

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 27.03.2017

RSA No.4415 of 2012

Karambir Singh

...Appellant

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naveen Daryal, Advocate, for the appellant.

Mr. R.T.Redhu, DAG, Haryana, for the respondents.

Mr. Sanjiv Gupta, Advocate, as Amicus Curiae.

RAJIV NARAIN RAINA, J.

This is an appeal by an unsuccessful plaintiff. The claim in the suit is for compassionate appointment in place of deceased Government employee Ram Chander, the plaintiff's father, who died on 12.10.2003. The plaintiff applied for ex gratia appointment and submitted necessary documents with the defendants as demanded by them to process the case. His father was a Driver in PWD (B&R) Branch, Kurukshetra. The claim was based on notification dated 28.02.2003, which set apart 5% of the total sanctioned vacancies posts in the cadre of Cleaner to be filled on compassionate grounds from the dependents of the deceased Government employee.

The suit was contested. It was stated that Vimla Devi, widow of deceased Ram Chander and mother of the plaintiff, requested to the Executive Engineer, Provincial Division No.II Haryana, PWD (B&R)

Branch, Kurukshetra through her application dated 02.03.2004 to employ her son, who turned major after about two years from the death of his father. The name of the plaintiff figured in the register of pending cases at Sr.No.17-A for Class-IV post. His name was to be considered for providing employment as and when his turn comes. Alas, his turn never came till the Haryana Government floated Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006 (for short '2006 Rules'), and notified them on 01.08.2006. Rule 6 of 2006 Rules provided that all the pending cases of ex gratia assistance shall be covered under the new Rules. However, only calculation of the period and payment shall be made to such cases from the date of notification, which was prospective in nature. Rule 6 also provided an option to opt for the lump sum ex gratia grant provided in the earlier Rules of 2003 & 2005, as the case may be. These Rules did away with ex gratia employment and replaced the scheme with financial assistance alone to the exclusion of right to employment. If the employee died during the operation of 2003 Rules and opted for lump sum ex gratia amount, then he can get financial assistance provided at the rate of ₹2.5 lakhs and if the employee died when the 2005 Rules were current and opted for lump sum ex gratia amount, then a higher amount of ₹5 lakhs was fixed. The case of the plaintiff was pending, when the 2006 Rules were notified, which did away with ex gratia employment altogether. Accordingly, the case of the plaintiff was rejected and the family was advised that they could still opt for lump sum ex gratia amount as if the case was treated pending, then family could opt for monthly financial assistance up to the age of superannuation i.e. 58 years according to the 2006 Rules.

Against the rejection order regarding employment, the suit was brought in the Court of Civil Judge (Junior Division), Kurukshetra bearing Civil Suit No.710 of 2009 instituted on 15.03.2007/04.08.2009. Pleadings were exchanged and issues were struck. Evidence was led by the parties. The trial Court held that right to such employment had been replaced by the financial scheme and, therefore, a direction or mandatory injunction could not be issued for employment. The sequence of events was not in dispute and the rights agitated in the case were tested on the policies and ultimately on a consideration of documents the suit was dismissed.

Dissatisfied with the judgment and decree of the trial Court dated 27.04.2010 the plaintiff carried an appeal to the learned District Judge, Kurukshetra. The lower Appellate Court, after re-appreciating the evidence, agreed with the work of the first Court of fact and held that the plaintiff had no legal right to compassionate appointment in the presence of the 2006 Rules. However, it was made clear that the family of the deceased employee Ram Chander may opt for lump sum ex gratia amount of ₹2.5 lakhs as provided in the 2006 Rules because at the relevant time, when Ram Chander died i.e. 12.10.2003, 2003 Rules were operational. Not only this, the family may opt for monthly financial assistance up to the age of superannuation i.e. 58 years as provided in the 2006 Rules and thereafter the family was eligible to receive family pension as per the normal rules of service after the completion of period of financial assistance as per formula prescribed in the Rules, 2006. It was the claim for financial assistance, which was allowed in appeal, though not prayed for, while the trial Court had not touched upon this aspect. The appeal was allowed to the extent of financial assistance. Qua compassionate appointment the suit was dismissed. The family of the deceased was given liberty to give requisite option to the authorities within

15 days of receipt of copy of the judgment and on receipt, the defendants were directed to finalize the claim within a period of one month. The appellate order was passed on 31.07.2012.

