

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1514 of 2009

IN

Civil Writ Jurisdiction Case No. 13622 of 2009

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Alok Kumar, S/o Sri Radeh Shyam, R/o Mohalla - Bastu Vaibhav
Colony, Beli Road, Gola Road, P.O. - Danapur, P.S. - Danapur,
District - Patna.

.... Appellant/Petitioner

Versus

1. The State of Bihar.
2. The Deputy Director, Welfare, Saran, District - Saran.
3. The District Magistrate-Cum-Chairman, District Compassionate
Committee, Saran, Chapra.
4. The Child Development Project Officer, Saran, Chapra.
5. Establishment Deputy Collector, Saran, Chapra.

.... Respondents/Respondents

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Appearance :

For the Appellant : Mr. Alok Kumar-I, Advocate
Mr. Sheel Bhadra Jha, Advocate
Mr. Shyam Bihari Singh, Advocate
Mr. Bindeshwar Pd. Singh, Advocate
Mr. Virendra Kumar, Advocate

For the Respondents : Mr. Indradeo Prasad, S.C.-27
Mr. Sunil Kumar Singh, A.C. to S.C.-27

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

And

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT & ORDER



(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 20-09-2018

By order dated 30.04.2010, a Division Bench of this Court in L.P.A. No. 1514 of 2009 (*Alok Kumar Vs. The State of Bihar & Ors.*) has referred the matter to a larger Bench after noticing conflicting decisions in ***Ashok Kumar Choudhary Vs. The State of Bihar & Ors.; 2000 (4) PLJR (HC) 651***, and ***Jyoti Kumari Vs. The State of Bihar & Ors.; 2005 (4) PLJR (HC) 507***, with respect to the issue regarding the entitlement of the writ-petitioner of C.W.J.C. No. 13622 of 2009 (*Alok Kumar Vs. The State of Bihar & Ors.*) for compassionate appointment on the ground that one of the parent had died in the year 2006, whereas the other had superannuated from service in the year 2002 and the resolution/circular issued by the Personnel and Administrative Reforms Department, Govt. of Bihar, Patna, contained in Letter No. 13293 dated 05.10.1991, laid down that if both the spouses are in Government service and one of them dies in harness, the benefit of compassionate appointment would not be available to the members of their family.

2. The learned Single Judge in aforesaid case (*C.W.J.C. No. 13622 of 2009*) was of the view that if both the parent of the writ-petitioner are in Government service and one of them died in harness, the petitioner shall not be entitled to compassionate appointment, notwithstanding that the father of the writ-petitioner had superannuated from service prior to the



death of his mother, but was alive and getting pension.

3. The aforesaid view of the learned Single Judge in C.W.J.C. No. 13622 of 2009 is in teeth of the interpretation given by a Division Bench of this Court in ***Jyoti Kumari Vs. The State of Bihar & Ors.; 2005 (4) PLJR (HC) 507***, wherein the clause of the resolution/circular referred to above was interpreted to mean that a person could be disentitled to claim compassionate appointment only on the condition of both the parent, at the time of seeking compassionate appointment, being in service and one of them dying in harness. The aforesaid decision was on the premise that with the retirement of one of the living spouses and the other serving partner having pre-deceased the other, it amounted to none of the spouses being in Government service.

4. While delivering the judgment, the Division Bench had relied upon the aforesaid interpretation given by a learned Single Judge of this Court in ***Dilip Kumar Das Vs. The State of Bihar & Ors.; 2000 (2) PLJR (HC) 203***.

5. It may, however, be noted that another Division Bench of this Court in ***Ashok Kumar Choudhary Vs. The State of Bihar & Ors.; 2000 (4) PLJR (HC) 651***, while interpreting the aforesaid clause of the resolution/circular referred to above, has held in paragraphs 13 and 14 as follows:-

13. Thus, in my view the said clause cannot be interpreted to mean that if one of the



spouses has retired at the time of death of the other spouse, the dependant will be appointed on compassionate ground. Even if the other spouse has retired at the time of death of the deceased employee but is recipient of the retiral benefits and the pension, even in that case no appointment could be given to the dependent on compassionate ground for the simple reason that the family is not in financial crisis for which appointment is to be made.

Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.

14. The learned single Judge in the case of **Bijoy Kumar** (supra) has considered the plain meaning of the aforesaid clause and held that a retired Government servant cannot be treated in active Government service and as such the aforesaid clause 1 (Anga) is not applicable. In such a situation, the dependant is entitled to appointment on compassionate ground. As I have stated above, if that meaning is given to the aforesaid provision contained in clause 1 (Anga), that would frustrate the very object of appointment on compassionate ground and the appointment for all purposes will be treated as appointment on the ground of descent, which is not permissible in law.

