
(2009) 10 MP CK 0007
In the Madhya Pradesh High Court
Case No : W.A. No. 1007 of 2007

Bank of Maharashtra and Another	Vs	APPELLANT
Manoj Kumar Deharia and Another		RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2010) ILR (MP) 1876 : (2010) 4 MPHT 18 : (2011) 1 MPJR 19 : (2010) 3 MPLJ 213

Hon'ble Judges : Rajendra Menon, J;K.K. Lahoti, J;Dipak Misra, J

Bench : Full Bench

Judgement

Rajendra Menon, J.

In the light of the decision rendered in T. Swamy Dass Vs. Union of India (UOI) and Others, , and the perceptual shift with regard to "compassionate appointment" and the recurring problem that is faced during the process of adjudication, a Division Bench to put the controversy to rest, referred the following singular question with alternatives to be addressed by a larger Bench:

In a case of compassionate appointment pursuant to the death of a deceased employee, which policy of the Government is to be applied:

1. The policy prevailing at the time of the death of employee?

OR

The policy prevailing at the time of application for compassionate appointment?

OR

The policy prevailing at the time of consideration of the application for compassionate appointment?

Facts, in brief, are that the Respondent, Manoj Kumar Deharia, filed a writ petition before Appellant claiming compassionate appointment and seeking quashment of an order-dated 31.5.2004 passed by the Appellant-bank, rejecting his claim. It was the case of the Respondent that his father, Late Lochan Singh Deharia, while working as a clerk, died in harness on 1.11.1996. On 28.11.1996, he submitted an application seeking compassionate appointment to the Appellant. The Branch Manager of the bank concerned forwarded the said application to the Regional Office on 19.2.1997. When the application was submitted on 28.11.1996, the Scheme for compassionate appointment in the Bank was in accord with the Circular/Policy dated 25.1.1989. However, with effect from 27.2.1997 a New Policy came into existence and by the time the Respondent's application, forwarded on 19.2.1997 by the Branch Manager reached the Regional Office, the New Policy dated 27.2.1997 had come into force. Accordingly, the Appellant Bank considered the claim of the Respondent for appointment on compassionate grounds in accordance with the New Policy and finding him ineligible, rejected his claim by the order impugned in the writ petition dated 31.5.2004.

It was the case of the Respondent before the writ Court that his father had expired on 1.11.1996, he had submitted his application on 28.11.1996 and the application was forwarded by the Branch Manager on 19.2.1997. That being so, it was submitted, his application should have been processed and decided in accordance with the conditions incorporated in the Circular/Policy dated 25.1.1989 and in considering his claim in accordance to the New Policy, which came into effect from 27.2.1997, the Appellants have committed grave error and, therefore, interference in the matter was warranted. The writ Court vide order-dated 20.3.2007, passed in W.P.(S) No. 7038/2004, held that the claim of the Respondent cannot be rejected on the basis of the new policy, which was not in vogue when the application was submitted or when his father had expired, and should have been decided on merits as per the old policy, and accordingly remanded for fresh consideration within four months. The present appeal u/s 2(1) of the M.P. Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 was filed by the Bank assailing the said order passed by the learned Single Judge in the writ petition. While hearing the appeal on 14.1.2008, the Division Bench framed the aforesaid questions of law and referred the matter for consideration by a Full Bench. Thus the matter has been placed before us.

Before advertng to consider the questions referred, it is thought appropriate to consider the legal principles governing grant of compassionate appointment, rights accruing to a person claiming compassionate appointment and the manner in which such a claim is to be decided.

Compassionate appointment is an exception to the normal rule for appointment to public service which contemplates appointment on merit through open invitation. Grant of compassionate appointment to a family member of the deceased employee is based on certain exceptions carved out from the general

rule of appointment and is based on a Scheme or Rule framed in this regard. In Haryana State Electricity Board and another Vs. Hakim Singh, , it has been held by the Supreme Court that the rule of appointment to public service is on merit and through open invitation. This is the general and normal route through which one can get into public employment. However, every rule has exceptions and it is true for employment to public service also, and these exceptions are required to be evolved to meet certain exceptional contingencies. One such exception is to grant appointment to dependants of a deceased employee by accommodating the said person in a suitable vacancy. It is held by the Supreme Court that the object of granting such an appointment is to give succour to the family, which has been suddenly plunged into penury due to untimely death of the sole breadwinner. It has been held and cautioned by the Supreme Court in the aforesaid case that the object of providing such an ameliorating relief should not be taken as opening an alternative mode of recruitment to public service.

