

(2010) 07 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (C) No. 2783 of 2003, W.P. (C) No's. 6123 and 9515 of 2004, W.P. (C) No's. 350, 1466 and 5821 of 2006, W.P. (C) No's. 3914, 4152, 4533, 5035 and 5581 of 2008, Cont. Case (C) 52 of 2009, W.P. (C) No's. 539, 594, 913, 1234, 1703, 1797, 186

Faziron Nessa and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(2), 309

Citation : (2010) 4 GLT 340

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami, H.R.A. Choudhury, S.C. Biswas, M.U. Mondal, M.U. Mahmud, A.M. Borbhuyan, K.K. Gupta, C. Baruah and B.D. Goswami, for the Appellant; M.R. Pathak, for the Respondent

Judgement

B.K. Sharma, J.—This batch of writ petitions pertains to the claim of the Petitioners for appointment on compassionate ground. While in some of the cases, the prayer is for consideration of the cases of the Petitioners as per the prevalent scheme, in other cases, the Petitioners have assailed the legality and validity of the rejection of their prayers for such appointment. The issue being one and the same, which is the extent of right of the Petitioners for appointment on compassionate ground and the validity and otherwise of rej section of their prayers for compassionate appointment, and as agreed to by the learned Counsel for the parties, all the writ petitions have been heard together and are being disposed of by this common judgment and order.

2. This Court in Achyut Ranjan Das v. State of Assam reported in 2006 (4) GLT 674 has already laid down certain guidelines towards consideration of the cases for compassionate appointment. The State Government has adopted the said guidelines and the cases for compassionate appointment are being considered on that basis. In Achyut Ranjan Das (supra), the court upon noticing the principles

governing compassionate appointment, has laid down the following guidelines on the basis of which claims relating to compassionate appointment are required to be considered. The said principles as enumerated in paragraph 7 of the judgment are reproduced below:

I) All pending applications against existing and available vacancies as per the quota earmarked including the cases of the Petitioners in the present cases and all Ors. , who may not be before the Court, shall be decided in accordance with the proposed directions to be laid down in the present order and also in accordance with the principles noted in the preceding paragraphs of this order. This will be done within a period of 4 (four) months from today. The present direction naturally has to be considered as a one-time measure in view of the subsequent direction as laid down in the succeeding paragraphs.

II) The District Head of each Department will intimate the vacancies as and when such vacancies occur, to the Court Appointed District Level Committees for its scrutiny. There will be no delay in such intimation.

III) The District Level Committee will be constituted by the Deputy Commissioner of the District and the Superintendent of Police. The Deputy Commissioner himself will sit in the Committee. The District Head(s) of such departments in which vacancies are available shall be co-opted as the Additional Members of the Committee.

IV) The District Level Committee will meet once every 2 (two) months on the last Saturday of the second month.

V) The District Level Committee will decide as to who amongst the eligible candidates is entitled to compassionate appointment. To the extent possible such appointments will be recommended to be made within the District. In making the recommendations for appointments, the District Level Committee will take into account the financial condition of the family of the deceased and on a relative consideration of the cases will make its recommendation. There will be no selection and "seniority of the claim" will not be resorted to unless two or more eligible candidates are at par.

VI) To decide on the question of financial status of the family of a claimant regard will be had to the following factors as laid down in B.M. v. Kunti Tiwari (Supra)

- a) Gratuity amount received/receivable.
- b) Family pension payable.
- c) Provident Fund Amount received/receivable.
- d) Any ex-gratia payment made or payable.
- e) Proceeds of LIC Policy and other investments of the deceased.
- f) Income of the family from other sources.

g) Employment of other family members.

h) Size of the family and liabilities, if any.

VII) The recommendations of the District Level Committee will be considered by a State Level Committee consisting of the Chief Secretary and the Senior Financial Commissioner of the State. The Commissioner and Secretary of the Department(s) in which vacancies are available will be co-opted as Additional Members of the State Level Committee.

VIII) The State Level Committee will meet once every 3 (three) months.

IX) All vacancies available against the quota of compassionate appointment must be filled up within a period of 6 (six) months from the date of occurrence of the vacancy in accordance with the present directions.

X) If the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of 2 (two) years from the date of making such applications, all such applications will require no further consideration and must be understood to have spent their force.

