

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/9/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

Writ Appeal No.1749 of 2019

Sudhanthira Devi ...Appellant/ Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Secretary
Education Department
Fort St. George
Chennai 600 009.
2. The Director of Collegiate Education
D.P.I.Campus
College Road
Nungambakkam
Chennai 600 034.
3. The Principal
Government Arts College for Men
Nandanam
Chennai 600 035. Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30/10/2018 made in W.P.No.17852 of 2014.

Prayer in W.P.No.17852 of 2014:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Mandamus directing the respondents herein to provide compassionate appointment to the petitioners son namely Ilango in any one of the posts which he is suitable.

For appellant : Mr.M.Gnanasekar
For Respondents : Mr.Karthikeyan,
Government Advocate

- - - - -

J U D G M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is filed against the order ,made in W.P.No.17852 of 2014, dated 30/10/2018, rejecting the prayer sought for, by the appellant/petitioner, directing the respondents to provide compassionate appointment to which the petitioner's son namely Ilango in any one of the posts, which he is suitable.

2. Short facts leading to the appeal are husband of the appellant died, on 8/4/1991, in harness. Appellant submitted an application, on 28/11/1991, for employment assistance to her daughter. Application was not disposed of. Pending disposal of the application, daughter was married. Thereafter, appellant submitted a fresh application on 25/9/1994, seeking employment assistance to the son of the deceased employee.

3. Material on record discloses that son of the deceased was a minor, at the time of death. According to the appellant, application submitted for employment assistance for the son of the deceased was kept pending for several years. Ultimately, vide proceedings in R.C.No.22250/B2/2007, dated 22/10/2007, Director of College Education, Chennai, requested the Principal Government Arts College for Men, Chennai, to send the application submitted by the appellant along with specific reasons for not providing employment assistance to the legal heir of the deceased Government servant Thiru.KL.K.Rathinavel. After nearly seven years, from the date of communication, W.P.No.17852 of 2014 has been filed, for a mandamus, directing the respondents therein, to provide compassionate appointment to the appellant's son namely Ilango, in any one of the posts.

4. After considering the submission and taking note of several decisions of this Court, a learned Single Judge, dismissed the writ petition, as follows:-

"6.The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

7. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

8. It is pertinent to note the fact that in a liberalized world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

9. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option /solution to mitigate 'hardship and distress of the family of an employee dying in-harness? The answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the dependent who gets appointment shall continue to maintain other dependents.

10. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is quality of the question of Welfare of the entire society and /or question of Governance. State like ours is free to wed the 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

11. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception, the authorities competent has to implement it in its strict terms. Equal opportunity in a public employment is a Constitution mandate.

12. All the recruitment process under the rules are made by the Competent Authorities by implementing the rules of reservation under the Constitution of India. This apart the regular competitive process has got a method of screening the candidates on merits even for the reserved categories. These two aspects are vital in regular recruitment process:

First is adherence of the Rules of Reservation under the Constitution of India;

Second is the comparative merit amongst the candidates who are participating in the regular open competitive process.

13. In case of compassionate appointments, no such constitutional mandated requirements have been followed. Thus, very scheme itself is an exception and not in accord with the constitutional scheme. Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families. This apart, the over all strength of the compassionate appointees should not exceed more than the restricted level and if such a kind of special appointments are increased in the public posts, this Court is of the view that the efficiency level in the public administration will certainly be affected.

14. In respect of the Rules of Reservation, the same has not been followed in compassionate appointment. Thus large number of compassionate appointments will have certain implication on the Rules of Reservation and the same will certainly have an impact on the Constitution of India, more specifically, on the principles of reservation. In respect of the merit aspect, no competitive examination or interview are conducted for compassionate appointees. Thus the very capability of the candidates in performing the administrative duties itself will be in question. Certain amount of merit assessment is certainly required for appointing a candidate in any public posts.

15. Thus, the concept of compassionate appointment itself is to be reconsidered by the Government and it should be restricted so as to provide appointment only to the legal heirs of the deceased in genuine circumstances. Otherwise, the scheme of compassionate appointment will have a negative impacts on the good governance and further, it will affect the chances of the

meritorious candidates, who can participate in the public administration in the better manner.

