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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 19.10.2022

Pronounced on: 23.11.2022

+ W.P.(C) 18657/2004 and C.M. Nos. 14165/2004 & 8733/2005

N.T.P.C. & ANR.

..... Petitioner

Through: Mr. Raj Birbal, Senior
Advocate alongwith Ms.
Raavi Birbal, Advocate

versus

BADARPUR POWER ENGINEERS &
WORKERS UNION & ANR.

..... Respondents

Through: Mr. Om Prakash Gupta,
General Secretary for
respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The case at hand is a Writ Petition preferred under Articles 226 and 227 of the Constitution of India. The Petitioner, National Thermal Power Corporation Ltd. ("NTPC") is aggrieved by the Award dated 17.08.2004 as passed by the Industrial Tribunal-cum-Labour Court-II in I.D. No. 54/93 and Reference Order dated 12.08.1993 of the Central Government titled as *General Secretary, Badarpur Power Engineers and Workers Union vs. Management of Badarpur Station* (hereinafter referred to as "impugned award").

2. Vide the impugned award, the learned Labour Court held that the management of Badarpur Thermal Power Station (i.e. the Petitioner/NTPC) must extend the facility of appointment on compassionate grounds to the dependents of the employees who died during their period of service with the Petitioner. It further directed the management of the Petitioner to consider each and every case and appoint persons on compassionate basis subject to qualifications and fitness prescribed in this regard.

FACTUAL MATRIX

3. The dispute in the case at hand hinges upon the issue of appointment on compassionate grounds and whether direction pertaining to the same can be issued in a blanket manner.
4. The petitioner/NTPC is a Government Company incorporated under the Companies Act, 1956. The petitioner is involved in the activity of generation of electricity. Badarpur Thermal Power Station (hereinafter referred to as “**BTPS**”) is an establishment owned by the Government of India and set up for the purpose of production of electricity. Vide agreement dated 12th April, 1978 between the Central Government and the Petitioner, the management of BTPS was transferred to the Petitioner for a period of ten years with effect from 1.04.1978. This agreement was extended from time to time and it was last extended till 31.03.2005. After the management of BTPS was transferred to the Petitioner, the employees working at BTPS volunteered to become the employees of the Petitioner.

5. In order to maintain industrial peace and harmony and to prescribe uniform terms and conditions of services to all employees at all establishments run by the Petitioner, the management of the Petitioner and the representatives of all establishments had constituted a Committee, namely, National Bi-partite Committee (NBC). As and when the parties felt it desirable to enter into a fresh settlement, the matter was discussed and negotiated at the national level in NBC and a draft settlement was arrived at. Thereafter, the NTPC and the representatives of workmen executed the settlements during the course of conciliation proceedings before the respective appropriate Governments with the active involvement of the Labour Department of the Central Government. Such settlements were also entered with employees of BTPS on 31.08.1978, 12.06.1979 and 14.09.1983. The workmen working at BTPS at the relevant time were represented by various trade unions. The respondent No. 1/union was not involved in the signatures to the settlements.
6. These settlements dealt with the terms and conditions of employment of the workmen with the Petitioner and included, *inter alia*, the subject-matter of appointment on compassionate grounds.
7. Thereafter, in a tripartite meeting held on 07.12.1984 and 11.12.1984 between the representative of Central Government, NTPC and the employees, the Secretary, Ministry of Power decided and agreed to extend the facility of appointment on

compassionate grounds of dependents of employees of BTPS which was available only on death on duty due to any reason during the period of service, considering the qualification and vacancies. Subsequent to this, a circular dated 21.12.1984 was issued by the management of BTPS incorporating this decision taken at the meeting.

8. It is the case of the Petitioner that in spite of the fact that the matter relating to compassionate appointment at BTPS was the subject matter of a settlement between the management and the workmen, the respondent union moved the Labour Department of the Central Government raising an alleged dispute for extending the facility of appointment on compassionate grounds to the dependents of the employees who died in harness.
9. The management of the Petitioner appeared before the learned conciliation officer and apprised him of the fact that the matter relating to compassionate appointments at BTPS was already covered by a settlement.
10. Thereafter, the Central Government made a reference for adjudication to the learned Labour Court in the following terms:

"Whether the General Manager BTPS, New Delhi is justified in not extending the facility of appointment on compassionate grounds to the dependents of employees who die during the period of service, taking into account the qualifications and fitness of the dependent to the particular post? If not, what relief the workmen were entitled to."

11. Pursuant to the reference, Respondent No.1/union filed a statement of claim. In response to the notice from the learned

Labour Court, the management of the Petitioner Company appeared and contested the claim on various grounds. Thereafter, the Respondent union filed a rejoinder. Sh. Om Prakash, General Secretary of respondent No.1/union was examined as WW-1. Sh.A.K Verma, Senior Manager (P&A) in NTPC, New Delhi was examined as MW-1.

12. After hearing learned counsel for the parties and perusing material on record, the learned Labour Court passed the impugned award and replied to the reference in the following terms:

“The General Manager BTPS, New Delhi is not justified in not extending the facility of appointment on compassionate grounds to the dependents of employees who dies during their period of service, taking into account the qualification and the fitness of the dependents to the particular post. One dependent of every deceased workman is entitled for compassionate appointment subject to qualifications and fitness prescribed on that behalf and it is further directed that within one month of the publication of the award, each and every case should be considered and appointment should be given.”

13. Being aggrieved by the impugned award, the Petitioner has preferred the present Writ Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Ms. Raavi Birbal, learned counsel appearing on behalf of the Petitioner, submitted that the impugned reference order and award was wholly erroneous and was liable to be set aside on the ground that it was in the teeth of Sections 12 and 18 (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “I.D.