3. In paragraph 8 of the Judgment, it has been observed thus:

Before parting with the record, this Court would like to observe that in the present group of cases the bulk of the claims pertains to non-consideration of claims made/applications filed for compassionate appointment. All such cases will naturally be governed by the directions contained in the present order. Few of the cases under consideration pertain to complaints with regard to rejection of the claims made or appointment of persons, who, the Petitioners/claimants contend do not have a better for appointment. There are also some claimants whose appointments have been approved by the State Government but appointment orders have not been forthcoming.

Who has a better right for appointment and whether a particular claim has been rightly rejected can be gone into by the Court only if there is a reasoned order setting out the relevant facts, a practice that seems to have become a thing of the past. However, as appointment of one person in preference to Anr. will not have the effect of abrogating the claim of the candidate passed over in view of the present Direction No. I which would now require the State to consider all pending claims afresh all the contentious questions raised need not be gone into. In so far as claims which have been approved by the State Government but appointment orders have not been forthcoming, the direction to re-examine all such claims and, thereafter, issue appointments orders in accordance with the laid down principles, will adequately take care of all such grievances.

4. The aforesaid guidelines have been laid down and the observations have been made upon a detailed discussion of the principal Office Memorandum dated 09.09.1983 laying down the criteria for compassionate appointment and consideration thereof. In the judgment the "grey" areas that are not covered by

the OM have also been noted. It is only thereafter and taking into account the principles governing compassionate appointment as deducible from the pronouncement of the Apex Court and what has been discussed in the Judgment, the aforesaid guidelines relating to the compassionate appointment have been laid down.

5. When a confusion was created in respect of consideration of all pending applications in terms of Principle No. I by rejecting such claims applying the test of Principle No. X, as per which if applications of eligible candidates cannot be considered due to want of vacancies for a period of two years from the date of making such applications, same are not required to be considered any further, this Court had to intervene once again by way of the judgment reported in 2009 (3) GLT 306: Ajit Pator and Ors. v. State of Assam and Ors. It was clarified that in terms of Principle No. I, all pending cases were to be considered in accordance with the other specific directions contained in paragraph 7 of the judgment and that once consideration of a case as a one time measure is over, such applications that may remain pending are not required to be considered, if a period of more than two years had elapsed. Thus, it was clarified that so far as the pending cases covered by Principle No. I, are concerned, the said cases cannot be rejected applying the test of the Principle No. X. The Principle No. X will come into operation only in respect of cases other than the pending cases covered by Principle No. I.

6. In the instant batch of writ petitions, some of the grounds of attack against the orders of rejection of the claim for compassionate appointment are non-assignment of reasons for rejection; non-consideration of the cases on the basis of seniority of claims; rejection of cases on ground of the candidate being over aged; cases not placed before the District Level Committee (DLC) and State Level Committee (SLC); although the DLC recommended the cases but SLC rejected the same, etc.

7. It will be pertinent to mention here that the Govt. of Assam in the Department of Personnel has issued the Office Memorandum dated 2.3.2009 on the subject of Revised Guidelines for Appointment on Compassionate Ground to the widow or son or unmarried daughter or adopted son/adopted unmarried daughter of a Govt. servant who dies in harness with a view to give immediate financial assistance to the family of the deceased in a Class-III/Class-IV posts (not above the level of LDA), limiting such appointment to 5% of vacancies occurring in a year. As per the OM, this restriction will, however, not apply where only one vacancy is to be filled up in a year. As per the said OM, the department can appoint one person on compassionate ground against 5% quota upto 20 (twenty) vacancies in a year. The OM emphasises the need for prompt action on the applications for compassionate appointment and not to keep them pending for years together. The following guidelines have been laid down in the OM.

1. Applications for appointment under the Scheme in prescribed Format should be submitted within a period of 3 months from the date of death of the person,

to the respective Office/Departments under which the person dies in harness. Applications submitted after 3 months should not be considered.

2. The 5% of the vacancies in Class-III and Class-IV posts occurring in a year must be reserved for appointment on compassionate ground. The Ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded.

3. A person selected for appointment on compassionate ground should be adjusted in the recruitment roster against the appropriate category viz. SC/ST(P)/ST(H)/OBC/MOBC/General depending upon the category to which he/she belongs. For example if he/she belongs to SC category he/she will be adjusted against S.C. reservation point and if he/she belongs to ST/OBC category he/she should be adjusted against ST/OBC point and if he/she belongs to General category he/she will be adjusted against the vacancy point meant for General category.

