
(2003) 12 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 42056 of 2001

Chaklesh Sarswat

APPELLANT

Vs

General Manager, U.P. State Road Transport Corporation and
Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Citation : (2004) 2 AWC 1742

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : S.K. Chaturvedi, for the Appellant; V.K. Singh and V.K. Verma, S.C.,
for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri S.K. Chaturvedi, learned counsel for the petitioner and Sri V.K. Verma, learned counsel holding brief of Sri V.K. Singh, learned counsel for the respondents, and with the consent of learned counsels for the parties writ petition is decided finally at this stage in view of the Second Proviso to Rule 2 of Chapter XXII of the Allahabad High Courts Rules, 1952.

2. In this petition prayer has been made for quashing the order dated 13.6.2001, whereby the petitioner's application for getting appointment on compassionate ground has been rejected, and further prayer has been made for issuance of mandamus commanding the respondents to consider the application of the petitioner for compassionate appointment.

3. According to the petitioner, the mother of the petitioner, while deployed as Class IV employee in U. P. State Road Transport Corporation, died on 31.8.1995. On the death of his mother the petitioner, whose date of birth is 18.2.1982, being eldest male member in the family submitted his earlier application on 24.11.1997 as a minor, and subsequently on 13.7.2000, i.e., within five years from the date of death of his mother submitted his application for getting

employment on compassionate ground. The Regional Manager, U.P.S.R.T.C., Agra Region, Agra by its letter dated 2.12.2000 directed the petitioner to appear with his testimonials for physical test. In compliance thereto the petitioner presented himself before the said authority, however, the petitioner was informed by letter dated 13.6.2001 that his claim for getting employment on compassionate ground has been rejected.

4. According to the petitioner he is class 8th pass and has 5 feet 4 and 1/2 inches height and the application was presented within five years, therefore, he could be appointed by relaxing the criteria of appointment as a driver. According to the petitioner he could be given appointment to the Class IV post under Dying-in-Harness Rules on compassionate ground, for which the petitioner is fully in possession of qualification and is also competent to be appointed as a driver, and the rejection of the petitioner's claim is illegal, without application of mind and is derogation to the spirit of the Dying-in-Harness Rules.

5. Counter-affidavit has been filed, wherein it has been indicated that the strength of working Class IV employee is more than the sanctioned posts, as such there is no post available to give appointment to the petitioner. According to the respondents as a driver the petitioner cannot be given appointment because for appointment as a driver minimum qualification is High School and height should be 5 feet 5 inch, however, the petitioner is only High School pass and his height is only 5 feet 4 and 1/2 inch, this stand of the respondents has been denied by the petitioner.

6. On behalf of petitioner rejoinder-affidavit has been filed controverting the averments of the counter-affidavit and reiterating the stand taken in the writ petition.

7. For convenience Rule 5 of "Rules, 1974" is extracted below ;

"Recruitment of a member of the family of the deceased.--(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person :

(i) fulfils the educational qualifications prescribed for the post;

(ii) is otherwise qualified for Government service ; and

(iii) makes the application for employment within five years from the date of the death of the Government servant :

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department which the deceased Government servant was employed prior to his death."

8. The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment. This is because as a rule appointments in public service should be made strictly on the basis of open invitation of applications and no other mode of appointment nor any other consideration is permissible. However, to this general rule which is to be followed strictly in all cases of public appointment, there are certain exception carried out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. In such cases out of humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased employee who may be eligible for such employment. So, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. Laying down the above principles in *Umesh Kumar Nagpal Vs. State of Haryana and Others*, ; *Jagdish Prasad Vs. State of Bihar and Another*, and *S. Mohan Vs. Government of T.N. and Another*, . The Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by the deceased employee.

9. Mere death of an employee not sufficient to entitle the dependant of the family for the compassionate appointment. The Government or the public authority concerned has to examine the financial condition of the family, and it is only when 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 Supreme Court has cautioned that it must be remembered that as against the destitute family of the deceased, there are millions of other families, which are equally, if not more, destitute. It is, therefore, pointed out by the Supreme Court in *Umesh Chandra Nagpal (supra)*, *Jagdish Prasad (supra)* ; *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, that the exception to the general rule that all appointments in public service shall be made strictly on the basis of open selection on merits is made in favour of the family of the deceased employee in consideration of the services rendered by him and the legitimate expectations and changes in the status and affairs of the family engendered by erstwhile employment which are suddenly upturned. The Supreme Court also indicated that the compassionate

appointment cannot be granted after a lapse of reasonable period if that be so, it must be specified in the rules and the object being to enable the family to tide over the financial crisis which it faces because of the sudden death of the sole bread-earner, the compassionate employment cannot be claimed and offered after long lapse of time more so, when the crisis is over, it is because, the consideration of such employment is not the vested right which can be exercised at any time in future.

