

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5477 of 2013

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Sawan, Devi Wife Of Late Sri Shambhu Rajak Resident Of Chhoti Keshopur, Gate
No. 6, Dharhara Road, P.O. And P.S. Jamalpur, District- Munger

.... Petitioner/s

Versus

1. The Central Bank Of India, Through The Managing Director Having Its Central Office At Chandermukhi Nariman Point, Mumbai- 400021
2. The Managing Director, Central Bank Of India Having Its Central Office At Chandermukhi, Nariman Point, Mumbai- 400021
3. The General Manager (Personnel), Central Bank Of India, Central Office, Chandermukhi, Nariman Point, Mumbai- 400021
4. The Dy. General Manager (Prs) Central Bank Of India, Central Office, Chandermukhi, Nariman Point, Mumbai- 400021
5. The Zonal Manager, Central Bank Of India At Block- B, 2nd Floor, Mauryalok Complex, Dak Bunglow Road, Patna- 800001
6. The Chief Regional Manager, Central Bank Of India, Purnea Regional Office, Bhatta Bazar P.B. No. 34, Purnea- 854301
7. The Regional Manager, Central Bank Of India, Purnea Regional Office, At Bhatta Bazar/ P.B. No. 34, Purnea- 854301
8. The Executive Director/Chairman Of The Committee, Central Bank Of India, Central Office At Chandramukhi, Nariman Point, Mumbai- 400021
9. The General Manager- H.R.D./ Member Of The Committee Central Bank Of India, Central Office At Chandramukhi, Nariman Point, Mumbai- 400021
10. The General Manager-Gad/Member Of The Committee, Central Office At Chandramukhi, Nariman Point, Mumbai- 400021
11. The Chief Manager (H.R.D.) Central Bank Of India, Central Office, Nariman Point, Mumbai- 400021

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birju Prasad, Adv.

For the Respondent/s : Mr. Ajay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-05-2016

Heard learned counsel for the parties.

In the present case, the petitioner is claiming her appointment on compassionate on the ground that the husband of the petitioner was an employee of the Central Bank of India and had died



in harness. The husband of the petitioner, namely, Late Shambhu Rajak, working as an Assistant Manager in the Regional Office of Central Bank of India at Purnea, had died in harness on 8.5.2001, he was suffering from Alsar and hospitalized for six months at Apollo Hospital, Chennai and Dewaki Hospital, Chennai respectively but, his life could not be saved on account of failure of both the Kidney, leaving behind his widow mother, wife, the petitioner and four children. The petitioner had passed the matriculation examination on 28.1.2002. Due to acute financial crisis, the petitioner was facing hardship in carrying the load of the family with amount of family pension and other retiral dues of her husband, she applied for appointment on compassionate ground vide letter dated 27.2.2002 (Annexure-2). The Regional Manager, on receipt of the application, vide letter dated 29.7.2002, remitted the application along with the record to the Zonal Office of Central Bank of India, Patna for favourable consideration. On due consideration, the competent authority did not find favour, rejected the claim of the petitioner, communicated the same vide letter dated 22.5.2004 with the following reasons which reads as follows:-

“From the information submitted by you, it is observed that the financial condition of the family is not that of indigence in nature, therefore, as per Govt./I.A. guideline employment cannot be provided to the dependent of the deceased employee.”



The petitioner, being not satisfied with the reason given by the competent authority, approached to the General Manager (PRS), Central Office, Mumbai for favourable consideration wherein it has been shown that the petitioner is facing very hardship to pool the big family of six persons in a very meager amount, reason has been assigned that the amount which has been paid to the petitioner after the death of her husband, major portion of the money was deducted by the bank against the loan taken by her husband, altogether she received in total Rs. 1,43,937/-. In the representation, it has been stated that she has been receiving family pension of Rs. 8,000/- per month is not sufficient to meet the expenditure incurred by the petitioner. When no favourable response was given, the petitioner approached this Court in CWJC No. 11409 of 2007, disposed of the same with certain observation and direction which reads as follows:-

“In view of the fact that the petitioner has been pressing for appointment on compassionate ground for a long period of time and the matter has remained pending either in the Bank or before this Court for nearly ten years, this Court would direct that the representation filed by the petitioner, as contained in Annexure 5, must be disposed of by a speaking order within a period of four months from the date of receipt/production of a copy of this order.

This application is allowed to the extent indicated above.”

