

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATESIDE

W.P.A.13605 of 2016

GRSE Limited Workmen's Union & Ors.
Versus
Garden Reach Shipbuilders & Engineers Limited & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Advocate
Mr. Nilay Sengupta, Advocate
Mr. Sujit Banerjee, Advocate

For the Respondent
Nos. 1 & 2 : Mr. Joydip Kar, Sr. Advocate
Mr. Ranajay De, Sr. Advocate
Mr. Basabjit Banerjee, Advocate
Mr. Adityajit Abel Bose, Advocate

For the Respondent
No. 3 : Mr. Nandlal Singhania, Advocate
Mr. Subrata Santra, Advocate

Hearing concluded on : 26th June, 2025

Judgment On : 12th August, 2025

Saugata Bhattacharyya, J.:

1. In terms of the order dated 25th February, 2025 passed by the Hon'ble Supreme Court in Civil Appeal No. 3243 of 2025 (Garden Reach Shipbuilders and Engineers Limited vs. GRSE Limited Workmen's Union and Ors.) Hon'ble Chief Justice of Calcutta High Court vide order dated 20th March, 2025 directed the matter to be placed before me for deciding the writ petition being WPA 13605 of 2016 (GRSE Limited Workmen's Union and Ors. vs. Garden Reach Shipbuilders & Engineers Limited & Ors.). In terms of the order dated 25th February, 2025, Hon'ble Supreme Court requested the Hon'ble Chief Justice of High Court at Calcutta to

assign the writ petition to an appropriate bench for its consideration and disposal at an early date, preferably within six months from the date of passing order by the Hon'ble Supreme Court. Hence on revival of writ petition being WPA 13605 of 2016 and after assigning the matter to me same has been heard at length in presence of learned advocates representing the parties on several dates.

2. There are 51 petitioners seeking appointment under death in harness category due to demise of Group-IV employees working in Garden Reach Shipbuilders and Engineers Limited (for short 'GRSE'). At present 49 petitioners are pursuing remedies in search of getting employment under death in harness category.
3. Mr. Soumya Majumder, learned senior advocate representing petitioners submits that there were three Schemes governing employment under death in harness category in GRSE which require consideration of this court while determining right of petitioners to be considered as eligible candidates to be appointed being dependent family members of deceased employees. First scheme for appointment under death in harness category is dated 11th January, 1997 which was framed based on an understanding reached in between GRSE Limited and Workmen's Union wherein it was provided only dependents' sons/daughters or widow could be provided compassionate appointment. In the said scheme dated 11th January, 1997 age, educational qualification and financial condition of the family of the deceased employee were delineated as requisite criteria for giving appointment on compassionate ground.

Requisite financial condition for such appointment was absence of earning member in the family of the deceased to support the family. As per the said scheme a candidate if fulfilled criteria was required to undergo training and on successful completion of training employment could be provided.

4. Another scheme was framed in 2006 for appointment under death in harness category based on minutes of meeting held on 24th March, 2006 and 11th May, 2006 between the Management and GRSE Limited Workmen's Union wherein it was also decided that Company would commence recruitment under the category of Operatives (skilled and unskilled) to fill up existing vacancies in certain phases and such recruitment would also include eligible candidates under death in harness category. In the said scheme also more or less similar criteria as of previous scheme of 1997 were laid down relating to age, qualification to become eligible for appointment under death in harness category. In 2006 Scheme it was also provided that only one dependent son/daughter or widow would be eligible for recruitment under death in harness category. Financial condition was to be determined based on absence/presence of earning member in the family of the deceased employee to support the family. Thereafter, another scheme was framed dated 27th August, 2013 for appointment under death in harness category wherein it was provided if family is indigent and deserves immediate assistance for relief from financial destitution after the death of employee eligible dependent family member can be appointed under such scheme. Who are dependent family members for getting the benefit of scheme of 2013 was

provided in the said scheme. What were the requirements which were to be exempted in case of appointment under death in harness category were also provided in the said scheme and there was provision to relax upper age limit if same was found to be necessary. It was specifically provided in clause B(a) under the heading Relaxation that eligibility in terms of age shall be determined with reference to the date of application and not the date of appointment. Under clause 7(b) it was also provided that compassionate appointment can be made up to 5% of vacancies falling under direct recruitment quota in any Group-C and Group-D post.

5. Events which took place in between 2006 Scheme and 2013 Scheme relating to appointment on compassionate ground require consideration of this court in order to put a quietus on the issue of claim of petitioners for appointment on compassionate ground. It was pointed out on behalf of petitioners in reference to minutes of 319th meeting of the Board of Directors of GRSE held on 31st July, 2014 that as per paragraph 8 of minutes of meeting signed on 11th March, 2006 between GRSE and Union a panel of dependents under death in harness category was frozen on 31st March, 2006 in consultation with the Unions. Said finalized panel of dependents was duly signed and was handed over to the Union. Such panel comprised of 279 names. Advertisements were also issued for casual labourers in four phases and total 213 casual labourers were appointed which included 170 candidates under death in harness category, names of whom featured in the frozen list of 279 candidates dated 31st March, 2006. These candidates as per frozen list were considered for appointment under death in harness category under four

phases based on advertisements in the employment news dated 24th – 30th June, 2006, 28th – 3rd November, 2006, 10th – 16th March, 2007 and 8th – 14th December, 2007. Total 170 candidates were appointed under death in harness category against three phases in terms of the first three aforesaid advertisements published in employment news when 213 candidates were appointed out of which 43 did not come under death in harness category. Appointments under death in harness category in fourth phase was kept in abeyance pending enquiry ordered by Ministry of Defence (MoD) on the advice of Central Vigilance Commission (CVC) to that extent notice dated 9th March, 2009 was issued by GRSE. Present petitioners were expecting appointments under fourth phase being enlisted candidates in panel which was frozen on 31st March, 2006.

Details of such appointments are given below :

Phase	Date of Adv. in Empl. News	Vacancy Advertised	Dependents of DIH appointed	Non-DIH appointed	Total appointed
1 st	24-30/6/06	75	62	13	75
2 nd	28-3/11/06	56	44	10	54
3 th	10-16/3/07	95	64	20	84
4 th	8-14/12/07	105			
Total		331	170	43	213

6. Framing of 2013 Scheme followed as per direction of MoD following Department of Personal and Training (DoPT) Guidelines and Goa

Shipyard Limited (GSL) Scheme which received approval of Board of Directors in its meeting held on 24th August, 2013.