Act”). It was further submitted by the learned counsel that the perversity in the impugned award emanated from the fact that the learned Labour Court decided on the reference in complete ignorance of the fact that the field related to the subject-matter of compassionate appointment in BTPS had been dealt with in subsequent settlements between the Petitioner and the various trade unions operating at BTPS. Learned counsel submitted that the learned Labour Court had solely relied on the Circular of BTPS dated 19.12.1984 to arrive at its decision and had not appreciated the fact that the said settlements were entered during the conciliation proceedings before the Labour Department of the Central Government.

15. The learned counsel further submitted that having been entered into during the course of conciliation proceedings, the said settlements were binding on all employees of petitioner Corporation at BTPS. Learned counsel placed reliance on *The Bata Shoe Co. (P) Ltd. v. D.N. Ganguly* reported as *AIR 1961 SC 1158* to contend that the impugned award had ignored the position of law that the settlement arrived at in the course of conciliation proceedings was binding not only on the parties thereto but also on all present and future workmen.

16. It was further submitted by the learned counsel that the learned Labour Court had not gone into the question whether or not the settlements between the management and workmen union were just and proper. Learned counsel relied on *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd.* reported as *(1976) 4 SCC*

736 to bring home the point that the settlement arrived at in the course of conciliation proceedings had to be accepted or rejected as a whole and it was impermissible for an adjudicating authority to pick and choose from the said settlement and hold some parts as good and acceptable and the other parts bad.

17.To establish the sanctity of the said settlements, the learned counsel placed reliance upon *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Limited* reported as (1991) 1 SCC 4 to submit that the settlement arrived at in the course of conciliation proceedings was put at par with the award made by the adjudicatory authority. The learned counsel drew force from this argument to contend that the learned Labour Court was wrong in ignoring the settlements which were still holding the field and had erroneously placed sole reliance on the Circular published by BTPS.

18.It was further submitted by Ms. Birbal that it was never the case of any of the party nor was there any finding of the learned Labour Court to the effect that the settlement between the parties stood terminated.

19.The learned counsel further submitted that the award was erroneous and without jurisdiction also on the ground that the present dispute between the parties was not an industrial dispute as defined under Section 2 (k) of the I.D. Act. Learned counsel further relied on *Management of Messers Hotel Samrat v. Government of NCT* reported as 2007 (2) LLJ 950 to contend that the present dispute was outside the scope of section 2A of

the I.D. Act as no evidence was led by the respondent to show that the dispute had been validly espoused by substantial number of workmen or a representative union. She further submitted that the present dispute could at the most be considered as an individual dispute and not an industrial dispute.

20. The learned counsel further submitted that the facility of compassionate employment was an exception to the rule of appointments to public post on the sole criteria of merits and an exception could not override the operative norm itself. She further contended that in view of the fact that there were no vacancies and hardly any appointment had been made for last more than a decade, the learned Labour Court erred in issuing direction to make compassionate appointment.
21. The learned counsel further submitted that various considerations were required to be looked into for extending the facility of appointment on compassionate basis. To bolster this submission, she relied on the judgment of the Hon'ble Supreme Court in *Umesh Kumar Nagpal v. State of Haryana & Ors.* reported as **1994 (4) SCC 138** and argued that these appointments were not to be granted as a matter of course.
22. It was further submitted by the learned counsel that in accordance with the settled law, even if a Tribunal/Court was of the opinion that a person was qualified to be appointed to the post by way of compassionate appointment, the Court/Tribunal could only give direction to the appropriate authority to consider facts of the particular case in the light of the relevant rules and subject to

availability of vacancy. Drawing support from this submission, she argued that the learned Labour Court had erred in taking upon itself the function of the appointing authority and making blanket directions for the appointments.

23.To conclude her arguments, the learned counsel placed reliance on the recent order delivered by this Hon'ble Court in W.P.(C) 5538/2015 titled as *Manju Devi v. Hindustan Petroleum Corporation Ltd.* dated 14.07.2022 wherein this Court had noted that compassionate appointment could not be claimed as an entitlement, especially when the rigours of the crisis had been mitigated by opting for an alternative scheme, and submitted that the case at hand was squarely covered by the observations made in the said order.

24.Having made the above submissions, the learned counsel prayed for issuance of a writ of certiorari or other appropriate order quashing the impugned award and the reference order dated 12.08.1993.

SUBMISSIONS ON BEHALF OF RESPONDENT No.1

25. Mr. Om Prakash Gupta, General Secretary for Respondent No. 1, submitted that the award given by the CGIT was perfectly legal and had been decided on merit after giving full opportunity to the parties to state their case before the Industrial Tribunal. He further submitted that there was no proper ground for issuance of writ of certiorari in the present case.

26.It was further submitted by Mr. Gupta that the facility of appointment on compassionate grounds was part and parcel of

the service condition of BTPS employees and could not be subsequently altered to their detriment.

27.Placing reliance on the service conditions, past practice and orders of the Central Government in the Department of Power dated 11.12.1984 as well as Circular issued by the NTPC on 21.12.1984, Mr. Gupta submitted that the facility of appointment on compassionate grounds for employees presently available for death on duty had been extended from 21.12.1984 for death due to any reason during the period of service, considering the qualifications and vacancies. It was further submitted by Mr. Gupta that the management of BTPS never worked out and issued any scheme for the benefit of the employees, despite the service conditions, Settlement, circulars, agreements and decision to that effect.

28.Mr. Gupta challenged the validity of the settlements of 1983, 1989 and 1995 and submitted that the conciliation machinery had been used as a rubber stamp to give ready-made settlements the colour of conciliation settlements. It was further submitted by him that the settlements dated 31.08.1978 and 12.06.1979 were the only settlements which had been arrived during the course of conciliation proceedings and were as such binding on the employees.

29.Mr. Gupta further submitted that the reliance placed by the Petitioner on the subsequent settlements dated 01.08.1989 and 31.05.1995 was misconceived and of no help. It was further submitted by him that the settlements dated 01.08.1989 &

31.05.1995 had no overriding effect on earlier provisions which were available to the employees of BTPS in view of the fact that these settlements had saving clause which protected the earlier service conditions.