After taking note of the principle laid down in the case of Hakim Singh (supra), Supreme Court in the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , has laid down the following dictum:

8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. 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. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In Umesh Kumar Nagpal Vs. State of Haryana and Others, Appellant has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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. In that case the Court was considering the question whether appointment on compassionate grounds could

be made against posts higher than posts in Classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories. It was observed:

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 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 status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

(Emphasis supplied)

The concept of granting compassionate appointment and the purpose of granting the same has been the subject matter of adjudication in various cases and therefore, it would be relevant at this stage to refer to some of the decisions in the field. In Commissioner of Public Instructions and Others Vs. K.R. Vishwanath, , after following the earlier principles laid down in the cases of State of Haryana and Others Vs. Rani Devi and Another, ; Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, ; and Umesh Kumar Nagpal Vs. State of Haryana and Others, , the principle and the object with regard to compassionate appointment is laid down by the Supreme Court in the following manner:

9. As was observed in State of Haryana and Others Vs. Rani Devi and Another,), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In State of Haryana and Others Vs. Rani Devi and Another, it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by

sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal Vs. State of Haryana and Others*, that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

(Emphasis supplied)

In *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir*, , after taking note of the judgments rendered earlier in the cases of *Rani Devi (supra)*, *Asha Ramchandra Ambekar (supra)* and *Umesh Kumar Nagpal (supra)*, it has been so held by the Supreme Court:

11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and livelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say "goodbye" to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

In *State of Haryana and Others Vs. Rani Devi and Another*, , it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

(Emphasis supplied)

Again, in the case of I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, , it has been held that recruitment to the State services is normally governed by Rules framed under the statute or the provisos appended to Article 309 of the Constitution. It has been further ruled that in the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as envisaged under Articles 14 and 16 of the Constitution, and that all appointments, therefore, must conform to the said constitutional scheme, but an exception is carved out to this normal rule in favour of children or other relatives to an employee, who dies while in service. Thereafter, in the said case the Supreme Court has held thus:

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by Appellant, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

(Emphasis supplied)

In National Institute of Technology v. Niraj Kumar Singh this Court has stated the law in the following terms: (SCC p. 487, para 16)

16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.

In State of Rajasthan v. Umrao Singh Appellant has categorically stated that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise.

Again in State of Haryana v. Ankur Gupta Appellant held: (SCC p.707, para 6)

6. As was observed in State of Haryana v. Rani Devi it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is

necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of India v. Asha Ramchandra Ambekar it was pointed out that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

From the enunciation of law laid down therein, it is clear that employment to government and other public services should be open to all eligible candidates and by open competition on merit. This is in consonance with the mandate of Articles 14 and 16 of the Constitution. This general rule can be departed from only when compelling circumstances demand and one such circumstance is the death of the sole breadwinner of a family. However, it is held by the Supreme Court that appointment on compassionate ground is governed by Rules and Regulations or Scheme and taking into consideration instructions framed in this regard and the same should confirm to the requirement of Articles 14 and 16 of the Constitution. That apart, the principles clearly indicates that grant of compassionate appointment is not a right, vested in nature, available to a person. It is a benefit granted dehors the normal mode of recruitment and, therefore, it is to be granted strictly in accordance to the Scheme or Policy formulated in this regard.