7. A writ petition being WPA 19565 of 2009 (Goutam Samanta & Ors. - Vs- Garden Reach Shipbuilders & Engineers Limited and Ors.) was filed by the candidates whose appointments under death in harness category were held up in fourth phase though their names featured in the frozen panel dated 31st March, 2006. While disposing of the said writ petition vide judgment dated 13th December, 2011 it was observed and directed by a coordinate bench that the consideration of appointments of the petitioners should not be kept in limbo ad infinitum. It was further observed that the procedure which was resorted to for recruitment of the petitioners in that writ petition through advertisement required logical conclusion. Court refused to grant further time to the concerned officials to frame rules and directed the authorities to start the process of consideration of the case of petitioners for their recruitment under death in harness category subject to eligibility and other requirements being fulfilled. Taking note of the allegations made by CVC that they had received complaints regarding irregularities court directed that when the cases of the petitioners to be considered a senior officer of CVC must be present to oversee each and every case individually. It was finally directed that subject to the satisfaction recorded in writing by both the officers of GRSE and senior officer of CVC, the respondent authority shall conclude the matter in accordance with law within a period of six months from the date of receipt of the copy of the said order.

8. Against the judgment dated 13th December, 2011 an intra-court appeal being MAT 1362 of 2012 was preferred by CVC which was dismissed vide order dated 13th March, 2013 by the Hon'ble Division Bench. In the said order dated 13th March, 2013 the Hon'ble Division Bench recorded that GRSE was going to complete the process of consideration within six months. It was also recorded in the said order that the learned advocates appearing for the appellants as well as petitioners/respondent nos. 1 to 153 in the appeal agreed to the submissions made on behalf of GRSE. Based on consensus arrived at by the learned advocates appearing for the parties Division Bench directed the respondents GRSE to complete the process of consideration of the case of the petitioners in the connected writ petition with regard to their recruitment in accordance with law within a period of six months from date. It was recorded as agreed by the learned advocates representing the parties that an officer of CVC would remain present at the process of consideration of the case of petitioners. In the event officer of CVC fails to remain present authorities would be at liberty to make periodical review of all the process of consideration and shall pass appropriate orders.
9. It was argued on behalf of the petitioners that by making averments in the affidavit-in-opposition to the writ petition being WPA 19565 of 2009 effort was made by GRSE to defend the selection made in favour of the petitioners by preparing a panel which was frozen on 31st March, 2006. In paragraph 18 of the said affidavit it was averred that there was no scope for misuse of discretion and favoritism. In paragraph 19 statements were made that total number of 170 cases from death in

harness category were listed out of which 167 candidates were offered appointments and joined company and balance three were due to be appointed. In fourth phase it was stated that due advertisement was made and selection was finalized pending enquiry by the authorities concerned including MoD and CVC. In paragraph 23 it was again stated that recruitment was sought to be effected by virtue of minutes of the meeting and there was no scope for corruption in such recruitment nor there is any underhand deal between Union Leaders and Human Resources officers. Whole recruitment was an open one arising out of minutes of meeting with the recognized union and there was no scope for any favoritism in any manner whatsoever. Specific averments were made in paragraph 29 of the said affidavit-in-opposition to the extent that there was no scope for any further recruitment since clause 8 of the minutes of the meeting dated 11th May, 2006 provides that the panel of dependents under the death in harness category shall stand frozen after 31st March, 2006.

10. On behalf of petitioners attention of this court has been drawn to three letters issued by GRSE dated 6th January, 2012, 14th February, 2012 and 21st June, 2012 post coordinate bench order dated 13th December, 2011 in the writ petition being WPA 19565 of 2009. In the letter dated 6th January, 2012 in clause 4 it was recorded that DoPT Guidelines on compassionate appointment are not applicable to CPSUs and Department of Public Enterprise has not issued any guidelines on the subject for compliance by CPSUs. Such stand was taken on behalf of GRSE in reference to letter dated 24th October, 2011 of Department of

Public Enterprises. In the letter dated 14th February, 2012 it was stated in clause 1 that GRSE was required to commence the recruitment process under the notification issued in employment news dated 8th to 14th December, 2007 but presence of senior officer from CVC was felt necessary to oversee each and every case of the petitioners individually and record their satisfaction in writing to conclude the matter. In 21st June, 2012 letter it was issued on behalf of GRSE intimating to the General Secretary, GRSE Limited Workmen's Union that GRSE was taking necessary action to finalize the process of phase four recruitment considering the cases of the petitioners. However it was also stated therein that action towards compliance of the High Court order can only be taken either with the involvement of CVC or modification to the order of the High Court thereby exempting CVC from recruitment process.

11. It was also pointed out in reference to the minutes of meeting of the Board of Directors dated 31st July, 2014 that a preliminary screening of the applications of petitioners was done as per the eligibility criteria provided in scheme of appointment under death in harness category and was forwarded to CVC for vetting. However CVC informed that vetting by them was not required and same may be done by GRSE themselves. In paragraph 37 of the minutes of said meeting dated 31st July, 2014 it was disclosed that the issue was discussed in GRSE Board meetings on 2nd January, 2014 and 29th January, 2014 and after deliberation Board in principle agreed to recommend to MoD for one time exemption to the existing 5% rule of compassionate employment to consider recruitment of remaining 109 dependents of GRSE employees from the frozen list of 31st

March, 2006 as a special case. It is stated therein after submissions of authenticated list of 270 candidates to the Board 170 were already appointed. In support of the case made out in the writ petition attention has been drawn to paragraph 6 of the application being CAN 4883 of 2012 filed by GRSE in connection with the writ petition being WPA 19565 of 2009 seeking extension of time which would enable the GRSE to complete the process. In the said paragraph it was averred that as per advertisement in employment news dated 8th – 14th December, 2007 applications received were scrutinized by the management and candidates were shortlisted. After obtaining approval shortlisted candidates were called for literacy test/practical test followed by interview. The test and interview completed in October, 2008.

