein, the principle enunciated by the Division Bench is that cases have to be considered on the basis of the scheme available as on the date of submission of application. It is submitted by the learned counsel for the department that the Special Leave Petition filed against the said judgment is pending and the operation of the judgment has been stayed. We have gone through the factual details contained in the said judgment. Under the memorandum of settlement (Ext.P1) prevalent in the company, a scheme was in existence providing compassionate appointment and at the relevant point of time, seniority based on the date of death of the employee was the preliminary criteria. Such appointment will be made only against 5% of the vacancies arising out of death, retirement and resignation. While the applications were pending, the applicants were appointed as casual employees. A new scheme came into operation under which a time limit was fixed as three years from the date of death of the employee, for appointment. On the said ground the applications were rejected. Therefore, the validity of the time limit was the subject matter of consideration and the Bench noticed that the scheme as such was not abolished. The learned Single Judge allowed the writ petition based on the decision of a Division Bench of this Court in

Tittin's case (supra) wherein the view taken is that the rights accrued as on the date of submission of the application and in terms of the policy in existence at that point of time will have to govern. The Division Bench noted in paragraph 5 that a new fact came into existence that the company issued another OM dated 26.7.2012 withdrawing the time limit of three years. It was also noted by the Division Bench that instead of compassionate appointment the company has proposed financial assistance depending upon the number of service viz. 10 years, 10 to 20 years and above 20 years, etc. The view taken by the Division Bench is clear from paragraph 6 which we extract below:

“6. Now, the question is whether they are entitled to compassionate appointment as directed by the learned Single Judge? If we look at the factual situation right from the date of submission of their application till date, we note that the policy came to be changed from time to time so far as time limit is concerned. There was no time limit at the time of submission of their applications. In between, three years time limit came in the way of writ petitioners securing any compassionate appointment, though other respondents were fortunate enough to secure compassionate appointments on account of vacancies arising within three years immediately after the death of the employee. Whatever be the reason, the writ petitioners seem to have been put to disadvantageous position for no fault of anyone, but, on account of circumstance that came in their way

from time to time. The fact remains, as on today, there is no restriction of three years time limit to consider their application, but, meanwhile they are in service as casual employees. They are continuing as casual employees for more than 10 years in some cases. So far as consideration of the cases of the writ petitioners for compassionate appointment, it is settled that their cases have to be considered as per the scheme available as on the date of submission of applications. In view of the fact that the present scheme also is almost similar to such scheme which was applicable at the time of submission of their applications, we find no good ground to interfere with the judgment of the learned Single Judge.”

We find from the said paragraph that the Bench was of the view that the applicants could not gain employment since vacancies could not arise within three years immediately after the death of the breadwinner and there was no time limit at the time of submission of the application and that they have been put to disadvantageous position for no fault of any one but on the ground of the circumstances which came in their way. But finally it was observed that their cases have to be considered as per the scheme available as on the date of submission of applications. It was also noted that the present scheme also is similar to the scheme which was available at the time of submission of applications. In paragraph 7 liberty was given to the petitioners to apply for financial assistance

offered in lieu of compassionate appointment also.

40. It is obvious that the decision of the Apex Court in **Rajkumar's case** (supra) was not brought to the notice of the Division Bench. We cannot therefore accept the view taken therein that “it is settled law that the cases will have to be considered as per the scheme available as on the date of submission of application.” What we notice is that there have been arguments in some cases that the date of death will be the crucial date for considering the claim for compassionate appointment and in some cases that it should be the date of consideration of the application whenever there is a change or modification in the norms. According to us, the issue will have to be considered as to whether the applicants have obtained any vested right and the norms issued by way of modification or amendment or introduction of a new policy affect such vested right. Such a question has not been considered by the Division Bench and therefore it will not be right for us to accept the broad view that the scheme as on the date of application will have to govern the parties. As observed by the Apex Court in **Rajkumar's case** (supra), even a scheme itself can be dropped and a new c\scheme can be introduced which itself is a policy matter. The considerations in all mattes therefore should be governed by a definite principle.

41. The decision of a Division Bench of this Court in **Tittin's case** (2011 (4) KLT 409) also therefore cannot hold good, according to us. It is pointed out that in S.L.P.(C) No.31079/2011 an interim order has been passed staying the operation of the said judgment. We find from paragraph 1 of the judgment that the date of death of the father of the applicant was on 13.10.2005 and the application for appointment was declined. The Tribunal allowed the application in favour of the applicant which was challenged before this Court by the department. The contention raised by the department mainly was that in the light of the fact that family pension and retirement benefits of substantial sum has been paid, the respondent is not entitled to get employment on compassionate grounds. The details of the scheme considered are not available from the judgment. The Bench in paragraph 4 observed that “beneficial schemes are to be implemented as per the norms existing as on the date of application. In such cases the interpretation shall always be in favour of the beneficiary.” It was held that the denial of benefits under the compassionate appointment scheme due to subsequent change of rules cannot be supported. For the reasons already discussed by us, the broad view taken therein cannot be supported.