Having determined the nature and object of such an appointment, it would be now appropriate to consider the contentions advanced by the learned Counsel for the parties in the backdrop of the aforesaid principles and objects underlying grant of compassionate appointment. Shri Ashish Shroti, learned Counsel for the Appellant-bank, argued that when grant of compassionate appointment is not a vested right available to an individual and is governed by the Schemes, Policies or the Special Rules formulated in this regard, the appointment has to be governed strictly in accordance with the Policy that is in vogue at the time of

consideration. It was emphasized by him that the employer has a right to formulate a Scheme or Policy granting this extraordinary benefit keeping in view the requirement of the establishment and various other factors and the same can change from time to time. In that view of the matter, it was urged by him that the appointment has to be done as per the Scheme which is in existence at the time of consideration, because consideration is made when appointment is to be granted and when appointment is to be strictly in consonance with the Scheme or Policy formulated, then the Scheme which is in existence at the time of consideration is only relevant for grant of appointment. Placing reliance on the following authorities Shri Shrotri submitted that the reference be answered by holding that the appointment on compassionate grounds is to be made on the basis of the Policy existing at the time of consideration and not on the basis of the Policy which was in existence at the time when the employee concerned had expired or the claim is made for appointment. The decisions relied upon by Shri Shrotri are: Punjab National Bank and Anr. v. R. Latha [W.A. (MD) No. 411/2006 and W.A.M.P. (MD) No. 1/2006 dated January 8, 2007]; Punjab State Electricity Board and Others Vs. Malkiat Singh, ; National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, ; S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others, ; Union Bank of India and Others Vs. M.T. Latheesh, ; State Bank of India and Another Vs. Somvir Singh, ; State Bank of India and Anr. v. Vikas Dubey and Ors. [Civil Appeal No. 7003 of 2005]; M.P. Ram Mohan Raja Vs. State of Tamil Nadu and Others, ; and, State Bank of India and Others Vs. Jaspal Kaur, .

Inviting our attention to the principles laid down in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, and State of Tamil Nadu Vs. Hind Stone and Others, , Shri Shrotri submitted that when grant of a benefit is based on certain policies or schemes formulated by the Government or public sector undertakings, then any person claiming benefit of such Policy or Scheme is entitled for consideration on the basis of the Policy or Scheme as is in existence at the time of consideration. It is further submission that as compassionate appointment does not confer any vested right, it is akin to grant of a license or a lease as per a Policy and in that view of the matter, such grant can be made only on the basis of the Policy prevailing on the date when the grant is to be made and not on the basis of a Policy which has been changed.

Refuting the aforesaid contentions and pointing out that grant of compassionate appointment is made to tide over the crisis that has fallen on a family due to death of the sole breadwinner and, therefore, the claim has to be evaluated on the basis of the Policies and Scheme existing at the time of submission of the claim, Shri R.K. Sanghi, learned Counsel, contended that an application for grant of compassionate appointment has to be considered in accordance with the Policy that is in existence when the application is submitted and cannot be considered on the basis of a Policy which may have changed, detrimental to the interest of the claimant after submission of his application. It was emphasized by Shri Sanghi that if such a procedure is permitted then the employer can always keep

an application pending till change of Policy and thereafter reject the application on the ground of change of Policy so as to frustrate the legitimate right of an individual to claim compassionate appointment. It was argued by him that a Division Bench of Appellant in the case of T. Swamy Dass (supra) and a Single Bench of Appellant in the case of Heeralal Baria v. M.P. State Electricity Board and Anr. 2008(1) MPLJ 492, have approved grant of compassionate appointment on the basis of Policy prevailing on the date of the application and the same should be approved. It is canvassed by him that the decision rendered in T. Swamy Dass (supra) is based on an earlier judgment of the Supreme Court, in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , and as the claimant cannot be punished for the delay caused by the employer in processing the application and the claimant cannot be put to loss because of the deliberate delay on the part of the employer in processing the application. It was submitted by him by drawing analogy with the settled principles governing selection to public employment that a selection process once initiated cannot be changed in between by new sets of conditions, similarly an application under process for grant of compassionate appointment cannot be dealt with in any manner which is contrary to the procedure prevalent for grant of such appointment, when the application was made. Hence, submitted Shri Sanghi, the principle laid down in the case of T. Swamy Dass (supra) should be made applicable and the application for compassionate appointment should be processed in accordance with the Policy that was prevailing at the time of submission of the application. Reliance is also placed by Shri R.K. Sanghi on another judgment of the Supreme Court, in the case of State Bank of India and Others Vs. Jaspal Kaur, , and the observations made in paragraph 26 of the aforesaid judgment:

Finally in the fact situation of this case, Shri Sukhbir Inder Singh (late), Record Assistant (Cash and Accounts) on 1.8.1999, in the Dhab Wasti Ram, Amritsar Branch, passed away. The Respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the Appellant Bank on 5.2.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the Respondent applying the scheme formulated on 4.8.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the Respondent that the income of the family of the deceased is Rs. 5855 only, which is less than 40% of the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water.