Aggrieved by the rejection of the claim for ex gratia employment, the plaintiff has approached this Court by way of the present second appeal claiming still that he was entitled to appointment to a Class IV post and such a direction deserves to be issued by this Court by setting aside the impugned part of the appellate decree.

When this matter came up for hearing on 19.12.2016, the coordinate Bench adverted to the earlier interim order dated 28.05.2015, where counsel for the appellant Mr. Daryal had referred to the judgment in Sushila Devi Vs. State of Haryana & others, 2009 (3) SCT 715 to contend that after the coming into force of the policy of 2006, the appellant was entitled to benefit of ex gratia financial assistance upon which the State counsel was asked to get necessary instructions and the case was adjourned. This led to the filing of an affidavit along with a speaking order, which was taken on record. The speaking order in the affidavit was the same one which was passed on 05.09.2007, which was the one, passed rejecting the claim and was made subject matter of challenge in the suit. Nevertheless on 19.12.2016, the learned Single Judge by ad interim order directed the respondents to re-examine the case of the appellant and to appoint him on compassionate grounds with reference to policy or rules existing on the 'date of application'. To this end, the learned Single Judge referred to the Full Bench decision of this Court in Krishna Kumari Vs. State of Haryana & others, 2012 (2) SCT 736. The result of the re-examination has led to the passing of another speaking order dated 17.02.2017 during second appeal

after the two Courts below have applied their mind and dismissed the suit in first appeal with directions to pay the benefit of financial assistance in lieu of appointment. This has created some amount of confusion in my mind as to how to deal with this situation.

It has been reiterated in the fresh order that on the date of death, the 2003 Rules were in operation. The mother of the plaintiff applied for appointment of her son in a duly filled proforma for employment. They were informed that the boy's name has been noted in the priority list at Sr.No.17-A for Class IV post. Vide letter dated 05.06.2006, family was informed that the case will be considered for providing employment as and when appellant's turn comes in the quota ear-marked for compassionate appointment subject to availability of vacancy. The right did not mature when the new Rules were notified on 01.08.2006 and the old Rules of 2003 repealed. The new Rules provided for monthly financial assistance replacing ex gratia employment scheme. The 2003 Rules provided concessions as follows:

“2. The object of the rules is to assist the family of a deceased employee in tiding over the emergency situation, resulting from the loss of the bread-earner by giving either of the following options:-

- (i) Ex gratia appointment on compassionate grounds to a member of the family who was “completely dependent” on the deceased employee and is in extreme financial distress due to the loss of the deceased, namely, the Government employee who dies in “Harness”;
- (ii) Ex gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex gratia grant due to his

family to be paid @ 2.5 lakhs, in cases where the family of the deceased does not opt for ex gratia employment.

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6. (1) The Head of the concerned department where the deceased/missing person was employed is competent to give appointment/provide compassionate financial assistance to the completely dependent indigent member of the family or the deceased/missing Government employee.
- (a) The Head of the Department shall prepare a list of such dependents which shall be valid for a period of 3 years and appointments will be given by the department strictly in accordance with the seniority so maintained.
- (b) The validity of the list shall lapse after 3 years.”