12. It was argued on behalf of petitioners that the Scheme of 2006 was comprehensive scheme and same is not merely minutes of meeting whereas 2013 Scheme is a supplementary scheme which depends upon the Scheme of 2006. Requisite age and qualification in determining eligibility of a candidate to be appointed under death in harness category were not specifically defined in 2013 Scheme and to that extent 2013 Scheme rests on 2006 Scheme wherein there were specific stipulations relating to requisite age and qualification. Furthermore, financial hardship of the family of the deceased employee in terms of 2006 Scheme was required to be assessed on the factor whether there was any earning member in the family or not whereas in 2013 Scheme expression used is 'indigent' which has wider connotations. According to petitioners, 2006

Scheme is stricter than 2013 Scheme in the matter of assessing financial hardship of family of deceased employee.

13. Another limb of submission advanced on behalf of the petitioners was framing of 2013 Scheme after commencement of recruitment process under death in harness category and panel containing names of petitioners was frozen on 31st March, 2006. Therefore said Scheme of 2013 is not applicable while deciding eligibility of the petitioners to be appointed under death in harness category. Reliance is also placed on paragraphs 41 and 42 of meeting dated 31st July, 2014 wherefrom it appears that during deliberation it was stated that MoD may be requested for one time dispensation of the existing 5% rule of compassionate appointment for appointment of remaining candidates under death in harness category with the recommendation of the Board of Directors. It was further stated that the list be scrutinized further and only the genuine candidates be considered in accordance with law and death in harness policy of the company. It was mentioned in the meeting that genuineness of the candidates may be investigated by CVO, GRSE. After further deliberation by Board it was decided to form a Working Level Committee consisting of members from Management and Trade Unions having minimum 20% membership to scrutinize the applications and submit its report to the Board for consideration.
14. An order was passed on 14th May, 2024 in an intra-court appeal being MAT 850 of 2022 by the Hon'ble Division Bench directing respondents to ascertain financial condition of the appellants being the present petitioners following the decision taken earlier in this regard. It is

submitted that in terms of the said order dated 14th May, 2024 which was corrected subsequently vide order dated 20th May, 2024 no exercise was carried out by the respondents.

15. On behalf of petitioners following judgments are relied upon :

- i. **(1969) 3 SCC 84 (Chandra Bhavan Boarding & Lodging Bangalore Vs.State of Mysore & Anr.)**
- ii. **(1992) 1 SCC 290 (Workmen represented by Secretary Vs. Reptakos Brett. & Co. Ltd. and another)**
- iii. **(2020) 7 SCC 617 (N. C. Santosh Vs. State of Karnataka)**
- iv. **(2025) 2 SCC 1 (Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.)**

16. On the contrary, Mr. Joydip Kar, learned senior advocate representing GRSE at the outset defended 1997 Scheme which was framed for providing appointment under death in harness category. Pointing out relevant provisions of 1997 Scheme it was submitted that appointment under death in harness category as per the said scheme was provided on successful completion of training and said employment was made after approval of the Board. In reference to a document dated 31st January, 1997 it was contended that job would be provided to one of the eligible members of family of deceased employee subject to availability of vacancy and satisfactory proof of destitution. Reliance was also placed on order dated 30th July, 1998 passed by a coordinate bench on a writ petition being WPA 10199 of 1998 wherein it was observed that employment on compassionate ground was offered initially on casual basis and subsequently on availability of vacancies substantive employment was

offered in terms of the relevant scheme. According to GRSE under skilled categories recruitment was carried out by inviting applications from GRSE passed out apprentices who satisfied requisite age and qualification. After conducting interview candidates were recruited for a period of two years and thereafter were offered substantive appointment. Under unskilled categories applications were invited from candidates who passed class-VIII and who fulfilled requisite criteria. Interview was conducted thereafter candidates were initially taken as casual labour for a period of three years and subsequently were offered permanent employment. It was submitted that while initiating process of recruiting under death in harness category in terms of 2006 Scheme aforesaid steps were not taken which vitiated the recruitment process.

17. In reference to relevant parts of affidavit-in-opposition used on behalf of Union to the writ petition being WPA 19565 of 2009 it was submitted that the Scheme of 1997 was signed by GRSE and Trade Union and same was enforceable since it had approval of the Board. It was stated in paragraph 9 of the said affidavit-in-opposition that 1997 Scheme was framed before detailed guidelines on compassionate appointment by the Government of India was promulgated vide Office Memorandum dated 9th October, 1998. In the affidavit 2006 Scheme was also criticized on the count that said scheme did not have approval of the Board making the same inoperative. Said Scheme of 2006 was framed in violation of Office Memorandum dated 9th October, 1998. Attention of this court was also drawn to one order dated 26th April, 2001 passed by a coordinate bench

on the writ petition being WPA 13992 of 1999 (Md. Kamal and Ors. -Vs- Garden Reach Shipbuilders and Engineers Limited) wherein it was directed that GRSE must consider the case of the petitioners in that writ petition when ban of employment would be lifted by the Board of Directors and when respondent authority would decide to fill up vacancy. It was also directed therein that respondent authority would not be entitled to appoint any person without first considering the case of the petitioners in that writ petition and other successful trainees under death in harness category. At the same time a letter dated 31st May, 2005 issued on behalf of GRSE to the General Secretary, GRSE Limited Workmen Union was shown to point out that in 2005 a ban was continuing in recruitment of skilled and unskilled Group-D employees. According to GRSE considering the situation which was prevailing at the material point of time in 2005 lifting of ban on appointment could make it possible to recruit employees under death in harness category after formulation of viable policy.

18. It is submitted on behalf of GRSE that appointments given under death in harness category in terms of Scheme dated 11th May, 2006 (2006 Scheme) and first category of such appointees was in terms of the order dated 26th April, 2001 passed by a coordinate bench in writ petition being WPA 13992 of 1999 wherein coordinate bench observed after lifting of ban petitioners in that writ petition would be appointed without considering right of other candidates. While recruitment process was continuing in terms of 2006 Scheme under death in harness category a letter was issued dated 6th November, 2008 by the concerned authority of

Vigilance Commission advising Department of Defence Production and CVO to conduct enquiry into ongoing recruitment thereby suspending alleged irregular/motivated appointment till proper recruitment rules/procedures are framed. An order was subsequently issued dated 25th February, 2009 on behalf of Central Vigilance Commission (CVC) wherein it was decided to conduct enquiry by Board of Enquiry (BoE) and CVO, GRSE was requested to extend all facilities and cooperation to BoE while conducting such enquiry.