4. Since compassionate appointment is made in relaxation of prescribed procedure of recruitment, as such approval of Finance (SIU) Deptt. Will not be necessary when there is a clear sanctioned vacancy to consider the proposal subject to the condition that the vacant post against which appointment on compassionate ground is to be made has been retained upto-date/retained permanently.

5. As per direction of Hon"ble High Court dtd. The 3rd Aug/2006 in W.P. (C) No. 3875 of 2005 and 162 other connected cases, guidelines have already been issued to follow the process and examination of compassionate appointment cases by all Deptts. And authorities vide Notification No. ABP.50/2006/58 dtd. 11.10.2006, which should be strictly adhered to.

6. All cases of compassionate appointment of a District should be routed through the District Level Committee to the respective Administrative Deptts. For proper verification so that the Administrative Deptts. Can prepare a statement of eligible candidates to be appointed on compassionate ground with the approval of State Level Committee.

7. All vacancies available against the 5% quota on compassionate appointment are to be filled up within a period of six months from the date of occurrence of vacancies. If the applications of eligible candidates remain pending and can not be considered due to want of vacancy or otherwise for a period of two years from the date of making such application, all msuch applications will require no further consideration and must be understood to have spent their force.

8. However, if no candidate is available for appointment under compassionate scheme, then the posts may be filled up in the usual manner as per provision of Rules.

9. All the Administrative Deptts/Directorates/Appointing authorities should examine the cases including the proposal received from the District Level

Committee with their recommendation as indicated in this Department's Notification mentioned at para-5 above before placing the same in the State Level Committee by them.

10. In case of any confusion, power of interpretation lies with Personnel (B) Department.

8. In terms of the guideline No. I, applications for appointment under the scheme is to be submitted in the prescribed format within a period of 3 (three) months from the date of death of the Govt. servant. Further, as per guideline No. 4, the approval of Finance (SIU) Department will not be necessary when there is clear sanctioned vacancy to consider the proposal. However, such dispensation of requirement of approval of the Finance Department has been done away with by Office Memorandum dated 1.10.2009 which reads as follows:

GOVERNMENT OF ASSAM DEPARTMENT OF PERSONNEL (PERSONNEL-B)
DISPUR::GUWAHATI.

No. ABP.357/80/Vol.I/314

Dated, Dispur, the 1st October.2009.

OFFICE MEMORANDUM

Subject: Revised guidelines for appointment on compassionate ground of a son, daughter or a Government Servant.

A revised guidelines have been issued vide O.M. No. ABP.357/80/Vol.I/303 Dated 2-3-2009 for appointment on compassionate ground to the son and daughter of a Government Servant who dies in harness. Para 4 of the Office Memorandum stipulates that since compassionate appointment is made in relaxation of prescribed procedure of recruitment, as such approval of Finance (SIU) Department will not be necessary when there is a clear sanctioned vacancy to consider the proposal subject to the condition that the vacant post against which appointment on compassionate ground is to be made has been retained upto date/retained permanently.

On further consideration it has been decided to amend Para 4 of that Office Memorandum which be read as below:

Since compassionate appointees cannot be differentiated with that of other fresh appointees who are recruited as per provisions of rules and procedures, as such mandatory requirement of obtaining approval/appraisal No. of Finance (SIU) Department before making appointment on compassionate ground will be required for release of Salary by the concerned Treasury Officer to avoid possible irregularities, like fraudulent drawal of salaries making regular appointments etc". All other conditions will remain same.

Sd/-Rajiv Bora Commissioner and Secretary to the Govt. of Assam, Personnel (B) Department.

9. From the materials on record and as submitted by Mr. M.R. Pathak, learned Standing Counsel, Education Department, some of the pending cases have been rejected by the department applying the guideline No. 1 of OM dated 2.3.2009, which stipulates submission of application for compassionate appointment within three months from the date of death of the Govt. employee. Learned Counsel for the Petitioners have taken objection to the application of guideline No. 1 even in the pending cases. Objections have also been raised to the restriction imposed limiting the time limit of 3 (three) months for submission of application.

10. While it is true that the various schemes for compassionate appointment is to provide immediate financial assistance to the members of the family whose sole bread earner dies in harness and thus there is need for immediate submission of application for compassionate appointment as a measure for such consideration, but limiting the same only to the extent of 3 (three) months and that too without any clause for relaxation of such time limit, may cause hardship to many deserving cases.