This order was brought to the notice of the Regional Manager for compliance of the order passed by this Court in the writ



application as aforesaid. In absence of compliance of the order, the petitioner filed contempt application MJC No. 608 of 2012. While the matter was pending for consideration in the contempt proceeding, the Bank rejected the claim communicated through letter no. 1432, primary ground has been taken of change of policy of payment of exgratia amount in place of appointment as per modified scheme of 2005 and found that she can only make a prayer for ex-gratia amount, cannot claim the appointment on compassionate ground.

Learned counsel for the petitioner submits that her husband has died on 8.5.2001 and, on the date of death of the husband of the petitioner, scheme for appointment on compassionate ground of 1993 was prevailing in the Bank. Subsequent substituted Scheme 2005 is not applicable in the present case and, so much so, he has also submitted that the Bank has brought 2015 Scheme thereby again revived the old scheme making provision of appointment. As in the 2015 Scheme, the Bank, on the basis of government of India letter and the I.B.A. Guideline, started giving benefit of compassionate appointment and, as such, the order passed by the Bank rejecting the claim of the petitioner for appointment on compassionate ground is illegal and, so much so, the financial condition of the petitioner is alarming low, not in good shape rather is facing hardship in carrying the load of seven persons in the family, whatever amount that was



received by the petitioner after deduction by the Bank got exhausted, she is facing severe hardship in pooling the load of family and, by and large, the family has reached at the stage of destitution. In support of the submission, learned counsel for the petitioner has placed reliance on the judgment in the case of *Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors.* (AIR 2000 SC 1596), *Canara Bank & Anr. Vs. M. Mahesh Kumar* (AIR 2015 SC 2411). He has further submitted that in the case of M.Mahesh Kumar (supra), the Hon'ble Supreme Court has specifically considered the Government Circular of 1993 vis-à-vis 2005 Scheme and arrived to a conclusion that the Circular which was prevalent on the date of death of the bread earner will be applicable, any amendment and substitution in the circular will not affect the right of compassionate appointment. Learned counsel for the petitioner has further relied on a judgment in the case of *State Bank of India & Ors. Vs. Jaspal Kaur* (AIR 2007 SC 414) for the proposition that the Scheme which was prevalent at the time of date of death of the bread earner will be applicable not any amendment or subsequent new Scheme will be applicable. He has further submitted that the petitioner fulfills all the requisite qualification for being appointed on the compassionate ground.

Per contra, learned counsel for the Bank has submitted that 1993 Scheme will not be applicable in view of enforcement of 2005



Scheme which provides ex-gratia amount, has been made applicable in pending cases. It has been submitted that the husband of the petitioner has died in the year 2001. It has further been submitted that in course of time, the financial crisis lost its relevance. The phases of financial crisis is no longer in existence. He has further submitted that the appointment of compassionate ground cannot be a source of employment but, a consideration is given to the family whose bread earner has died and suddenly the family faces sudden financial crises. The intention is to tide over the financial crunch of the family. They should not reach to a stage of destitution. In support of her contention, he has placed reliance on the judgment the case of *Umesh Kumar Nagpal Vs. State of Haryana & Ors. (1994 (4) SCC 138)*, *State Bank of India & Anr. Vs. Raj Kumar, (2010(2) BBCJ IV-353)*. He has specifically stated that in the case of Raj Kumar (supra), an identical issue came for consideration about the applicability of the Scheme for the appointment on compassionate ground. In that case also, the husband, bread earner died prior to enforcement of 2005 Scheme and the application remained pending by the time, the Scheme of 2005 came in operation. The question arose, which Scheme would apply, whether it will be earlier scheme or the subsequent scheme of 2005. The Hon'ble Supreme Court after considering the factual and legal matrix, held that the old Scheme is not applicable in view of stipulation

specifically mentions applicability of 2005 Scheme in pending cases which has not been disposed of by the Bank.

Having considered the rival contentions of the parties, it is well settled principle of law that the appointment on compassionate ground is not a source of employment rather 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 dependent of employees, who died in harness, do not have any special claim or right to employment, except by way of concession that may be extended by an employer under the Rules or by separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim of 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 application under the Scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows 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 be itself create a right in favour of the applicant. Three basic requirements for granting compassionate appointment such as (i) an application by a



dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment and (iii) availability of posts for making such appointment. In the case of Umesh Kumar Nagpal (supra), the Hon'ble Supreme Court has said that 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 to the posts of Class III and Class IV post. It will be relevant to quote paragraph no. 2 of the said judgment which reads as follows:-

“2. *The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the*



public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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.