42. Now we will come to the decisions relied upon by Shri P.V.

Mohanan, learned counsel appearing for some of the respondents. **Jaspal Kaur's case** {(2007) 9 SCC 571}, **Vikas Dubey's case** {(2007) 9 SCC 579} and **K. Chandrashekar Rao's case** {(2013) 3 SCC 310} have already been discussed by us.

43. Great reliance is placed on **Balbir Kaur and another v. Steel Authority of India Ltd.** {(2000) 6 SCC 493}. Therein, the facts are somewhat different from the one raised before us. It is clear from the first paragraph of the judgment of the Apex Court that the question for determination was concerned with the interpretation of the Family Benefit Scheme as introduced by NJSC Agreement in 1983. The High Court held that in the light of the introduction of Family Benefit Scheme, pursuant to the agreement in 1989, the question of compassionate appointment would not arise. The Apex Court therefore examined the two schemes, one of 1983 and the other of 1989. Under the 1983 scheme clause 7.16 provides for employment to one dependent of workers disabled permanently and those who meet with death. Under the 1989 Tripartite Agreement also there was a provision which allows the widow to deposit the PF amount and gratuity dues with the Company's separate trust constituted for this purpose, to receive monthly payments. But significantly, it was provided that the benefits provided under the

previous NJSC Agreement will continue, unless otherwise specified in the Agreement. It was also specified under paragraph 8.14.2 that “merely as a consequence of the implementation of this Agreement, any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practice or usage, shall not be withdrawn, reduced or curtailed except to the extent and manner as provided for in this Agreement.” After considering the policy underlying under the compassionate appointment scheme, the Apex Court in paragraph 13 held that “the Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointment.” It was held that under the Payment of Gratuity Act, 1972 there is a mandate under the statute for payment of gratuity and under the Family Benefit Scheme, the said mandate stands violated. Regarding the payment of Provident Fund also, it was held that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. Finally, in paragraphs 17 and 18 it was held as follows:

“17. In any event as appears in the contextual facts, the NJSC Agreement being a tripartite agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and in the wake of

the same we do not see any arson to deny the petitioner the relief sought for in the writ petition.

18. In the wake of the aforesaid, we do feel it convenient to record that the option should have been made available either to have a compassionate appointment, provided, however, the deceased employee's representative is otherwise competent to hold the post or the adaptation of the family pension fund by way of deposit of provident fund and gratuity amounts. In fact, however, there was no option taken from the employees, at least no records have been produced therefor, neither any submissions made in that regard. Mr. Bhasme further pointed out that though the present appeals related to two individual cases but any interpretation contrary to the one canvassed by the respondent “is likely to open a Pandora's box”, since in the huge “empire” of the respondent, several such cases would be existing which would have to be reconsidered.”

The question raised like the one herein is not the one considered by the Apex Court in that decision. It was also noticed that the 1989 Tripartite Agreement did not withdraw the benefit of compassionate appointment already available and therefore it cannot be denied.

44. The decision of a Full Bench of this Court in **Soman's case** (2013 (2) KLT 215 - FB) is one considering the amendment of Rules 7A (3) and Rule 51-A of Chapter XIV-A K.E.R. With regard to the retrospectivity of the amendment, it was held that they are having only

prospective operation and the vested right cannot be taken away by introducing the amendment. The said principle is well settled. But the question is whether the applicants herein have obtained a vested right for appointment under the compassionate appointment scheme.

45. **Sreejith L. v. Deputy Director of Education, Kerala and others** {(2012) 7 SCC 248} is a judgment of the Apex Court wherein the schemes for compassionate appointment under the Kerala Education Rules, viz. Under Rule 9A of Chapter XXIV-A and Rule 51B of Chapter XIV-A, have come up for consideration. A reading of the judgment will show that the question raised like the one herein has not come up for consideration before the Apex Court. A bunch of Special Leave Petitions have been considered and decided on various aspects emerging in each case.

46. **State of Gujarat and others v. Aravindkumar T. Tiwari and another** (2012 (9) SCC 545) is also a case where the scheme for compassionate appointment has been considered. We find from the said judgment that the Apex Court considered the different terms “eligibility” and “qualification”. In paragraph 9 the difference in the meaning of these two terms has been considered and it has been laid down as follows:

“9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term “qualification”, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfil the eligibility criteria. (Vide *Preeti Srivastava v. State of M.P.* - (1999) 7 SCC 120).”