After the case was closed for judgment on 7.5.2009, learned Counsel for the Respondent by filing I.A. No. 4742/09, has invited attention of Appellant to a judgment of the Orissa High Court, in the case of Smt. Sabi Bawa v. Grid Corporation of Orissa Limited and Ors. 1999 (3) SLR 81, to contend that in the said case the Scheme prevailing at the time of death was said to be the one on the basis of which consideration is to be made. On a close scrutiny of the said

judgment rendered by the Orissa High Court, it would be seen that in the said case when the death of the employee concerned occurred in the year 1983, a scheme was in operation. Case for compassionate appointment of the claimant was considered as per the said scheme, it was rejected after consideration and in a Writ Petition filed, directions were given for consideration in a particular manner as per the same scheme. When the dispute was pending, another Writ Petition was filed after the claim was again rejected and it seems that during this period, a new scheme came into force in the year 1992, and the matter was considered as per the new scheme, it was due to the said fact that direction was given to consider the claim as per the old scheme, which was prevailing. Infact in this case the claim was considered and decided as per the old scheme of 1983 and this consideration gave rise to the dispute. The matter was considered and decided as per the old scheme and the dispute arose with regard to enforcement of the right or consideration as per the old scheme. Thus, it is evident that the dispute has arisen when the claim was considered as per a particular scheme and due to direction of the High Court, subsequent change in the scheme was not given effect to for the purposes of consideration.

The core question that requires to be adverted to is whether a claim for appointment on compassionate grounds should be evaluated in accordance with the Policy that was prevailing when the application is submitted seeking such appointment or as per the Policy prevailing at the time of consideration of the application. As already indicated herein before, compassionate appointment is granted as an exception by carving out a procedure dehors the normal rule for appointment to public service with the sole objective of giving some benefit to members belonging to the family of a deceased employee and to mitigate the hardship which falls on the family due to death of the breadwinner. In *Smt. Sushma Gosain (supra)*, it has been held by the Supreme Court that this being the purpose of granting compassionate appointment, such appointments should be provided immediately to redeem the family, which is in distress. In *I.G. (Karmik) (supra)*, it is observed by the Supreme Court that appointment on compassionate grounds is made for the purpose of mitigating the hardship of the family and is not a process for providing endless compassion. It is also clear from the principles laid down that appointment on such grounds" is an exception carved out contrary to the constitutional mandate and no vested right accrues to any person to claim such an appointment.

In *State of Haryana and Another Vs. Ankur Gupta*, , it has been held by the Supreme Court that it is necessary for the authorities to formulate regulations or schemes in such a manner that they withstand the test of Articles 14 and 16, because appointment on compassionate grounds cannot be claimed as a matter of right, but it has to be evolved in such a manner that the Scheme is formulated taking into consideration the financial conditions of the family of the deceased and the means of livelihood available to them.

In *National Institute of Technology v. Niraj Kumar Singh* 2007 (1) SCC 668, it has

been held by the Supreme Court that all public appointments should be in consonance with Article 16 of the Constitution of India.

Thus understood, compassionate appointment is neither a vested right, which can be exercised at any time even after the crisis created by the death of the earning member is over, nor is it a hereditary right, it cannot be bequeathed. These principles are laid down in the cases of Haryana State Electricity Board Vs. Naresh Tanwar and Another, ; Srikanth v. Chief Engineer, Karnataka Electricity Board 1996 (1) SLR 118 ; and Ashok Kumar Maiti v. State of West Bengal 1995 Lab IC 2175.