Accordingly, the case for ex gratia employment has been declined again while that of compensation has been preserved and the same will be paid to the dependents of deceased Government employee @ ₹ 2.5 lakhs lump-sum. Does the order create a fresh cause of action for the appellant to start all over again and waste more time chasing a mirage created by an interim order? What are the appellant’s rights zeroed down to appointment? What happens to the relief refusal part of the decree? Does the theatre of litigation change to start a fresh suit as though nothing happened or a writ petition in the High Court? If writ petition, then how would the writ Court deal with evidence recorded and view taken in the subordinate and the superior Court is also an issue? Is the decree nullified? All these questions flow from misinterpretation of the interim order dated 28.05.2015 which had referred to the judgment in *Sushila Devi* cited by Mr. Daryal in his favour upon which the State counsel was asked to bring instructions whether the

case covered the appeal. The interim order did not require the State to pass a fresh order and that is the super gloss put by subsequent orders thinking that the State had to pass a fresh order. Due to subsequent orders the State had no option except to file an affidavit where they adverted to the original order challenged in the suit. This exercise was found wanting by co-ordinate Bench and by yet another order, the order dated 17.02.2017 has been forced into existence only to add heft to this order where the fresh issue has to be necessarily dealt with much to Court embarrassment. Therefore, I thought it wiser to appoint an amicus whose everyday business is the civil law and part time in service law to help me solve the problem arising in service law, not in writ jurisdiction but on the second appeal side of this Court. I dare say in service law in a writ, the length of this order could easily have been cut to size.

It is well-settled that compassionate appointment cannot be claimed as a matter of right. It depends on the policy. Compassionate appointment can be offered only in extreme financial distress due to loss of Government employee, who dies in harness. The policy itself adumbrates this limitation. In the suit, the plaintiff did not plead his family condition being in extreme financial distress. Nor has he done so by affidavit by way of additional evidence in appeal. Nor is financial status of the family all these years being extremely unsound mentioned in the memorandum of appeal in the grounds of challenge. The appeal itself is restricted to ex gratia employment. It is the extreme financial distress on the date of death, which is relevant consideration since the policy is to provide employment to tide over immediate hardship. By passage of time the sting of poverty may have receded in the background. The plaintiff has been a major since 2005 and at this distance of time, there is no material available on record from where an

opinion can be formed reasonably that any extreme financial distress continues, as associated with a penurious family left without any resources or source of income. The appellant has not said that he has made effort to seek employment elsewhere during this period and his efforts have been in vain. Besides a priority list is not forever, it is curtailed by time with its validity lapsing after three years as per the policy. Appointments are to be offered strictly in accordance with the priority list and it is not the case set up in the plaint or any time afterward that any person similarly situated was offered appointment on compassionate grounds, who was lower in the list prepared or there was availability within 5% quota during the relevant period. If the order passed on the strength of an ad interim order by this Court in regular second appeal is taken to create a fresh cause of action on the date of passing of the order dated 17.02.2017, it will lead to multifarious litigation and complications, which would be oppose the public policy which hopes that litigation must come to an end as soon as possible. The order impugned in the suit passed in 2007 bears the same quality and content, as the order passed in 2017 induced by ad interim order leaving hardly option to the State except to invite contempt. This order I am afraid cannot change the shape of the appeal and it would not be justified to give liberty to the appellant to start litigation all over again based on the order dated 17.02.2017, when the order says nothing new, other than what formed subject matter of the order in suit.

A word on the Full Bench decision in *Krishna Kumar's* case, of which I was a member, may be in order at this stage of the discussion since it was referred to in the interim order that rights have to be determined on the date of death of the deceased employee. In the appeal carried by the State of Haryana to the Supreme Court, the SLP was dismissed, but the

question was left open; as to whether the date of death or the date of consideration is the relevant date for processing cases of compassionate appointment and ex gratia financial assistance.