16. Rules of Reservation being a constitutional mandate any scheme violating the same has to be implemented cautiously and restrictedly. Thus, genuineness of the claim made by the person on compassionate grounds to be strictly in accordance with the terms and conditions and further, the State cannot be going on extending the scope of compassionate appointment so as to dilute the principles of reservation under the Constitution.

17. Such being the scope of the scheme, Courts are also to be cautious, while extending the benefit of compassionate appointment in favour of the legal heirs of the deceased employee and the legal presumption in this regard is that the indigent circumstances certainly vanishes after a lapse of long years.

18. The learned counsel appearing for the writ petitioner in this regard relied on the orders passed by the Hon'ble Division Bench in Writ Appeal No.205 of 2017 on 15.09.2017. The Hon'ble Division Bench in a case, where the deceased employee died on 28.08.1986, held that the legal heirs who was aged about 10 years at the time of death of the employee, on attaining the majority, submitted an application on 11.12.1995. The Hon'ble Division Bench in the said case allowed the claim of the writ petitioner. It is pertinent to note that the legal principles in relation to the scheme of compassionate appointment settled by the Hon'ble Supreme Court of India in various judgments have not been brought to the notice of the Hon'ble Division Bench. Thus, the above said case the Hon'ble Division Bench has dismissed the appeal filed by the Chennai Metropolitan Water Supply and Sewerage Board on the facts of the case. If the legal principles are not discussed or settled in an order passed in appeal, the same need not be followed in a routine manner.

19. The Judicial discipline require that all the Courts have to follow the legal principles and the judgments delivered by the higher forum. So also this Court has to follow the legal precedents laid down both by the Hon'ble Division Bench, Full Bench and the Hon'ble Supreme Court of India. However, a fine distinction is to be drawn between the 'orders' and the 'judgments' passed by the Constitutional Courts. If any order is passed based on certain factual circumstances or by showing some leniency or sympathy, such orders need not be

followed. Contrarily, if the legal principles and the law relating to the particular subject has been settled by the Hon'ble Supreme Court, certainly this Court is bound to follow the legal principles formulated and settled by the Hon'ble Supreme Court of India.

20. Further, the Advanced Law Lexicon provides the meaning for Judgment and Order, " An order is a decision made during the progress of the cause, either prior or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by the pleadings, and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

21. An order is the mandate or determination of the Court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings and it has not the qualities or consequence of a judgment".

22. "Judgment" is a decision which affects the merits of the question between the parties by determining some right of liability, and does not include a mere formal order, or an order regulating the procedure in a suit.

23. Judgment is a faculty of deciding the matter with wisdom, truly, legally, skillfully, or accurately. Final judgments are such as one put an end to the action by determining the right and fixing the amount in dispute.

24. In respect of judgment, discretion, prudence.

Judgment acts by a fixed rule; it admits of no question or variation; discretion acts according to circumstances and is its own rule. Judgment determines in the choice of what is good; discretion sometimes only guards against error or direct mistakes; it chooses what is nearest to the truth. Judgment requires knowledge and actual experience; discretion requires reflection and consideration; a general exercise is judgment in the disposition of his army, and in the mode of attack; whilst it is following the rules of military or it exercise its discretion in the choice of officers of different posts, in the in the treatment of men, in its negotiation with its enemy and various other measures which depend upon contingencies."

25. The learned counsel appearing on behalf of the writ petitioner repeatedly emphasized that the

Hon'ble Division Bench has allowed the writ appeal on 15.09.2017 in W.A.No.205 of 2017, and therefore, this Court also should allow the claim of the writ petitioner in this writ petition. However, this Court has to follow the legal principles settled by the Hon'ble Supreme Court of India in relation to the scheme of compassionate appointment.

26. Yet another judgment also is brought to the knowledge of this Court by the learned counsel appearing for the writ petitioner passed in W.A.No.44 of 2016 on 20.10.2016. In this case also the application was submitted on 29.04.2002 seeking compassionate appointment of the deceased employee, who died on 02.01.1995. However, the Hon'ble Division Bench has not discussed and adjudicated the entire legal principles with regard to the scheme of compassionate appointment, contrarily the order was passed based on factual aspects.