30.Mr. Gupta further submitted that the present dispute was well within the scope of the provisions of the I.D. Act. Placing reliance on *Municipal Employee's Union v. Secretary (Labour), Government of N.C.T. of Delhi* reported as **2000 (1) LLJ 196** and *Municipal Employee's Union v. Secretary (Labour)* reported as **1999 (2) LLJ 1136**, Mr. Gupta further submitted that the management could not take the advantage of its own wrong as it was the management who had failed to determine the representative character of the union operating at BTPS.

31.It was further submitted on behalf of Respondent No.1 that the reference was not made in a mechanical manner as contended by the management. He furthered his argument by submitting that detailed proceedings were held before the conciliation authority and the Central Government, after considering the material on record and the FOC report of the conciliation machinery, had referred the dispute for adjudication in accordance with law.

32.Mr. Gupta concluded his arguments by placing reliance on *Balbir Kaur v. Steel Authority of India Ltd.* reported as **AIR 2000 SC 493** and submitting that BTPS, under the management of NTPC, was an authority within the meaning of Article 12 of the Constitution of India and was under an obligation to act in terms of avowed objectives of furthering social and economic

justice as enshrined in the Constitution. Having submitted thus, Mr. Gupta argued that the requirement of compassionate appointment could not be given a go-by, more so having regards to the constitutional mandate and industrial jurisprudence.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

33. This Court has heard the counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.

34. It is a settled position of law that the High Court in the exercise of Writ jurisdiction under Article 226 of the Constitution of India can interfere with the order of the inferior Tribunal in a writ of certiorari if the order assailed suffers from an error of jurisdiction or from breach of principles of natural justice or is vitiated by an apparent error of law which results in manifest injustice. A patent error for this purpose is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. It can thus be safely deduced that disregarding a settled legal position would qualify as a 'manifest error' or a perversity which goes to the root of the award.

35. This court shall now proceed to examine the impugned award in the light of the position of law discussed above.

36. One of the primary grounds of challenge to the award happens to be that of lack of jurisdiction. The learned counsel for the Petitioner has submitted that it was never the case of any other parties nor was there any finding of the learned Labour Court to

the effect that the settlement between the parties stood terminated. The field relating to compassionate appointment was thus already a subject-matter of a settlement validity entered into between the parties. In view of this fact, neither the Central Government had any authority to refer the dispute during the current year of the settlement nor did the learned Labour Court have any jurisdiction to adjudicate any such alleged dispute.

37. It will be pertinent at this juncture to refer to the observations of the Hon'ble Supreme Court regarding the issue of jurisdiction in ***National Engineering Industries Ltd. v. State of Rajasthan and Ors.*** reported as (2000) 1 SCC 371. The relevant portion of the judgment reads as follows:

“24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal (sic. dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate government lacks power make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an

appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable.”

(emphasis supplied)

38. On this issue, it will also be apposite to note the observations made by the Hon'ble Supreme Court in ***Indian Oxygen Ltd vs The Workmen As Represented By Indian Oxygen Karamchhari Union*** reported as (1979) 3 SCC 291.

“10. There is nothing in the Act to require that the dispute or difference should be raised by all the workmen of the industry, or by every one of them, or even by a majority of them. It is enough if the controversy is between the employer on the one side and workmen on the other. So also, there is nothing in the Act to require that the workmen raising the controversy should form a majority of the employees. The reason appears to be that where it is found that the controversy affects, or will affect, the interest of workmen as a class, the law envisages that, in the interest of industrial peace, it should be examined and decided in one of the modes provided by it. An individual dispute cannot however be said to be an industrial dispute unless of course the other workmen associate themselves with it. No hard and fast rule can possibly be laid down in such circumstances to decide when and by how many workmen an industrial dispute can be raised within the meaning of the Act, or whether a minority union, or even an unrecognised union, can raise an industrial dispute. It is enough if there is a potential cause of disharmony which is likely to endanger industrial peace, and a substantial number of workmen raise a dispute about it, for then it is permissible to take the view that it is an industrial dispute within the meaning of clause (1) of section 2 of the U.P. Act, and to refer it for adjudication to a Tribunal....

*19. We have gone through the two cases which have been cited by Mr. Nariman in this connection. **Herbertsons Ltd.** (supra) was a case where all the workers of the Company had accepted the settlement and received the arrears and the emoluments according to it. In fact it was in the facts*

*and circumstances of that case that this Court took the view that it was not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Even so, this Court expressed the view that if the objectionable part was shown to outweigh all the other advantages, the Court would be slow to hold the settlement unfair and unjust. **Herbertsons is therefore no authority for the argument that a part of a package deal cannot be the subject matter of a reference for adjudication by the Tribunal. New Standard Engineering Co. Ltd (supra) was also a different case, for there the justness and fairness of the settlement was examined with reference to the situation as it stood on the date on which it was arrived at, and it cannot also avail the argument of Mr. Nariman about the illegality of a reference merely because it relates to a part of a package deal. That is essentially a matter for the Tribunal to examine and adjudge on the merits of the reference.***

(emphasis supplied)

39. At this juncture, this Court would like to observe that although the above decision was made keeping in view the provisions of U.P. Industrial Disputes Act, 1947, the observations made above are also applicable to the facts of this case, keeping in view the similarity between the provisions in the State Act and the Central Act.

40. Even otherwise, it transpires from a perusal of the records that the reference made by the Central government pertained to the justifiability of the action of management of BTPS in not granting appointment on compassionate grounds to dependents of employees who die in harness. It is not disputed that all the arrangements on record mention that appointment on compassionate grounds was to be granted to the dependents of employees who died in harness subject to fulfilment of certain

criteria. It is pertinent to note that the impugned reference does not question whether or not appointment on compassionate grounds was to be granted to such dependents. Instead, it questions the justifiability or fairness of the action of the management in denying compassionate appointment to these dependents.