In paragraph 10 it was also held that in the matter of selection the appointing authority is competent to fix a higher score. We extract hereinbelow the following sentence from paragraph 10:

“The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that the same may be lower than the ones fixed by the statute.”

It was held that the power of relaxation could be exercised as provided under the rules, but should be exercised only for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. Significantly, the Bench in paragraph 12 held that in the matter of fixing eligibility for a particular post or even changing the same, it comes within the exclusive domain of legislative or executive. The judicial

review is only on the question of arbitrariness or unreasonableness. We extract the said paragraph for convenience:

“12. fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide *State of J & K v. Shiv Ram Sharma* - (1999) 3 SCC 653) and *Praveen Singh v. State of Punjab* - (2000) 8 SCC 633).”

The significance of the said dictum is that nobody can have a case that he should be governed by the rules existing on a particular date, say, the date of submission of application or the date of death of the breadwinner. Even in the matter of compassionate appointment, there may be stringent conditions in an original scheme which may be relaxed by adopting new

norms. There can be cases where a particular financial limit is prescribed as the total income of a family and later the administration may choose to delete such a clause. Therefore, there will be cases where even beneficial norms may be introduced by way of modification or amendment or by way of introduction of a new scheme and to hold that such things will not apply by reference to date of death or the date of application, will adversely affect the applicant himself. Therefore, an objective analysis of the whole aspects will have to be made in the light of the nature of the right which a person can claim for enforcement in a court of law.

47. Therefore, we are of the view that the tests laid down by the Apex Court in **Rajkumar's case** {(2010) 11 SCC 661} will hold the field. There cannot be any generalised rule that the scheme as on the date of death or date of application will have to govern the parties. Always the question will have to be considered whether the applicant had accrued a vested right as on the date of modification of an existing scheme or amendment of a scheme. The question of retrospective operation of such a scheme or retroactivity also will have to be addressed on such a legal principle.

48. The rules of interpretation as regards the retrospectivity

statutes and statutory rules are wellknown. In all cases the question will have to be addressed as to whether any fundamental rights are affected or any vested rights are sought to be impaired by the amendment. A Constitution Bench of the Apex Court in **State of Gujarat v. Raman Lal Keshav Lal Soni** {(1983) 2 SCC 33} had occasion to laid down the following principles:

“The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history.”

The Apex Court in **Hitendra Vishnu Thakur and others v. State of Maharashtra & others** {(1994) 4 SCC 602} in paragraph 26 has laid down the principles which may have application in cases of amending Acts having retrospective operation and we extract the same hereunder:

“From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

Therefore, the principles being such, naturally in a case like this the scheme for compassionate appointment has been held to be a concession and not a right at all, we will have to address the question herein by keeping in mind such broader principles. The norms under the 1998 scheme under clause 16(c), as we have already noticed, require an objective assessment of the financial condition of the family. The circular dated 27.6.2007 has introduced uniformity in assessment of the indigent condition of the family for offering appointment. The provision for weightage point system has been introduced “as a procedure for processing the case of compassionate appointment”. We are of the view that it will not affect any substantive right of the applicant since the object is to find out the most eligible person or family having the

indigent condition requiring an appointment under the scheme. Unlike a case where the Welfare Officer may have to report about the situation of the family, the weightage point system addresses each factors of the applicant's family. Going by the assessment criteria, a case with 55 or more net points shall be prima facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate appointment and cases with net point below 55 (i.e. 54 or less) shall be treated as non indigent and rejected. We fail to understand as to how it can be termed as a new one or new scheme as highlighted by the applicants. The scheme for compassionate appointment is the basic one itself, i.e. under the memorandum dated 9.10.1998. It is evident that there will be a selection based on the financial aspects of each one of the families. Such a scheme enables the appointing authority to make compassionate appointment upto a maximum of 5% of the vacancies falling under direct recruitment quota in any Group C or D post. Therefore, the submission of an application for compassionate appointment does not ensure the appointment in a particular vacancy for a particular applicant. There is no reservation of a vacancy in favour of an applicant. If an applicant is entitled for appointment simply by filing an application de hors the number of vacancies arising in an year

or even falling under direct recruitment quota, it can be said that he is having a vested right for appointment. Going by the scheme, an application is required and the eligibility conditions are also prescribed. Going by clause 5 of the scheme, the family should be indigent and deserves immediate assistance for relief from financial stringency. The applicant also should be eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules, going by clause 5 (b). Going by the exemption clause under clause 6, the applicants are exempted from recruitment procedure by the Staff Selection Commission or Employment Exchange. They are also exempted from clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of employment and Training. They are exempted from ban orders on filling up of posts issued by the Ministry of Finance (Dept. of Expenditure). Paragraph 6-B covers relaxation. It cannot be said that the procedure under paragraph 12 automatically confers a substantive right for appointment. Similarly, the provision under clause 16(c) that while considering the request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made, cannot be understood as conferring a substantive right on the applicants to contend that their

applications should be considered based on the provisions of the scheme as on the date of death of the breadwinner or the date of application and not on the basis of the date of consideration.