(Emphasis supplied by us.)

6. It is curious to note that the same learned Single Judge, who had authored the judgment in **Jyoti Kumari** (supra), has revised his opinion in **Ashok Kumar Choudhary** (supra).

7. Thus, the necessity of reference to the larger



Bench.

8. In order to answer the reference, it is of utmost importance to first set out the law with regard to compassionate appointment.

9. Notwithstanding the general rule that appointment to public service has to be made on merits and through an open invitation, compassionate appointment to a person is given by carrying out an exception to the general rules of recruitment. Thus, compassionate appointment is an exception to the general rule that appointment in public service is to be made only on merit and by an open invitation. In such cases of compassionate appointment, the family member of a deceased employee is accommodated in public service against a suitable vacancy.

10. The rationale of the rule relating to compassionate appointment has been aptly explained in ***Haryana State Electricity Board & Anr. Vs. Hakim Singh; (1997) 8 SCC 85***, wherein, it has been held that as against the normal route of getting public employment, which is by way of merit and through open invitation, an exception has been carved out to such rule in order to meet certain unforeseen contingency. Compassionate appointment to the family member of a deceased employee is only for the purposes of giving succour to the family which has suddenly plunged into



penury due to untimely death of the sole breadwinner. In the aforesaid case, the Supreme Court had clarified that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

11. Similar view was expressed in ***Smt. Sushma Gosain & Ors. Vs. Union of India & Ors.; (1989) 4 SCC 468***, where the Supreme Court opined that the purpose of providing appointment on compassionate ground is to mitigate hardships due to death of the bread-earner of the family and, therefore, such appointment should, as far as practicable, be provided immediately for redeeming the family in distress.

12. From looking at the decisions of the Supreme Court of India on the issue of compassionate appointment, it can easily be discerned that the Courts, while deciding the cases relating to compassionate appointment delved into the facts of each case and more often not, gave primacy to sympathy and sentiment for the family in distress. Later, it was revealed that there were indiscriminate claim for compassionate appointment in public service and, therefore, the respective Governments and Organizations came up with resolutions/circulars, channelising and formulating the conditions under which compassionate appointment could be given to the family members in case of death of the sole breadwinner of the family,



who was in Government service hitherto.

13. In ***Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar & Anr.; (1994) 2 SCC 718***, the Supreme Court made an effort of laying down the law in that regard, as it was of the view that conferring benediction impelled by sympathetic consideration yielded to instinct ignoring the cold logic of law. In the aforesaid case, one Ramachandra Ambekar, who was working as a higher-grade Assistant in the Life Insurance Corporation, died while in service and his widow sought employment on compassionate ground. The aforesaid request of the respondent was rejected on the ground of her having exceeded the upper-age limit of 45 years. Thereafter, the son of the deceased requested for being appointed on compassionate ground, but such request was also turned down. This led to the filing of writ petition before the High Court of Bombay, wherein the appellant-Corporation was directed to appoint the son of the deceased employee on compassionate ground. This was challenged by the appellant-Corporation in view of the provision contained in the relevant Instructions and Circulars of the Corporation against granting compassionate appointment in a case where any member of the family was employed. While deciding the aforesaid issue, the Supreme Court found that there was a disturbing trend of cases where appointment on compassionate



ground was being directed by the judicial authority.

14. Referring to the judgments delivered in ***The Martin Burn Ltd. Vs. The Corporation of Calcutta; AIR 1966 SC 529***, and ***Brij Mohan Parihar Vs. M.P. State Road Transport Corporation & Ors.; (1987) 1 SCC 13***, the Supreme Court denied compassionate appointment to the son of the deceased, holding that such denial by the Corporation was not impermissible/illegal, as there may be others who would be waiting for appointment on compassionate grounds and their cases would be harder than that of the son of the deceased employee.

15. However, later, there was some shift in the aforesaid approach. In ***Umesh Kumar Nagpal Vs. State of Haryana & Ors.; (1994) 4 SCC 138***, the Supreme Court held in paragraphs 2, 6 and 7 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.

3. x x x x x x x x x x

4. x x x x x x x x x x

5. x x x x x x x x x x

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.*

7. *It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.*

16. Thus, it follows from the aforesaid decisions that (i) compassionate appointment is a separate category or class outside the general rule; (ii) such appointment is only for the purposes of providing immediate assistance to the family in distress, which is often limited to the cases of death in harness; and (iii) that only posts in Class-III and Class-IV, which are lowest categories of posts, be given in appointment guided by compassion.