41. Therefore, in the considered opinion of this Court, the impugned reference is validly made inasmuch as it questions the justifiability of action taken by an authority in implementing the terms of the settlement. The same was a potential cause of disharmony. The learned Labour Court thus had jurisdiction to entertain the present dispute.

42. Having established the jurisdiction of the learned Labour Court, it becomes pertinent to enquire whether there had been a proper exercise of this jurisdiction.

43. The primary question that arises is whether the findings returned and relief granted by the learned Labour Court are legally sustainable. The submissions made by the parties necessitate a careful perusal of the award on the following two grounds:

- i. Ignorance of position of law pertaining to settlement
- ii. Justifiability of issuing direction in a blanket manner to make compassionate appointments

i. Position of law pertaining to settlement

44. It will be pertinent to note here that the lynchpin of the attack mounted by the Petitioner on the impugned award has been the existence of the two settlements dated **01.08.1989** and

31.05.1995 which have allegedly been ignored by the learned Labour Court as it has placed sole reliance on the Circular of BTPS dated **19.12.1984** to arrive at its decision.

45. To appreciate this issue in the light of the circumstances of the case, it will be pertinent at this juncture to peruse the manner in which the subject-matter of appointment on compassionate grounds has been dealt with under the various arrangements between the management of BTPS and the various trade unions operating at BTPS.

i. **Settlement dated 12.06.1979 between the Management of BTPS and its workmen (Annexure P-14)**

*“Clause 3.20– In the case of death of a regular workman in harness, Management agrees to provide employment to his wife, dependent son or dependent daughter **subject to the condition that he/she fulfils recruitment specifications and subject to availability of vacancies**”*

ii. **Settlement dated 14.09.1983 between the Management of BTPS and their Workmen (Annexure P-15)**

“Clause 5.8 –It is agreed that Management will provide employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty on compassionate and humanitarian considerations. Dependent for this purpose will mean spouse of the employee, his/her son or daughter or legally adopted son or daughter only.”

iii. **Circular dated 21.12.1984 published by BTPS (Annexure P-4)** provided for compassionate appointment in the following terms:

“to introduce the facility of appointment on compassionate grounds of dependents of employees of BTPS which is presently available for deaths on duty also to deaths due to any reason

during the period of service considering qualification and vacancies. Details of the scheme is being worked out for issue shortly.”

iv. **Settlement dated 01.08.1989 between the Management of BTPS and its workmen (Annexure P-6)**

“Clause 4.5 – Employment to one dependent of each workmen who is permanently disabled or who dies as a result of accident while on duty will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his/ her son or daughter or legally adopted son or daughter only.”

v. **Settlement dated 31.05.1995 between the Management of BTPS and its workmen (Annexure P-7)**

“Clause 5.4 –Employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty, will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his/her son or daughter or legally adopted son/daughter.”

46.A perusal of the abovementioned arrangement reveals that compassionate appointment had consistently been a subject-matter of various arrangements between the management and the various Trade Unions operating at BTPS, the latest one being the settlement dated **31.05.1995** arrived at in the course of conciliation proceedings.

47.At this juncture, it will be pertinent to delve into the position of law pertaining to the effect of settlements arrived at during the course of conciliation proceedings.

48.To properly appreciate this sub-issue, it will be appropriate to first refer to the relevant provisions of law. One such provision is Section 12 of the I.D. Act. The relevant portion of the same is being reproduced below:

“Section 12. Duties of conciliation officers.-

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.”

49. Another provision relevant in view of the facts of the present Petition is Section 18 of the I.D. Act. The relevant portion of it reads as under:

“18. Persons on whom settlements and awards are binding.-

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(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on--

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

(emphasis supplied)

50. It is clearly discernible from the above-stated provisions that the settlement arrived at during the course of conciliation proceedings with the assistance of the conciliation officer is binding on all the workmen presently employed in the establishment or part of the establishment and even on those who subsequently become employed in that establishment or its part.

51. This view is further fortified by the observation of the Hon'ble Supreme Court in *The Bata Shoe Co. (P) Ltd. v. D.N. Ganguly* reported as *AIR 1961 SC 1158*, wherein the Court made the following observation:

"7. The question thus posed raises the question as to what is meant by the words "in the course of conciliation proceedings" appearing in s. 18 of the Act...

8. Reading these two provisions along with s. 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding under s. 18 on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the conciliation officer, for it is the duty of the conciliation officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. It is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding under s. 18.
...."

(emphasis supplied)

52. It will be apposite at this juncture to refer to the celebrated decision of the Hon'ble Supreme Court in ***Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Limited*** reported as (1991) 1 SCC 4 wherein the Hon'ble Court made the following observations regarding the sanctity of the settlement arrived at in the course of conciliation proceedings:

“8. It may be seen on a plain reading of sub-sections (1) and (3) of section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. ...”

(emphasis supplied)

53.As regards the question of persons who are bound by the aforesaid settlements, it will be pertinent to refer to the observations of the Hon'ble Supreme Court in ***P. Virudhachalam & Ors vs The Management Of Lotus Mills & Anr*** reported as (1998) 1 SCC 650. The same are being reproduced below:

“8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration award.

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9. ... In all these negotiation based on collective bargaining individual workman necessarily recedes in background. The reins of bargaining on his behalf is handed over to the union representing such workmen. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members.”

(emphasis supplied)

54.It will be pertinent to note that the aforementioned settlement dated **31.05.1995** was arrived at in the course of conciliation proceedings between the management of BTPS and the unions of workmen. Discussion regarding settlement in conciliation proceedings were held in which four, out of five unions had participated and Respondent no. 1 union had not participated.

