
(2018) 07 CAL CK 0065
In the Calcutta High Court
Case No : W.P.No. 6389 (W) of 2017

Bijon Mukherjee	Vs	APPELLANT
State Of West Bengal & Ors.		RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 — Rule 20, 21
Constitution of India, 1950 — Article 14, 16, 141, 226

Citation : (2018) 07 CAL CK 0065

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Dilip Saha, Mrinal Kanti Sarder, Joytosh Majumder, Avishek Prasad

Final Decision : Dismissed

Judgement

Shekhar B. Saraf, J.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is seeking appointment on compassionate grounds in

place of his deceased mother Banalata Mukherjee. The writ petitioner has approached this Court by filing this writ petition being aggrieved by the

action of the District Inspector of Schools (SE), North-24 Parganas, Barasat (respondent no. 3) (hereinafter referred to as "D.I. of Schools")

who has denied the appointment of the petitioner in the category of died-in-harness vide the impugned memo being no. 69/H dated February 11, 2011.

2. The mother of the petitioner was appointed as an assistant teacher in the Minakhan Jatindranath Balika Vidyalaya (H.S.) on January 01, 1980. The

mother of the petitioner died on July 30, 2007 while she was working in the aforesaid school. The managing committee of the school vide resolution

dated August 8, 2007 had decided to recommend and forward the appointment of the petitioner in the category of died-in-harness in place of his deceased mother to the D.I. of Schools.

3. The D.I. of Schools issued the impugned memo rejecting the appointment of the petitioner on the basis that the income of the family of the deceased was more than the initial gross salary of the Group "D" staff at the material point of time. The relevant portion of the memo is reproduced hereunder:

"In connection with the subject noted above it is regretted to state that the financial criteria of the family of the deceased is computed in terms of

G.O. No. 697-ES/1S/S- 18/08 dated 09-07-2009. At the material point of time income of the family of the deceased is Rs. 5599/- and initial gross

salary of the Group "D" staff of State Govt. is 5326/- as on 30-07-2007 i.e. at the material point of time. As the income of the family is not less

than the initial gross salary of the Group "D" staff at the material point of time the prayer for appointment on compassionate ground could not be considered in terms of the existing Govt. Order."

4. The D.I. of Schools has based the impugned memo on a Government Order, namely G.O. No. 697-ES/1S/S- 18/08 dated July 9, 2009, containing

the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (hereinafter

referred to as "the Rules, 2009").

5. The Counsel for the petitioner, Mr. Dilip Saha has relied upon two judgments of the Supreme Court in support of his arguments. He has relied on

Govind Prakash Verma v- Life Insurance Corporation of India and Ors. reported in (2005) 10 SCC 289 and Balbir Kaur and Anr. v- Steel

Authority of India Ltd. and Ors. reported in (2000) 6 SCC 493.

6. In the case of Govind Prakash Verma v- Life Insurance Corporation of India and Ors. (supra) [Coram: Brijesh Kumar and Arun Kumar, JJ.] it

was held that the scheme of compassionate appointment of respondent is over and above whatever is admissible to legal representatives of the

deceased employee as benefits of service which they get on the death of the employee. The relevant part of the judgment is provided below:

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which

was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.â??

7. In the case of *Balbir Kaur and Anr. v- Steel Authority of India Ltd. and Ors.* (supra) [Coram: S.B. Majumdar and Umesh C. Banerjee, JJ.] the Supreme Court was dealing with a case in which the Steel Authority of India had rejected the plea for compassionate appointment on the ground that the company had a Family Benefit Scheme as adopted by the employeesâ?? union and therefore, the question of any departure from the above scheme was not possible and the question of compassionate appointment did not and could not arise. In the above case the High Court had rejected the plea of the employee on the basis of the availability of the family benefit scheme. The Supreme Court in appeal, reversed the decision of the High

Court holding that monetary benefit in the form of compassionate appointment though not a replacement of the bread earner, it would undoubtedly

bring some solace to the situation. Accordingly, the Supreme Court held that in spite of the Family Benefit Scheme, compassionate appointment could

not be refused. The relevant paragraph is given below:

“13.....But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden

jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family “

this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and

it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to

the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner,

but that would undoubtedly bring some solace to the situation.”

