

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WP.ST 65 of 2021
Kongkon Mondal
Vs.
The State of West Bengal & Ors.
and
WP.CT 99 of 2021
Bappa Karmakar & Anr.
Vs.
Union of India & Ors.**

Appearance:

For the Petitioners	:	Mr. Dilip Kr. Samanta, Adv. Mr. Biswapriya Samanta, Adv. Mr. Debapriya Samanta, Adv. Mr. Debanshu Ghorai, Adv. Mr. Md. Ashraful Haque, Adv.
For the State	:	Mr. Tapan Kr. Mukherjee, Adv. Mr. Biswabrata Basu Mallick, Adv. Mr. Sayan Ganguly, Adv.
For the Union of India	:	Mr. Debopriya Gupta, Adv. Mr. Arijit Majumdar, Adv.

Judgment On : 25.02.2022

Harish Tandon, J.:

These two writ petitions are taken up together as the common point of law was raised and argued by the appearing

counsels. A question which is involved in the aforesaid writ petitions is whether an application for compassionate appointment at the behest of a dependent shall be considered on the rules prevalent at the time of the death of the employee or at the time of consideration of an application.

There has been a divergent opinion on the above and in fact, the matter was referred to a larger Bench and we have given to understand by the appearing counsels that the larger Bench has not decided as yet. However, in course of the hearing we have been taken to various judgments rendered by the Supreme Court even prior in time of the reference having made and/or thereafter.

Mr. Samanta, appearing for the writ petitioner in WPCT 99 of 2021 was persistently insisting for adjourning the matter sine die till the larger Bench decides the matter but we should not detain ourselves in comprehending the law as the Supreme Court consisting of three Judges have elucidated and analysed all the conflicting judgments and reinstated the law as it stands. To have more clarity we decided to succinctly

elucidate the principle behind the concept of compassionate appointment.

The compassionate appointment is neither a vested right nor a constitutional right but based on concession with an avowed object to succour the family facing sudden financial jerk/crisis on untimely death of the bread earner. Articles 14 and 16 of the Constitution of India provide equal opportunity in employment to all eligible candidates and, therefore, the concept of compassionate appointment is an exception thereto. The dependent of the family who suffered penury because of untimely death of the sole earner may be provided with sustenance by way of compassionate appointment in order to tide over the crisis but the same is dependent upon scheme to be framed by the nodal employer in this regard. In other words, in absence of any scheme or the rules framed by the employer with regard to the compassionate appointment, no right is vested upon the dependent of such family to claim appointment on compassionate ground. It is thus dependent upon the nature of the scheme - the modalities for consideration of the application, eligibility criteria and the

financial stability of the family and so on and so forth. All these schemes framed for compassionate appointment have predominantly projected the financial crisis as a pivotal tool keeping in mind that the family having sufficient means to sustain in absence of the deceased employee should not be extended the benefit of such scheme. Predominantly, the financial status including the income of the family who lost the earning member has to be seen and such income is not sufficient enough to sustain the family. The reason for saying that it is not a vested right can be visualised from the core fact that none of the Schemes or Rules provide that the moment the employee dies in harness the dependent shall automatically be absorbed without looking into any other criteria on compassionate ground. The appointment on compassionate ground is an exception to a normal rule of employment enshrined in the constitutional provision. The same has to be construed strictly in the light of the provisions contained therein. Equally while construing the provisions of the Schemes/Rules, the approach should not be pedantic but pragmatic keeping in mind the object and purpose of such a

Scheme because of the exception that the recruitment to public service is to be based on merit by making open invitation and providing equal opportunities to all eligible participants. The source of the compassionate appointment can be traced only from the Scheme or the Rules framed by the employer and the applications are to be decided within the four corners thereof. Such being the object and the purpose the Government as well as the statutory bodies framed Schemes pertaining to the compassionate appointment reserving various criteria and it is axiomatic to record that each case has to be considered on a particular scheme applicable thereto.

The object and purpose of a compassionate appointment having succinctly adumbrated herein above, the counsels for the respective parties took us to various judgments of the Supreme Court touching upon the principles whether an application of such nature should be decided on the Rules prevalent at the time of the death of the employee while in service or on the date of consideration of such application by the employer. The counsels for the writ petitioners uniformly

relied upon a judgment of the Supreme Court in case of ***State Bank of India & Ors. vs. Jaspal Kaur, reported in (2007) 9 SCC 571***, for the proposition that such application shall be decided on the basis of the Scheme/Rules prevalent at the time of the death of the employer in service and not beyond that.