27. The Hon'ble Supreme Court in the matter of compassionate appointment has rendered a judgment setting out the principles, the guidelines and the scope of providing appointment on compassionate ground. Compassionate ground being an exception to that of the general recruitment, the same should be provided with all caution taking note of the fact that compassionate appointment will certainly deprive the eligible meritorious youths and citizens of the country to get public employment. When the Courts are providing an exceptional scheme of compassionate appointment to the individual, it is equally relevant to keep in mind that such facilities provided should not affect the rights of other citizens, who are otherwise qualified, meritorious and aspiring to participate in the open competitive process. The granting of relief, if it affects the Constitutional rights of other citizens, then the Courts must be slow in granting such relief.

28. The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of compassionate appointment. It is not the case as if the Courts should stretch off the scope of compassionate appointment based on an unwarranted sympathy or leniency. No doubt, the Court of Justice has to consider the factual circumstances and if necessary, certain relief can be provided. However, any such sympathy or leniency shown to a particular person should not have any adverse effect of affecting the rights of other eligible citizens, who are waiting and longing for public employment in this great Nation.

29. Thus, this Court is of the view that a striking balance ought to have been adopted in such circumstances and Court in its wisdom has to analyze the possible direct and indirect impacts in this regard, in order to provide equal opportunity in public employment to all the citizens. The Courts are bound to borne in mind that equality clause also to be weighed before stretching the scope of such an exceptional scheme of compassionate appointment. Thus, this Court cannot consider the orders produced by the learned counsel for the writ petitioner and this Court has to follow legal principles and the precedents settled by another Division Bench of this Court in the case of Inspector General of Prisons Vs. Marimuthu (2016 5 CTC 125) and all other judgments of the Hon'ble Supreme Court of India in this regard.

30. The learned counsel appearing on behalf of the writ petitioner cited the Judgment of the Hon'ble Supreme Court of India in the case of Vijaya Ukarda Athor (Athawale) Vs. State of Maharashtra and Others reported in [(2015) 3 Supreme Court Cases 399]. On a reading of the above judgment, the order passed by the High Court in Review Application and in the writ petition are set aside by the Hon'ble Supreme Court of India and the matter was remitted back to the High Court for consideration of the matter afresh. Thus, the Hon'ble Supreme Court left open the issue in respect of the facts and circumstances of the legal principles and directed the High Court to decide the matter afresh. Such a judgment rendered by the Hon'ble Supreme Court in respect of the particular facts and circumstances of that case cannot be considered in respect of the facts of the present writ petition on hand.

31. The Hon'ble Supreme Court time and again emphasized that the facts and circumstances of each case has to be considered and the legal principles are to be considered only with relevant to the facts of the particular case. The above case cited by the learned counsel for the petitioner cannot have any relevance in respect of the facts and circumstances of the present case, since in the above case the Hon'ble Supreme Court remitted the matter back for consideration. For all these reasons, no consideration is required in this writ petition.

32. In Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}, wherein the Hon'ble Supreme Court, in paragraph-3 of its judgment, held as under:-

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

33. In Umesh Kumar Nagpal vs. State of Haryana and Others {(1994) 4 SCC 138}, the Hon'ble Supreme Court, in paragraph 6 of its judgment, held as under:-

"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."

34. In State of Manipur vs. Md. Rajaodin {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the

family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in *Phoolwati (Smt.) vs. Union of India and others* (1991) Supp. (2) SCC 689) and *Union of India and others vs. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."

35. In *Steel Authority of India Limited vs. Madhusudan Das and Others* {(2008) 15 SCC 560}, wherein the Hon'ble Supreme Court, in paragraph 15 of its judgment, held as under:-

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14

and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See General Manager, State Bank of India and Others vs. Anju Jain (2008) 8 SCC 475, para 33]"

36. In MGB Gramin Bank vs. Chakrawarti Singh {(2014) 13 SCC 583}, the Hon'ble Supreme Court, in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of its judgment, held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In Umesh Kumar Nagpal v State of Haryana & Ors., (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

"2. ... 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.... 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.