8. The Counsel for the Petitioner has also relied on an unreported judgement in W.P. S.T. 579 of 2009 (In Re: Smt. Purnima Giri “v- The State of

West Bengal and Ors.) [Coram: Pranab Kumar Chattopadhyay and Syamal Kanti Chakrabarti, JJ.] passed by a Division Bench of this Court that has

based its judgement relying on the aforementioned cases. The relevant part is provided below:

“Furthermore, the Supreme Court in the Case of Balbir Kaur and Another (Supra) has also observed that the monetary benefit would not be the

replacement of the only breadearner and the same can bring some solace to the situation. Following the aforesaid decisions of the Supreme Court in

the Case of Balbir Kaur and Another (Supra) and Govind Prakash Verma (Supra) we are of the opinion that the claim of the petitioner for

compassionate appointment cannot be rejected on the ground that the family of the deceased employee received terminal benefits specially when the

respondent authorities failed to establish that the family of the said deceased employee has sufficient income to maintain themselves.”

9. The Learned Government Pleader, appearing on behalf of the State Mr. Joytosh Majumder, has made four submissions before this Court. They are

enumerated below:

â?¢ The order of the D.I. of Schools dated February 11, 2011 is in consonance with the Rules, 2009.

â?¢ The petitioner has not challenged the validity or the constitutionality of the Rules, 2009 and therefore, his case shall be judged upon the touchstone

of the Rules, 2009 and is bound by them. Since, the Rules, 2009 have not been challenged and the order of the D.I. of Schools is in consonance with

the Rules, 2009 the petition fails.

â?¢ The Supreme Court judgements, which the Counsel for the petitioner has relied upon in support of his arguments, have been overruled by two

Supreme Court judgments in Union of India and Anr. â?¢v- Shashank Goswami and Anr. reported in (2012) 11 SCC 307 and Union Bank of India and

Ors. â?¢v- M.T. Latheesh reported in (2006) 7 SCC 350, which had considered the above mentioned Supreme Court cases and dissented from the

same. Accordingly, the judgement delivered by the Division Bench of the High Court should be read as per incuriam.

â?¢ The unreported judgement delivered by the Co-ordinate Bench in W.P. 9384 (W) of 2014 (Smt. Sunita Saha (Poddar) â?¢vState of West Bengal

and Ors.) should be relied upon by this Court as the facts of the petition are pari materia to the present writ petition.

10. I have considered the arguments placed by the Counsels appearing on behalf of the parties and also perused the materials on record.

11. In order to fully comprehend the issue at hand, the provisions of the Rules, 2009 should be considered. Rules 20 and 21 of the Rules, 2009 lays

down the framework within which compassionate appointment may be given to family members of teachers. Schedule V appended to the Rules, 2009

lays down the conditions which need to be satisfied for grant of appointment on compassionate grounds. The relevant portion of Schedule V of the

Rules, 2009 is provided below:

â?¢1. When a Teacher or non-teaching staff dies in harness before the date of his superannuation, i.e.,Â Â the age of 60 years, leaving a family

which is, in the opinion of the District Inspector of Schools (Secondary Education), in such extreme financial hardship that it fails to provide two

square meals and other essentials to the surviving members of the deceased teacherâ??s family, the â?¢ (i) Spouse;

(ii) Son;

(iii) Daughter of the deceased Teacher or non-teaching staffs family who is possessing required educational qualifications as laid down in Schedule I

for the posts of Clerk or Group â??Dâ?? staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years

from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-

teaching staff on compassionate ground:

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule. Explanation.- The

expression â??financial hardshipâ?, in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family,

shall mean an amount of income less than the initial gross salary of Group â??Dâ?? staff of the State Government at the material point of time. For

computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity

and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive,

whichever is earlier, at the material point of time, shall be taken into account: Provided that if the family of the deceased teacher exceeds five

members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall

be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group â??Dâ?? staff at the initial

stage at the material point of time.â??