6. *For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse*

of time and after the crisis is over.”

In the case of Balbir Kaur (supra), the Hon’ble Supreme Court has held that merely because some financial perk has been given to the bereft family will not be sufficient for depriving the benefit of compassionate appointment when after preamble has been amended and 42nd Amendment has declared the Republic to be a socialistic one. The Hon’ble Supreme Court has quoted the dream of the First Prime Minister of India Pandit Jawaharlal Nehru in the following words:-

“Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible; forcibly if necessary, and there seems to be little doubt that coercion will often be necessary.”

In the case of Raj Kumar (supra), the Hon’ble Supreme Court has considered the case of Jaspal Kaur (supra) and explained the circumstances, the Supreme Court has given observation about the applicability of the Scheme when the bread earner has died. There the Court has said that 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. The Hon'ble Supreme Court in Jaspal Kaur case (supra) has set aside the order of High Court and it has been held that the High Court erred in deciding the matter in favour of the respondent applying the scheme formulated on 04.08.2005, 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 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. The Hon'ble Supreme Court explained observation in mentioning that the observation was made in context of rejecting the widow's request for additional amount under the 2005 Scheme. In fact, the claim of compassionate appointment was rejected.

In the case of M. Mahesh Kumar case (supra), the Hon'ble Supreme Court had an occasion to again consider the case of persons whose bread earner died before the enforcement of 2005 Scheme applied 1993 scheme, directed for appointment. The Court has placed reliance on different judgments such as Jaspal Kaur (supra), Umesh



Kumar Nagpal (supra) and held that in the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No. 154/1993 dated 8.5.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005, being an administrative or executive order, cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993. In paragraph no.14, the Court has taken cognizance of enforcement of 2014 scheme superseding the 2005 scheme and has also held that the bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

In the case of Raj Kumar (supra) the Apex Court says that in the cases the husband has died before the enforcement of 2005 scheme and the application for compassionate ground is pending, the cases will be disposed of in accordance with 2005 Scheme and not in accordance with 1993 scheme but, in the case of Mahesh Kumar (supra) the Hon'ble Apex Court has held that if the bread earner has died before the enforcement of 2005 scheme, the 2005 scheme cannot be given retrospective effect and matter would be governed by 1993 Scheme. Thus, these two aforesaid Schemes are contrary to each other

and both views cannot be reconciled.

In the present case, two judgments of Hon'ble Supreme Court deciding the same identical issue are conflicting to each other, cannot be reconciled. Now question is which judgment should be followed in solving such a situation. On the principle of precedent and preference, in presence of the two judgments, it will be proper to examine earlier judgments, as to which judgment should be followed by the High Court. This Court would take assistance from the judgment in the case of *Amar Singh Yadav & Anr. Vs. Shanti Devi & Ors.* reported in *1987 PLJR 184 = 1987 BLJR 351*. In paragraph no.24 of the judgment, the same situation was faced by this Court and the Full Bench held that the High Court must follow the judgment which appears to it to state the law more elaborately and accurately. It will be relevant to quote paragraph no.24 of the aforesaid case which reads as follows:-

“24. *To conclude on this aspect, it is held that where there is a direct conflict between the decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posted at the outset is rendered in these terms.*”

In the case of *Babu Parasu Kaikadi Vs. Babu* reported in *2004(1) SCC 681*, an identical question was raised before the Hon'ble



Supreme Court on the principle of precedent and preference and the Hon'ble Supreme Court says that the Supreme Court is bound to follow the earlier judgment which precisely on the point in preference to the later judgment which has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act. It is relevant to quote paragraph nos. 14 to 18 of the aforesaid case which reads as follows:-

“14. *Having given our anxious thought, we are of the opinion that for the reasons stated; hereinbefore, the decision of this Court in Dhondiram Totoba Kadam (supra), having not noticed the earlier: binding, precedent of the co-ordinate Bench, and, having not considered the mandatory provisions as contained in Section 15 & 29 .of the Act had been rendered per incuriam. It, therefore, does not constitute a binding precedent.*

15. *In Halsbury 'Laws of England, 4th Edition Volume 26 it is stated ;*

“A decision is given per in curiam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decisions, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having

statutory force."