At this juncture it is worth noting that in Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , a Three Judge Bench of the Supreme Court has explained the purpose for granting compassionate appointment and the exceptional nature of this appointment is indicated and it is held that while granting such an appointment, care should be taken to ensure that application of this right does not interfere with the right of other persons who are eligible to seek appointment in public service.

In P.T.R. Exports (Madras) Pvt. Ltd. (supra) and M/s Hind Stone (supra), relied upon by Shri Shroti, even though the Supreme Court was dealing with matters pertaining to grant of export license and lease for mining, but after taking note of the fact that grant of export license and mining lease is not a vested right, principle laid down is that grant on the basis of such a right has to be in accordance with the Policies prevailing when the grant is to be made and not on the basis of the Policy which was in vogue at an early stage, it is held by the Supreme Court that such grant of license or lease depends upon the Policy prevailing on the date of grant of license or permit. Even though the criteria laid down and consideration for grant of a mining lease or import license may be different from the requirement of granting compassionate appointment, but Appellant cannot lose sight of the fact that while granting compassionate appointment, various factors have to be taken note of: i.e. availability of vacancy, financial condition of the dependents, man power requirements of the establishment, its financial position, the concept of discipline in the organization and various other factors relevant for deciding the question of granting compassionate appointment. That being so, the employer is granted liberty to formulate a Policy in such a manner that the same caters to the requirement, as may be existing from time to time and the employer should have an opportunity to change his policy with regard to compassionate appointment depending upon various factors that may also change from time to time.

In Punjab National Bank and Anr. v. R. Latha [W.A. (MD) No. 411/2006 and W.A.M.P. (MD) No. 1/2006 dated January 8, 2007], Madras High Court considering the decisions in the case of P.T.R. Exports (supra) and M/s Hind Stone (supra) has held that right to compassionate appointment is neither a fundamental right nor a legal right. It is only an exception to the general rule and that being so, the same has to be decided as per the Scheme which comes into

operation and which is prevalent at the time of consideration and not on the basis of an earlier Scheme, which has been changed.

It is submitted by Shri Sanghi that the controversy has been put to rest by the Supreme Court in the case of Jaspal Kaur (supra). On a close scrutiny of the aforesaid judgment, it would be seen that the case has been decided on the facts of that case and the observations made and the directions issued in paragraph 26 does not lay down the law as canvassed by Shri R.K. Sanghi. In the said case, after the employee had died namely one Shri Sukhbir Inder Singh, his widow applied for compassionate appointment on 5.2.2000, in accordance to the policy that was in vogue in the year 2000. On 7.1.2002, the competent authority of the Bank rejected the application after considering it in accordance to the Scheme and after evaluating the financial position of the family. This decision of the Bank was challenged before the Punjab and Haryana High Court, and the High Court by its order dated 11.12.2003, directed for reconsideration of the case in accordance to the policy of 2000 that was in vogue at the relevant time. After such reconsideration, the Dy. General Manager of the Bank on 5.3.2004 again rejected the claim after considering the financial condition of the family. The said rejection was again challenged before the Punjab and Haryana High Court and on 20.9.2005, the High Court allowed the Writ Petition and directed for grant of compassionate appointment. The second order passed by the High Court and on 20.9.2005, was subject matter of adjudication before the Supreme Court, in the case of Jaspal Kaur (supra) and when the matter was pending before the Supreme Court it was brought to the notice of the Court by the Bank that a new policy has been formulated on 4.8.2005 and according to this Policy the claimants were not entitled for compassionate appointment. It was in the backdrop of the above factual aspects that the High Court in paragraph 26 made the observations and directions, reproduced hereinabove.