12. In the case of Shashank Goswami (supra) [Coram: Dr. B.S. Chauhan and Dipak Mishra, JJ.], the Apex Court had deliberated on the matter at

hand and had come to a conclusion that the appointment on compassionate grounds cannot be claimed as a matter of right. The Supreme Court relied

upon the judgement delivered in Mumtaz Yunus Mulani v. State of Maharashtra reported in (2008) 11 SCC 384 which had overruled the judgement

delivered in Govind Prakash Verma (supra). The relevant part of the judgment is reproduced hereunder:

â??9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate grounds is based on the premise that

the applicant was dependant on the deceased employee. Strictly, such a 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. Appointment on compassionate grounds cannot be claimed as a matter of right.

10. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate grounds 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 and not to confer a status on the family. Thus, the applicant cannot claim appointment in a particular class/group of post.

Appointments on compassionate grounds 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.

11. This Court in *Govind Prakash Verma v. LIC* [(2005) 10 SCC 289: 2005 SCC (L&S) 590], while dealing with a similar issue i.e. whether payment of terminal/retiral benefits to the family can be taken into consideration, held as under: (SCC p. 291, para 6)

“6. In our view, it was wholly irrelevant for the departmental authorities to take into consideration the amount which was being paid as family pension to the widow of the deceased and other amounts paid on account of terminal benefits under the Rules. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.”

12.....

13. In *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077], this Court examined the scope of employment on compassionate grounds in a similar scheme making the dependant of an employee ineligible for the post in case the family receives terminal/retiral benefits above the ceiling limit and held that the judgment in *Govind Prakash* [(2005) 10 SCC 289 : 2005 SCC (L&S) 590] had been decided without considering earlier judgments which were binding on the Bench. The Court further held that the appointment has to be made

considering the terms of the scheme and in case the scheme lays down a criterion that if the family of the deceased employee gets a particular

amount as retiral/terminal benefits, dependant of the deceased employee would not be eligible for employment on compassionate grounds.â??

13. In the case of M.T. Latheesh (supra) [Coram: Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ.], the Supreme Court had reached the conclusion

that the judgement delivered in Balbir Kaur (supra) could be distinguished both on facts as well as law. The relevant paragraphs of the judgement are

reiterated below:

â??18. It is submitted that the dependent of a deceased employee will not get any vested or hereditary right to succeed the deceased in the matter of

employment. What he is entitled to is a preferential treatment for appointment as against the general principle of appointment. The employer is not

under obligation to grant appointment to the dependents. The duty of the employer is only to properly consider the application.

31. In Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] this Court considered a case of

compassionate appointment and the factors necessary for being taken into account before offering compassionate appointment. This Court held that

merely death of an employee does not entitle his family to compassionate employment and that the authority concerned must consider as to whether

the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death. This Court also held as under: (SCC p.

140, para 2)

â??The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a

member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle

his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the

deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered

to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone

can be offered on compassionate grounds, the object being to relieve the family,

of the financial destitution and to help it get over the emergency.â??

35. Learned counsel for the respondent cited the decision in *Balbir Kaur v. Steel Authority of India* [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] which

also deals with compassionate appointment. In this case, this Court held that the family benefit scheme assuring monthly payment to the family of the

deceased employee was not a substitute for compassionate appointment and, therefore, compassionate appointment could not, therefore, be denied on

the ground that the Family Benefit Scheme was available and that non-payment of gratuity and provident fund to the family at the time of death of the

employee runs counter to the object of the beneficial legislation contained in the Payment of Gratuity Act and the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 and that lump sum payment of provident fund is an insulating factor for the family to cope with the situation arising

out of the death of the employee. This Court also held that the socialistic pattern of society as envisaged in the Constitution has to be attributed its full

meaning and that the law courts cannot be a mute spectator where relief is denied to the horrendous sufferings of a family which has lost its

breadwinner and the constitutional philosophy should be allowed to become part of every man's life and then only the Constitution can reach everyone.