19. According to GRSE four advertisements were published for four phases of recruitment under death in harness appointment in terms of 2006 Scheme. It was contended that after third phase of recruitment in terms of 2006 Scheme, fourth phase of recruitment could not be given effect to since such recruitment procedure was not in consonance with Office Memorandum dated 9th October, 1998 of the Government of India. As per said Office Memorandum compassionate appointment can be made up to maximum 5% of vacancies falling under direct recruitment quota in any Group i.e. 'C' and 'D'. Compassionate appointment could only be made against regular vacancy within the limit of 5%. Upper age limit could be relaxed wherever found to be necessary but educational qualification prescribed in the relevant rule was inflexible. Immediacy in providing financial relief is object of compassionate appointment. Application forms of three dependent candidates of the deceased GRSE employee were relied upon in order to substantiate that these three candidates namely, Md. Samiullah, Smt. Shrabani Manna and Kanhai did not have requisite educational qualification to be considered for

appointment under death in harness category. However it was not shown during course of arguments that these three candidates are petitioners before this court in the present writ petition.

20. Proceedings were initiated against some of the officials of GRSE and by Office Memorandum, CVC on consideration of materials agreed with the Ministry of Defence and intimated "Government Displeasure" to Rear Admiral (Retd.) K.C. Sekhar, the then Chairman-cum-Managing Director of GRSE and major penalty proceeding was initiated against three other officers. However on perusal of the relevant documents on record it transpires that Sri H.K. Verma was intimated "Government Displeasure" who was Ex-Director (Personnel) and Mr. K.P. Chatteraj as well as Mr. B. Urma, G.M. (H.R.) and AGM (HR&IR) respectively were imposed punishment of reduction to one stage lower in the time scale of pay (i.e. one increment down) for six months. Contention of GRSE was responsible officials for initiating recruitment process in order to recruit candidates under death in harness category were found fault with after taking action.

21. Reliance is also placed on minutes of meeting dated 25th November, 2009 where officers representing GRSE, Ministry of Defence and CVC attended. It was recorded in the minutes of said meeting that no recruitment rules for unskilled workers in GRSE was existing and without framing rules and procedures recruitments were made in GRSE. It was decided to frame recruitment rules for all categories at the earliest following guidelines/instructions issued by DOPT and approval was to be

obtained from competent authority. Ultimately it was decided in the said meeting that no further recruitment should take place unless proper guidelines are formally approved. According to GRSE, 2013 Scheme was framed as per such decision. However it is found from a letter dated 16th April, 2010 issued on behalf of Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training that the Scheme for compassionate appointment issued vide Office Memorandum dated 9th October, 1998 as amended is applicable to Central Government employees and is not applicable to an Autonomous Body. Since GRSE is an Autonomous Body needs to be governed by its own service rules. Two letters dated 11th February, 2011 and 4th February, 2012 issued on behalf of Government of India, Ministry of Defence, Department of Defence Production were shown highlighting framing of Scheme on compassionate appointment for GRSE. In letter dated 4th February, 2012 it was also clarified that finalization of recruitment rules for Operatives (Group – ‘C’ and ‘D’) and office assistance is within the powers vested in GRSE and approval of Ministry of Defence was not required. Department felt need of immediate promulgation of scheme for compassionate appointment. Accordingly new scheme was framed dated 27th August, 2013 by GRSE.

22. Much reliance was placed on letter dated 24th August, 2004 issued on behalf of Government of India, Ministry of Defence, Department of Defence Production whereby approval was accorded to the proposed delegation of powers to the Board of Directors and Chairman-cum-Managing Director of GRSE. As per said letter dated 24th August, 2004

reservation of powers for the Board of Directors was according to Schedule-I whereas delegation of powers to the Chairman and Managing Director was made as per Schedule-III. Schedule-I contains powers reserved for Board of Directors which includes Personnel Policies whereas powers delineated under Schedule-III which were reserved for Chairman-cum-Managing Director includes powers to appoint and employ assistants, officers, servants, labourers, agents, brokers, contractors and other workers for any of the purposes stated in the relevant schedule. Taking cue from the said delegation of power as approved vide letter dated 24th August, 2004 it was contended on behalf of GRSE that Scheme of 2006 was not approved by Board therefore same was nullity. In terms of Schedule-I of delegation of powers since Personnel Policies remained in the hand of Board according to GRSE Scheme of 2006 for recruitment under death in harness category was required to be approved by the Board and in absence of same such scheme cannot be given effect to.

23. It was further contended that in the writ petition being WPA 13605 of 2016 no prayer was made seeking implementation of 2006 Scheme for appointment under death in harness category. An interim order was passed on this writ petition by a coordinate bench on 1st August, 2016 restraining the respondents from filling up 49 posts of unskilled Operative (Casual Labour) against which petitioners had offered their candidatures till 30th November, 2016. It was also submitted that for violation of the order passed by the Hon'ble Division Bench dated 13th March, 2013 passed in intra-court appeal being MAT 1362 of 2012 one

contempt application was filed which was disposed of by the Division Bench vide order dated 11th February, 2016 wherein it was held placing reliance on status report of the committee which was constituted on 2nd August, 2014 that there was no contempt on the part of the respondents and contempt proceeding was dropped. Subsequently, GRSE had to make an exercise to ascertain financial condition of the petitioners herein in terms of the order dated 14th May, 2024 passed in an intra-court appeal being MAT 850 of 2022 preferred by the present petitioners. In this regard a document dated 28th June, 2024 was placed before this court wherefrom it appears a committee comprising three officers of GRSE was constituted in terms of the order passed by the Division Bench on 14th May, 2024 to ascertain financial condition of the petitioners herein and such committee submitted a report which was signed by three members on 13th July, 2024. It was submitted that 30 petitioners out of 49 submitted documents in support of their financial condition and on scrutiny of same conclusion was drawn at the end of said report. It was contended that while ascertaining financial condition of the petitioners in terms of the order of the Hon'ble Division Bench passed in MAT 850 of 2022 door to door survey was not made.