4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

* * * *

6. ... The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis....." (Emphasis added)

8. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

11. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as:

"vested.----fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of

some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute "vested rights".

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570)

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh v Government, NCT Delhi AIR 2006 SC 2652).

14. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications.--The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground

may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

37. This Court in a judgment in W.P.No. 8773 of 2015 dated 27.07.2017 held as follows:-

"11. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

12. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately,

any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the country has been making in all Sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanishes suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference, to the States 'Service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee'.

13. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependents of the Government servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependents of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making

appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died, can get along and carry on their show for considerable length of time after the departure of the breadwinner, by far, in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, and it has the necessary social resources to carry on with the show in his absence as well.

14. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

15. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service--rather it is an exception to the normal constitutional norm of allowing all people to contest and compete--appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant.

16. It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying

to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs."

38. This apart, the Hon'ble Division Bench of this Court in The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}, in paragraphs 35 to 41, held as follows:

"35. With due respect, decisions made in V.Jaya's case and J.Jeba Mary's case, cannot be considered to be precedents, on the specific issue, as to whether, a minor is eligible to seek for employment assistance on compassionate grounds, on attaining majority, after a long number of years, after the death of the Government servant, de hors the condition that it has to be submitted within three years from the date of death of the Government servant, and when the scheme of employment assistance on compassionate grounds, is to tide over the financial constraint of the deceased family. The issue to be considered is when the scheme provides for a limitation or a specific period within which, an application for employment

assistance has to be made, and how the said period of three years from the date of death of the Government Servant has to be computed, whether a person, who is otherwise not eligible to apply within the said period, on account of age or not satisfying the required qualifications for any post in the service, in which the employee died, can make an application, on attaining majority and whether such application has to be considered irrespective of the period of limitation? On this aspect, this Court deems fit to consider few decisions of the Hon'ble Apex Court.

(i) In Union of India (UOI) and Others Vs. Bhagwan Singh, reported in 1995(6) SCC 476, a Senior Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/1981, he sought appointment on compassionate grounds. The same was rejected. The authorities took the view that the application was beyond the period of limitation (five years) and that the case of the respondent was not covered by the relevant rules, at the time of the demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the order of rejection as unjustified and directed Union of India to reconsider the case of the respondent therein, if he was otherwise qualified. Testing the correctness of the order of the Central Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies in harness, the Hon'ble Supreme Court, at paragraph No.8, held as follows:

"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the

family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed."

(ii) In Haryana State Electricity Board and another Vs. Hakim Singh, reported in 1997 (8) SCC 85, Haryana Electricity Board challenged an order of the High Court of Punjab and Haryana contending inter-alia that the respondent therein was not entitled to be considered for appointment in the Board on compassionate grounds. In the reported case, father of the respondent therein was a Lineman in employment of the Board. He died on 24.8.1974 in harness, leaving behind him, his widow and minor children, including the respondent. About 14 years, after the death of the said Lineman, widow applied for appointment to her son in the Board, on compassionate grounds, based on two circulars. As per the said circulars, one member of the family of the deceased employee could be considered for employment in the service of the Board, as a goodwill gesture, provided the request for such employment is made within one year of the death of the employee. The respondent filed a writ petition in the High Court contending inter-alia that when his father died, he was only four years old and therefore, his mother could make an application in the prescribed form and when he attained majority, he made a request. The Board did not give any favourable response to the repeated representations made in the matter. The Board took a stand that as the application was not made within the period specified in the circulars, the Board was unable to entertain the request for appointment on compassionate grounds. The High Court ordered the Board to consider the case of the respondent therein for compassionate appointment on the ground that, even if the dependents happened to be a minor child, at the time of death of the employee, the policy mandates his case to be considered by an extended period i.e., the time till the defendant attained

majority. The Board's appeal was negatived by the Hon'ble Division Bench, with a direction to comply with the orders of the Single Judge, within a time frame. When the correctness of the above said orders was tested, at paragraph No.8 of the judgment, the Hon'ble Supreme Court held as follows:

"8. The rule of appointment to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at paragraph Nos.14 and 15, held as follows:

"14. In that case widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate ground. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court one in Umesh Kumar Nagpal v. State of Haryana and Ors. [1994 (3) SCR 893], the other in Jadgish Prasad v. State of Bihar and Anr. 1996 (1) SCC 301. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is 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 the post held by the deceased". In the latter decision which also was rendered by a Bench of two judges, it was observed that "the very object of appointment of dependent of the deceased employees who die in

harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, de hors the recruitment rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. Respondent, if he is interested in getting employment in the Board has to pass through the normal route now."

Ultimately, the Hon'ble Supreme Court set aside the impugned orders of the High Court.

(iii) In Sanjay Kumar Vs. The State of Bihar and Others, reported in 2000 (7) SCC 192, the petitioner was 10 years old, and his mother working as a Excise Constable, died. He made an application on 02.06.1988, soon after the death of his mother, seeking appointment on compassionate grounds. The said application was rejected on 10.12.1996. Fresh application subsequently made was also rejected on 21.04.1997. Being aggrieved by the same, he preferred a writ petition before the High Court. A learned Single Judge dismissed the writ petition and that the same was also confirmed by the Hon'ble Division Bench. On appeal, the Hon'ble Supreme Court, at paragraph No.3, held as follows:

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood: In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and Anr. vs. Pushpendra Kumar and Ors. (Supra). It is also significant to notice that on

the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(iv) In *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468, it was observed that in all the claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India* [1991 Supp (2) SCC 689] and *Union of India v. Bhagwan Singh* [1995 (6) SCC 476].

(v) In *Director of Education (Secondary) v. Pushpendra Kumar* reported in 1998 (5) SCC 192, it was observed that in the matter of compassionate appointment, there cannot be insistence for a particular post. Out of purely humanitarian consideration, and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby

nullify the main provision by taking away completely the right conferred by the main provision.

(vi) In Director, Defence Metal Research Laboratory v. G. Murali, reported in 2003(9) SCC 247, the applicant was aged about two years, at the time of death of his father and that his application for compassionate ground appointment made, on attainment of majority was rejected, on the ground of non-availability of posts. The Central Administrative Tribunal, rejected the challenge. However, the High Court directed appointment on compassionate grounds, with a direction to the respondent's therein to create a post to accommodate him. The Civil appeal filed by the Director (Defense) and another, was allowed and at paragraph No.4, the Hon'ble Supreme Court opined as follows:

"4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him"

(vii) In National Hydroelectric Power Corporation and Anr. Vs. Nanak Chand and Anr., reported in 2004 (12) SCC 487, father of the respondent was working under Hydro Electric Project of Government of India and died on 10.12.1976. The project was handed over to the appellant Corporation in 1978. The respondent, after attaining majority in 1986 applied for compassionate appointment which was rejected on the ground that the application was made after 10 years and that Corporation had surplus staff. Placing reliance on the instructions issued by the Government, contained in Swamy's Complete Manual and Establishment and Administration, the High Court granted the relief in favour of the respondent/dependent. Setting aside the said order, the Hon'ble Supreme Court, after referring to a catena of decisions held that the impugned judgment therein, as unsustainable. The Apex

Court further held that the fact that the ward was a minor at the time of death of his father, was no ground to grant compassionate ground appointment, unless the Scheme itself envisages.

(viii) In *State Bank of India v. Somvir Singh*, reported in 2007 (4) SCC 778, at Paragraphs 7 and 10, the Hon'ble Apex Court held as follows:

"7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16 (2) Protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

10. There is no dispute whatsoever that the appellant bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

The Hon'ble Supreme Court further held that it is well settled that the hardship of the dependent does not entitle one, to compassionate appointment, dehors the scheme or the statutory provisions, as the case may be.