This is a general observation made by this Court in the context of compassionate appointment. The above judgment, in our view, is distinguishable on

facts and on law. This apart, the case on hand is directly covered by the Scheme formulated by the Bank in regard to compassionate appointment.

36. In the present case, by declining the application submitted by the respondent after the proper consideration of the same in the light of the relevant

parameters, the appellant Bank cannot be said to have acted in an arbitrary manner regardless of the constitutional principles.

37. It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped

to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single

Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered

the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found

the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law

laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception

to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding

factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of

the family is much above the criterion fixed in the new Scheme.â??

14. Furthermore, a Co-ordinate Bench of this Court in W.P. 9384 (W) of 2014 (Smt. Sunita Saha (Poddar) â?"v- State of West Bengal and Ors.)

[Coram: Dipankar Datta, J.] had thoroughly examined the legal position on the Rules, 2009 applicable for appointment on compassionate grounds. It is

imperative that this judgement be considered as the facts in the writ petition are *pari materia* to the facts in the present writ petition. The relevant

portion is reproduced below:

â??Untimely death of an employee is no doubt unfortunate. It is more unfortunate if the deceased leaves behind minor children and a young widow

surviving him, without any prospect of earning. The distress condition faced by the family members of the deceased can well be imagined. It is for

saving a family from destitution that compassionate appointment is offered to an eligible member of the family of the deceased to tide over the crisis

arising due to untimely death of the sole bread winner. However, over the years, the Supreme Court has shifted from the initial compassionate view

taken in the decision reported in AIR 1989 SC 1976 (Sushma Gosain Vs. Union of India) to a rather strict view starting from the decision reported in

(1994) 4 SCC 138 (Umesh Kumar Nagpal Vs. State of Haryana). It has been held there as follows:-

â??2. *** The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give

a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not

entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of

the deceased, and it is only if it is satisfied, that but for the provision of

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

That compassionate appointment cannot be claimed as a matter of right and should be offered only in accordance with the rules/regulations/scheme in place, and that financial condition of the family of the deceased is a relevant consideration for offering compassionate appointment has been reiterated by the Supreme Court in recent decisions reported in (2007) 9 SCC 571 (SBI v. Jaspal Kaur), (2012) 11 SCC 307 (Union of India v. Shashank Goswami) and (2012) 9 SCC 545 (State of Gujarat v. Arvindkumar T. Tiwari).

In the decision in Balbir Kaur (supra), the earlier decision in Umesh Kumar Nagpal (supra) was not noticed and, therefore, the efficacy of the former decision as a binding precedent stands eroded. Since the learned Judge while deciding Tapan Kumar Barman (supra) also did not notice the decision in Umesh Kumar Nagpal (supra) and His Lordship's view seems to be inconsistent with the views expressed in Jaspal Kaur (supra), Shashank Goswami (supra), and Arvindkumar T. Tiwari (supra), I am not persuaded to concur therewith. It is axiomatic that compassionate appointment can only be offered in terms of the scheme that is formulated by the State. None can claim it as a matter of right. In the event a member of the family of the deceased fulfills the requirements of the scheme, appointment would follow but not otherwise. Non-fulfillment of the provisions of the scheme can well lead to denial of compassionate appointment.

15. At this juncture, one needs to examine the principles to be followed by a

Single Judge of the High Court when encountered with conflicting decisions of the Division Bench of the High Court and of the Supreme Court. Under normal circumstances, a Single Judge is bound by the decision of the Division Bench of the same Court. The Single Judge is also bound by the decisions of the Supreme Court as the same is law under Article 141 of the Constitution of India. In this particular case, the petitioner has contended that I am required to follow the Division Bench judgement of this Court while the Government Pleader has argued that the same should not be followed as the Division Bench judgement relied on judgements of the Supreme Court that were subsequently overruled by the same Court. In order to unravel this conundrum, I embark on an examination of the Doctrine of Precedents.