11. In the parent 1983 scheme, under Clause-7, it has been laid down that if several years have passed after the death of the government servant, it would appear on the face of it that the family has managed to support and has some means of assistance and thus in such a case, compassionate appointment will not ordinarily be justified. However, no time limit has been fixed for submission of application. In a given case, it may not be possible for the bereaved family members to submit application for compassionate appointment within the stipulated period of three months and in absence of any clause for relaxation of such time limit, the case of a deserving family will automatically stands rejected. Within such short span of three months, it may not be possible for the family to assess as to whether it could survive even without the assistance of a compassionate appointment.

12. Immediately after the death of the sole bread earner, the family members are forced to engage themselves to observe official formalities towards submission of pension papers, documents relating to final settlement dues, assess the assets and liabilities of the bread earner etc. Such formalities coupled with the bereavement naturally take time. By the time, the family overcomes the tight situation, in which it finds itself, much time is consumed.

13. In many cases, the sole bread earner serves elsewhere leaving behind his family members in rural areas. Such family members, after the death of the sole bread earner are required to visit the office to collect in formations, documents pertaining to his or her service particulars towards claiming final settlement dues. The lethargy with which the files relating to final settlement dues for final payment of the same move, is known to all. Further, the State represents collective cause of the community and the decisions are taken by the Officers/ authorities at a slow pace and the encumbered process of pushing the files from table to table consumes considerable time causing delay. All these factors add insult to the injury and bring un-told woes and miseries to the bereaved family.

In such a situation, it will be too much to expect the family to apply for compassionate appointment within a period of three months from the date of death of the sole bread earner.

14. I have consulted the various schemes of compassionate appointment in which no such time limit of 3 (three) months has been fixed. Even in the various Apex Court decisions, while emphasising that the very concept of compassionate appointments loses its force after several years of death of the sole bread earner, it has not been emphasised that application for compassionate appointment must be submitted within a time limit

15. As per the aforesaid scheme of 2.3.2009, the application for compassionate appointment must be submitted within three months from the date of death of the Govt. servant failing which such applications will not be considered. Considering the matter in its entirety, I am of the considered opinion that such a clause is opposed to the very concept of the scheme for compassionate appointment. In the given facts and circumstances, I am of the opinion that a time limit of one year for submission of applications for compassionate appointment from the date of death of the sole bread earner will be the appropriate time limit. Accordingly, Clause-I of the OM dated 2.3.2009 shall stand modified to that extent.

16. This now leads us to the question as to whether the pending cases and/or the cases in respect of which the applications were filed prior to the date of issuance of the OM dated 2.3.2009, should be considered applying the guideline No. I. The OM dated 2.3.2009 does not have any retrospective application and thus the guideline No. I cannot be applied to the pending cases and the said cases will have to be considered without taking into account the said OM dated 2.3.2009 but will have to be considered as per the prevalent scheme coupled with the guidelines issued in Achyut Ranjan Das (supra). If any application has been rejected applying the Guideline No. I of the OM dated 2.3.2009, those applications will have to be considered afresh in terms of this judgment and order.

17. In the above context, the decision of the Apex Court in State Bank of India and Others Vs. Jaspal Kaur, may be referred to. In the said decision, interfering with the decision of the High Court towards consideration of the case of the Respondent on the basis of the scheme prevailing in 2005, while deciding application of the deceased of the Respondent filed in 2000, held that the matter should be decided within the parameter of the scheme prevailing when the application for compassionate appointment was filed and not as prevailing on the date of decision of the court.

18. A submission was made that in terms of OM dated 2.3.2009, no compassionate appointment can be made to the post of Assistant Teachers, although in the same pay scale like that of LDA, upto which level appointment on compassionate ground can be considered but the learned Counsel for the Petitioners by producing the OM dated 17.2.2000, issued by the Govt. of Assam

in the same department i.e. the Department of Personnel, contended that the submissions so made is mis-placed. As per the said OM dated 17.2.2000, the benefit of compassionate appointment shall also be extended to the eligible family members of the deceased teachers who dies in harness, for appointment to the post of Teacher in ME/MV/MEM/LP/Junior Basic Secondary School. For a ready reference, the OM dated 17.2.2000 is quoted below:

GOVERNMENT OF ASSAM DEPARTMENT OF PERSONNEL:: PERSONNEL(B)
DISPUR:::GUWAHATI

No. ABP.357/807107

Dated Dispur, the 17th Feb/2000.