In ***Jaspal Kaur*** (Supra) the employee died on 1.8.1999, an application was taken out by his widow for compassionate appointment on 5.2.2000. The said application was rejected on 7.1.2002 in view of the subsequent amendments having brought into the scheme. The subsequent scheme laid down the various criteria to ascertain the penury suffered by the family including the payment of ex-gratia extended to the family. In the backdrop of the above, it was held that such ex-gratia payment under the scheme of 2005 framed after the death of the employee cannot be imputed for an application taken out immediately on the death of the employee and directed the authorities to consider the said application keeping in mind the scheme prevalent at the time of the death, in these words:

*“14. Also we are of the view that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Both the Benches of the High Court that heard this present matter have erred in entertaining the claim of the respondent and allowing the claim of the respondent. This was the view taken in a recent decision of this Court in **Union Bank of India and Ors. V. M.T. Latheesh** (supra), where the court observed that, “Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment”. Finally in the fact situation of this case, Sri.SukhbirInder Singh (late), Record Assistant (Cash & Accounts) on 01.08.1999, in the DhabWasti Ram, Amritsar branch, passed away. The respondent, widow of Sri.SukhbirInder Singh applied for compassionate appointment in the appellant bank on 05.02.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 04.08.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place*

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

The judgment of **Jaspal Kaur** was taken into consideration by the Co-ordinate Bench in case of **State Bank of India & Ors. vs. Rajkumar, reported in (2010) 11 SCC 661**. The Co-ordinate Bench held that in **Jaspal Kaur** (Supra) the widow in course of the hearing relied upon the new scheme dated 4.8.2005 and sought an additional payment in terms thereof. The observation made in Paragraph 14 was relatable to the claim of the additional benefit under the new scheme and in such backdrop it was held that such observation cannot be made applicable for consideration of an application for compassionate appointment under the old scheme in these words:

“18. The said observations are read out of the context by the Respondent. In that case the Bank employee died on 1-8-1999. Application was filed by the widow on 5-2-2000. The case of the widow was considered twice and the request for appointment on

compassionate grounds was declined by taking into consideration the financial position/capacity of the family. The High Court allowed the writ petition filed by the widow in 2004 on the ground that the terminal benefits of Rs. 4,57,607 received by the family were not sufficient for the sustenance of the family. In an appeal by the Bank, it was contended before this Court that in addition to Rs.4,57,607 paid as terminal benefits, the widow was getting Rs.2055 per month as family pension and that was not considered by the High Court. During the hearing before this Court, the widow relied upon the new Scheme dated 4-8-2005 and sought additional payment in terms of the scheme.

19. *The above observations were made in the context of rejecting, the widow's request for additional payment under the 2005 Scheme. In fact, this Court allowed the Bank's appeal and dismissed the writ petition filed by the widow for additional benefits. The said observations, cannot therefore, be of any assistance to consider the applicability of the old Scheme for compassionate appointment vis-à-vis the new Scheme for ex gratia payment."*

Ultimately, the Bench held:

"21. *We, therefore, allow this appeal in part as follows:*

(i) The orders of the learned Single Judge and the Division Bench are set aside.

(ii) The Respondent and/or his family may file a fresh application under the new Scheme, as directed by the Bank in its letter dated 31-1-2006.

(iii) The Appellant Bank is directed to process such application under the new Scheme, if and when made, and pay the lump sum ex gratia amount due in terms of that Scheme, to the beneficiaries, within four months of the receipt of the application.”