Respondent no. 1 union had written a letter to the conciliation officer that it had received the proposed settlement only on 30.05.1995 and it was asked to give its response by 3 PM on 31.05.1995, which was not practical and it also objected to the fact that talks of settlement were to take place at the office of the management. The allegations were made that the conciliation officer was under the influence of the management. None from Respondent no. 1/union attended the settlement proceedings on 31.05.1995. However, the settlement was arrived at between the management of BTPS and other four unions in the presence of the Labour Commissioner. In view of the position of law discussed in the above paragraphs, the said settlement had a binding effect under Section 18(3) of the I.D. Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union (**Respondent No. 1**). It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as mandated by Section 18(3) (d) of the I.D. Act, it would *ipso facto* bind all the existing workmen who are all parties to the industrial dispute and who may not be members of union that are signatories to such settlement under Section 12(3) of the I.D. Act.

55. At this juncture, it will be apposite to address the submission of the Respondent union pertaining to the vires of the settlement dated 31.05.1995. To challenge the vires of the settlements entered into in 1989 and 1985, the following submission has been made in the counter-affidavit on behalf of Respondent No. 1:

“30. It is submitted that the settlements dated 31.08.78 and 12.06.79 are the only settlement, which are arrived during the course of conciliation proceedings. All other subsequent settlements have never been arrived during the course of conciliation proceedings. A readymade settlement have prepared in advance and the conciliation machinery has used as a rubber stamp to give it the colour of conciliation settlement. The settlements of 1983, 1989 and 1995 are such settlements. The validity of the settlement of 1995 has being challenged by the respondent union before this Hon'ble Court vide writ petition NO. 2232/95. It is further submitted that the settlements of 1983, 1989 and 1995 are no more in operation anymore and have no binding effect on the respondent union.”

56. It will be pertinent at this juncture to also take cognizance of the fact that Respondent No.1/union had not challenged the settlements dated 01.08.1989 and 31.05.1995 before the learned Industrial Tribunal. In view of this absence of challenge, the learned Labour Court did not get an opportunity to return a finding on the fairness of the aforesaid settlements. In this regard, the observations of the Hon'ble Supreme Court in ***Herbertsons Ltd. v. The Workmen of Herbertsons Ltd.*** reported as (1976) 4 SCC 736 merit consideration. The relevant part is reproduced hereunder:

“18. When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective

bargaining and, therefore, is entitled to due weight and consideration.”

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27. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement.”

(emphasis supplied)

57. Having made the aforesaid observations, the Hon'ble Supreme Court refused to interfere with the settlement holding it as fair and just.

58. In this regard, it will also be apposite to refer to the findings of the Hon'ble Apex Court in ***National Engineering Industries Ltd. (supra)***.

“27. ... It is not the contention of Workers' Union that tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such was not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite

settlement clearly show that the settlement was arrived at during the conciliation proceedings.”

(emphasis supplied)

59. This Court is of the opinion that the aforesaid observation applies with full force in view of the facts of the present case.

60. It will be pertinent to note here that the Respondent No. 1/union had approached this Hon'ble Court vide WP (C) No. 2232/1995 titled as *Badarpur Thermal Power Engineers & Workers Union v. Union of India and Ors.* reported as (2006) 132 DLT 662. In the writ petition, Respondent No.1/union contended that the settlement had not been arrived at with true representative union of the employees of BTPS and it was the union that was the true representative of the employees. It was also contended on behalf of Respondent No. 1/union that the settlement dated 31.05.1995, though had been given a colour as if it has been arrived at under Section 12(3) of I.D. Act and was binding on all the employees even if they were not party to it, was *dehors* the conciliation proceedings and, therefore, was not binding on Respondent No.1/union.

61. Dismissing the said writ petition, this Hon'ble Court made the following observations:

“6. In the entire writ petition, the petitioner has nowhere stated that the settlement arrived at was not fair, equitable or was against the interest of the employees.

7. I consider that this court cannot issue directions restraining the respondent No. 3 from implementing the settlement even if the settlement was not to the liking of the petitioner. By the impugned settlement workmen were going to get certain additional benefits and arrears of pay. It was the option of the workmen to accept or not to

accept benefits under the settlement. The workmen were at liberty to decide about availing the benefits of settlement and they did decide to take benefits. Even if the workmen had received the benefits, this would not have prevented the petitioner from raising an industrial dispute.

8. *Thus, the implementation of the settlement by the respondent No. 3 could not have prevented the petitioner from raising the industrial dispute before the Industrial Tribunal regarding settlement being unfair.*
9. *As far as second prayer is concerned, I consider it is well settled law that High Court, in exercise of writ jurisdiction, cannot entertain issues involving disputed question of facts. It is not in dispute that four of the unions of the workers of respondent No. 3 plant had participated in the settlement before the conciliation officer. Only the petitioner had not participated. The petitioner claims that the petitioner was the majority union and its not participating vitiated the conciliation proceedings arriving at the settlement. Whether the petitioner was a majority union on the day when conciliation proceedings were held and settlement was arrived at, is a disputed question of fact which cannot be decided without recording of evidence. If the petitioner was aggrieved by the settlement arrived at, the petitioner ought to have raised an industrial dispute and the dispute would have been referred to the Tribunal and the Tribunal would have opportunity to record evidence and came to conclusion whether the settlement arrived at was with a majority of the workmen or not. This court, unless there are strong circumstances, cannot entertain writ petition directly, bypassing the Tribunal.*

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10. *Since it is not pleaded or shown that the settlement arrived at between the management and other unions was unfair and against the interests of workmen nor it is pleaded or shown that the management has taken benefit of weak bargaining power of the workmen, the court should be loath to unsettle the settlement which has been arrived at between the parties, more so, when the settlement has been reached with the active assistance of conciliation officer. Court should discourage the tendency of raising issues by a union which has not participated in arriving at the settlement, despite having*

notice. The petitioner, if wanted more time to give its response, was free to send its representative before the conciliation officer at the appointed time and ask for more time. Non-appearance of the petitioner before the conciliation officer and merely writing a letter shows that the petitioner was not interested in welfare of the workmen and was more interested in promoting its leadership. The previous settlement had expired in the year 1991 and no new settlement had been arrived at between the management and the workmen after that. It was expedient for the union to cooperate in arriving at a settlement beneficial to the workmen. When settlement was being done before the conciliation officer, all objections could have been raised before the conciliation officer.”