10. Compassionate appointment are to be in consonance with rules. The Supreme Court has made it clear that compassionate appointment cannot be made de hors the rules. The respondent claimed compassionate appointment for the post of Sub-Inspector in Rajasthan Police on the death of father dying in harness. He having crossed the upper age limit for the appointment to such post even after relaxation of age as provided in the rules was found ineligible for appointment as Sub-Inspector of Police and has been offered the post of Lower Division Clerk, however, he persisted in his demand for appointment as Sub-Inspector of Police and moved the High Court under Article 226 of the Constitution challenging the appointment given to him as a L.D.C. The High Court issued direction to the Government to give him the appointment of Sub-Inspector and the Government had to give him such appointment under pressure of contempt proceedings pursuant to the High Court judgment. The Supreme Court in appeal has held that the High Court had erred in issuing direction to the State Government to give appointment to the respondent de hors the rules and cannot issue such direction regardless of the rules of recruitment in view of *State of Rajasthan Vs . Chandra Narain Verma*;;, (1994) 2 SCC 752 Compassionate appointment is permissible only when there are rules providing for such appointment in the light of *State of U.P. and Others Vs. Paras Nath*,

11. Compassionate appointment given as L.D.C. but no legal right to claim the appointment as Sub-Inspector of Police. The respondent's father died while he was serving as Sub-Inspector of Police in C.I.D. (Special Branch). The respondent applied for compassionate appointment either as Sub-Inspector of Police or Lower Division Clerk. He was given appointment as L.D.C. After accepting that appointment he sought appointment as Sub-Inspector of Police. When this was denied by the Government he moved the High Court under Article 226 of the Constitution. A single Judge of the High Court directed consideration of his appointment to the post of Sub-Inspector of Police in accordance with the provision to Rule 5 of the Rajasthan Recruitment of Dependents of the Government Servants (Dying while in Service) Rules, 1975. An appeal by the State before the Division Bench was dismissed on the ground of the delay. The Supreme Court in appeal by special leave on condoning the delay has set aside the order of the High Court and held that once the appointment as L.D.C. has been accepted by the respondent his right to be considered for appointment on compassionate ground was consummated and no further consideration on compassionate ground would ever arise, otherwise it would be a case of endless compassion. It was also observed that once the respondent has accepted the

appointment on compassionate ground the High Court cannot direct him to consider his appointment as Sub-Inspector of Police under proviso to Rule 5 even if the said proviso applied to his case *State of Rajasthan Vs. Umrao Singh*, .

12. Compassionate appointment in Class III or Class IV posts only. The posts in Class III and Class IV are non-manual and manual categories and hence they alone can be offered for compassionate appointment, the object being to relieve the family of the financial destitution and to help it to get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory and the favour being given to the dependant of the employee dying-in-harness on such posts has the rational nexus with the object sought to be achieved, i.e., relief against destitution. The Supreme Court has, therefore, held that no other posts are expected or required by the public authorities for the purpose, and that offering compassionate appointment as matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments on posts above Class III and Class IV posts is legally impermissible in view of *Umesh Chandra Nagpal* (supra).

13. In the State of M. P. v. *Ramesh Kumar Sharma* 1994 (3) SCC 661 , the respondent was offered the post of Lower Division Clerk on his prayer for compassionate appointment, but he refused and claimed the post of A.P.P. Grade II for which he had the requisite qualification. It has been held by the Supreme Court that under the rules of compassionate appointment, the respondent had no right to any particular post of his choice and he can only claim to be considered for the post. Moreover, even if in an earlier occasion the Government gave compassionate appointment to the post of A.P.P. Grade II that could be no ground for claiming such post by the respondent. The Supreme Court has observed that mistake committed by the Government in giving compassionate appointment earlier to a dependant to the post of A.P.P. Grade II can be no ground for the Government in repeating the same mistake by offering compassionate appointment to a dependant to a post above the rank of Lower Division Clerk and the State cannot be permitted to commit the same mistake. In another decision, the Supreme Court has trend the plea of discrimination in rejecting the claim of the dependant son as a teacher and as Inspector/Assistant Sub-Inspector of Police after he had been offered a post of Clerk and joined the post without objection. In that case the widow of the Government employee dying-in-harness in accordance with Government instruction sought for compassionate appointment of her son as Clerk and the Government acceded to the request and appointed him as Clerk to which post he joined without protest. The mother thereafter renewed the prayer for her son's appointment as a teacher or as Assistant Sub-Inspector of Police and the request was turned down by the Government. The plea was taken that in other cases such request for appointment as teacher was given and the refusal was discriminatory. The High Court entertained the writ petition and directed the Government to consider his prayer afresh. The Supreme Court in appeal of State Government had turned