24. Reliance is placed on behalf of GRSE on following judgments :

- i. **(2011) 7 SCC 397 (Union of India & Anr. Vs. Arulmozhi Iniarasu & Ors).**
- ii. **(2021) 5 SCC 638 (Rachna & Ors. Vs. Union of India & Anr.)**
- iii. **(2023) 14 SCC 376 (State of Madhya Pradesh through Principal Secretary & Ors. Vs. Seema Sharma)**

- iv. **(2025) 2 SCC 1 (Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.)**
- v. **2024 SCC OnLine SC 3292 (Tinku Vs. State of Haryana & Ors.)**
- vi. **(2020) 7 SCC 617 (N.C. Santosh Vs. State of Karnataka & Ors.)**
- vii. **2023 SCC OnLine SC 219 (State of West Bengal Vs. Debabrata Tiwari & Ors.)**
- viii. **2025 SCC OnLine SC 290 (Canara Bank Vs. Ajithkumar G.K.)**

25. On behalf of Central Vigilance Commission, Mr. Nandlal Singhania, learned advocate submitted based on Section 15 of the Central Vigilance Commission Act, 2003 and defended the stand taken by the Central Vigilance Commission by raising objection against the method of selection which was carried out by GRSE in terms of 2006 Scheme for appointment under death in harness category.

26. While summing up detailed arguments advanced on behalf of petitioners, GRSE and Central Vigilance Commission court in pursuit of finding answer whether petitioners to be further considered for appointment under death in harness category issue of applicability of Scheme of 2006 and Scheme of 2013 would ultimately tilt the fulcrum either towards petitioners or the respondents when very basis of claiming appointment on compassionate ground according to petitioners rests on 2006 Scheme qua frozen panel of 31st March, 2006 wherein names of the petitioners featured, bone of contention of GRSE is against said 2006 Scheme which according to GRSE is a nullity. It was submitted on behalf

of GRSE sans approval of Board of Directors Scheme of 2006 lost its credence which should not have been applied by the authorities of GRSE for appointing candidates under death in harness category. It was further contended that posts against which petitioners to be appointed has to be sanctioned and such appointment should not be beyond 5% of the existing approved vacancies as it has been provided in 2013 Scheme. Training was also considered to be one of the criteria for giving appointment under death in harness category which according to GRSE petitioners do not possess.

27. Requirement to grant approval to the Scheme of 2006 according to GRSE necessitated in terms of letter dated 24th August, 2004 of under Secretary to the Government of India whereby revision of delegation of powers was made and it was argued that Schedule-I of such powers postulates scheme of appointment under death in harness category requires approval by the Board of Directors.

28. In reference to the order dated 11th February, 2016 passed by the Hon'ble Division Bench in contempt proceeding report of a committee constituted on 2nd August, 2014 was taken into consideration and it was found that acts and actions of GRSE were not to be termed as willful deliberate violation as a result whereof said contempt proceeding was dropped. It was submitted that report of the said committee is not under challenge in this writ petition wherein it was found 109 listed candidates were not eligible to be appointed under death in harness category. Furthermore, it was submitted on behalf of GRSE that in connection with

fourth phase of selection process which was carried out in terms of 2006 Scheme, out of 49 petitioners 30 petitioners submitted income certificates in terms of order of the Hon'ble Division Bench dated 14th May, 2024 passed in an intra-court appeal being MAT 850 of 2022 and 19 yet to submit such certificates. A committee was formed vide order dated 28th June, 2024 to ascertain the financial condition of the petitioners based on materials submitted which submitted report signed by members of the committee on 13th July, 2024 along with a chart in tabular form containing names of those 30 candidates disclosing their details including income declaration made by them in 2014 and in 2024. According to GRSE such exercise made by the committee as reflected from the report signed on 13th July, 2024 does not support case of the petitioners.

29. Order passed by the Hon'ble Division Bench in MAT 850 of 2022 on 14th May, 2024 directed GRSE to ascertain financial condition of the petitioners herein following the decision taken earlier in this regard. Court finds substance in submission made on behalf of petitioners that exercise which was required to be carried out in terms of the order dated 14th May, 2024 is yet to be done. Report of the committee constituted vide order dated 28th June, 2024 issued by Director (Personnel) is devoid of findings whether financial condition of the petitioners (30) requires appointment under death in harness category either under 2006 Scheme or under 2013 Scheme. No door to door survey was made as same was carried out in 2006 in terms of 2006 Scheme to find out eligibility of the petitioners to be appointed under death in harness category which

resulted in incorporation of their names in the frozen panel of 31st March, 2006.

30. Much emphasis was laid on behalf of GRSE to question validity of their own Scheme of 2006 which according to GRSE sans approval of Board of Directors. But supplementary affidavit filed on behalf of GRSE in WPA 19565 of 2009 (Goutam Samanta & Ors. Vs. Garden Reach Shipbuilders & Engineers Limited & Ors.) reveals different situation. Paragraph 4 of said supplementary affidavit affirmed on 17th June, 2010 contains statements that there was no irregularity and corruption in the recruitment process carried out in terms of 2006 Scheme and there was total transparency in the acts and actions of the company. 2006 Scheme was also defended and it was averred therein that recruitment undertaken was against approved vacancies and such recruitment was approved by the Board of Directors in its 266th meeting dated 14th September, 2006. Averments made in paragraph 4 of the supplementary affidavit affirmed on 17th June, 2010 in WPA 19565 of 2009 negate submission of GRSE that exercise which was carried out for appointment under death in harness category under 2006 Scheme was without approval of the Board of Directors and there were no sanctioned vacancies.

31. Affidavit-in-opposition filed on behalf of GRSE to the writ petition being WPA 19565 of 2009 also buttressed the steps taken in terms of 2006 Scheme to recruit petitioners under death in harness category in fourth phase. It was averred in paragraph 19 that in connection with

fourth phase of recruitment due advertisement was made but selection could not be finalized pending enquiry by the authorities of Ministry of Defence and Central Vigilance Commission. In paragraph 24 it was averred that mode and manner of recruitment would show that there was no scope for irregularity or corruption. Said affidavit-in-opposition clearly justifies the steps taken by GRSE in recruiting candidates under death in harness category under fourth phase in terms of 2006 Scheme. In spite of completing preparation of select list wherein names of petitioners herein featured same could not be given effect to due to objection raised by CVC.