(emphasis supplied)

62. In this regard, it is pertinent to note that Respondent No.1/union had not raised any plea pertaining to the fairness of the settlement dated 31.05.1995 in his Statement of Claim before the learned Labour Court and had raised it for the first time in this Writ Petition. This plea, being a disputed question of fact, cannot be entertained under the exercise of writ jurisdiction by this Court.

63. At this stage, it will also be pertinent to address any lingering apprehensions that the settlement dated **31.05.1995** had ceased to be operative. In this regard, the observations of the Hon'ble Supreme Court in *M/s Shukla Manseta Industries Pvt. Ltd. v. The Workmen employed under it* reported as **AIR 1977 SC 2246** become important. The same are being reproduced hereunder:

“8. Under the provisions of section 19(2) it is clear that a settlement shall be binding for such period as is agreed upon by the parties and if there is no period mentioned in the agreement, for a period of six months from the date on which the settlement is signed by the parties. With regard to the period of operation of the settlement, section

19(2) confers a statutory continuity of the settlement even after the expiry of the period agreed upon until the expiry of two months from the date on which a written notice of the intention to terminate the settlement is given by one party to the other. It is, therefore, clear that when a period is fixed in settlement, the settlement remains in operation for the entire period and also thereafter until one or the other party gives written intimation of the intention to terminate the settlement and until expiry of two months from the date of such intimation.

9. The object of the above provision under section 19(2) is to ensure that once a settlement is arrived at, there prevails peace, accord and cordiality between the parties during the period agreed upon and if the settlement does not require to be altered for some reason or the other the same climate prevails by extension of the settlement by operation of law. Section 19 is not a dead end freezing all manner of aspirations of labour or even, may be, sometime, hardship suffered by the employer on account of a settlement. There is an option given to either party to terminate the settlement by a written intimation after the expiry of two months from the date of such notice. This is in accord with the policy of settlement of industrial disputes which is the principal object underlying the provisions of the Act."

(emphasis supplied)

64. The same view has been re-iterated by the Hon'ble Supreme Court in ***L.I.C. of India v. D.J. Bahadur*** reported as ***AIR 1980 SC 2181*** where the Hon'ble Court has referred to a catena of decisions on this issue and opined that until a new contract or award replaces the previous one, the former settlement or award will regulate the relationship between the parties.

65. In view of the afore-stated observations, this Court is of the considered opinion that in the absence of any notice of termination or any new contract or award to replace the

aforementioned settlement dated **31.05.1995**, it was still operative and continued to regulate the relationship between the management and workmen, including *inter alia* appointments on compassionate grounds.

- 66.It can be concluded from the aforesaid discussion that the settlements arrived at in the course of conciliation proceedings are perceived as sacrosanct in view of the avowed objective of the Act to bring forth industrial peace and harmony. In order to achieve this objective, these settlements are made binding on all the present and future workmen of the employer whether or not they had taken part in the conciliation proceedings. The said settlements remain operative and continue to regulate the fields contained in them unless a new settlement or award is arrived at.
- 67.Having discussed the position of law in this regard, it will now be apposite to return to the factual matrix of the present case. The learned Labour Court has devoted more than half of the award to discuss the rival contentions made by the parties before it. However, what strikes the attention of this Court is that the learned Labour Court has failed to appreciate the submissions in their entirety. It becomes pertinent here to reproduce the relevant portion of the impugned award:

“From perusal of settlement in Tripartite meeting dt. 1.12.1984 and circular letter of para 9, it becomes quite explicit that the benefit of employment of one dependant of the deceased employee has been extended due to death for any reason i.e. the employee died during duty or during service period. The settlement of the Tripartite meeting of December, 1984 and the circular letter of 1985 establish

the fact that the management has admitted that one dependent of the deceased employee is to be given the benefit of compassionate appointment whether the workman died while on duty or during his service period.

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*It is explicitly from the circulars referred to above that the facility has been extended to the dependents of the deceased who dies due to any reasons. The Hon'ble APEX Court in 2000 SCC page 767 has held in the matter of SAIL that the denial of compassionate appointment should be perceived as denial of social and economic justice. This direction has been given in the case of SAIL and BTPS is also such an undertaking as such the judgement of Hon'ble APEX Court referred to above is fully applicable to BTPS also. The Hon'ble APEX Court has held that this benefit should be provided as a measure of social and economic justice, as such, the dependents of the deceased employee should not be deprived of this benevolent provision of the APEX Court and **in every circumstance, one dependent of the deceased employee whether he dies while on duty or during service period should be given appointment on compassionate ground subject to his qualification and fitness.** The law cited by the management is not applicable in the present facts and circumstances of the case."*

(emphasis supplied)

68.A perusal of the arrangements entered into between the Management of BTPS and the unions of workmen indicates that the management has been throughout consistent in its stand that appointment on compassionate grounds was to be made subject to the dependents fulfilling the prescribed qualification criteria and to the availability of vacancies. An inescapable conclusion that flows from the perusal of these arrangements is that compassionate appointment has not been offered to the dependents in absolute terms. Moreover, it is also pertinent to note that a bare perusal of these findings returned by the learned Labour Court reveals that it has not appreciated the fact that the

subject-matter of compassionate appointment had already been covered by the two subsequent settlements **01.08.1989** and **31.05.1995** between the Management of BTPS and its workmen represented by various unions. These settlements regulated, *inter alia*, the field of appointment on compassionate grounds. The settlement dated **31.05.1995** was arrived at in the course of conciliation proceedings and was, in the view of the legal position discussed above, binding on all the workmen of the Petitioner management. As revealed by a perusal of the records, the same had not been terminated or superseded and it still continued to regulate the fields contained therein. It can therefore be deduced that the sole reliance placed by the learned Labour Court in the Circular of BTPS dated **19.12.1984** was misplaced.