The judgment of **Rajkumar** (Supra) was noticed by another Co-ordinate Bench in a subsequent judgment rendered in case of **MGB Gramin Bank vs. Chakrawarti Singh, reported in (2014) 13 SCC 583**. It was a case where the Class-III employee of the Bank died on 19.4.2006 while in service and an application for compassionate appointment was made on 12.5.2006. In the meantime, a new scheme dated 12.6.2006 came into force with effect from 6.10.2006 wherein it provides that all applications pending as on the date of the commencement of the scheme shall only be considered for ex-gratia payment to the family instead of compassionate appointment. Naturally, the application for compassionate appointment was rejected on the basis of the new scheme and

the challenge was thrown against such order of rejection that the application filed prior in time should be considered as per the then existing scheme prevalent at the time of the death. The High Court disposed of the writ with the view that since the cause of action arose at the time the death i.e. prior to the commencement of the new scheme, the same is required to be considered as per the old scheme and further proceeded to direct the authorities not only to consider the application for compassionate appointment but directed the appointment to be made immediately. The said order was assailed before the Supreme Court and the Apex Court after taking into consideration the observations made in **Rajkumar** (Supra) held:

“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 SBI, this Court held that in such a situation, the case under the new scheme has to be considered.”

In ***Canara Bank & Anr. vs. M. Mahesh Kumar, reported in (2015) 7 SCC 412***, the two Judges Bench of the Apex Court faces the identical question where an application was made by the dependent of the family member of the deceased employee under the Dying in Harness Scheme passed vide Circular no. 154 of 1993 replaced by a subsequent scheme dated 14.2.2005 which totally eroded the concept of the compassionate appointment and instead provided an ex-gratia payment, was rejected by the bank on the ground that the financial position does not show indigent circumstances providing for an employment on compassionate ground. An argument was advanced that the application for compassionate appointment must be decided on the basis of the scheme in vogue at the time of the death and the payment of ex-gratia in lieu thereof under the subsequent scheme has no manner of an application. However, in course of hearing it was brought to the notice of the Apex Court that such scheme

of 2005 stood superseded by another scheme of 2014 which revived the original scheme of providing appointment on compassionate ground. Taking into consideration the earlier judgment of the Co-ordinate Bench rendered in case of **Jaspal Kaur, Rajkumar** and **MGB Gramin Bank** (Supra) The Apex Court held:

“21. Referring to SAIL case, the High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the Bank that the respondents’ family is having any other income to negate their claim for appointment on compassionate ground.

22. Considering the scope of the scheme “Dying in Harness Scheme 1993” then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.”

However, the divergent views expressed in case of **Rajkumar** and **MGB Gramin Bank** (Supra) the coordinate Bench in case of **State Bank of India vs. Sheo Sankar**

Tewari, reported in (2019) 5 SCC 600 referred the matter to be decided by a larger Bench in the following:

“7. In these decisions, the original scheme under which appointment on compassionate grounds could be made, was substituted by one under which only ex gratia payment would be made our the dependants. The decisions relied upon by the petitioner proceed on the premise that there is no vested right to have the matter considered under the former scheme and the governing scheme would be one which was in force when the applications came up for consideration. On the other hand, the decision relied upon by the respondent proceeds on a different principle and stipulates that the governing scheme would be the former scheme and any subsequent scheme that came into force after the claim was raised would not be applicable. The decision of this Court in Canara Bank did notice the earlier two decisions in SBI and MGB Gramin Bank.

8. All the aforesaid three decisions as well as the one in Jaspal Kaur were rendered by the Benches of two Hon’ble Judges of this Court. The principles emanating from these two lines of decisions, in our considered view are not consistent and do not reconcile. The matter, therefore, requires consideration by a larger Bench of at least three Hon’ble Judges of this Court. We, therefore, request the Registry to place the papers of this case before the

Hon'ble the Chief Justice of India for constituting a Bench of appropriate strength to dispose of the present petition."

Even those points were referred to be decided by a larger Bench yet, the two Judge Bench of the Apex Court in case of ***Indian Bank & Ors. vs. Promila & Anr., reported in (2020) 2 SCC 729*** accepted the view expressed by the Co-ordinate Bench in case of ***Canara Bank & Anr. vs. M. Mahesh Kumar, reported in (2015) 7 SCC 412*** (Supra) in these words:

"20. We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being provided at the stage of unfortunate demise. Coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be application, in view of the judgment of this Court in Canara Bank. It is not for the courts to substitute a Scheme or add or subtract from the terms

thereof in judicial review, as has been recently emphasised by this Court in State of H.P. v. Parkash Chand.”

In ***N.C. Santhosh vs. State of Karnataka & Ors., reported in (2020) 7 SCC 617*** even after noticing that the point whether an application for compassionate appointment should be considered on the basis the rule prevalent at the time of the death of the employer or at the time of consideration of an application, the court proceed to decide such point taking into consideration the earlier judgments opining differently and held that the rule which was applicable at the time of consideration of an application and not the rule prevalent at the time of the death shall apply in these words:

“18. In the most recent judgment in State of H.P v. Shashi Kumar the earlier decisions governing the principles of compassionate appointment were discussed and analyzed. Speaking for the Bench, Dr. D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government

employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.