down the plea of discrimination and has held that without, proper finding regarding discrimination on positive facts the plea should not be entertained. It is also held that the Selection Board rejected the claim on the ground of lack of requisite qualification and that the post of Assistant Sub-Inspector of Police is a promotional post and cannot be offered to the candidate in view of the State of Haryana Vs. Naresh Kumar Bali, The Supreme Court has made it clear that compassionate appointment cannot be insisted upon for a particular post. In view of Pushpendra Kumar (supra).

14. Compassionate appointment based on descent not permissible. Government of India O.M. No. 1401/1/77 Estt. (D), dated 25th November, 1978 has made provision for compassionate appointment to son, daughter or widow of Government servant who died in harness but over and above it made further provision for compassionate appointment for "near relative". The validity of the said O.M. has come up for challenge before the Supreme Court. The Supreme Court has observed that the appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of the Government employee is valid because this is not on the ground of descent simpliciter but exceptional circumstances exist to provide for such compassionate appointment. It cannot be a rule to take advantage of the Memorandum to appoint persons to the posts on the ground of compassion, that the provision in the O.M. that the appointment on compassionate grounds would be not only to a son, daughter or widow, but also to a near relative was vague and undefined, that the O.M. has enumerated all the eventualities to avoid appointment on regular basis, that these enumerated eventualities would be the breeding ground for misuse of appointments on compassionate ground, that Articles 16 (3) to 16 (5) provided exceptions but further exceptions must be on constitutionally valid and permissible grounds and that the appointment on the ground of descent clearly violates Article 16(2) of the Constitution. So, the Supreme Court has directed that the O.M. be circumscribed with suitable amendment to the Memorandum limiting it to relieve the members of the deceased employee dying-in-harness from economic distress in view of Auditor General of India and others Vs. G. Ananta Rajeswara Rao,

15. Circumstances which negative necessity of compassionate appointment : The railway servant died leaving his widow, his two major sons and a minor son aged twelve years and application for compassionate appointment for the youngest son had been made twenty years after the death of the railway servant and the same has been refused. The respondent then made an application before the Central Administrative Tribunal against such refusal and the Tribunal directed the authority to consider his case and if found fit to provide him with employment. The Supreme Court in appeal of Union of India has set aside the order of the Tribunal by observing that the plea for compassionate appointment is not to enable the family to tide over the sudden crisis or distress which resulted long ago, that at the time the railway employee died there were two major sons and the mother who were apparently capable of meeting the needs of the family and

so did not apply for any job on compassionate ground that for nearly twenty years, the family has pulled on apparently without any difficulty and that in this background the Tribunal must be held to have acted illegally and without jurisdiction in directing the authorities to consider the case of the respondent for appointment on compassionate ground and to give him appointment if found suitable in view of Union of India (UOI) and Others Vs. Bhagwan Singh, . In another decision the Supreme Court has held that when at the time of death of the father, the son was only four years old, he having applied for compassionate appointment twenty three years after the death of the father, is not entitled to appointment on compassionate ground in the light of decision in Jagdish Prasad (supra) and Paras Nath (supra). When the father died in 1965 the son was less than six years old. After attaining majority he applied for compassionate appointment on 15th July, 1987. Such deleted claim cannot be allowed in view of Dhalla Ram v. Union of India AIR 1999 SC 564.

16. Widow of the deceased living with husband's brother as man and wife, if disentitled. When the widow of the Government servant dying-in-harness prayed for compassionate appointment, her claim was refused on the ground that after her husband's death she has been living with the husband's brother as man and wife and has given birth to a child. It is on this ground her claim for compassionate appointment has been refused. The Supreme Court has not approved the decision of the authority to deny her claim for compassionate appointment only on that ground. It was held that her statement that she was the widow of the deceased Government servant as not at all incorrect, that she being a member of a Hindu Joint Family and she was dependant upon her husband was also not incorrect and in these circumstances the refusal was not justified in the light of Jethi Devi Vs. Bhakra Beas Management Board and Another,

17. Widow provided with compassionate appointment and the prayer of brother not to be allowed. When the employee died during service period his widow prayed for compassionate appointment and was given such appointment. During the continuance of the appointment of the widow the brother of the deceased claiming to be the dependant also prayed for compassionate appointment. It was held by the Supreme Court that subsequent claim of the brother is impermissible and must be refused and that the brother cannot claim to be the dependant of the deceased to claim compassionate appointment in the light of decision in State of Manipur and Others Vs. A. Ongbi Memcha Devi (Smt) and Another, .