OFFICE MEMORANDUM

Subject: Extension of the benefit of the scheme for appointment on compassionate ground to the eligible family members of the deceased teachers.

In partial modification of this Department's O.M. No. ABP.357/80/pt/79 dtd. 8.4.96 read with the provision of original O.M. No. ABP.357/80/137 dtd. 9.9.83. the undersigned is directed to say that the State Government, after careful consideration of all aspects in the matter, have decided that henceforth the benefit of the compassionate appointment shall be extended to the eligible family members of the deceased teacher who dies in harness for appointment to a post of teacher in a ME/MV/MEM/LP/Junior Basic Secondary School subject to norms and procedure and qualifications as specified by the Department of Education (Secondary and Elementary).

Sd-Illegible (B.K. Gohain) Secretary to the Govt. of Assam Personnel(B) Department.

19. Coupled with the above, the learned Counsel for the Petitioners has also brought on record the order dated 11.6.2009 issued by the Director of Elementary Education, Assam, by which as many as 15 appointments have been made to the post of Assistant Teacher in Upper Primary and Lower Primary Schools on compassionate ground. Thus, it cannot be said that there cannot be any compassionate appointment to the post of Assistant Teacher in the aforementioned Schools. It is hereby clarified that the appointment on compassionate ground in a Class-III/Class-IV post, not above the level of LDA shall also include the post of Assistant Teacher in ME/MV/MEM/LP/Junior Basic Secondary Schools.

20. As regards the grievance of the Petitioners that in cases pending prior to Achyut Ranjan Das (supra), applying the Principle No. X of the said Judgment, many such cases have been rejected. Suffice is to say that such grievance has been taken care of in the case of Ajit Pator (supra). If any such pending cases are still left to be considered, the department/authorities shall consider the said cases in terms of the Principle No. I laid down in Achyut Ranjan Das (supra),

without any further delay and shall give finality to the same, whatever may be the consequences thereof.

21. So far as the other cases not covered by Principle No. I are concerned, the said cases shall be considered strictly in terms of parameters and yardsticks laid down in Achyut Ranjan Das (supra).

22. An argument was advanced that the cases are required to be considered on the basis of seniority of cases. Examples were shown that the authorities/departments have considered the cases of subsequent years while the cases of earlier years have been left out. Needless to say that compassionate appointment is not a source of recruitment, so as to contend that such appointments will have to be made on the basis of seniority of cases. Such appointments are made on need basis upon evaluation of comparative needs. This aspect of the matter has also been taken note of in Achyut Ranjan Das (supra) vide Principle No. V. Thus, it cannot be claimed that since ones claim is prior in time than Anr. , he or she will get preference over the latter applicant.

23. Referring to certain cases in which the claim for compassionate appointment has been rejected, it was argued that no reasons having been assigned, it is not discernible as to on what grounds, such cases have been rejected. This aspect of the matter has also been taken note of in Achyut Ranjan Das (Supra) (refer para 8). In this connection, the particular observation is quoted below:

Who has a better right for appointment and whether a particular claim has been rightly rejected can be gone into by the Court only if there is a reasoned order setting out the relevant facts, a practice that seems to have become a thing of the past. However, as appointment of one person in preference to Anr. will not have the effect of abrogating the claim of the candidate passed over in view of the present Direction No. I which would now require the State to consider all pending claims afresh all the contentious questions raised need not be gone into. In so far as claims which have been approved by the State Government but appointment orders have not been forthcoming, the direction to re-examine all such claims and, thereafter, issue appointments orders in accordance with the laid down principles, will adequately take care of all such grievances.

24. In view of the above, in those cases in which the claim for compassionate appointment has been rejected but no reasons have been assigned, the authorities/departments are directed to assign reasons for such rejection. It was submitted that although the order of rejection itself may not have assigned reasons but the relevant files might contain the reasons. If that be the case, the said reasons may be communicated to the aggrieved candidates.

25. As regards the pending cases prior to issuance of the direction/guidelines in Achyut Ranjan Das (Supra), the authorities/departments must comply with the directions contained in Principle No. I and cannot delay the same for indefinite period. As per the said direction, all such pending cases were required to be considered within four months. If for any reason, the said time limit has not been

able to be adhered to, the Respondents shall do the needful in this regard, so as to dispose of all such pending cases on or before 30th September, 2010.