19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

It now take us to another judgment of a three Judge Bench rendered in case of **State of Madhya Pradesh & Ors. vs. Amit Shrivastava, reported in (2020) 10 SCC 496**. The said case relates to a death of driver in the Tribal Welfare Department, Bhopal, Madhya Pradesh who died on 11.12.2009 while in service. An application was taken out by the son under the Compassionate Appointment Scheme which was rejected on 19.8.2010 placing reliance upon the policy dated 18.8.2008 issued by the General Administration Department,

Madhya Pradesh Government. The said policy provided that where a government servant died in service and was earning salary from a work-charged/contingent fund then there will be no provision for grant of such appointment but a compassionate grant of Rs. 1 lakh shall be disbursed to the nominated dependents of such family. However, the clarification was made to such scheme from time to time and it was stipulated that any contingency paid employee or work-charged employee who completed 15 years or more in service on and after 1.1.1974 shall be treated as a permanent employee. The Relevant Pension Rules define the work-charged employee and the permanent employee and in the backdrop of the above, the question which fell for consideration was whether the employee who died in service and admittedly employed as a work-charged/contingency employee in the Tribal Welfare Department, upon his death the dependent's son is entitled to compassionate appointment as per the existing policy on the date of such demise. The Court held that the deceased employee was undoubtedly a work-charged

employee and, therefore, attained the status of a permanent employee having completed 15 years of service in these words:

“17. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody’s case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso fact give him the status of a regular employee.”

Therefore, the Court held that even if an employee is paid out of a work-charged/contingency fund yet, it does not ipso facto give him a status of a regular employee and such distinction has been lost sight of by the High Court. However, taking note of the judgment rendered in **Promila** (Supra) and the scheme which was prevalent and applicable in this regard. The Bench held:

“24. We had the occasion of examining the issue of compassionate appointment in a recent judgment in Indian Bank v. Promila. We may usefully refer to paras 3, 4 and 5 as under: (SCC p. 731)

“3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank v. M. Mahesh Kumar, qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and

payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.

25. *We are, thus, unable to give any relief to the respondent, much as we would have liked under the circumstances, but are constrained by the legal position. The family of the late employee has already been paid the entitlement as per applicable policy.”*

However, taking note of the subsequent circular issued by the authority when the matter was pending which provides the compassionate grant instead of compassionate appointment the Apex Court held that the expression “pending cases” must be construed as the case pending before the authority and not pending before the court in the following:

“27. *We, however, are of the view that we can provide some succour to the respondent in view of the Circular dated 21-3-2017, the relevant portion of which reads as under:*

“2. *In this regard, it is clarified that the compassionate appointment for the employees of work-charge and contingency fund is in force also w.e.f. 31.8.2016. And the cases pending before this date, will be decided only in*

accordance with the directions issued for compassionate grant and not 29-9-2014 i.e. they will be eligible only for compassionate grant and not the compassionate appointment. The proceedings be ensured accordingly.”

28. *The aforesaid circular records that pending cases will be decided in accordance with the directions issued for compassionate appointment on 29-9-2014. The present case is really not a pending case before the authority, but a pending lis before this Court.”*

In a most recent unreported judgment delivered by the Supreme Court in case of **Secretary to Govt. Department of Education (Primary) & Ors. vs. Bheemesh alias Bheemappa (Civil Appeal no 7752 of 2021 decided on December 16, 2021)** the Apex Court was poised with the identical points concerning the Karnataka Civil Services (Appointment on Compassionate Ground) Rules , 1996. In the said case the sister of the applicant who was unmarried, died in harness on 08.12.2010. The application was rejected by the competent authority on 17/21.11.2012 on the ground that amendment made in the aforesaid rules on 20.6.2012 extending the benefit of compassionate appointment to an unmarried dependent brother will not be applicable. The respondent before the