18. Compassionate appointment for son of incapacitated father. The driver of the Haryana Roadways retired from service on being found medically unfit for driving heavy vehicles but not certified to have become blind or nakara, but he sought for premature retirement on medical grounds, after his retirement, his prayer for compassionate appointment for one of his sons was turned down by the authorities, however, the High Court directed one of his sons to be given appointment on compassionate ground commensurate with his educational

qualifications. The Supreme Court has held in appeal of State of Haryana that the High Court was not justified in issuing direction to give one of his sons a suitable appointment commensurate with his educational qualifications when the driver was not medically incapacitated to do any job, in view of the decision of the Supreme Court in Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, . The driver could have got alternative job and in exceptional cases where that was not possible, compensation could be paid and in the circumstances the order of the High Court was not found proper in view of State of Haryana v. Hawa Singh 1995 (2) SCC 258. In State of Haryana v. Surjeet Singh (1995) 5 SCC 478 ; the Supreme Court reiterated the same view when the driver of a heavy vehicle retired on account of deficiency in sight, but the medical report did not declare him either blind or nakara. It was held that in terms of Haryana Government instructions dated 22nd February, 1991 and 28th August, 1992 he was not entitled to have his son appointed on compassionate ground however, since in reference to the decision of the High Court the appellant State had already appointed his son, therefore, the Supreme Court did not intend to disturb such appointment.

19. Major brother's claim for appointment claiming to be member of the family of the deceased. A major brother in the State of Haryana claiming benefit of the definition of "family" in Rule 6.16 B of the Punjab Civil Services Rules (Volume III) as applicable to Haryana has sought for compassionate appointment on the death of the deceased elder brother in harness. As his claim was refused, he moved the High Court under Article 226 of the Constitution and the High Court issued direction upon the Government to appoint the brother of the deceased on compassionate ground. The Supreme Court has set aside the order of the High Court. The Supreme Court on analysing the definition of the "family" in the above rules found that only brothers below the age of eighteen years were among others constituted the family of the Government servant and not a major brother and consequently a major brother cannot be treated to be the member of the family of the deceased Government employee to become eligible for compassionate appointment. It was sought to be urged that when previously the Government appointed the major brothers of the deceased employees on compassionate ground the Government was estopped from refusing the claim of the respondent to claim compassionate appointment. The Supreme Court has held that it might be that some department had wrongly given the benefit but such wrong action cannot become right in the face of the unambiguous language of the rules defining "family" in the Rules 20 in view of State of Haryana and Another Vs. Dhan Singh,

20. Compassionate appointment to the dependant of casual or ad hoc employee or apprentice. On the basis of the Haryana State Government Circular dated 31st October, 1985 providing for compassionate appointment, one of the dependants of the deceased employee dying-in-harness applied. The question arose before the Supreme Court if the said provision would be attracted when a casual or ad hoc employee or an apprentice died-in-harness. In that case, the claim of widow

of the deceased apprentice Canal Patwaris was turned down by the State Government on the basis of the definition of "employee" given in Chapter II, para 2.6 Punjab Civil Service Rules as in force in the State of Haryana when the widows of the deceased apprentices moved the High Court under Article 226 of the Constitution direction was issued for the appointment of the respondent widows on compassionate ground even though the respective husbands of the respondents were working as apprentice Canal Patwaris, however, the Supreme Court did not approve the verdict of the High Court and has been held that the claim for compassionate appointment was based on the ground that the claimant was a dependant of a deceased employee, even though strictly this claim cannot be upheld on the touchstone of the Articles 14 and 16 of the Constitution, but the Supreme Court has upheld this claim 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 and 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 of the Constitution, however, the Supreme Court has construed the Government Order dated 31st October, 1985 and has held that the said order extends the benefit of the appointment to one of the dependants of the deceased employee, but such expression does not conceive casual or purely ad hoc employee or apprentice. The Supreme Court has also found that the expression "employee" in the Punjab Civil Service Rules as in force in the State of Haryana, does not include the casual or purely ad hoc employee or apprentice and consequently the High Court should not have directed the appointment of the respondent widows on compassionate ground when admittedly the respective husbands of the respondents were working as apprentice canal patwaris. The Supreme Court has also pointed out if the scheme of compassionate appointment of the State Government is extended to all sorts of casual or ad hoc employees including those who are working as apprentice, then such scheme cannot be justified on the constitutional ground in view of State of Haryana and Others Vs. Rani Devi and Another, .