17. What is needed to be looked into the judgment of **Umesh Kumar Nagpal** (supra) is that that mere death of an employee in harness is not a source of employment and the authority concerned has to examine the financial condition of the family of the deceased and has to arrive at a decision whether offer of appointment is a must to save the destitute family.

18. Same view has been expressed in **Jagdish Prasad Vs. State of Bihar & Anr.; (1996) 1 SCC 301**.

19. Now comes the requirement of interpretation of the Clause 1 (*Anga*) of the resolution/circular of the Personnel and Administrative Reforms Department, Govt. of Bihar, Patna, viz. :-

"* विशय :- सेवा काल में मृत सरकारी सेवकों के आश्रित को वर्ग-3 एवं 4 के पदों पर अनुकम्पा के आधार पर नियुक्ति की प्रक्रिया ।

निर्देशनुसार कहना है कि अब तक सेवा-काल में किसी सरकारी सेवक की मृत्यु होने पर मृत सरकारी सेवक के आश्रित को वर्ग-3 एवं 4 के पदों पर नियुक्ति हेतु कार्मिक एवं प्रशासनिक सुधार विभाग द्वारा निर्गत सभी अनुदेशों को अवकमित करते हुए सरकार ने यह निर्णय लिया है कि अनुकम्पा के आधार पर नियुक्ति की प्रक्रियाओं को इस प्रकार सरल एवं प्रभावकारी बनाया जाय कि सरकारी सेवक के मृत्युपरान्त उसके आश्रित को बिना विलम्ब के वर्ग-3 के कतिपय पदों अथवा वर्ग-4 के पदों पर नियुक्ति मिल सके ।इस उद्देश्य से सरकार निम्नांकित निर्णय लिया है :

(1) किनका चयन हो सकता है :

(क) अनुकम्पा के आधार पर नियुक्ति का लाभ वैसे मृत सरकारी सेवक के एक ही आश्रित को अनुमान्य होगा जिनकी मृत्यु सेवा काल में हुई है ।

(ख) इस हेतु सरकारी सेवक उसे ही माना जायेगा जिसकी नियुक्ति, स्वीकृत पद के विरुद्ध विधिवत की गई हो ।

(ग) सेवा काल में मृत सरकारी सेवकों के आश्रितों को ही अनुकम्पा के आधार पर नियुक्ति दी जा सकती है । आश्रित के अन्तर्गत केवल पत्नी, पुत्र, अविवाहित पुत्री तथा पुत्र की विधवा पत्नी सम्मिलित रहेगी । दत्तक पुत्र, दामाद भतीजा, आदि को आश्रित नहीं माना जायेगा ।

(घ) अनुकम्पा के आधार पर निम्नलिखित प्राथमिकता के अनुसार किसी एक आश्रित की नियुक्ति दी जायेगी :-



(1) मृत सेवक की पत्नी ।

(2) पुत्र ।

(3) अविवाहित पुत्री ।

(4) पुत्र की विधवा पत्नी ।

(ड.) यदि पति-पत्नी दोनों सरकारी सेवा में हो और किसी एक की मृत्यु हो जाय तो वैसी स्थिति में अनुकम्पा के आधार पर नियुक्ति का लाभ उनके परिवार के किसी आश्रित को नहीं मिलेगा ।

(च) यदि कोई महिला सरकारी सेवा में हो और उनके पति किसी सरकारी सेवा में कार्यरत नहीं हो तो महिला सरकारी सेवक की मृत्यु उपरान्त उनके पति को अनुकम्पा के आधार पर नियुक्ति का लाभ प्राप्त हो सकेगा ।”

20. In ***Life Insurance Corporation of India*** (supra) and ***Umesh Kumar Nagpal*** (supra), it has conclusively been held that if the rules or guidelines have been framed regarding compassionate appointment, it can only be given in consonance with such rules or guidelines and not otherwise.

21. The relevant provision, viz., Clause 1 (*Anga*) of the aforesaid resolution/circulars declares that if both the spouses of the claimant are in Government service and one of them dies, in that event, the appointment on compassionate ground shall not be given. The aforesaid interdict in giving compassionate appointment to such a claimant has, therefore, been framed, keeping in mind the “indigency” principle. If both the parents of the claimant are in Government service, it is expected that the family is not facing such hardship that with the death of one, it would be difficult for the claimant to sustain himself. When the reference is of both the spouses being in service, it only means that if both the spouses were in service and one of them died. It does not mean that both of them



should be in active service. No circular regarding compassionate appointment can ignore the concept of "indigency" while framing any rule for giving appointment to the bereaved family.