26. So far as the other pending cases are concerned, the Respondents shall pass appropriate reasoned orders upon consideration of all the said cases as per the guidelines laid down in Achyut Ranjan Das (Supra). The guidelines issued in the said case being exhaustive, no further guidelines are required to be issued and in fact, the State Government having accepted the said guidelines, to be the guiding factors towards determination of the cases for compassionate appointment, it must adhere to the same towards consideration of such cases.

27. Learned Counsel for the Petitioners during the course of argument submitted that the prayer for compassionate appointment cannot be rejected, once it is approved by the DLC. Argument was also advanced that the principles relating to compassionate appointment are not adhered to while considering the cases for such appointment and that the Respondents have adopted pick and choose policy towards making such appointment. On the other hand, learned Standing Counsel, Education, submitted that the various parameters and yardsticks which are applicable in the matter of compassionate appointment have been strictly followed towards accepting and rejecting the claim for compassionate appointment.

28. In Umesh Kumar Nagpal Vs. State of Haryana and Others, the Apex Court considering the factors necessary for being taken into account before offering compassionate appointment held that mere death of an employee does not entitle his family to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting through the employee's death. It was also observed that compassionate appointment cannot be granted after lapse of a reasonable period, which must be specified in the rules.

29. In State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma, regarding the assertion made by the Respondents in reference to Anr. case that although both the cases were identical, the authority while considering the other case, did not consider his case, the Apex Court observed thus:

Learned Counsel for the Appellants has contended that under the instructions in question the Respondent is not entitled to a higher post of his choice merely because he fulfils the requisite eligibility qualifications. Learned Counsel for the Respondent has attempted to defend his case by citing the illustration to Anr. applicant-Rajiv Dwivedi-who, according to him, was appointed in similar circumstances as APP-Grade II. The facts relating to Rajiv Dwivedi are not on record and it is the mere assertion of the Respondent that the circumstances are identical. Even assuming that Rajiv Dwivedi's case was similar to that of the Respondent, the applicant has no right to any particular post of his choice, he can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the two cases. If a

mistake was committed in an earlier case, that cannot be a ground for directing the State to perpetuate the error for all times to come. Learned Counsel for the Respondent has not been able to show before us any rule or Government instructions under which the Respondent can claim the post APP-Grade II.

30. In *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, the Apex Court considering the purpose of compassionate appointment, held that it has to be ensured that a provision for grant of compassionate appointment does not unduly interfere with the right of other persons, who are eligible for appointment against the posts which would have been available to them, but for the provision for compassionate appointment, else that would be violative of the equality clause.

31. In *Haryana State Electricity Board and another Vs. Hakim Singh*, the Apex Court upholding the rejection of claim for compassionate appointment made after a long lapse of time, held that rejection of request made after 14 years was justified. In that case, the claim was made when the deceased employee's son attained majority.

32. In the case of *Sanjay Kumar Vs. The State of Bihar and Others*, the Apex Court held that there cannot be reservation of a vacancy till such time the claimant becomes a major, after a number of years. The very basis of compassionate appointment is to see that the family gets immediate relief. In that case, the Petitioner was 10 years old when his mother died, while she was working as an Excise Constable. The date on which the application for compassionate appointment was made by her son, he was not eligible for appointment. Similar view has been expressed in *Jagdish Prasad Vs. State of Bihar and Another*, .

33. In *Auditor General of India and others Vs. G. Ananta Rajeswara Rao*, the Apex Court interpreting the term "near relative" as laid down in the particular scheme, held that the appointment on ground of descent clearly violates Article 16(2) of the Constitution of India. However, it was made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on account of immediate need of assistance in the event of their being no other earning member in the family to support the loss of income from the bread-winner to relief economic distress of the member of the family, it is unexceptionable. It was observed that in other cases, it cannot be a rule to take advantage of the scheme to appoint the persons on the ground of compassion.