(ix) In *S.Venkateswaran v. The Additional Director, Land Survey and Records Department* [W.P.(MD)No.9086 of 2011, dated 14.09.2011], it is held as follows:

"The principles enunciated in the above said judgments would makes it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time, after the crisis is over. On the facts and circumstances of the above case, the Apex Court proceeded to observe that the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they have arrived at a settlement that the son-in-law (husband of the second daughter) who was unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P) , who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. The Supreme Court held that the decision of the employer was in consonance with *Umesh Kumar Nagpal's case* and the same should not have been interfered with by the High Court."

(x) In *Local Administration Department v. M.Selvanayagam* reported in 2011 AIR SCW 2198, an application was made by the son of the deceased, after 7½ years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5½ years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for

appointment on compassionate grounds, afresh and to pass an order on his application, within four months, from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but

having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the Respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

36. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the

employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LR's. And Ors., (2005) 12 SCC 1]"

37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of

breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468.

41. In the result, the Writ Appeal is allowed. No costs. Order made in W.P(MD)No.6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected Miscellaneous Petition is closed."

39. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and by the Hon'ble Division Bench, this Court is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this writ petition deserve no further consideration.

40. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs."

5. Being aggrieved, instant writ appeal is filed, on the following grounds:-

(i). Writ Court had failed to see that application for compassionate appointment was submitted, on 28/11/1991, immediately after the death of her husband, and on 8/4/1991 and the same was forwarded by the Principal, Government Arts College for Men, Channai/the third respondent, on 29/11/1991, to the second respondent.

(ii). Writ Court failed to see that there was no delay in making the application for compassionate appointment and that the same was filed in time, on 28/11/1991.

(iii). Writ Court failed to see that the second respondent, by communication, dated 22/10/2007, addressed to the third respondent, directed the third respondent to explain the reason, for not giving the compassionate appointment to the appellant and directed the third respondent, to forward the application, for compassionate appointment submitted by the appellant. Since the request of the appellant was entertained by the respondents 2 and 3 and the request for compassionate appointment was pending with the respondents and that the same was not rejected, there was no compulsion on the part of the appellant, who have approached the Court hurriedly.

(iv). Writ Court failed to consider that in the absence of any order of rejection, particularly, when the application for compassionate appointment was entertained, forwarded and pending consideration, learned Judge is not justified in rejecting the writ petition, on the ground that the writ petition was filed belatedly.

(v). Instead of coming down heavily on the respondents in not considering the application submitted by the appellant, on 8/4/2011, Writ Court adversely commented on the appellant, in approaching the Court for remedy.

6. Though Mr.M.Gnanasekar, learned counsel for the appellant made submissions, seeking for reversal of the order, made in W.P.No.17852 of 2014, on the grounds stated supra, and further added that it is the respondents who had delayed consideration of the application submitted for employment assistance for her son, and that the writ Court failed to consider the above in proper perspective, we are not inclined to accept the said contentions, for the reason that the government servant died, on 8/4/1991, initially the appellant has submitted an application, dated 28/11/1991, seeking employment assistance for her daughter. She is married and thereafter, the appellant has submitted another application, on 13/6/2007, seeking employment assistance for her son, after 16 years, from the date of submission of the first application.

7. Thus, from the above it could be seen that after a gap of nearly sixteen years, appellant has submitted her second application seeking employment assistance for her son. Even taking for granted that the first application seeking employment assistance for her daughter was not considered, appellant ought to have approached this Court, seeking employment assistance to her daughter, within a reasonable time. She did not choose to do so. Instead, appellant has chosen to file another application, seeking employment assistance to her son, after 16 years. There is an inordinate and unexplained delay on the part of the appellant in even making her second application, seeking employment assistance for her son.

8. Communication, dated 22/10/2007, of the Director of College Education, Chennai, addressed to the Principal, Government Arts College for Men, Chennai, with a copy marked to the appellant is extracted hereunder:-

"Thiru L.K.Rathinavel, while he was working as Physics Professor in the Government Arts College for Men, Nandanam, Chennai 35, died, his wife requesting to provide the employment to his son Thiru.R.Ilango who is legal heir of the deceased based on the compassionate ground in the reference cited above application. She was informing that in her application, her husband died on 8/4/1991, applied to provide employment to her daughter R.Isaimozhi, because she got married, she applied for his son to provide employment, yet to be not giving appointment. I requested to the Principal of the said College to send her application along with specific reason for not to be assigned a job appointment to the legal heir of the deceased Government Servant Thiru.KL.K.Rathinavel."