16. *In State of U.P. And Anr. v. Synthetics And Chemicals Ltd & Anr., reported in [1991] 4 SCC 139, this Court observed (SCC pp. 162-63, para 40)*

"40. Incuria" literally means 'carelessness'. In practice per in curiam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young versus Bristol Aeroplane Co. Ltd.) Same has been accepted approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

17. *In Govt. of Andhra Pradesh And Anr. v. B. Satyanarayana Rao (Dead) by Lrs., [2000] 4 SCC 262, it has been held as follows :*

"Rule of per in curiam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

18. *Furthermore, this Court, while rendering judgment in Dhondiram Totoba Kadam (supra), was bound by its earlier decision of Co-ordinate Bench in Ramchandra Keshav Adke (supra). We*

are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the bar and also without reference to the mandatory provisions of the Act.”

The same issue again came for consideration before the Hon’ble Court again in the case of *Sundeeep Kumar Bafna Vs. State of Maharashtra & Anr.* reported in *2014(16) SCC 623* where the Hon’ble Supreme Court has dealt with the situation when two irreconcilable view in two judgments are placed before the Court for consideration. The Hon’ble Supreme Court resolved the issue by adverting that when the High Court is encountered by two or more mutually irreconcilable decisions of the Supreme Court is cited at the Bar then inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incurriam. It will be relevant to quote paragraph nos. 18 and 19 of the aforesaid case which reads as follows:-

“18. *This ratio of Raghubir Singh was applied once again by the Constitution Bench in Chandra Prakash v. State of U.P.: AIR 2002 SC 1652. We think it instructive to extract the paragraph 22 from Chandra Prakash in order to underscore that there is a consistent and constant judicial opinion, spanning across decades, on this aspect of jurisprudence:*



“Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in Parija’s case (supra). In that case, a Bench of two learned Judges doubted the correctness of the decision a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, the five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench found fault with the reference made by the two-Judge Bench based on the doctrine of binding precedent.”

19. *It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance*



with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

Thus, it is very much clear that when the High Court is faced with the two irreconcilable judgments, the preference will be given to the earlier view. If earlier view has been dealt with elaborately and correctly, subsequent judgment of the Supreme Court has not dealt with the earlier judgment of Supreme Court. In such a situation, the judgment that is decided earlier will be treated to be binding precedent. In the present case, this Court is faced with the two judgments, one the case of Raj Kumar (supra) where the Hon'ble Supreme Court has explained and decided the applicability of 2005 Rules and specifically held that if the application for compassionate appointment remains pending for disposal, 2005 Rule will be applicable. In sum and substance, in place of appointment, the person aggrieved may get lump sum amount by way of ex-gratia whereas in the case of M. Mahesh Kumar case (supra), which is a latter judgment, though the judgment of Raj Kumar (supra) has been



mentioned but nowhere the conflicting view of the Raj Kumar case has either been dealt or being reconciled. In Raj Kumar case, the Hon'ble Supreme Court has explained Jaspal Kaur's case (supra) in a different manner, in M. Mahesh Kumar case (supra), the Hon'ble Supreme Court has taken a different view with regard to Jaspal Kaur. In such a piquant situation, in the entire judgment of M. Mahesh Kumar (supra), Raj Kumar case has nowhere been explained or dealt with. In such view of the matter, this Court would give preference to follow the judgment of Raj Kumar case (supra) and in this case, the Hon'ble Supreme Court has specifically mentioned the applicability of 2005 Scheme in the pending case so much so that in the present case the husband of the petitioner has died in the year 2002 and now the age of the petitioner, as per affidavit, is about 44 years. The basic purpose of compassionate appointment is to tide over the sudden financial crisis on account of death of the bread earner. The son of the petitioner has reached the age of about 25 years. This Court, while giving relief, has to take into account the balance the competing interest of the Bank vis-à-vis of the writ petitioner who is the widow of the deceased employee. It has to be kept in mind the person who is to be appointed on the compassionate ground will not become a liability to the institution rather should be proved to be an asset to the institution. As the petitioner has reached to an advanced stage, even if

this Court gives a direction to the Bank for her appointment, it will not subserve any purpose. The compassionate appointment cannot be treated to be a source of employment nor creates a vested right but conferred for specific purpose.

Looking to the entire facts and circumstances of the case, this Court would direct the Bank to pay the ex-gratia amount to the petitioner in terms of the 2005 Rules within a period of four weeks from the date of receipt/production of a copy of this order. Failing to comply this order, the ex-gratia amount will carry the compound interest @ 10% from the due date.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.05.2016
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