16. The Supreme Court, in the case of *Sundeeep Kumar Bafna v State of Maharashtra* reported in (2014) 16 SCC 623 [Coram: K.S.P.

Radhakrishnan and Vikramajit Sen, JJ.], held that when two mutually irreconcilable decisions by the Supreme Court are cited at the Bar, the High

Court should follow the view laid down by the earlier judgement as the latter judgement which was delivered without consideration of the previously

pronounced judgement by a Bench of co-equal or larger strength should be read as per incuriam. The relevant paragraph of the judgement is

delineated below:

19. It cannot be overemphasized that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application

of the per incuriam rule is of great importance, since without it, certainly of law, consistency of rulings and comity of courts would become a costly

casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A

decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or

larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per

incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more

mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the

succeeding ones would fall in the category of per incuriam.â??

17. In the case of Mamleshwar Prasad â?"v- Kanhaiya Lal reported in (1975) 2 SCC 232 [Coram: A.N. Ray, CJ and K.K. Mathew and V.R.

Krishna Iyer, JJ.], Justice Krishna Iyer eloquently stated that in the event, a judgement has failed to notice a plain statutory provision or an obligatory

authority which is in contravention of the reasoning and result reached, it may not act as a binding precedent. The relevant portion is mentioned

hereunder:

â??7. Certainty of the law, consistency of rulings and comity of courts â?" all flowering from the same principle â?" converge to the conclusion that a

decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious

inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result

reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission.

18. In my opinion, the case of Commissioner of Income-Tax, W.B.-III â?" v- Oberoi Hotels reported in 2011(4) CHN (CAL) 552 [Coram: Bhaskar

Bhattacharya and Sambuddha Chakrabarti, JJ.] is also to be considered. In this case, two Supreme Court judgements in McDowell & Company Ltd.

â?"v- Commercial Tax Officer reported in 1985 (3) SCC 230 and Union of India â?"v- Ajadi Bachao Andolan reported in (2004) 10 SCC 1 were cited

at the Bar. The former was a 5-Judge Bench of the Supreme Court while the latter was a subsequent 2-Judge Bench which considered the same

matter at hand and dissented from the ratio laid down in McDowell (supra). Justice B. Bhattacharya held that the ratio laid down subsequently by the

smaller bench of the Supreme Court must be followed over the earlier judgement by a larger Supreme Court bench, when the former has taken the

decision by the larger bench of the Supreme Court into consideration. Furthermore, the view of the subsequent judgement can only be rejected in the

event that the subsequent Bench had not taken the decision taken earlier by the larger Bench into consideration. The High Court in such an event

would be entitled to reject the ratio laid down in the subsequent smaller Bench judgement as per incuriam. The relevant paragraph of the judgement is

provided hereunder:

There is no dispute with the proposition of law that if there are conflict of opinions between the two Benches of the Supreme Court on a question of law, the one declared by the larger Bench would prevail over the one pronounced by the other Bench. But if a Bench consisting of a smaller number of judges interprets a decision of a larger Bench of the Supreme Court in a different way which may be apparently opposed to the one taken by the larger Bench, a subsequent coordinate Bench of the Supreme Court may refuse to follow the interpretation of the latter one on the ground that it proposed to follow the earlier view expressed by a larger Bench. But if the subsequent decision of the smaller Bench explaining the larger Bench is placed before a High Court, the latter is bound to follow the subsequent one by the smaller one which interprets the decisions of the larger Bench because that is the interpretation of the larger Bench by a Bench of Supreme Court and the High Court cannot make a different interpretation than the one made by the subsequent decision of the Supreme Court which is binding upon it. The position, however, would be different if the subsequent smaller Bench of the Supreme Court in ignorance of the earlier larger Bench takes a contrary view from the one taken by the earlier larger Bench. In that situation, the High Court is entitled to reject the view of the latter smaller Bench of the Supreme Court as per incuriam.