21. Dependant of work charged employee under Die-in-Harness Scheme of Manipur, On construing the provisions of Die-in-Harness Scheme, Manipur, 1984, para 3 as substituted by corrigendum dated 8th May, 1984 and amended by O.M. dated 31st August, 1992, the Supreme Court has held that such scheme of Manipur continues to be inapplicable to work charged employee and his dependants are not entitled to the benefit of the compassionate appointment thereunder. It was urged before the Supreme Court that the work charged employee when confirmed is entitled to be eligible to get the benefit of the said scheme. The Supreme Court has negatived that plea and has held that when the work charged employee has been excluded from the purview of the said scheme, then the status of such work charged employee is not changed even after his confirmation State of Manipur Vs. Thingujam Brojen Meetei, .

22. No time limit for making the claim if belated petition entertainable. Ex-employee of Haryana State Electricity Board died during the minority of his sons

and his sons on attaining majority 12 or 13 long year respectively after death claimed compassionate appointment. Under the scheme of the Government prevalent at that time on the employee's death, there was no time limit for making such a claim. The High Court in writ petition directed the Board to allow their claims. The Supreme Court while setting aside the order of the High Court held that the High Court order allowing the claim at a belated stage is not sustainable because compassionate appointment cannot be granted after a long lapse of reasonable period and very purpose is intended to meet the immediate financial problem being suffered by the members of the deceased family and such consideration cannot be kept pending for years. Allowing the appeal of the State Electricity Board and setting aside the order of the High Court, the Supreme Court has, however, observed that the claimants are not precluded from making representation for consideration of their cases giving full details of the circumstances and economic conditions of the family in view of Haryana State Electricity Board Vs. Naresh Tanwar and Another,

23. High Court or Tribunal cannot direct the authority to create supernumerary post to make appointment on compassionate ground. When the application has been submitted for compassionate appointment before the Hindustan Aeronautics Ltd. under the Compassionate Appointment Rules framed by the public undertaking and the application has been rejected on the ground that there was no vacancy and a ban on fresh recruitment was in operation as there was surplus labour. The applicant moved the High Court under Article 226 of the Constitution. The High Court directed to consider the candidature of the applicant and to give her compassionate appointment by creating a supernumerary post. The Supreme Court in appeal has held that such a direction by the High Court in the circumstances of the case is not proper. It was not disputed that the public undertaking in question has framed the rules for compassionate appointment, but such rules are subject to the availability of the vacancy. It is also observed that when the respondent applied for compassionate appointment, there was no vacancy and there was a ban on fresh recruitment as there was a surplus labour the work-force was being reduced and the incentives were offered for voluntary retirement. In view of the above position, the Supreme Court has held that the order of the High Court to consider the candidature of the respondent and to give her an appointment by creating a supernumerary post is improper. The Supreme Court has distinguished its earlier decision in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, ; and has observed that when there is a ban on recruitment and no vacancy was available, it was not proper for the High Court to direct the authorities to give the respondents appointment by creating a supernumerary post in view of Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai, .

24. Similar view has been taken by the Supreme Court in Himachal Road Transport Corporation Vs. Dinesh Kumar, . In that case, even though the Himachal Pradesh Road Transport Corporation has "kith and kin" policy for giving appointment on compassionate ground for the employees dying-in-harness, but

the prayer for the son of the deceased employee of the Corporation was turned down on account of nonavailability of the vacant posts. The aggrieved claimant moved the Administrative Tribunal challenging such order seeking a direction to give him compassionate appointment to the post of the clerk. The Tribunal directed the Corporation to appoint the claimant in the regular clerical post forthwith or to create a supernumerary post to accommodate him. The Supreme Court has held that such an order is illegal and without jurisdiction and that in the absence of a vacancy it is not open to the Corporation to appoint a person to any post and it will be gross abuse of the powers of the public authority to appoint persons when vacancies are not available and persons are so appointed and paid salary, it will be mere misuse of public fund which is totally unauthorised. In view of the above position, the Supreme Court has observed that even if the Tribunal finds that a person is qualified to be appointed to a post under the "kith and kin" policy, the Tribunal should give a direction to the appropriate authority to consider the case of the particular applicant in the light of the relevant rules and subject to the availability of the post and that it is not open to the Tribunal either to direct the appointment to any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such post.