A perusal of the same would indicate that the Supreme Court was of the view that a dispute which arose in 2000 cannot be decided on the basis of a scheme that came into existence much after the dispute arose i.e. in the year 2005. The aforesaid observation, as is evident from the opening words of paragraph 26-"Finally in the fact situation of this case", would clearly indicate that dispute in the said case arose in the year 2000 much before the Scheme of 2005 came into force, and the direction to consider the case as per the Scheme of 2000 was because the claim was initially adjudicated, on 7.1.2002, when the Bank declined the claim of the dependent and the High Court decided the matter for the first time in the year 2002. The case before the Supreme Court was one in which the claim was decided by the Bank in accordance to the Scheme of 2000 and directions were issued by the High Court in two writ petitions, after evaluating the matter in accordance to the Scheme prevailing when the dispute arose in the year 2000 and 2002. Therefore, in the light of the aforesaid peculiar factual aspect of the matter the observations and directions were issued in paragraph 26. The same cannot be construed to be a legal principle laid down by the Supreme Court to be applicable in all cases. It is the considered view of Appellant

that the observations made in paragraph 26, relied upon by Shri R.K. Sanghi, is based on the factual situation that was existing in the case before the Supreme Court i.e. the decision of the Bank dated 7.1.2002 after evaluating the claim as per the policy of 2000 and further direction of the High Court to reconsider the matter much before the Scheme of 2005 came into existence. Accordingly, the said judgment also does not help the Appellant.

In this context, we fruitfully state that a decision has to be treated as precedent for what it decides. The Supreme Court in the case of *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213, has held thus:

18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.

In the matter of *Bhavnagar University v. Palitana Sugar Mill (P) Limited*, (2003) 2 SCC 579, it is so observed by the Supreme Court as under:

59 It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

(Emphasis supplied)

Similarly, the said principle is considered in various other cases also. In the case of *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, , it is so held by the Supreme Court in paragraphs 9 to 12:

9. Courts should not place reliance on decisions without disclosing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that took taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock. co. Ltd. v. Horton* 1951 AC 737, Lord Mac Dermott observed (All ER p. 14 C-D):

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In *Home Office v. Dorset Yacht Co. Ltd* 1970 AC 1004, Lord Reid said,

"Lord Atkin's speech... is not to be treated as if it were a statutory definition. It

will require qualification in new circumstances." (All ER p. 297g).

Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) (1971) 1 WLR 1062, observed (All ER p. 1274d):

One must not, of course, construe even a reserved judgment of even Russell, L.J. as it were an Act of Parliament;

And, in *British Railways Board v. Herrington* 1972 AC 877, Lord Morris said: (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * * * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

(Emphasis supplied)

The matter was again considered in the case of *Oriental Insurance Co. Ltd. Vs. Smt. Raj Kumari and Others*, , and the principle is laid down in the following manner:

A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The nunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context.

The aforesaid authorities have been considered recently by the Supreme Court in *Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra* and

Others, , and the principle affirmed after taking note of certain observations made by Lord Halsbury, reproduced in paragraph 14 in the case of Sarva Shramik Sanghatana (KV) (supra), which reads as under:

14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leatham* 1901 AC 495: (All ER p.7G-I)

Before discussing *Allen v. Flood* 1898 AC 1, and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before-that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

Yet in another decision in *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, , their Lordships have opined thus:

34. The decision of a Court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent.

In *State of Punjab Vs. Baldev Singh*, , a Constitution Bench of Appellant observed (vide SCC para 43) that a decision is an authority for what it decides (i.e.. the principle of law it lays down) and not that everything said therein constitutes a precedent.

In *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, ,(vide SCC para 23) Appellant observed that the only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided.

As observed by Appellant in *State of Orissa v. Sudhansu Sekhar Misra* AIR 1968 SC 467, (vide AIR para 13): (AIR pp. 651-52, para 13)

13. ...A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observations found therein nor what logically follows from the various observations made in it....

In this context, we may take note of another principle. A judgment is not to be read as a statute. It has been so held in *Union of India and Ors. v. Dhanwanti Devi and Ors.* 1996 AIR SCW 4020:

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No

judgment can be read as if it is a Statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.

(Emphasis supplied)

Further, in the case of "Bharat Petroleum Corporation Limited (supra), the following observations, relevant for the case in hand, reads as under:

9 Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context....

..Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define.

(Emphasis supplied)

Thus, particular fact can make a lot of difference. Their Lordships have decided in the facts of the case. Hence, it cannot be held that the dictum of the said decision in that application for compassionate appointment is to be considered keeping in view the scheme when the application was submitted. A ratio of a decision as has been held their Lordships, is not to be understood by inference.