19. At this point I also refer to the House of Lords' decision in *Noble v-Southern Railway Co.*, (1940) 2 All ER 383, where the question arose whether a Court of Appeal would be bound to follow its own earlier decisions notwithstanding the fact that the decision was inconsistent with a decision of the House of Lords. In that case, the Court of Appeal followed its earlier decision notwithstanding the fact it was contrary to a decision of the House of Lords. Lord Wright observed as follows: (p. 392):

On the judge's findings, the case fell precisely within the ruling on *Merrin's* case, [1926] AC 377, and the judge properly so held.

His decision was, however, overruled by the Court of Appeal, not on the facts, which it was not competent to the court to question, but, so far as I can understand, on grounds completely inconsistent with what this House decided in *Merrin's* case. I feel no doubt that the decision of the Court of Appeal was wrong. I can understand the difficulty in which both the county court judge and the Court of Appeal were placed in the present

case. What a court should do, when faced with a decision of the Court of Appeal manifestly inconsistent with the decisions of this House, is a problem

of some difficulty in the doctrine of precedent. I incline to think that it should apply the law laid down by this House, and refuse to follow the erroneous

decision.â??

20. The law as regards the binding nature of the decision of the Court of Appeal and House of Lords is stated thus in Halsbury's Laws of

England, 4th Edn., Vol. 37, p. 1242:

â??The decisions of the Court of Appeal upon questions of law must be followed by Divisional Courts and courts of first instance, and, as a general

rule, are binding on the Court of Appeal until a contrary determination has been arrived at by the House of Lords. There are, however, three

exceptions to this rule; thus (1) the Court of Appeal is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) it is

bound to refuse to follow a decision of its own which, although not expressly overruled, cannot, in its opinion, stand with a decision of the House of

Lords; and further is not bound by one of its decisions if the House of Lords has decided the case on different grounds, ruling that the issue decided by

the Court of Appeal did not arise for decision; and (3) the Court of Appeal is not bound to follow a decision of its own if given per incuriam. Unlike the

House of Lords, the Court of Appeal does not have liberty to review its own earlier decisions. A decision is given per incuriam when the court has

acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must

decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision.â??

21. It is to be noted that one of the judgments relied on by the Division Bench in Purnima Giri (supra) namely Balbir Kaur (supra) was distinguished by

the Apex Court in M. T. Latheesh (supra) with the observation that the principles enunciated therein are general observations made by the Apex

Court in the context of compassionate appointment and thereafter Balbir Kaur (supra) was distinguished on the ground that in the case before the

Court the same was covered by a Scheme framed by the authority with regard to compassionate appointment. The Apex Court went on to hold that

the respondent is not entitled to claim relief under the new Scheme because the

financial status of the family is considerably above the criterion that has been fixed in the new Scheme. Following the ratio laid down in Oberoi Hotels (supra), that the decision of the latter judgment that had dealt with an earlier judgment of the Supreme Court has to be followed by the High Court, it is clear that the Division Bench of the High Court was bound by the judgment in M. T. Latheesh (supra). The fact that M. T. Latheesh (supra) was not considered by the Division Bench results in the judgment losing its binding force.

22. The second Supreme Court judgment of Govind Prakash Verma (Supra) relied by the Division Bench in Purnima Giri (supra) has been specifically distinguished and held to have no efficacy as a binding precedent by the Supreme Court judgment in Shashank Goswami (supra) and Mumtaz Yunus Mulani (supra). The judgment of the Supreme Court in Mumtaz Yunus Mulani (supra) was passed prior to the Division Bench judgment of this Court.

Having ignored the judgment in Mumtaz Yunus Mulani (supra), I am of the clear view that the Division Bench judgment becomes distinguishable in

law and I am not bound to follow the same. Subsequently, the Supreme Court in Shashank Goswami (supra) has reiterated the law laid down in

Mumtaz Yunus Mulani (supra). Such reiteration further makes the Division Bench judgment in Purnima Giri (supra) distinguishable in law.