Supreme Court moved a tribunal application before the State Administrative Tribunal which was eventually allowed on 10.11.2017 on the ground that the amended provision would apply retrospectively and, therefore, the benefit was given to the said respondent pertaining to a compassionate appointment. The State of Karnataka challenged the said order before the High Court by filing a writ petition which was dismissed on 20.11.2019 holding that such amendment is retrospective in nature. The Bench noticed that at the time of the death of sister of the respondent, the said rule does not provide an appointment on compassionate ground to the unmarried brother within the definition of “dependent of the deceased Government Servant” but it is only by a subsequent amendment the unmarried brother was included within the said definition. The Bench noticed the fact that because of the conflicting decisions on the above aspect, the Co-ordinate Bench has referred the matter to the Chief Justice of India for constituting a larger bench yet proceeded to assimilate the principles laid down in the conflicting judgments. It was found that there are two apparent conflicts in those line of decisions

one pertained to a case concerning the difference between an amendment by which the existing benefit was withdrawn and/or diluted and secondly, an amendment by which the existing benefits were enhanced and/or enlarged. The Apex Court further held that despite the reference having made to the larger Bench four cases have been decided by the Supreme Court including **N.C. Santhosh** (*supra*) case delivered by three-Member Bench. The bench ultimately succinctly analysed the conflicting judgments and noticed two distinctive features emerged therefrom. Firstly, the cases where the benefit under the existing scheme was taken away or substituted with lesser benefit, the Apex Court directed the applicability of a new scheme. Secondly, the cases where the benefits under the existing scheme were enlarged by a modified scheme after the death of the employee, the Apex Court applied the scheme which was in force on the death of the employee. The Apex Court held that despite the conflict as to whether the scheme in force at the time of death of the employee would apply or the scheme came subsequently, but before the date of the consideration of an application for

appointment for compassionate ground would apply, there is no apparent conflict in the aforesaid decision. It was held:

“Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the Old Scheme was made applicable.”

However, the conflict was resolved by giving a hypothetical example of an employee dying on a same day and application was made on a diverse date wherein a modified/new scheme came in the interregnum of the aforesaid two applications with the following:

“A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.”

It was ultimately held that since on the date of the death, the definition of the dependent of the deceased female

employee did not include the unmarried brother, the application cannot be considered under the modified scheme.

The law emerged from the aforesaid decision, more particularly, the distinction have been shown in a most recent judgment delivered in case of **Bheemesh** (*supra*) is that the modified scheme shall be made applicable provided it dilutes the existing benefits but would not be applicable in the event it enlarges such benefits. However, the applicability of the modified scheme and for the purpose of interpreting the provisions contained therein is dependent upon a determined and fixed criteria such as the date of the death, and not indeterminate and variable factor. It is obvious that no one can claim compassionate appointment as vested right. Such right emanates from the scheme or the rules framed by the employer as a concession which cannot be construed as the invariable rights. The scheme fixing a definite and the fixed criteria as on the date of the death shall be the factor for interpretation as to the applicability of the modified scheme. The logical conclusion which can be drawn from the aforesaid decision of **Bheemesh** (*supra*) that the entitlement must be

created under the scheme prevalent at the date of death. Such entitlement cannot fructify into a right in the revised, modified or new scheme. Even a Three-Judge Bench in case of **Amit Shrivastava** (*Supra*) held that in case of compassionate appointment, the policy or the rule existing on the date of death of the demise of the employee in service shall be made applicable unless the subsequent policy is expressly made applicable with retrospective operation. The another three bench judgment in case of **N.C. Santhosh** (*supra*) held otherwise to the extent that since the compassionate appointment is not a vested right but gives a right to demand for consideration of an application and, therefore, the policy/scheme prevalent at the time of consideration of the said application would be applicable. However, the aforementioned distinction and conflict has been ultimately resolved in **Bheemesh** (*Supra*) we feel to proceed in deciding the aforesaid appeals on the factual matrix in the light of the law expounded therein.