25. Policy decision of the Government to appoint candidates on compassionate ground in Class IV posts only irrespective of their qualifications, if can be challenged. A policy has been framed by the State of Bihar to appoint all the candidates seeking appointment on the compassionate ground to appoint them in Class IV posts irrespective of their qualifications and twelve posts have been made available in Class III as reserved for appointment by promotion from the Class IV candidates who are entitled thereto as per the rules. But several dependants of the deceased employee challenged such policy decision and moved the High Court under Article 226 of the Constitution forwarding the claim to give them appointment to Class III posts as they had the requisite qualifications for the same. The High Court passed an order directing them to be appointed in Class III posts. The State Government has moved the Supreme Court in appeal by special leave. The Supreme Court has set aside the order of the High Court. It is held that there is no right vested in the candidates for particular appointment on compassionate ground, that the State had taken a policy decision to appoint all the candidates irrespective of the qualifications to Class IV posts and twelve posts available in Class III were reserved for appointment by promotion to the Class IV candidates who are entitled thereto as per the rules and that the principles adopted by the Government cannot be said to be unjustified or illegal. The Supreme Court has taken note that earlier some candidates approached the Court and obtained orders and in compliance thereof at pain of contempt petition, the Government instead of appointing them to Class IV posts upgraded the Class IV posts as Class III posts as by then the Class III posts were not available and confirmed them as Class III employees. But the Supreme Court has held that the said order which was wrongly made by the High

Court cannot be a base to issue directions in future, and that if the directions of the High Court as made in this case are complied with, all the Class IV posts would be converted into Class III posts which is against the discipline of the service and consequently the High Court was not justified in issuing direction in all cases for appointment to the candidates for compassionate appointment in Class III posts. *State of Bihar and others etc. Vs. Samsuz Zoha etc.*,

26. Scope of High Courts and Tribunals' power to order compassionate appointment. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, ; the Supreme Court has held that the Courts cannot order appointment on compassionate ground, de hors the provisions of the statutory regulations and instructions. In that case, in view of the provisions in Clause 2 (ii) of 1979 Instructions of the Life Insurance Corporation and Clause 4 of the Circular dated 19th January, 1987 against the granting of compassionate appointment in a case where any member of the family was already employed, the Life Insurance Corporation refused the compassionate appointment to the respondent No. 2. The respondent No. 2 moved the High Court against such order and the High Court directed the Corporation to give him such appointment. The Supreme Court has set aside that order allowing appeal of the Corporation by a special leave. The Supreme Court has held that the High Court and the Administrative Tribunals cannot confer benediction impelled by sympathetic considerations, that Court shall endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law and whatever the case it may be, nothing should be done in disregarding the law. The Supreme Court has pointed out that in this case there are regulations and instructions governing the matter, that the court below has not even examined whether the case falls within the scope of the relevant statutory provisions and that the appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the statutory regulations and instructions and cannot put aside the same and order compassionate appointment. The Supreme Court has further pointed out that the High Court should not have directed the appointment on compassionate ground and should have merely directed the consideration of the claim of the 2nd respondent because no mandamus should be issued directing the authority to do a thing forbidden by law. Similar view was expressed by the Supreme Court in case of *Naresh Kumar Bali*, (supra).

27. In that case as the respondent's claim for giving an appointment to the post of Inspector of Police was not acceded to on compassionate ground, he has moved the High Court under Article 226 of the Constitution and the High Court issued the direction to appoint the respondent to the post of Inspector within three months when direct recruitment is not available. The Supreme Court has held that the High Court can only direct consideration of the writ petitioner's claim to compassionate appointment in accordance with the Rules and cannot itself direct the appointment, *moreso*, when the post in question was exclusively a promotional one.

28. In *Pepsu Road Transport Corporation v. Satinder Kumar* 1995 (4) SCC 597, the Supreme Court has also held that the High Court should not compel the appointing authorities to appoint a person to a particular post possessing merely a minimum qualification and should only direct the authority to consider the appointment of the candidate to the post commensurate with his qualification, therefore, when in that case, the High Court directed the Corporation to appoint the respondent to the post of clerk only on the ground that he possessed the minimum qualification for eligibility, namely. Matriculation, the Supreme Court has modified the order of the High Court in appeal by special leave. It was held that such order directing the Corporation to appoint the respondent to the post of clerk only because he possessed the minimum qualification was not proper and the order of the High Court has been substituted by the Supreme Court directing the appellant Corporation to consider the case of the respondent for appointment on compassionate ground commensurate with his qualification.

29. In *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held as under :

"It can be stated unequivocally that in all claims for appointment on compassionate ground, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant."

30. Aforesaid judgment was approved and the principle laid down therein was reiterated by the Hon"ble Supreme Court in *Smt. Phoolwati Vs. Union of India and Others*, .

31. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, the Hon"ble Supreme Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court has observed as under :

"It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some

source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.....

.....The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose, it must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased.....The decision does not justify compassionate employment either as a matter of course..... The only ground which can justify compassionate employment is the penurious condition for such employment is not a vested right..... The object being to enable the family to get over the financial crisis."