69. In view of the above discussion, this Court is of the considered opinion that the learned Labour Court has returned the abovementioned findings in clear ignorance of the facts of the case and the settled position of law. Being based on a manifest error apparent on the face of the record, the same are not legally sustainable.

ii. Justifiability of issuing direction for compassionate appointment in a blanket manner

70. Another infirmity that a perusal of the impugned award reveals is that the learned Labour Court has granted the relief of appointment on compassionate grounds in a blanket manner to the dependents of the employees who died in harness. The relevant portion of the impugned award is being produced below:

*“It is explicitly from the circulars referred to above that the facility has been extended to the dependents of the deceased who dies due to any reasons. The Hon'ble APEX Court in 2000 SCC page 767 has held in the matter of SAIL that the denial of compassionate appointment should be perceived as denial of social and economic justice. This direction has been given in the case of SAIL and BTPS is also such an undertaking as such the judgement of Hon'ble APEX Court referred to above is fully applicable to BTPS also. The Hon'ble APEX Court has held that this benefit should be provided as a measure of social and economic justice, as such, the dependents of the deceased employee should not be deprived of this benevolent provision of the APEX Court and **in every circumstance, one dependent of the deceased employee whether he dies while on duty or during service period should be given appointment on compassionate ground subject to his qualification and fitness.** The law cited by the management is not applicable in the present facts and circumstances of the case.*

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*“The General Manager BTPS, New Delhi is not justified in not extending the facility of appointment on compassionate grounds to the dependents of employees who dies during their period of service, taking into account the qualification and the fitness of the dependents to the particular post. **One dependent of every deceased workman is entitled for compassionate appointment subject to qualifications and fitness prescribed on that behalf and it is further directed that within one month of the publication of the award, each and every case should be considered and appointment should be given.**”*

(emphasis supplied)

71. It will be pertinent at this point to refer to the submissions made by the learned counsel for the Petitioner in this regard. The learned counsel argued before this Court that various considerations were required to be looked into for extending the facility of appointment on compassionate basis such as liability, death and other benefits received by the family of the deceased and the existing and potential earning capacity of the other

members of the family. She also argued that these appointments were not to be granted as a matter of course.

72.To appreciate the abovementioned submissions, it will be apposite to delve into the jurisprudence evolved on the issue of compassionate appointment.

73.The object and purpose of compassionate appointment have been succinctly captured by the Hon'ble Supreme Court in the celebrated decision in ***Umesh Kumar Nagpal v. State of Haryana & Ors.*** reported as ***1994 (4) SCC 138***. The relevant portion is being reproduced below:

*“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 dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

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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.*

(emphasis supplied)

74. Similar view has been echoed by another Bench of the Hon'ble Supreme Court in *Steel Authority of India Limited v.*

Madhusudan Das reported as (2008) 15 SCC 560. The Court has made the following observation:

“14. Appointment of a dependent of a deceased employee on compassionate ground is a matter involving policy decision. It may be a part of the service rules. In this case it would be a part of the settlement having the force of law. A Memorandum of Settlement entered into by and between the Management and the employees having regard to the provisions contained in Section 12(3) of the Industrial Disputes Act is binding both on the employer and the employee. In the event any party thereto commits a breach of any of the provisions thereof, ordinarily, an industrial dispute is to be raised. We would, however, assume that a writ petition therefor was maintainable. It is in that sense of the term, the learned Single Judge opined that the question as to whether there has been a breach of the Memorandum of Settlement on the part of the employer or not involves a disputed question of fact. The Division Bench of the High Court, however, proceeded on the premise that the employer was bound to provide appointment on compassionate grounds in all cases involving death of an employee. The Division Bench, in our opinion, was not correct in its view.

15. 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.”

(emphasis supplied)

75. Similarly, in *Pushpinder Kumar v. Directorate of Education* reported as (1998) 5 SCC 192, the Hon'ble Supreme Court has held:

“8. ...Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify/the main provision by taking away completely the right conferred by the main provision....”

(emphasis supplied)

76. It will also be pertinent at this point to take cognizance of the settled legal position that appointment on compassionate grounds is a policy matter and even if a Tribunal/Court is of the opinion that a person was qualified to be appointed to the post by way of compassionate appointment, the Court/Tribunal can only give direction to the appropriate authority to consider facts of the particular case in the light of the relevant rules and subject to availability of vacancy. This recital is further strengthened by the observations of the Hon'ble Supreme Court in *Life Insurance Corporation of India v. Asha Ramchandra Ambekar and Anr.* reported as (1994) 2 SCC 718, wherein the Hon'ble Supreme Court held that courts were not empowered to give direction for compassionate appointment and are only entitled to direct consideration for compassionate appointment. The relevant portion of the judgment reads as under:

“10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the

Administrative Tribunals cannot confer benediction impelled by sympathetic consideration.

11. The courts should endeavor to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have extracted above. The court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the circular dated January 20, 1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

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Thus, apart from the direction as to appointment on compassionate grounds being against statutory provisions, such direction does not take note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the second respondent. To straightaway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. ”

77. This decision was relied upon by a learned single judge of this Court in ***Municipal Corporation of Delhi v. Bhorilal & Anr.*** reported as ***1999 (50) DRJ 712***. The relevant portion of the judgment is being reproduced below:

“As noticed above, Industrial Tribunal has merely stated that the management has not communicated any reasons relating to the result of application of Shri Bhorilal for

