

14 08.02.23

Ct. No. 04

Akd

WP.CT. 123 of 2022

Meherunechha Bibi & Anr.

Vs.

The Union of India & Ors.

**Mr. Malay Das,
Mr. M. A. Sardar,
Mr. S. Haque.**

... for the petitioners.

**Mr. D. N. Ray,
Ms. Indrani Chakraborty.**

... for the Union of India.

The only point involved in the instant writ petition is whether the Rule/Scheme prevalent at the time of death of the Government employee shall be a guiding tool for an application filed by the dependant of the deceased Government employee seeking compassionate appointment or the new modified Rule in vogue at the time of making an application or consideration of the application by the competent authority.

Admittedly the Government employee expired on 29th January, 2019 while serving in the Postal Department of Government of India. Subsequently an application was taken out within a period of one month by the widow of the Government employee which was not in prescribed form, but subsequently in a prescribed form seeking appointment of the son of the deceased Government employee and several requisitions were made by the Department, which runs more than a decade.

Ultimately the writ petitioner was constrained to approach the Tribunal by filing an application being OA 1561 of 2016, which was disposed of directing the authorities to take a decision within the time frame. Even thereafter the authority consumed substantial

period in arriving at the final decision and ultimately passed an order on 24th May, 2022, which according to the petitioner, was cryptic and actuated with malice in securing the rejection thereof. The said order was again challenged before the Tribunal in a tribunal application, which has been disposed of by the impugned order.

The Tribunal accepted the contentions of the Department that the modified scheme contained exhaustive provisions relating to awarding the points for the purpose of adjudging the merit and entitlement for compassionate appointment and held that the writ petitioner did not acquire such point and, therefore, no interference with the decision of the authority is warranted.

As indicated in the opening paragraph of the instant order, the point, which fell for consideration, is whether the Scheme/Rule prevalent at the time of death of the Government employee should be the relevant factor or the modified/new scheme subsequently promulgated and in vogue at the time of consideration of the said application should be the applicable provision. There has been a divergent views on the above aspect, which has been noticed by the Bench of the Supreme Court in a recent decision delivered in case of *Secretary to Govt. Department of Education (Primary) and Others vs. Bheemesh Alias Bheemappa* reported in (2021) SCC Online SC 1264.

The Apex Court after taking into consideration the conflicting views operating in the field held that the safest course which the law permits to be adopted is the scheme which was prevalent at the time of the date of death. The Apex Court further held that the date of death being fixed factor and the other factors namely, consideration of the application and filing of

the application are the variable cannot determine the applicability of the Scheme/Rules for consideration of the application for compassionate appointment. The enlightening observations of the Apex Court in paragraph 19 is quoted hereunder:

*“The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variable such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. **There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor.** Let us take for instance a hypothetical case where 2 Government servants died in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the*

*same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. **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.”*

In view of the law enunciated in the above Report it is manifest that the Rule/Scheme, which was prevalent at the time of death, shall apply to an application seeking compassionate appointment and not the Rule in vogue at the time of consideration of the said application.

In view of the law declared by the Supreme Court, the decision of the authority as well as the Tribunal cannot be sustained.

The impugned order is thus set aside; as a consequence whereof the order of the authority assailed in the tribunal application is also set aside.

The respondent no. 3 is directed to consider the application filed by the writ petitioner seeking compassionate appointment afresh on the basis of the Scheme/Rules prevalent at the time of death of the

Government employee and not the new/modified Schemes subsequently came into force.

The entire exercise shall be completed within three weeks from the date of the communication of this order.

The writ petition is thus allowed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)