32. The same view has been reiterated in Jagdish Prasad Vs. State of Bihar and Another, ; State of Bihar and others etc. Vs. Samsuz Zoha etc., ; Himachal Road Transport Corporation Vs. Dinesh Kumar, and Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai, . It has categorically been held that compassionate employment cannot be claimed as a matter of course not being a vested right.

33. In Haryana State Electricity Board and another Vs. Hakim Singh, the Hon''ble Supreme Court placed reliance upon the judgments referred to above and observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, an ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

34. Similarly, in Haryana State Electricity Board Vs. Naresh Tanwar and Another, , the Hon''ble Supreme Court reiterated and followed the law laid down in Umesh Nagpal's case (supra) and directed the applicants involved therein to apply for employment on compassionate ground "by giving full details of the family

circumstances and the economic conditions."

35. In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, the Supreme Court has observed as under :

"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 a livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving gainful appointment to one of the dependants 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. 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 provision, 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 for the dependant of a deceased employee."

36. In Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and Others, the Hon"ble Supreme Court held that in absence of the statutory provisions, an adopted son cannot claim appointment on compassionate ground. Similarly, in General Secretary, American Express Bank Union v. American Express Bank Ltd. (1999) SCC 1235 , the Hon"ble Supreme Court held that mere adoption of recruitment policy in pursuance of a settlement between the union and the employer for compassionate employment of the specified categories of relations of employees on their retirement, death or incapacitation, cannot be enforced unless adopted by the employer by bringing the Standing Order/Statutory Rule. Similarly, in West Bengal State Electricity Board and Others Vs. Samir K. Sarkar, , the Hon"ble Supreme Court held that embargo on compassionate employment in case of death of employee within two years prior to reaching the age of superannuation, was not invalid.

37. Undoubtedly, in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, the Hon"ble Supreme Court held that appointment on compassionate ground is not a vested right but it should not be denied in deserving cases for the reason that it would be tantamount to denial of economical and social justice as enshrined in the Constitution and law must be, in its adaptability and flexibility, applied depending upon a situation for the benefit of the society.

38. In Sanjay Kumar Vs. The State of Bihar and Others, the Hon"ble Supreme

Court again reiterated that the purpose of the rules providing for compassionate employment is only to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood, but such an appointment cannot be held as if a reservation for the dependants of the deceased Government servant who died in harness. In *Regional Manager, A.P.S.R.T., Nellore v. C.M. Pawana Kumari* AIR 2007 SCW 4779, the Supreme Court held that direction cannot be issued to appoint a person on compassionate ground de hors the scheme framed by the employer nor the Court has a power to modify the scheme or rules framed in this regard. Similar view has been reiterated in the *Divisional Manager, A.P.S.R.T.C. v. K. Radha Krishna* AIR 2001 SCW 5190, while deciding a case of appointment on compassionate ground under Re-employment Children Quota provided under the Circular issued by the Corporation.

39. In *Surya Kant Kadam v. State of Karnataka and Ors.* 2001 (2) AWC 1128 (SC) : AIR 2001 SC 3145, the Supreme Court held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

40. In *State of Haryana and Others Vs. Vipin Kumar*, the Supreme Court held that compassionate employment is not given to offer a status on a family and no person can claim to have the same post and if rules/executive instructions provide that appointment shall be made on one stage below, it can be made not only next below post but to any other lower post as the rules provide only that the appointment may be offered at least one step below the post the deceased Government servant was holding and there can be no bar in offering still a lower post for the reason that the purpose of appointment on compassionate ground is to redeem the family from financial constraints and not to confer any other benefit or status.

41. In *Sail and Another Vs. Awadhesh Singh and Others*, the Hon'ble Supreme Court held that if rule prohibits an appointment on compassionate ground if any other member of the family is already in service, the said rule is valid and no direction can be issued against such scheme.

42. While reiterating the purpose of making appointment on compassionate ground, the Hon'ble Supreme Court, in *Haryana State Electricity Board Vs. Krishna Devi*, held that the main object behind giving such employment is to provide immediate financial help to the family of the deceased employee. Such appointment cannot be made in absence of Rules or Instructions. Application for such employment must be made within the period prescribed by the Rules/Instructions. Application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

43. Thus, it is evident that such employment cannot be claimed as a vested

right. The concept of vested right has been explained by the Supreme Court in *Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others*, wherein it has been described as under :

"The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as "vested", Fixed ;, accrued ;, settled;, absolute ;, complete. Having the character or given in the rights of absolute ownership ; not contingent ; not subject to be defeated by a condition precedent". Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest ; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as (Law held by a tenure subject to no contingency ; complete ; established by law as a permanent right ; vested interest."

44. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law.

45. Thus, in view of the above, as the time is an essential factor in a case like this as the purpose of providing the compassionate employment is to feed the starving family, no application should be entertained after expiry of 15 years and petition is liable to be rejected only on this sole ground.

46. The text and context of the entire provisions must be looked into while interpreting any of the provision of the Statute. The Court must look to the object, which the Statute seeks to achieve while interpreting the provisions of the Act/Rules/ Regulations. A purposive approach for Interpreting the provision is necessary.

47. It is also settled principle of interpretation of law that any interpretation, which leads to hardship and complication, should be avoided. In *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, , the Hon"ble Apex Court has held that "the mechanical approach to construction is altogether out of play with the modern positive approach. The modern positive approach, i.e., to effectuate the object and purpose of the Act."

48. In *Colour-Chem Limited Vs. A.L. Alaspurkar and Others*, , the Supreme Court held that the provisions of welfare legislation should be construed in a way to give benefit to the persons for whose benefit the Rules have been enacted and the Court must examine the policy and object of the Act and must advance the cause of enactment.

49. In *Durga Oil Company and Another Vs. State of U.P. and Others*, the Hon"ble Supreme Court held that while interpreting the provisions of a Statute or Rules, the purposive interpretation should always be borne in mind. Similar view has been taken by the Hon"ble Supreme Court in *Forest Range Officer v. P. Mohd. Ali*

1993 3 SCC 627 . In *The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.*, the Supreme Court observed as under :

"The language of a statutory provision is not static vehicle of ideas and concepts and as ideas and change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of clash between conflicting interest. It is therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate."

50. In *S.P. Jain Vs. Krishna Mohan Gupta and Others*, the Hon"ble Supreme Court had held that law should take a pragmatic view of the matter and response to the purpose for which it was made and also take cognizance of the current capabilities and life-style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of meaning of the Act. The legislative futility is to be ruled out so long as the legislative policy permits.

51. In *The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh*, the Hon"ble Supreme Court held that the Court must always keep in view the beneficial and social welfare aspect of the statute. Same view has been taken by the Hon"ble Supreme Court in *Dinkar Anna Patil and Others Vs. State of Maharashtra and Others*, ; *Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others*, and *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union and Ors*, In *Vaijanath and Others Vs. Guramma and Another*, the Hon"ble Supreme Court held that remedial Act should be given beneficial interpretation.

52. However, in *Employees State Insurance Corporation Vs. M/s. M.M. Suri and Associates (P) Ltd.*, the Hon"ble Supreme Court held that even if the statute is beneficial, the Courts should not stretch it too far. The Supreme Court relied upon its earlier judgments in *Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, wherein the Court observed as under :

"Counsel for the appellant emphasised on the feature that the statute is a beneficial one and the Court should not interpret a provision occurring therein in such a way that the benefit would be withheld from the employees. We do not doubt that the beneficial legislation should have liberal construction with a view to implement the legislative intent but where such beneficial legislation has a scheme of its own, there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory

benefit to those who are not covered by the scheme."

53. An employment on compassionate ground should be provided strictly in accordance with the Rules and the Court cannot take a view as to make it violative of Articles 14 and 16 of the Constitution of India. Vide Cochin Dock Labour Board Vs. Leenamma Samuel and Others, The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Vide U.P.S.R.T.C. Vs. Pukhraj Singh and Others, and A.P.S.R.T.C. represented by Depot Manager Vs. K. Pochaiah and Another, .

54. I have heard learned counsels for the parties. I find that in view of the verdict of the Supreme Court in catena of decisions the compassionate appointment is necessarily to be given to the petitioner to enable the penurious family of the deceased employee to tide over the sudden financial crises and to overcome the family and dependants of the deceased employee died in harness leaving his family as penury without any means of livelihood in the peculiar circumstances out of humanitarian consideration taking into consideration the fact that without any source of livelihood the family of deceased employee may not be able to make both ends meet, therefore, the appointment on compassionate ground is to be given to the petitioner to enable the family of the deceased employee to tide over the sudden financial crises. The petitioner has submitted his application dated 13.7.2000 well within time and for compassionate appointment on the Class IV post. The petitioner was in possession of qualification and other requirement, therefore, the petitioner could be accommodated on the Class IV post. If the post is not available then a superannueary Class IV post should be created and after creation of the post in the same category, the same shall be adjusted against that available post. In these circumstances mandamus is issued to the respondents to consider the case of the petitioner in the light of the above observations and make a suitable arrangement for giving appointment to the petitioner.

55. In view of the above observations writ petition is allowed.

56. No order as to cost.