9. Reading of the above does not indicate that the Director of Collegiate Education, Chennai, has considered the request of the appellant to provide employment assistance. Director of College Education, Chennai, has only requested the Principal, Government Arts College for Men, to send the reasons along with the application of the appellant. After the receipt of the communication, dated 22/10/2007, appellant has approached this Court in the year 2014. Here again, there is an inordinate and unexplained delay, in approaching the High Court, under Article 227 of the Constitution of India.

10. Though learned counsel for the appellant vehemently argued that it was the respondents who had considered the application of the appellant's son, for employment assistance and that though the writ petition was entertained, no counter affidavit was filed and therefore, prayer sought for ought to have been ordered, this Court is not inclined to accept the said contention. Merely because the writ petition has been entertained and that no counter affidavit was filed, that does not mean that Court has no power to go into the merits of the case, applying legal principles and decide as to whether the prayer sought for should be granted or not.

11. In the case on hand, writ Court has considered a catena of decisions, both on merits, as well as on the aspect as to whether the appellant has approached the Court within a reasonable time. There is an inordinate delay and laches on the part of the appellant in approaching this Court. What laches, is explained,

"Laches or reasonable time are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case."

12. It is also well settled that delay defeats equity. In Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman, reported in (2003) 12 SCC 408, the Supreme Court has observed as follows:-

"12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone."

13. In S.S. Balu v. State of Kerala reported in (2009) 2 SCC 479, the Supreme Court considered a case,

where the appellant therein, approached the court, with an inordinate delay, claiming right to appointment. The proposition of law held by the Hon'ble Apex Court is that there is no indefeasible right to appointment. A candidate included in rank list cannot obtain a mandamus, unless arbitrariness or discrimination is established. While addressing the aspect of delay, the Hon'ble Supreme Court, at paragraph 17, held as follows:-

"17. It is also well-settled principle of law that 'delay defeats equity'. The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

14. In Ghulam Rasool Lone v. State of J&K, reported in (2009) 15 SCC 321, the Hon'ble Supreme Court, while considering the scope of equitable relief, considered the following decisions,

"14. It is now well settled that who claims equity must enforce his claim within a reasonable time. For the said proposition, amongst others, we may notice a decision of a three-Judge Bench of this Court in Govt. of W.B. v. Tarun K. Roy, reported in 2004 (1) SCC 347 = 2004 SCC (L&S) 225, wherein it has been opined: (SCC pp. 359-60, para 34) ?34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar, reported in 1991 Supp (1) SCC 138 = 1991 SCC (L&S) 841 The plea of delay, which Mr

Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

15. In a recent decision in State of Himachal Pradesh v. Shashi Kumar reported in 2019 (3) SCC 653, the Hon'ble Supreme Court considered the aspect of compassionate appointment and the delay in approaching the Court and held as follows:

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930], SCC pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. 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 dependant 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."

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has

adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.

28. The same principle has been reiterated in another decision of a Bench of two Judges of this Court in SBI v. Surya Narain Tripathi [SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] . While advertng to a submission of the learned counsel based on the decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] , this Court noted thus: (Surya Narain Tripathi case [SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] , SCC p. 741, paras 8-9)

"8. He relied upon the judgment of this Court in Govind Prakash Verma v. LIC [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] where a view has been taken that the compassionate appointment cannot be refused on the ground that another member of the family had received appropriate employment and the service benefits were adequate. We may humbly state that this view runs counter to the view which was taken earlier in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] which was not cited before the Court in Govind Prakash [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590]. The subsequent two judgments which were referred above also take the same view as in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . Mr Vikas Singh has drawn our attention to the judgment in SBI v. Somvir Singh [SBI v. Somvir Singh, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] where the 1998 Scheme has been considered.

9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the breadearner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent."