32. Withholding of recruitment of candidates in fourth phase of selection process in terms of 2006 Scheme triggered the writ petition being WPA 19565 of 2009 (Goutam Samanta & Ors. vs. Garden Reach Shipbuilders & Engineers Limited and Ors.) which was disposed of vide order dated 13th December, 2011 passed by a coordinate bench directing GRSE to start process of consideration of the case of petitioners for the recruitment subject to eligibility and other requirements being fulfilled by them. Taking note of the objections raised by CVC court directed at the time of consideration of the case of the petitioners by GRSE a senior officer of CVC must be present to oversee each and every case individually. On recording satisfaction in writing by the concerned officer of GRSE as well as by such senior officer of CVC respondents were directed to conclude the process in accordance with law within a period of six months. Judgment and order dated 13th December, 2011 of the coordinate bench was tested before the Hon'ble Division Bench in an

intra-court appeal being MAT 1362 of 2012 preferred by CVC and while disposing of said appeal Division Bench recorded the submissions of GRSE that the company was to complete process of consideration within a period of six months which was agreed by CVC being the appellant and the present petitioners being respondents. Recording consensus arrived at by learned advocates appearing on behalf of the parties Division Bench directed GRSE to complete the process of consideration of the petitioners for their recruitment in accordance with law within a period of six months. It was observed by the Hon'ble Division Bench in the order dated 13th March, 2013 as far as possible an officer of CVC would remain present while exercise to be carried out by GRSE as per direction of the court and in the event officer of CVC fails to remain present said authority would be at liberty to make periodical review of all the process of considerations and shall pass appropriate order. What is striking is when these two orders dated 13th December, 2011 passed by the coordinate bench and 13th March, 2013 passed by Hon'ble Division Bench, Scheme of 2013 did not see light of the day. 2013 Scheme was promulgated in August, 2013 whereas in both the aforesaid orders respective courts directed the GRSE to complete the process within stipulated time in accordance with law. In the backdrop of facts that petitioners were the empaneled candidates in the frozen list of 31st June, 2006 for being appointed under death in harness category and said list could not be given effect to in connection with fourth phase of recruitment process due to objection raised by CVC and taking note of the aforesaid orders passed by the coordinate bench on 13th December,

2011 and subsequently on 13th March, 2013 passed by the Hon'ble Division Bench right of the petitioners to be considered for appointment under death in harness category was crystalized in terms of 2006 Scheme when 2013 Scheme was not promulgated. Writ proceeding which was ultimately concluded by the order dated 13th March, 2013 passed by the Hon'ble Division Bench examined merit of the objections raised by CVC which halted fourth phase of recruitment process under 2006 Scheme but order dated 13th March, 2013 passed by the Hon'ble Division Bench only granted leave to the CVC to depute an officer to remain present at the time when steps were to be taken by GRSE to conclude the process and failure of such officer to remain present authorized CVC to make periodical review of all the process of consideration including passing of appropriate order.

33. Order passed by Division Bench in the contempt proceeding dated 11th February, 2016 may have exonerated respondent authorities from contempt but that does not absolve of GRSE in completing the exercise in terms of the order dated 13th March, 2013 as per 2006 Scheme passed by the Hon'ble Division Bench in MAT 1362 of 2012. This court is not oblivious of recording consensus arrived at by the parties, by the Hon'ble Division Bench in order dated 13th March, 2013 thereby directed GRSE to complete exercise and liberty was granted to CVC to participate in the said exercise of scrutinizing the eligibility of the petitioners to be appointed under death in harness category by deputing an officer or to make periodical review of consideration process.

34. A committee was constituted on 2nd August, 2014 which prepared a report as it was taken note of by the Hon'ble Division Bench in the order dated 11th February, 2016 passed in the contempt proceeding but such report was not prepared following 2006 Scheme. Subsequent exercise made by GRSE as it emanates from the report signed on 13th July, 2024 in terms of the order of the Hon'ble Division Bench dated 14th May, 2024 passed in MAT 850 of 2022 does not postulate a situation that taking note of 2006 Scheme steps were taken.
35. The ratio of **N.C. Santosh** (supra) was decided in the backdrop of facts of amending proviso to Rule 5 which stipulated that in case of minor dependent of the deceased government employee, he/she must apply within one year from the date of death of the government servant and he must have attained age of 18 years on the date of making application. Before amendment, minor dependent was entitled to apply till one year of attaining majority. Rule 5, as it originally stood, enabled a minor dependent to apply within one year after attaining majority; the rule making authority with the amendment effected from 1st April, 1999 stipulated an outer limit of one year from the date of death of the government servant for making application for compassionate appointment. Issue which was considered in **N.C. Santosh** (supra) in the context that dependents applied for appointment under death in harness category when amended provisions became operational requiring applications to be made within one year from the death on attaining majority. But the case at my hand is glaringly different as it is found that petitioners were already selected to be given appointment under death in

harness category in terms of 2006 Scheme in fourth phase but ultimately appointment could not be made due to objection raised by CVC. Therefore in the present case recruitment process was complete upto third phase, appointments were given, 170 candidates out of 213 were given appointment under death in harness category but the petitioners could not be appointed due to intervention of CVC. Whereas paragraph 10 of **N.C. Santosh** (supra) discloses facts where applications were made by the candidates on attaining majority when amended provisions became operational.

36. In **Canara Bank** (supra) in paragraph 22 it was observed that High Court rightly directed the appellant to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per previous scheme then in existence. It was the case of reconsideration of claim of the candidates in terms of a particular scheme for appointment under death in harness category but in the present case entitlement of the petitioners was decided leading to incorporation of their names in the frozen list dated 31st March, 2006. From the said frozen list 170 candidates were appointed under death in harness category excluding the petitioners who were similarly placed.