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Admittedly, the father of the petitioner namely, Sibapada Mondal died on 31.7.2005 leaving behind his widow, one son namely, the petitioner and a daughter as heirs and legal representatives. Immediately, upon the death of the said employee the mother of the petitioner made an application on 24.8.2015 seeking compassionate appointment on the basis of her qualification. Indubitably, the petitioner was minor at the time of death of his father and was a student of class IX. The application filed by the mother of the petitioner was rejected by the authority with categorical finding that the family is not in penury and the income of the family is sufficient enough to cater the need. After attaining the age of majority, the petitioner made an application on 4.6.2008 seeking appointment on compassionate ground. Though the petitioner was called upon with the relevant documents by the Enquiry Committee yet the said application was rejected on 21.5.2015 on the ground that at the time of death of the employee the petitioner was minor and the recruitment rules came subsequently in the year 2013 mandates the application to be taken out within 6 months from the date of death. Having

communicated with the same order, the petitioner made another application on 22.6.2015 for reconsideration of the case and the concerned authority made requisition to his subordinate officer to send all the relevant papers. It is contended in the writ application that though no order has been communicated to the petitioner taken upon the said application for reconsideration yet the petitioner has come to know that the same has been dismissed on the self-same ground. The subsequent order has not been challenged but the petitioner challenged the order dated 21.5.2015 by which the earlier application seeking compassionate appointment was rejected. The contention is raised that the rule which was prevalent on the date of the death should be the sole criterion for considering his application and the modified or new scheme came in existence subsequent thereto shall not be projected to deny the right which had accrued. Undoubtedly, by notification dated August 21, 2002 which was prevalent at the time of the death of the employee provides for an employment on compassionate ground without reserving any time limit within which such application is required to be

made. Paragraph 1 of the said notification dated August 21, 2002 postulates that an employment on compassionate ground can be given to a solely dependent wife/son/daughter/near relation who are in immediate need of assistance. Since the near relations were also included within the said scheme the clarification was also incorporated therein to the effect that the claim of the near relation may be considered for employment on compassionate ground only when the wife/son/daughter cannot be considered for employment because of the minor age or other disability. The object and purpose behind the aforesaid clause having inserted therein leaves no ambiguity in our mind that the insertion of a near relation and creating his right in his/her favour is to give immediate economical assistance by way of a compassionate appointment so that the family of the deceased employee may survive. It further exposes the object of incorporation of the near relation when the immediate dependent is disentitled because of the minor or other disability which leads to invariable conclusion that the son or daughter who was minor at the time of the death may not be

considered for employment. However, by a further notification dated 6th June, 2005, the government laid down the procedure to be followed on the issue of employment of compassionate ground to the dependent providing an ex-gratia grant. The option was also given to the family to opt for such ex-gratia grant in lieu of the compassionate appointment. However, in paragraph 11, the compassionate appointment was restricted to the dependent of an employee who suffered death as a result of the accident or permanently incapacitated in course of the performance of the duties. By a notification dated 3rd December, 2013 an exhaustive scheme was further framed which is called West Bengal Scheme for Compassionate Appointment, 2013 re-imposing in the concept of the employment on the compassionate ground empowering the authority to condone the age in eligible cases as well as the educational qualification for Group-D post but created a deadline within which the dependant member should attain the minimum age of recruitment. It is indicated that such dependant must attain the age of recruitment within 6 months from the date of death or incapacitation of the concerned

employee who died-in-harness. In view of the law expounded in **Bheemesh** (supra) since the subsequent scheme dilutes the existing benefits and does not enlarge such benefits, we do not find any infirmity in the decision of the authority in rejecting an application of the petitioner that he did not attain the minimum age of employment within 6 months from the date of death of the concerned employee. Hence, we do not find any illegality in the order passed by the authority as well as the Tribunal and, therefore, the writ petition is liable to be dismissed and is accordingly dismissed.

WPCT 99 of 2021

The petitioner in the instant writ petition has been subjected to several round of litigation before the Tribunal as well as this Court challenging the order of the authority rejecting an application for employment of compassionate ground citing diverse reasons. The father of the petitioner namely Sambhu Nath Karmakar, was a Group-D staff in Geological Survey of India and died on August 18, 2004 while in service. Since he left widow, the petitioner and a married

daughter an application was taken out by the widow praying for appointment of the petitioner on compassionate ground under died-in-harness category. The first application filed by the petitioner was rejected by the respondent authorities on November 29, 2007 citing a ground of unavailability of the vacancy in terms of the DOPT, Government of India office memorandum no 14014/19/2002-Estt dated May 5, 2003 and finally closed the file. The said order dated 29th November, 2007 was challenged by the petitioners before the Central Administrative Tribunal, Kolkata Branch which gave rise to registration of OA no. 240 of 2008. An argument was advanced before the Tribunal that there is no fatter on the part of the authorities to consider the case of the petitioner for employment of compassionate ground for consecutive three years and the authorities should not have finally closed the file.