22. In ***Union of India & Anr. Vs. B. Kishore; 2011 AIR SCW 2293***, the Supreme Court was looking at the case of a claimant of compassionate appointment when with the death of the employee, there was a rival claim of another dependent. In that case, the request for granting compassionate appointment was kept pending the decision regarding settlement of rival claims of payment of death-cum-terminal dues of the employee. After the claims were settled, the claimant was asked to furnish his credentials and on a consideration of the same, he was denied appointment on compassionate ground, as the Committee looking into the case of the claimant found that he was not in any indigent circumstances.

23. The aforesaid decision of the Selection Committee was challenged before the High Court of Madras, wherein, it was held that the scheme of the compassionate appointment did not lay emphasis on the "indigency" as a criterion for upholding or offering compassionate appointment. The Supreme Court, on going through the materials on record, was of the view that the High Court of Madras had based its decision on complete misconception about the scheme of



compassionate appointment. The very purpose and object of any scheme for compassionate appointment is to provide immediate relief to the family of the employees on death and to prevent destitution. The Supreme Court went on to explain that if the element of indigence and the need to provide immediate assistance for the relief from financial deprivation is taken out of the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependants of an employee who died while in service, which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 15 of the Constitution of India.

24. In the present case, the resolution/circular in question clearly indicates that in order to simplify all previous rules/circulars issued by the Personnel and Administrative Reforms Department, Govt. of Bihar, Patna, the aforesaid resolution/circular was being issued so as to give compassionate appointment to the family members of the deceased employee, without delay, on Class-III and Class-IV posts.

25. The relevant Clause (1) (*Anga*) of the aforesaid resolution/circular is in the form of a negative covenant indicating that if the both spouses are in Government service and one of them dies in harness, then in that case, any person of the family of the aforesaid spouses will not be entitled to compassionate appointment. The emphasis, therefore, is



definitely on "indigency" and not on being in active service of both the parents, in which, one dies in harness. Had it not been the case, the negative covenant would not have been incorporated in the resolution/circular.

26. Thus, by no stretch of imagination can it be said that the element of "indigency" was taken out from the aforesaid resolution/circular.

27. A circular/resolution is in the nature of a rule which conveys the edict of the issuing authority. It can be properly construed only if the intent of such rule or resolution is kept in mind. The age-old principle in that regard is the *mens or sententia legis*. If a provision is open to more than one interpretation, only that interpretation which represents the true intention has to be chosen. Not only the meaning of a particular rule or resolution is important, but the purpose and object as well as the reason and spirit pervading the aforesaid rule/resolution are also important. The process of construction of any particular rule, therefore, would combine both literal and purposive approaches. In this regard, the accepted norm is that the intention of the maker of a rule has to be found in the words used therein. The plain meaning is normally to be taken as representing the intention of the rule maker. But many a times, construing a rule by virtue of its plain meaning may create anomalies which can only be safely avoided if eyes are kept on



the object and purpose of the rule/act or the reason and spirit behind it.

28. A mechanical interpretation of the words in a rule/statute sans the intent would denude the purpose of enacting such rule/statute and would have the effect of reducing the remedial and beneficial content in the aforesaid rule/statute to a nullity.

29. A statute/rule is to be read as a whole and only such construction is required to be placed upon it which makes it effective and workable. If meaning of the rule/statute is plain, effect must be given to it, irrespective of consequences. But, if plain reading leads to absurdity and anomaly, it ought to be avoided and a purposive interpretation of such rule/statute is required to be given.

30. Since there is a negative covenant in the aforesaid Clause 1 (*Anga*) of the resolution/circular, the same has to be read down to mean that if both the parents of a claimant were in service, then with the death of one in harness, no entitlement would accrue to the claimant. As has been stated above, if the intention would have been otherwise, the clause would have been framed in a different way indicating that only such persons would be entitled to get compassionate appointment, if one of the parent dies in harness and the other is no longer in active service. Even at the cost of repetition, we



indicate that the rule of "indigency" pervades the aforesaid resolution/circular and the same cannot be completely lost sight of while interpreting a particular clause in the resolution/circular.

31. True it is that the income of a superannuated employee is reduced by half, but the expenses also are correspondingly curtailed with the superannuation. That apart, if any one of the parent is having some source of income, the near family member cannot be said to be in such an impecunious circumstance that any Government/Organization will be forced to provide appointment to him on compassionate grounds for preventing destitution. Any other interpretation of the clause in question would lead to anomalous results, which would neither be advisable nor permissible.