37. This court is not unmindful of pendency of the resolution on the issue whether rule relating to appointment under death in harness category which was in vogue at the time of date of death of employee will apply or the rule which was in existence at the time of consideration of applications seeking appointment under death in harness category

becomes applicable in consideration of reference made to the Larger Bench in **State of Bank of India and Ors. Vs. Sheo Shankar Tewari (2019) 5 SCC 600**. Such reference though still awaiting resolution after the reference was made in **Sheo Shankar Tewari** (supra) but in the order dated 25th February, 2025 passed by the Hon'ble Supreme Court in **Civil Appeal No. 3243 of 2025** arising out of **SLP (C) No. 28399/2024 (Garden Reach Shipbuilders and Engineers Limited Vs. GRSE Workmen's Union & Ors.)** it was observed in paragraph 4 that the Single Bench may not have been entirely right in delisting the writ petition on the ground stated in order dated 21st February, 2022 passed in the present writ petition being WPA 13605 of 2016 and ought to have proceeded with consideration of the writ petition finally, giving due regard to the law then prevailing.

38. In **Ajithkumar G.K.** (supra) in paragraph 47 Hon'ble Supreme Court observed that the court was not oblivious of the legal position that so long the decision that is doubted is overruled, it continues to remain binding. Therefore, this court finds placing reliance on observations made by the Hon'ble Supreme Court in paragraph 47 of **Ajithkumar G.K.** (supra) read with observations made in paragraph 4 of the order dated 25th February, 2025 passed in **Garden Reach Shipbuilders and Engineers Limited** (supra) ratio decided in **Canara Bank** (supra) is relevant while deciding the present case as it is alluded above the facts of the present case do not attract ratio of **N.C. Santosh** (supra).

39. On behalf of petitioners as well as GRSE reliance was placed on **Tej Prakash Pathak** (supra). Petitioners argued that 'rule of game' should not be changed in the midst of a recruitment process whereas placing reliance on paragraph 65.4 of **Tej Prakash Pathak** (supra) it was submitted on behalf of GRSE that recruitment body subject to extant rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided procedures so adopted is transparent, non-discretionary and non-arbitrary which has a rational nexus to the object sought to be achieved. Ratio of **Tej Prakash Pathak** (supra) primarily centered around recruitment process initiated by recruiting bodies for fresh candidates resorting to relevant recruitment rules and emphasis is laid to resort to transparent, fair, non-arbitrary process which would keep the recruitment method in tune with spirit of Article 16. Whereas appointment under death in harness category is an exception to the rule of recruitment which requires due observance while recruiting fresh candidates. Appointment under death in harness category requires observance of scheme of such appointment with an object to provide succour to the family of deceased employee due to sudden demise of bread earner. Therefore recruitment under death in harness category in terms of relevant scheme may not be equated with the recruitment process for appointment of fresh candidates. Generally as per scheme of recruitment under death in harness category candidates are required to comply with the provisions relating to age, educational qualification and whether family of the deceased suffers from 'financial hardship' as defined in the scheme. If there are promulgation of

different schemes at different point of time for recruitment under death in harness category, it requires consideration which of such schemes would apply in a particular case. Therefore ratio of **Tej Prakash Pathak** (supra) operates in different field of recruitment. However it needs to be observed herein borrowing inspiration from observations made by the Hon'ble Supreme Court in **Tej Prakash Pathak** (supra) even in case of recruitment under death in harness category there is requirement of strict observance of relevant scheme which would make the method of selection fair, non-arbitrary and non-discriminatory.

40. In **Arulmozhi Iniarasu** (supra) respondents were not extended benefit of age relaxation in consideration of rendering service as casual labourers since it was found that respondents were engaged as part time contingent casual labourers for doing all type of works as may be assigned to them. It was their part time engagement being need based for which they were to be paid on hourly basis but it was found that respondents were not recruited or ever discharged the duties of 'Sepoy' for which recruitment process was initiated. Based on such fact situation Hon'ble Supreme Court observed that discharging duty as casual labour does not confer legal right on them for seeking mandamus for relaxation of age limit. Facts of the present case is completely different where in spite of being selected to be given appointment from the frozen panel of 31st March, 2006 under death in harness category petitioners were denied appointment due to objection raised by CVC whereas similarly placed other candidates from the said panel in connection with first three phases of selection process, were given appointment.

41. Reliance was placed on **Rachna** (supra) as well as **Seema Sharma** (supra) in the context of challenging policy decision and to what extent such challenge can be entertained. In **Rachna** (supra) relevant rule was questioned relating to fixation of upper age limit for participating in Civil Service Examination. Thirty-two (32) years was found to be the upper age limit and having found that there is no discretion left open with the authority to grant any relaxation in upper age limit prescribed for the candidates appeared in the examination-2020 it was ultimately held that such relaxation was impermissible though on earlier occasions by way of policy decision relaxation of upper age limit was granted. In the said context it was observed that policy decision relating to relaxation of upper age limit can only be challenged or is open to be questioned for a very limited purpose if such policy is capricious, totally arbitrary or not informed of reasons. In **Seema Sharma** (supra) respondent prayed for UGC scale of pay as paid to the persons in the senior scale of librarian in colleges under the higher education department, as per relevant rules. The Hon'ble Supreme Court taking note of stand taken on behalf of State of Madhya Pradesh that UGC scale of pay had not been extended to the employees of the Ayurvedic colleges including the members of teaching staff and observed that fixation of scale of pay is a matter of policy, with which the court can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by same authority in the same manner, where the eligibility criteria is the same and duties are identical in every aspect. Therefore in **Rachna** (supra) as well as **Seema Sharma** (supra) Hon'ble Supreme Court enunciated

conditions where policy decision can be tested in the context of particular facts as such, these two decisions do not come in aid of respondents. Furthermore, the case at my hand is not concerning challenge laid to policy decision.

42. Reliance was placed on **Tinku** (supra) wherein it was observed by the Hon'ble Supreme Court that if some wrong benefit has been conferred or some benefit which is contrary to the scheme has been granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India. Such observation was made by the Hon'ble Supreme Court taking note of the facts that though the relevant rule relating to appointment on compassionate ground prescribes three years from the date of death of the employee for making application seeking appointment on compassionate ground on attaining majority but appellant attained majority eleven years after the death of his father which led to rejection of claim. In the present case claim of the petitioners was not negated by GRSE on the ground that they approached the authority belatedly seeking appointment on compassionate ground. On the contrary their claim to be appointed under death in harness category was considered by placing them in the frozen list of 31st March, 2006 which confers right upon them to get appointment in the event they complied with financial condition as stipulated in the relevant scheme.