In the aforesaid perspective, the Tribunal application was disposed of directing the petitioner to make a fresh representation within a period of one month from date and the corresponding direction was passed upon the respondent

authorities to consider the said representation in accordance with law. Pursuant to the said order another representation was made on 11.12.2008 by the petitioner which was rejected on 20th April, 2009 citing a ground that since three years have elapsed from the date of the death and in view of the said office memorandum dated 5.5.2003, the prayer for compassionate appointment cannot be acceded to and, therefore, such representation stood rejected. Challenging the aforesaid order another Tribunal application being OA no. 741 of 2009 was filed wherein it was categorically stated that the blanket reliance upon the office memorandum dated 5.5.2003 for closure of the case after three years is not appropriate in view of the judgment of the Tribunal, Ahmadabad Bench. The said Tribunal application was disposed of on 3.1.2011 with the categorical finding that the decision of the Co-ordinate Bench of the Tribunal is binding on the other Co-ordinate Bench and, therefore, the impugned order cannot be sustained, and directed the respondent authorities to reconsider the application of the petitioner in accordance with the DOPT and office memorandum and the guidelines of the Ministry of

Mines/Geological Survey of India within three months from the date of communication of the order. Pursuant to the said direction, the application was reconsidered and by an order dated 28/29-4-2011, the respondent authority again rejected the application taking into consideration the office memorandum dated 5.5.2003. The order of 28th/29th April, 2011 was further challenged in OA 879 of 2011 primarily on the ground that in the meantime the said office memorandum dated 5.5.2003 should not have been taken as a pivotal ground when the above consideration is required to be taken into account. The Tribunal disposed of the said application on 1.10.2015 directing the authorities to place the application once again before the compassionate appointment committee for consideration in accordance with the law as and when the committee meets. However, the matter was again reconsidered in terms of the said order and stood rejected on the premise that the petitioner scored lesser merit point than the other recommended candidates and, therefore, in view of the office memorandum dated 5.9.2016 he is not entitled to any benefit as he is already married. The said order was further

challenged in OA 173 of 2017 before the Tribunal subsequently. The Tribunal held that since the order of rejection dated 23.11.2016 was passed before the filing of the Tribunal application indicating that the petitioner could not secure the requisite score no other relief can be granted except directing the respondents to communicate the comparative allotment of score points along with the break up and the decision thereof to the applicant within a stipulated time. Liberty was also given to the petitioner to make representation to the authority if he otherwise felt aggrieved thereby. The said order of Tribunal is challenged in the instant writ petition and an argument is advanced that the entire decision of the authority is based upon the office memorandum dated 5.5.2003 which was quashed and set aside by the Allahabad High Court on May 7, 2010 in WP 13102 of 2010. There is no findings returned by the Tribunal on the merit of the said application as the Tribunal simply proceeded on the basis that the order of rejection dated 23rd November, 2016 had been passed before the filing of the OA. The details thereof must be communicated to the petitioner. There is no finding returned

on the applicability of a subsequent scheme or the office memorandum nor on the proposition whether the scheme which was prevalent at the time of the death of the employee shall only be considered. The parties have not exchanged affidavits in the instant writ petition in view of the nature of the order passed by the Tribunal. Whether the ration laid down in **Bheemesh** (Supra) would apply or not is a matter to be decided in the Tribunal application on the basis of the disclosure of the materials on affidavits and the Tribunal should not have acted in slipshod manner as the very purpose of the scheme for appointment of compassionate ground would be frustrated. The order impugned is thus, set aside. We direct the respondent authorities to file affidavit in opposition within three weeks from date before the Tribunal; reply if any, shall be filed within a week thereafter. The Tribunal is directed to reconsider the application afresh upon recording its independent finding on the basis of the material disclosed in the affidavits by the respective parties and in accordance with the law and in the light of the observation made herein before within four weeks from the date of the expiration of period of

exchange of affidavits. None of the observations touching upon the merit of the case shall be construed as persuasive effect upon the Tribunal except the proposition of law as enumerated hereinabove and the Tribunal shall be free to decide the same on merit.

In view of the findings made hereinabove, both the writ petitions are disposed of.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Rabindranath Samanta, J.)