In MGB Gramin Bank Vs. Chakarvarty Singh, (2014) 13 SCC 583, the Supreme Court has observed that rights have to be examined from the date of consideration. The passing of the order dated 17.02.2017 at the second appeal stage had created doubts in my mind as to how the new order would find its place in the setting of civil proceedings. I had, therefore, requested Mr. Sanjiv Gupta, Advocate, to assist this Court as Amicus Curaie on this point for which he took time to address arguments. His valuable assistance has clarified my doubts and has shown the way forward in the context of the executive order dated 17.02.2017 on two narrow issues: that financial assistance was not claimed in the suit either independently or in the alternative, in case the major prayer for seeking appointment failed. The other issue is that when in the suit such prayer was not made in the plaint then could the lower appellate Court still grant rights of financial assistance by issuing permanent and mandatory injunction in exercise of appellate power.

Mr. Sanjiv Gupta commended to this Court that the law on the subject delineated in the above two issues has been explained in the Code of Civil Procedure, 1908. He would refer to Order VII Rule 7 and Order XLI Rule 33 of the Code as the sources of appellate power to do justice. In support of his arguments he has cited judgments from the Federal Court down to expound the proposition which has arisen with regard to the prayer for compassionate appointment, which has been rejected for good and sufficient reasons, but for financial assistance, the same could always be

decreed which arises due to the fact that the plaintiff in his suit presented in 2007 confined his claim to compassionate appointment without asking for the alternative prayer for his family for financial assistance under the 2003 Rules etc. The plaintiff, has kept hammering his prayer for a job, till the present stage in second appeal, and, before the interim orders were passed directing State to offer compassionate appointment to the appellant by applying rule in *Krishna Kumari* case from where his heart must have started beating again but the euphoria will be short lived in view of the slippery nature of claims for ex gratia employment to public posts curtailed by mandates in Articles 14 & 16 of the Constitution of equality before the law and equal protection of the law of third parties clamouring for appointment in open general merit. Compassionate appointments are an exception to the rule of equality where ground had to be carefully trod.

Issue No.1 framed by the trial Court was; whether the plaintiff is entitled for employment under ex gratia on compassionate ground after the death of the father? The other issues are not relevant for the purposes of the present discussion. There was no issue framed on financial assistance. When the prayer for compassionate appointment failed, the Civil Judge (Junior Division), Kurukshetra was correct in declining to issue declaration with consequential relief of mandatory injunction to the defendants to appoint the plaintiff on compassionate grounds but made no mention of financial assistance, there being neither prayer, nor issue struck, nor evidence on record, though were public documents being policies of State. Accordingly, the decree was drawn with reference to the sole prayer of the plaintiff for employment and the suit dismissed.

The Appellate Court agreed with the trial Court that this was not a case for compassionate appointment, but went on to allow the appeal to the extent of compassionate financial assistance without noticing or dealing with the prayer for financial assistance absent from the suit. The normal position is that a person will not get anymore in a civil Court than what he prays in the suit. This is where the assistance of Mr. Sanjiv Gupta has helped this Court out of the morass. In order to understand what he says, it would be appropriate to reproduce Order VII Rule 7 and Order XLI Rule 33 of the Code to take his argument logically forward:

“Order VII, Rule 7

7. Relief to be specifically stated – Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

“Order XLI Rule 33

33. Power of Court of Appeal – The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”

Order VII Rule 7 requires that ‘relief is to be specifically stated’, when it prescribes that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. This goes for the defendant in his written statement as well.

The Appellate Court exercising jurisdiction under Order XLI Rule 33 possesses power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties. The Appellate Court here includes the first Appellate Court or the Court of the District Judge.

Mr. Gupta cites the lodestar Full Bench Federal Court judgment pronounced in Lachmeshwar Prasad Shukul & others Vs. Keshwar Lal Chaudhuri & others, AIR 1941 FC 5; 1939 An. WR 1139; 1940 FCR 84, wherein their Lordships [while examining the order in appeal passed by the High Court] held that in exercise of its appellate jurisdiction against orders of High Court, it has power not only to correct error in the judgment under review, but to make such disposition of the case as justice requires, and, in determining what justice does require the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment

was entered. The Full Bench of the FC [precursor of the Supreme Court] went on to explain that for this proposition it makes no difference that it is not explicitly stated in the Indian statutes (as in Order 58, Supreme Court Rules) that an appeal is by way of re-hearing. It is also on the theory of, an appeal being in the nature of a re-hearing that the Courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account, even facts and events which have come into existence after the decree appealed against. For a more elaborate discussion on the point, the Federal Court referred to the Madras High Court judgment in Kanaiyya Vs. Janardhana Padhi, 36 Mad 439 at pp.441-444.