*compassionate appointment. Admittedly, even Tribunal has not itself gone into the question about the entitlement of Shri Bhorilal to get the appointment on compassionate grounds having regards to the considerations stated in the Office Memorandum dated 30.6.87. There is no discussion in the impugned Award about the income of the family/earning members, assets and liabilities left by the deceased, whether earning member was residing, what were the terminal benefit paid to the deceased etc. In the case of **Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs) (Supra)** as already pointed out above, Hon'ble Supreme Court held that High Court should not have directed the appointment itself and it could only give directions to consider the claim of the applicant. In the same judgment Hon'ble Supreme Court reversed the direction of the High Court also on the ground that High Court had not examined whether the pre-conditions for compassionate appointment were satisfied and, therefore, High Court should have merely directed the employer to consider the claim of the candidate and should not have straight away directed the Life Insurance Corporation to give him compassionate appointment. Accordingly, it would have been appropriate, if the direction was confined to the consideration of the application of Shri Bhorilal by MCD. When the Tribunal has not acted in accordance with law and the directions are against well settled laid down in various judgments quoted above, this court can interfere in exercise of its power under Article 226 of the Constitution of India."*

78. Having held thus, the learned judge set aside the impugned award and issued a direction to the Petitioner to consider the application of Shri Bhorilal for compassionate appointment after taking into consideration all relevant factors.

79. Similar view has been echoed by this Court in **MCD v Jai Singh** reported as **2007 SCC OnLine Del 793**, which reads as follows:

"11. Ordinarily, if the Tribunal finds that a person is qualified to be appointed to a post on compassionate grounds, the Tribunal is expected to give directions to the management to consider/reconsider the case of an

applicant in the context of the relevant rules, regulations, guidelines, administrative instructions and orders in this regard, which is of course, subject to availability of the post. However, a Tribunal does not have the power to direct appointment of any person to a particular post or direct the management to create a post and then appoint a person to such a post.”

80. Moreover, it will be pertinent to note that all the arrangements between the management and the workmen as highlighted above provide for compassionate appointment subject to the “availability of vacancies.” The learned Labour Court, while giving the relief to the dependents of the workmen, has proceeded in ignorance of the aforesaid clause. This is contrary to the established practice in the field of compassionate appointment as highlighted in the case of ***Veer Mohammed v. Municipal Corporation of Delhi*** reported as ***2001 SCC OnLine Del 1324*** in the following terms:

“11. A compassionate appointment would depend upon the existence of vacancies available at the relevant time. It is well-settled principle that the appointment on compassionate ground is made only by way of an exception to the constitutional mandate contained in Art. 16(2) of the Constitution of India and it cannot be claimed as a matter of right. No individual has a right to claim that he be appointed to a particular post. ”

(emphasis supplied)

81. The position of law as emanating from the above discussion is that the scheme of compassionate appointment is an exception to the general rule of appointment and has to be applied cautiously. It is settled law that compassionate appointment can be granted only within certain parameters as laid down in several judgments by the Supreme Court as also this Court. The appointment of

compassionate grounds cannot be claimed as a matter of right. Nor can such appointments be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee.

82. Upon perusing the jurisprudence evolved by the Hon'ble Supreme Court on this issue, this Court finds itself in agreement with the submissions made by the learned counsel. Compassionate appointment is an exception to the rule of appointments based on merit. It would not be logical to assume that the same may be taken to be a right vested in the dependents of the deceased. However, it transpires from a reading of the impugned award that the learned Labour Court has elevated an exception to the status of a rule and held that "*in every circumstance, one dependent of the deceased employee whether he dies while on duty or during service period should be given appointment on compassionate ground subject to his qualification and fitness.*" This, in the considered opinion of this Court, goes against the grain of the legal position on this subject-matter and therefore tends towards being a patent error in the impugned award.

83. It will not be out of place here to mention that the learned Labour Court has placed its reliance on the judgment in **Balbir Kaur v. Steel Authority of India Ltd.** reported as **AIR 2000 SC 493**. This Court has gone through the aforesaid decision and is of the considered opinion that this decision does not support the case of Respondent No.1/union. It is pertinent to note that the clause

pertaining to compassionate appointment in the aforesaid decision offered it in absolute and unqualified terms. In the case at hand, compassionate appointment has been made subject to qualifications and vacancies. The observations made in the above judgment pertaining to social and economic justice have, in the considered opinion of this Court, been misinterpreted to the extent of distortion by the learned Labour Court. It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an order to that effect despite the fact that the conditions precedent therefore, have not been satisfied. The learned Labour Court, thus, erred in placing reliance on *Balbir Kaur (supra)* and granting the aforementioned relief to the Respondent.

CONCLUSION

84. In view of the legal position on this issue, it cannot be disputed that re-appreciation of the findings of facts arrived at by the learned Labour Court is not permissible in judicial review in exercise of powers under Article 226 of the Constitution. However, if these findings are perverse and on palpably wrong interpretation of the evidence on record, interference can be called for. From a reading of the impugned award, it is clear that the learned Labour Court has not perused the settlements operating in the field which regulated the subject-matter of compassionate appointment and has granted the relief to the dependents of the deceased workmen in absolute terms. The learned Labour Court has therefore proceeded with the reference

in disregard of the settled position of law as emanating from the above discussion. This is the basic and fundamental flaw in the impugned award and goes to the root of the matter. This Court is of the considered opinion that the impugned award is perverse, being contrary to the settled position of law. The learned Labour Court could not have directed for the appointment of the dependents of each and every employee of BTPS who died in harness. The learned Labour Court could at the most give direction to the management of BTPS to consider the individual applications of dependents on the basis of aforementioned considerations and could not give a mandate directing the petitioner to give appointment to the dependents. Such a direction given by the learned Labour Court is a clear usurpation of power of the management and tinkers with the administrative policy of the Petitioner.

85. In the light of the discussion herein above, this Court is of the considered opinion that the impugned Award suffers from the infirmities as highlighted in the above paragraphs. This makes for a sufficient ground to warrant interference in the exercise of writ jurisdiction.

86. Accordingly, the impugned award is set aside and the present Writ Petition is allowed along with accompanying applications. There shall be no order as to costs.

GAURANG KANTH, J.

NOVEMBER 23, 2022

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