29. Now, it is in this background that it would be necessary to advert to the decision in Canara Bank [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] . A scheme for compassionate appointment of 8-5-1993 was prevalent in Canara Bank when the employee died on duty in October 1998. Faced with the rejection of an application for compassionate appointment, the High Court was moved in a writ petition in which a learned Single Judge issued [M. Mahesh Kumar v. Canara Bank, 2003 SCC OnLine Ker 657 : (2003) 98 FLR 1030] a direction for reconsideration of the claim for appointment. During the pendency of the appeal before the Division Bench, the scheme for compassionate appointment was replaced by a new scheme providing for ex gratia in lieu of appointment. The main issue which fell for consideration before this Court was whether the subsequent scheme which was formulated in 2005 providing for ex gratia payment would govern or whether the application would have to be disposed of on the basis of the earlier scheme of 1993. It may be noted that the application for compassionate appointment in that case had been rejected on the ground that the family of the respondent was not in indigent circumstances, as required by the scheme for compassionate appointment of 1993.

30. Dealing with the applicability of the subsequent scheme, a Bench of two Judges of this Court held, following the earlier decision in

SBI v. Jaspal Kaur [SBI v. Jaspal Kaur, (2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] , that the cause of action to be considered for compassionate appointment arose when the earlier scheme was in force. Hence, the claim could not be decided on the basis of the subsequent scheme which provided only for the payment of ex gratia. Moreover, as a matter of fact, the subsequent scheme was superseded in 2014 by reviving the scheme for the provision of compassionate appointment.

34. That leads the Court to the next aspect of the matter relating to the fixation of an income slab. In our view, the fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. The High Court was of the view that it was not open to the Finance Department to amend the scheme. The circulars which are issued by the Finance Department cannot be construed to be an amendment of the policy. They are really clarificatory of the intent and purpose of the scheme. The circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the scheme. In fact, as we have noted earlier, in the decision of this Court in Shashank Goswami [Union of India v. Shashank Goswami, (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , the Court was specifically dealing with a circular of the Comptroller and Auditor General of India which had imposed income limits respectively for Group 'B', 'C' and 'D' posts for the purpose of guiding the decision in the case of compassionate appointment. The fixation of income limits was not construed to be and is not an arbitrary exercise of power. However, what we find from the record of this case is that the income limit was fixed (as the High Court observed) on 29-9-2008 by the letter of the Finance Department. The income limit of Rs 1,00,000 for a family of four persons has since been revised to Rs 1,50,000 on 20-4-2011. Mr P.S. Patwalia has, on instructions, stated before this Court that this ceiling has been reiterated on 27-7-2017. What should be the

appropriate income criterion is undoubtedly a matter of policy for the State Government to determine. However, we would impress upon the State Government the need to periodically revise the income limits preferably at intervals of three years. Inflation and the increase in the cost of living have an important bearing on financial exigencies faced by families of serving as well as deceased employees. In fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals, as we have indicated above. We clarify that it would be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised.

35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had required that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In *Umesh Kumar Nagpal* [*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930], this Court has emphasised that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Para (8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased

employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J&K v. Sajad Ahmed Mir [State of J&K v. Sajad Ahmed Mir, (2006) 5 SCC 766, para 11 : 2006 SCC (L&S) 1195] and Local Admn. Deptt. v. M. Selvanayagam [Local Admn. Deptt. v. M. Selvanayagam, (2011) 13 SCC 42, paras 11, 12 & 13 : (2012) 1 SCC (L&S) 717]."

16. On going through the material on record, the grounds raised, and the decisions considered, we do not find that there is any error in the judgment nor the appellant has made out a strong case for interference.

17. In the light of the above discussion and decisions, writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs/dm
To

1. The Secretary
State of Tamil Nadu
Education Department
Fort St. George
Chennai 600 009.
2. The Director of Collegiate Education
D.P.I.Campus
College Road
Nungambakkam
Chennai 600 034.
3. The Principal
Government Arts College for Men
Nandanam
Chennai 600 035.

+1 cc to Government Pleader Sr.No. 76885

+1cc to Mr.M.Gnanasekaran, Advocate SR.No. 76033

Writ Appeal No.1749 of 2019

A.SK(19/11/2019)