For a bird's eye view on the subject presently under discussion, it would commend to the inquiring mind the legal position reduced by the Supreme Court in Om Prakash Gupta Vs. Ranbir B.Goyal, (2002) 2 SCC 256; 2002 (1) RCR (Rent) 150, on the proposition of Court noticing subsequent events on appeal so long litigation ends, if the following conditions are satisfied:

- “(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;
- (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties;
- (iii) that such subsequent with the rules of procedural law so that the opposite party is not taken by surprise;
- (iv) the test coming to notice has a fundamental impact on right to relief;

- (v) the event should be one as would stultify or render inept the decretal remedy;
- (vi) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstances repelling resort to that course in law or justice;
- (vii) such cognizance of subsequent events and developments should be cautions;
- (viii) the rules of fairness to both sides should be scrupulously obeyed;
- (ix) such subsequent event may be one purely of law or founded on facts;
- (x) such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so the parties.”

In *Om Prakash Gupta's* case, the Supreme Court, inter alia, observed as follows:

“11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu Vs. The Motor & General Traders* - AIR 1975 SC 1409 this Court held that a fact arising after the lis, coming to the notice of the Court and

having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

12. Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Messrs. Trojan & Co. Vs. RM. N.N. Nagappa Chettiar - AIR 1953 SC 235 this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao Vs. Sita Ram Kesho & Ors. - (1898) 25

Indian Appeals 195 (PC), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.

13. Power of the Court to take note of subsequent events, specially at the appellate stage, came up for the consideration of a Full Bench of Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in Chhote Khan Vs. Mohammad Obedulla Khan, AIR 1953 Nag 361. Hidayatullah, J. (as His Lordship then was) held, on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action. No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal. His Lordship quoted the statement of law made by Sir Asutosh Mookerjee, J. in a series of cases that merely because the plaintiff loses his title 'pendente lite' is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party. In the case at hand, the defendant-appellant has simply stated the factum of proceedings initiated by HUDA against the plaintiff-respondent in an affidavit very casually filed by him. He has not even made a prayer to the Court to take notice of such subsequent event and mould the relief accordingly, or to deny the relief to the plaintiff-respondent as allowed to him by the judgment under appeal, much less sought for an amendment of the pleadings. The subsequent event urged by the defendant-appellant is basically a factual event and cannot be taken cognizance of unless brought to the notice of the Court in accordance with established rules of procedure which if done would have afforded the plaintiff-respondent an opportunity of meeting the case now sought to be set up by the appellant. We do not think this Court would be justified in taking notice of a fact sought to be projected by

the appellant in a very cavalier manner. The fact remains that the present one is a landlord-tenant dispute and we cannot upset the relief granted by the courts below and the High Court to the plaintiff-respondent by relying on the doctrine of eviction by title paramount as it cannot be said that the proceedings initiated by HUDA against the plaintiff-respondent have achieved a finality or are such proceedings wherein the plaintiff-respondent cannot possibly have any sustainable defence.”

There is no doubt that the normal rule is that rights and obligations of parties have to be set at rest on adjudication, as they obtain at the commencement of the *lis*. But this is subject to an exception of subsequent events of facts or law, which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief or occur, the Court is not precluded from taking a ‘cautious cognizance’ of the subsequent changes of fact and law to mould the relief. To come to this conclusion, the Supreme Court in Ramesh Kumar Vs. Kesho Ram, 1992 (1) RCR (Rent) 370; (1992) Supp. 2 SCC 623 relied on the Federal Court judgment in *Lachmeshwar Prasad Shukul* (supra).