43. In **Debabrata Tiwari** (supra) Hon'ble Supreme Court was considering whether a direction issued several years after applications for

compassionate appointment are filed, needs consideration and whether decision needs to be rendered on such applications taking note of object of a policy/scheme for compassionate appointment. The applications for compassionate appointment were made in 2005-2006 and first concrete step was taken by the Chairman of Burdwan Municipality in 2013 by forwarding the list of candidates to the Director of local bodies for approval. Thereafter candidates approached the High Court in 2015 that is after a lapse of ten years from the date of making application for compassionate appointment. In such backdrop of facts it was held as compassionate appointment is not a vested right and same is relevant to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of government employee. The facts of the case which was considered by the Hon'ble Supreme Court in **Debabrata Tiwari** (supra) is different from the present one as the petitioners in the present case were selected to be appointed on compassionate ground far back in 2006 on preparation of list dated 31st March, 2006 but on the basis of objection raised by CVC, fourth phase of recruitment could not be concluded resulting in denial of appointment to the petitioners under death in harness category. In order to advert to the point of delay urged on behalf of GRSE in providing appointment to the petitioners under death in harness category this court finds it apt to rely upon the observations made by the Hon'ble Supreme Court in paragraphs 25, 26 and 27 in **Ajithkumar** (supra). It is observed in

paragraph 26 that law is well settled, relief may not be denied solely on the ground of time lost in prosecuting proceedings in judicial and quasi-judicial forum for no fault of the suiter. It would, therefore, not be prudent or wise to reject a claim only because of the time taken by the court(s) to decide the issue before it. Paragraph 27 of **Ajithkumar** (supra) is quoted below :

“Lapse of time could, however, be a major factor for denying compassionate appointment where the claim is lodged belatedly. A presumption is legitimately drawn in cases of claim lodged belatedly that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. However, what would be a reasonable time would largely depend on the policy/scheme for compassionate appointment under consideration. If any time limit has been prescribed for making an application and the claimant applies within such period, lapse of time cannot be assigned as a ground for rejection.”

44. In the present case, claim of the petitioners was not rejected on the ground of delay in making application seeking appointment on compassionate ground. Neither a case is made out on behalf of GRSE that petitioners failed to apply for appointment under death in harness category within the time stipulated in the relevant scheme. Rather in terms of 2006 Scheme petitioners were empaneled as eligible candidates to be appointed under death in harness category. Such facts nullify argument advanced on behalf of GRSE that delay caused in the present case frustrates claim of the petitioners.

45. Revision of delegation of powers as made vide letter dated 24th August, 2024 issued by under Secretary to the Government of India and Clause 3.2 of Schedule-I of such revised delegation of powers provides Board of Directors is empowered to appoint on the posts in the rank of General Manager and above but in the present case court is considering claim of appointment of petitioners as Class-IV employees on death in harness ground. Clause 2 of Schedule III of such revised delegation of powers conferred power on the Chairman and Managing Director to appoint and employ assistants, officers, servants, labourers, agents, brokers, contractors and other workers for any of the purposes as delineated in the scheme of delegation of powers. Therefore 2006 policy framed as per minutes of the meeting held on 24th March, 2006 and 11th May, 2006 ought not to be questioned since same is not approved by the Board of Directors. It needs to be recorded herein that in paragraph 4 of the supplementary affidavit affirmed on behalf of GRSE in the writ petition being WPA 19565 of 2009 statements were made to the extent that steps taken for appointment under death in harness category in terms of 2006 Scheme were against approved vacancies and the same was approved by the Board of Directors in its 266th meeting held on 14th September, 2006. In the minutes of 319th meeting of the Board of Directors held on 31st July, 2014 it was recorded that panel of dependents under death in harness category was frozen on 31st March, 2006 in consultation with the Union. Finalized panel of dependents duly signed was handed over to the Union. Advertisements were made prior to all four phases of recruitments. In respect of first phase of recruitment advertisement was

made in June, 2006, for recruitment in second phase advertisement was made in November, 2006, for recruitment under third phase advertisement was made in March, 2007 and for fourth phase recruitment advertisement was made in December, 2007. From the said frozen panel of 31st March, 2006, 170 candidates were appointed but appointment under fourth phase could not be made against 105 vacancies due to objection raised by CVC. From the steps taken by GRSE in order to give effect to the said frozen panel dated 31st March, 2006 and statements made in affidavit in earlier round of litigation it appears that petitioners are similarly circumstanced like 170 candidates who were appointed under death in harness category. Though it has been agitated on behalf of GRSE that the report prepared on previous occasion is not challenged in the writ petition but such objection pales into insignificance as in the prayer of the writ petition mandamus is sought for against order rejecting candidature of the petitioners for appointment under death in harness category.

46. At the same time it needs to be taken into consideration that vide order dated 13th March, 2013 Hon'ble Division Bench while disposing of appeal being MAT 1362 of 2012 on recording consensus arrived at by the parties directed GRSE to complete the process of considering the case of the petitioners with regard to the recruitment under death in harness category within stipulated period of time. Subsequently vide order dated 14th May, 2024 passed in another appeal being MAT 850 of 2022 another Hon'ble Division Bench directed the GRSE to ascertain financial condition of the appellants following decision taken earlier.

47. As it is found from the letter dated 31st May, 2024 of General Secretary of GRSE Limited Workmen's Union that out of 49 petitioners 30 submitted documents in support of their financial conditions rest 19 are directed to submit their documents in support of their financial conditions within fortnight from date before the Chairman & Managing Director being respondent No. 2. On receipt of such documents financial conditions of the petitioners shall be assessed by the concerned authority of GRSE within a period of six weeks in terms of 2006 Scheme without insisting upon the petitioners to submit documents from Revenue Authority, if necessary concerned authority of GRSE shall be at liberty to conduct door to door survey and report shall be prepared within said period of six weeks disclosing present financial condition of the petitioners. After preparation of such report same shall be supplied to the petitioners within seven days thereafter. If petitioners fulfill financial condition in terms of 2006 Scheme they shall be given appointment under death in harness category within a period of four weeks from the date of publication of report.
48. With the aforesaid directions and observations writ petition stands disposed of.
49. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)