32. In **Ashok Kumar Choudhary** (supra), the Division Bench of this Court has held as follows in paragraphs 7, 8 and 13:-

7. Article 14 of the Constitution of India guarantees equality before the law and the equal protection of the laws to all citizens within the territory of India. This Article is related to the Preamble of the Constitution as it contains the ideal and concept of equality, as expressed in the Preamble of the Constitution itself. The equality before the law is a dynamic concept having many facets. It provides that no one is above the law nor the law shows any favour or privilege to any class of persons. It provides that amongst the equals the law should be equal and it should be equally administered. Unequals should not be made equals and



equals should not be made unequals. However, the Article does not prohibit classification on the basis of reasonable differentia. The classification is permissible only where there is nexus between the basis of classification and the object of the statutory provision. Article 16 is one of the facets of the basic concept of equality contained in Article 14. It guarantees equality of opportunity for all citizens in the matter of employment to any office under the State. It is a supplement to the main Article 14. However, Article 16 enables the Government to make provision for reservation for the backward classes.

8. *Employment is a national property and is to be shared by all on the basis of their merit and qualification. No one should be discriminated on irrational ground. Public officer should be filled up by open invitation and on the basis of merit. In law there is no other mode of appointment in Government service. The constitutional mandate does not permit entry through backdoor or preference on the ground of caste, creed or being a dependant of the Government employee. The Constitution prohibits giving preference in the matter of employment on the ground of descent, and that would violate the equality clause.*

13. *According to the aforesaid provision, if both the husband and wife are in Government service and one of them dies; in that situation the benefit of appointment on compassionate ground will not be available to the dependant of the family. If the aforesaid sub-clause 1(Anga) is read in isolation without considering the other provisions of the Circular/Instructions including the application form as contained in Annexure-1 and the object of appointment on compassionate ground, then the submission advanced on behalf of counsel for the petitioner has some force, but after taking into consideration other provisions of the Circular/Instruction and the object of compassionate appointment, I am not inclined to accept the submission advanced on behalf of the petitioner. If any*



statutory provision which is subject matter of consideration is clear and unambiguous, then the plain meaning has to be given, unless the said meaning defeats the object of the provision or leads to anomaly, absurdity and inconsistency. If the provision is capable of more than one meaning the principle of purposive construction should be applied, so that the purpose and object for which the provision has been made are given effect to. The sole purpose of appointment on compassionate ground is to tide over the financial crisis in case of emergency. If at the relevant time the family has financial resources to meet the hardship, then no dependant can be appointed on compassionate ground. If the provision as contained in clause 1 (Anga) is interpreted in the manner as suggested by the petitioner, then that would frustrate the very object of appointment on compassionate ground. If one of the spouses dies and the other spouse retires, then the dependant is to be appointed on compassionate ground even though the source of livelihood is available to the family in the shape of pension and other retiral benefits. If appointment on compassionate ground is made in such a situation, then it would be an appointment on the ground of descent and not to meet the sudden hardship caused to the untimely death of an employee. In a case where only one spouse is employed and he dies and the dependent claims for appointment on compassionate ground, in that case also the crucial test is to see as to whether the family and financial resources or not to meet the emergent situation, and if it is found that the family has other sources to maintain itself, then the appointment on compassionate ground will be denied. Thus, in my view the said clause cannot be interpreted to mean that if one of the spouses has retired at the time of death of the other spouse, the dependant will be appointed on compassionate ground. Even if the other spouse has retired at the time of death of the deceased employee but is recipient of the retiral benefits and the pension, even in that



case no appointment could be given to the dependant on compassionate ground for the simple reason that the family is not in financial crisis for which appointment is to be made.

Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources o livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.

33. In the case of **Canara Bank and Anr. Vs. M. Mahesh Kumar** reported in **2015 (7) SCC 412**, after considering its earlier decision in the case of **Umesh Kumar Nagpal** (supra), the Hon'ble Supreme Court has observed and held that the compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or a public authority and that 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 *de horse* the scheme.

34. We, therefore, hold that the interpretation given to the resolution/circular in question and the law enunciated in **Ashok Kumar Choudhary** (supra) is correct and legally tenable.

35. The reference is answered accordingly.

36. We hasten to add that in C.W.J.C. No. 13622 of



2009 (*Alok Kumar Vs. The State of Bihar & Ors.*), the learned Single Judge has rightly interpreted the circular and has applied the law in that regard. No interference is required with the aforesaid judgment and order dated 28.10.2009, delivered by the learned Single Judge.

37. The L.P.A. No. 1514 of 2009 is, thus, disposed of in terms of what has been indicated above.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

(Mohit Kumar Shah, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.11.2018
Transmission Date	N/A