In addition, Mr. Sanjiv Gupta would rely on Pasupuleti Venkateswarlu Vs. The Motor and General Traders, AIR 1975 SC 1409; (1975) 1 SCC 770 and Ram Kumar Barnwal Vs. Ram Lakhan (dead), (2007) 5 SCC 660; 2007 (3) RCR (Civil) 279 cases which both make interesting reading and shed a great deal of light on appellate powers to do justice with change brought by passing time and the bearing on the result of litigation.

He would also refer to the judgment of the learned Single Judge of the Himachal Pradesh High Court in Raghubir Singh & others Vs. Tara Chand, 2012 (9) RCR (Civil) 835 dealing with Order 7 Rule 7. Learned Single Judge held that Court is competent to mould relief in the interest of

equity and justice. The plea of respondent that relief of possession cannot be allowed without amending the plaint was rejected.

Learned Amicus Curaie concludes by citing ruling of the Supreme Court in Mahant Dhanhgir & another Vs. Madan Mohan & others, AIR 1988 SC 54. In this case, Order 41 Rule 22, 23 & 33 were considered. On the question of maintainability of cross-objection, the Court held that if cross-objection filed under Rule 22 Order 41 is not maintainable against co-respondent, then Court can consider it under Rule 23 Order 41. Rule 22 and Rule 33 are not mutually exclusive. The Appellate Court can exercise power under Rule 33 even if appeal is only against a part of the decree of lower Court. The Appellate Court can exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. Appellate Court can pass any decree or order which ought to have been passed in the circumstances of the case. However, the power is discretionary. It is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties and such Court should not refuse to exercise that discretion on mere technicalities.

Learned Amicus also places reliance on the judgment in Panna Lal Vs. State of Bombay & others, AIR 1963 SC 1516, regarding Order 41 Rule 33 and Rule 22 on the inter se rights between co-respondents. In *Madan Mohan's* case, the Supreme Court followed the law on the point laid down as far as back in 1963 in *Panna Lal's* case, which is probably the lead authority from vantage point of the highest court.

As a result of the discussion, it follows *a priori* that even though the prayer was not made in the suit for financial assistance, yet the first Appellate Court had the jurisdiction to award the relief by allowing the appeal partly although it did not discuss or press its power to do so as explained in this order with the assistance of the learned Amicus. This Court would also in appeal have the power to judicially review the order dated 17.02.2017 even though it can be ignored since it was born out of error in the interim order. In review of the original and second order in second appeal arising in a service matter governed by statutory rules represented by the 2003, 2005 & 2006 Rules on compassionate appointment and financial assistance, the decision of the Superintending Engineer, Ambala Circle, PWD (B&R) Branch, Ambala Cantt. denying compassionate appointment twice over is upheld since it cannot be faulted in fact or in law, but the decision on ex gratia compensation restricting benefit to only ₹2.5 lakhs to be paid to the dependents of the deceased employee is set aside and the decree of the lower Appellate Court directing the defendants to finalize the case of the family of the deceased government employee in terms of the rules of 2003 read with the rules of 2006 by inviting option from the mother of the plaintiff- appellant and wife of late Ram Chander (deceased), [though not party to suit or present appeal since she is the rightful owner of the benefit of financial assistance in her lifetime] in terms of 2006 Rules is upheld and is confirmed. In the remaining exercise, the defendants will pay due regard to the provisions of Rules 5 & 6 of the 2006 Rules as well as the formula prescribed in the 2006 Rules to process the case for which the time bound direction in the lower Appellate Court decree is enlarged for the exercise to be completed within three months from the date of receipt of certified copy of this order.

Consequently, the instant appeal is dismissed qua compassionate appointment, but is partially allowed beyond the prayers in appeal in view of the law in Order VII Rule 7 and Order XLI Rule 33 of the Code as explained in the case law, noticed *supra*.

27.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

REPORTABLE