49. We are of the view that when the applicants cannot claim any vested right, the norms as on the date of consideration will be the relevant one. We find support from the dictum laid down in **Rajkumar's case** {(2010 (11) SCC 661} for taking such a view. All other considerations will not be definite and cannot govern the rights of parties. The Government and the Departments concerned have right to frame or adopt new norms - of course without violating the constitutional guarantees under Articles 14 and 16 of the Constitution of India - as a matter of policy as noted by the Apex Court in the judgment in **K. Chandrashekar Rao's case** {(2013) 3 SCC 310}. Judicial scrutiny can only extend to consider the question whether the policy framed infringes the spirit of Articles 14 and 16 of the Constitution of India. What is contended before us is not that there is violation of Articles 14 and 16 in the matter of adopting the norms providing for weightage point system. The applicants contend for the position that they are totally inapplicable based on the date of submission of their application. Since the power and right of the department and the Government to adopt norms, have to

be conceded, unless a matured right or a vested right for appointment is established beyond doubt, as on the date of adoption of the new norms, in the sense that the claim of the applicant has matured into a right for appointment (which aspect was noticed by the Apex Court in **Abhishek Kumar's case** (2007 (2) SCC (L&S) 308), we fail to understand as to how it can be contended that the modified norms cannot have any applicability while considering the applications filed by the applicants.

50. We refer with advantage the decision of a Full Bench of this Court in **State of Kerala v. Raveendran Pillai** (2010 (2) KLT 25 - FB) which arose under the Foreign Liquor Rules. Therein, the question addressed is whether the application is to be considered in accordance with the law prevailing as on the date of submission of the application or as on the date of consideration/disposal of the application. In paragraph 8 it was held that “the application for FL 3 licence has to be dealt with, with reference to the law prevailing as on the date of consideration/disposal of it.”

51. Therefore, in such cases where the applicants' claim has not matured into an automatic right for appointment, the application will have to be considered by the norms as on the date of consideration.

52. In W.P.(C) NO.36025/2009 the Division Bench considered the

question whether the applicant's case should be considered with reference to the scheme which was in force at the time of death of the employee or as per the scheme which came into force on 27.6.2007. The Bench answered the question in paragraph 2 thus:

“2. Though it was contended that the latter scheme is only the continuation of the earlier scheme and that it is more transparent and beneficial, the Tribunal rightly held that all that is required to be considered is as to what is the rule prevalent as on the date of the demise of the employee and whether it is beneficial or not is not relevant in that regard. The right to apply under the dying-in-harness scheme arose because of the death of the father of the applicant and when he made an application, if there was suitable post, then necessarily the benefit would have been worked out based on the scheme. The fact that available post was not there at that time and in the meantime another scheme has come into force by itself is not a reason to hold that the latter scheme is applicable irrespective of the death of the employee and the application of the applicant especially on the basis of the decision of the Apex Court.”

In fact, paragraph 1 of the judgment shows that the Tribunal relied upon **Jaspal Kaur's case** {(2007) 9 SCC 571} and **Vikas Dubey's case** {(2007) 9 SCC 579}. In our discussions, we have noted that those two judgments are not authorities for the proposition that the case of an applicant will have to be considered against a scheme which was in force

at the time of death of the employee. Therefore, the view taken by the Division Bench in paragraph 2 that the scheme as on the date of death of the employee will have to be considered, cannot hold good. Similarly, as we have already discussed, the broad view taken in **Tittin's case** (2011 (4)KLT 409) also will not hold good in the light of the view taken in **Rajkumar's case** {(2010) 11 SCC 661}.

53. We answer the reference accordingly. Even though learned counsel for the respondents have addressed arguments on the merits of each of the applicants, we are not considering the same since those will have to be addressed before the appropriate Bench and we accordingly send back all the cases for consideration by the appropriate Bench.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(A.V. RAMAKRISHNA PILLAI, JUDGE.)

(P.V. ASHA, JUDGE.)

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