34. In *I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi*, the Apex Court held that compassionate appointment must be in consonance with the constitutional scheme of equality enshrined in Article 14 and 16 of the Constitution. Interfering with the direction issued by the High Court even after observing "A word of caution, is put on record that the right to claim appointment under the die in harness rules on compassionate ground can be neither used as a devise to seek

employment nor it is a new mode of recruitment in Government service nor can be treated as a channel of promotion to higher post. The impugned order has been passed on the basis of facts of the present case", observed as follows:

An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department. See *Yogender Pal Singh and others Vs. Union of India* others,

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

35. In *National Institute of Technology and Others Vs. Niraj Kumar Singh*, , the Apex Court while emphasising that all public appointments must be in consonance with Article 16 of the Constitution of India and that an exception is carved out in the matter of compassionate appointment, observed thus:

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

36. In *Steel Authority of India Ltd. Vs. Madhusudan Das and Others*, the Apex Court emphasising that the appointment on compassionate ground cannot be claimed as a matter of right and that it is a concession, not a right, the Apex Court observed thus:

This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down thereof viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a

minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the post which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee in an exception to the said Rule. It is a concession, not a right.

37. In *General Manager, State Bank of India and Others Vs. Anju Jain*, the Apex Court while upholding the particular clause in the policy of compassionate appointment under which appointment could be denied to dependants of an employee "whose service record was blemished on account of disciplinary action having been taken against him" and reversing the decision of the High Court, holding that past misconduct of an employee was not a relevant consideration for the purpose of compassionate appointment of the dependant of the deceased employee observed thus:

We are of the view that both the Courts were wrong in granting relief to the writ Petitioner. Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is thus an exception to the general rule of equality and not Anr. independent and parallel source of employment.

In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges levelled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to dependent of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment.

Compassionate appointment is really a concession in favour of dependents of deceased employee. If during his carrier, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependents cannot claim right to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of principles of natural justice.

To us, the observation of the learned Single Judge that "no past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate

ground" is not in consonance with law. Past conduct of an employee is undoubtedly an important consideration. We are also of the view that the State Bank was right in rejecting the prayer of the wife of the deceased employee vide its letter dated January,29,2001 observing therein that "unblemished service record is implicit.

38. In *State of Haryana v. Rani Devi* reported in (1994) 5 SC 308 , interpreting the term "employee" occurring in the particular scheme for compassionate appointment, the Apex Court held that the said term does not include a casual or purely adhoc employee or apprentice and hence claim of dependents of such deceased employees for compassionate appointment is not sustainable. Similar view has been expressed in *State of Manipur Vs. Thingujam Brojen Meetei*, It has been held that the particular die in harness scheme will not be applicable in respect of dependents of a work-charged employee irrespective of confirmation.

39. Compassionate appointment is an exception to the general rule that appointment to public service should be on merits and, therefore, through open invitation. In *Hakim Singh* (supra), it was observed thus:

The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception belief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the ultimately death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

40. The departmental authorities while considering the cases for compassionate appointment shall do so keeping in mind the aforesaid principles laid down by the Apex Court. To sum up, the following directions are made:

i) While considering the cases for compassionate appointment, the authority shall strictly adhere to the principles/guidelines laid down in *Achyut Ranjan Das* (Supra).

ii) As per the Principle No. I in *Achyut Ranjan Das* (Supra), the pending cases should be considered and disposed of latest by 30th September, 2010.

iii) The time limit of 3 (three) months for submission of application from the date of death of the government employee shall stand extended to 12 (twelve) months.

iv) The OM dated 2.3.2009 had no retrospective application and all pending applications required to be considered other than the Principle No. I laid down in *Achyut Ranjan Das* (Supra), shall be so considered as per the guidelines/

principles laid down in the said case alongwith the prevalent scheme.

v) As emphasised in the said case, while rejecting the claim for compassionate appointment, reasons thereof must be assigned. The cases in which no reasons has been assigned towards rejection, the authority will assign reasons to the applicants.

vi) The cases for compassionate appointment shall be considered on need basis upon comparative assessment of various applications and not applying the test of seniority of claims. It may so happen that a claim latter in point of time is more deserving than a claim prior in point of time.

vii) It is hereby once again clarified that Principle No. X laid down in Achyut Ranjan Das (Supra) shall not be applicable to the cases under Principle No. I, but will be applicable in all other cases, meaning thereby, that if applications are pending for a period of two years from the date of making the application but could not be considered for want of vacancies, all such applications will require no further consideration and must be understood that they have spent their force.

viii) All the pending cases before the DLC or the SLC must be expedited and shall be given finality as expeditiously as possible, leaving no scope for any resentment. On ground of delay whatever may be the outcome of consideration of the cases, same shall be communicated to the applicants concerned.

41. With the above directions and observations, all the writ petitions stand disposed off. The Respondents are directed to act accordingly. There shall be no order as to costs.