In a given case, the employer as stated by Shri R.K. Sanghi and as observed by the Division Bench in the case of T. Swamy Dass (supra), may cause undue delay without any just cause or reason or with some ulterior motive. Thought on a first glance the submission looks quite attractive, but on deeper scrutiny and reflective consideration it cannot be held, as a principle of law, that the claim of compassionate appointment has to be decided on the basis of the Policy that was prevailing at the time of submission of the application. Be it noted Shri R.K. Sanghi has commended us to the decision in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, . The decision in that case is based on a right, which accrued to the claimant for grant of compassionate appointment on the basis of a tripartite agreement entered into by the Management of Steel Authority of India Limited. The agreement was binding on the parties and when compassionate appointment was denied on the ground of monetary compensation being provided, which was found to be contrary to the tripartite agreement, interference was made in the matter. That being so, the inspiration sought to be drawn by learned Counsel is not available, as the decision is absolutely distinguishable having a different foundation altogether.

It is, therefore, clear that compassionate appointment is not a vested right nor is it a hereditary right. Its grant is based on the Policies and Scheme which are framed by carving out an exception to the General Rule governing public appointment. Once it is held that it is an exception to the General Rule and is granted in accordance with the Scheme or Rules formulated, then considerations

to be made for grant of the appointment would be governed by the provision of the Rules or the Scheme and in that view of the matter when the Rules and the Guidelines play a dominant role, considerations have to be made in accordance with the Rules and Scheme which are applicable at the time of grant. As the entitlement for compassionate appointment is to be evaluated in accordance with the Schemes and Rules formulated in that regard, there cannot be any shadow of doubt that consideration and evaluation are required to be made in accordance to the existing Policies and not on the basis of a Policy or Scheme, which has become extinct. In that view of the matter, consideration has to be in accordance to the Policy applicable when the matter is taken up for consideration and not on the basis of any other Scheme or Policy, which has lapsed or superceded. The aforesaid being the position of law, the view expressed in T. Swamy Dass (supra) and Heeralal Baria (supra) is not correct.

Though we have held that an application for compassionate appointment is to be considered as per the scheme in vogue at the time of consideration we would like to add that in the scheme of things and regard being had to the nature of benefit conferred, the employer, as a model one, should not sit on the same and decide in quite promptitude for the simple reason such applications warrant immediate delineation.

In view of the foregoing discussion, we proceed to record our conclusions as follows:

- (a) That grant of compassionate appointment is not a vested legal right. It is only a benefit granted in certain circumstances dehors the normal rule of appointment and when the employer has a right to evolve an appropriate policy after considering various factors for granting such a benefit, the considerations have to be made in accordance with the Policy that is prevailing at that point of time.
- (b) When it is held that compassionate appointment is not a vested right and when grant of such appointment is governed by the Rules and Policies prevailing in an establishment, then consideration as per the Rules existing is required to be made and consideration on the basis of a Policy, which is given up by the employer and which has no application at that point of time cannot be insisted upon.
- (c) Having regard to the exceptional nature of this appointment and taking note of the fact that it is granted under a special Scheme carved out dehors the normal mode of recruitment, the same has to be governed as per the Policies or Provisions governing such appointment prevalent at a particular point of time when consideration is to be made, and not on the basis of a Policy which was in vogue and has been given up by the employer due to changed circumstances.
- (d) As compassionate appointment is granted by carving out a special Scheme contrary to the normal mode of recruitment and when the employer or the government is at liberty to evolve a Scheme for granting such appointment from

time to time, then the consideration for appointment has to be made in accordance with the Scheme or Policy that is in existence.

(e) The decisions rendered in T. Swamy Dass (supra) and Heeralal Baria (supra) do not lay down the correct law and are hereby overruled.

(f) Any right flowing from a settlement between the employer and employees' union or association has to be in a different compartment.

(g) It would be the obligation of the employer to deal with the application with immediacy and promptitude so that the grievance of a family in distress gets a fair treatment in accordance with law.

The Reference is accordingly answered.

Matter be placed before the Division Bench for decision on the appeal on merits.