23. Furthermore, it is pertinent to note that the Division Bench judgement was delivered prior to the Rules, 2009 coming into force and therefore, the

same can be distinguished from the present writ petition on the ground that the Division Bench had no occasion to examine the newly framed Rules,

2009. Such being the case, the Division Bench judgment is distinguishable on facts as well.

24. The view taken by me in the preceding paragraphs on the Doctrine of Precedents is bolstered by the law as laid down by the English Courts and

the Supreme Court of India as cited above. Coincidentally, faced with a similar fact situation dealing with the Rules, 2009 and predicament on the

Doctrine of Precedents the Coordinate Bench of this High Court in Sunita Saha (Poddar) (supra) had held that the decision of Balbir Kaur (supra) had

lost its efficacy as a binding precedent and following the law as laid down in Shashank Goswami (supra) held that compassionate appointment can

only be offered in terms of the scheme that is formulated by the State.

25. I had on an earlier occasion, examined the principles relating to compassionate appointment in the case of W.P. 2825 (W) of 2018 (Smt. Ipsita

Chakrabarti nee Dua â?"v- State of West Bengal and Ors.). After considering the Supreme Court judgements delivered in the cases of State Bank of

India and Anr. â?"v- Somvir Singh reported in (2007) 4 SCC 778; I.G. (Karmik) and Ors. â?"v- Prahalad Mani Tripathi reported in (2007) 6 SCC 162;

National Institute of Technology â?"vNiraj Kumar Singh reported in (2007) 2 SCC 481; Union Bank of India and Ors. â?"v- M.T. Latheesh (supra);

this Court held that the appointment on compassionate grounds is to be done in accordance with the rules framed by the employer and there is no right

to claim compassionate appointment on any other ground. Furthermore, the Court had held that this appointment is given only for meeting the

immediate hardship faced by the family due to the death of the bread earner and the financial condition of the family is a guiding factor for such

appointment. The relevant paragraph enunciating the ratio decidendi of the judgement is delineated below:

â??10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a

transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules

etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by

the employer.

(c) 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 seems to achieve, the idea

being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding

factors should be financial condition of the family.â??

26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined

above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants

of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other

equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in

mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such

appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules.

27. In the instant matter, it is to be noted that the District Inspector had rejected the application of the petitioner on the basis that the family pension

received by the petitioner is exceeding the salary of the Group D staff post at the relevant point of time. This fact remains undisputed and the

petitioner has not challenged the validity of the Rules, 2009 either. It logically follows that the petitioner is bound by these Rules, 2009 and has to be

eligible for appointment in consonance with the Rules, 2009. The petitioner cannot claim appointment on compassionate grounds if he is ineligible to

receive such appointment by the Rules, 2009. In order to compute family income, the D.I. of Schools considered the provisions contained in Schedule

V and, more importantly, the explanation that categorically defines the expression "financial hardship" (provided above). The impugned order

passed by the D. I. of Schools is in accordance with the definition of "financial hardship".

28. Furthermore, it is relevant to point out that the petitioner has approached this Court in 2017, which is more than six years after the D.I. of Schools

had rejected the application. The petitioner has filed a supplementary affidavit claiming he had not received any information that the D.I. of Schools

had rejected his application. He had made an application to the Secretary of the school in the year of 2016, which is still five years after the date of

rejection. The petitioner had maintained silence for over five years for an appointment on compassionate grounds and has failed to give a reasonable

explanation for his inaction from the year 2011 till 2016. In view of the same, it is obvious that the writ petition filed in 2017 is belated in nature and is

liable to be dismissed on the sole ground of having been filed at a belated stage, especially since this matter relates to appointment on compassionate grounds. The scheme of appointment on compassionate grounds is meant to alleviate the suffering and the immediate financial hardship (emphasis supplied) faced by the dependents of the deceased who was the breadearner of the family. On this score itself, the writ petition is not maintainable.

29. In light of the above discussions and reasons provided above, I find no reason to interfere with the order passed by the D.I. of Schools, which is in accordance with Schedule V of the Rules, 2009.

30. This writ application is misconceived and is accordingly dismissed. Being a case of compassionate appointment, I am not inclined to pass any order as to costs.