
(2020) 10 JH CK 0021
In the Jharkhand High Court
Case No : L.P.A. No. 624, 629 Of 2018

Nand Kishore Kumar And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 10 JH CK 0021

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, Jagdish, Navin Kr. Singh

Final Decision : Dismissed

Judgement

1. The matter has been heard through video conferencing with the consent of the learned counsel for the parties. They have no complaint about any audio and visual connectivity.
2. Both the appeals have been heard together with the consent of the parties since common issues are involved.
3. The instant intra-court appeal is directed against the order/judgment dated 25.08.2018 passed in W.P.(S) No.2430 of 2016 and W.P.(S) No.2489 of 2016 by which the writ petitions have been dismissed denying the claim of the writ-petitioners for appointment on higher post, i.e., Class-III post, on compassionate ground.
4. The brief fact of the case which requires to be considered stand enumerated as under:

The fathers of the appellants/writ-petitioners, i.e., late Maksudan Prasad died in harness on 24.05.2005 [L.P.A. No.624 of 2018 arising out of W.P.(S) No.2430 of 2016] and Late Nehal Ram died in harness on 31.12.2004 [L.P.A. No.629 of 2018 arising out of W.P.(S) No.2489 of 2016] both working as Forest Guard in

Koderma Forest Division.

The writ-petitioners claiming to be eligible persons for consideration of their candidature of appointment on compassionate ground applied for the same. The respective cases of the writ- petitioners along with others were considered by the District Compassionate Appointment Committee, Koderma in its meeting held on 27.12.2005 wherein decision was taken to appoint the writ- petitioners and other candidates, including one Mr. Promod Kumar, [3] on Class-IV post in the office of Forest Division, Koderma as Bunglow Chowkidar.

According to the writ-petitioner, respondents have adopted pick and choose policy since the candidates having lesser qualifications in comparison to the writ-petitioners, such as Ashish Kumar son of late Rohan Ram Turi, only being matriculate, was recommended for appointment on Class-III post while the writ-petitioners having higher qualification and suitable otherwise, were not considered for appointment on Class-III post.

Further case of the writ-petitioners is that one Nand Kishore Anand, who was recommended for appointment on Class- IV post in the office of District Education Officer, Koderma who refused to join on the said post as prior to the said consideration, was recommended for appointment on Class-III post. The said Nand Kishore Anand filed a writ petition being W.P.(S) No.7219 of 2005 which was decided in his favour and pursuant to the direction of this Court, the District Compassionate Appointment Committee recommended the name of Nand Kishore Anand for appointment on Class-III post in the office of Civil Surgeon-cum-Chief Medical Officer, Koderma.

Further, one Shailendra Kumar was also recommended for compassionate appointment on Class-III post and, accordingly, he was appointed in the office of Civil Surgeon-cum-Chief Medical Officer, Koderma on Class-III post. The writ-petitioners, being aggrieved and dis-satisfied with the action of the respondent-authorities along with one Upendra Kumar Mehta, filed a writ [4] petition being W.P.(S) No.2323 of 2008, praying therein for issuance of direction for consideration of their appointment on Class-III post as they fulfilled the qualifications and other eligibility criteria as provided under the Scheme made for appointment on compassionate ground. The said writ petition was decided vide order dated 10.01.2011 granting liberty to the writ-petitioners to file fresh representation regarding their claim for consideration by the Deputy Commissioner-cum-Chairman, District Compassionate Appointment Committee, Koderma.

The cases of the writ-petitioners were considered and rejected vide the decision dated 19.03.2012.

The writ-petitioners again filed fresh writ application before this Court being W.P. (S) Nos.2430 of 2016 and 2489 of 2016 questioning the order dated 19.03.2012 inter alia on the ground that other similarly situated persons, namely, Shri Pramod Kumar, who was initially appointed on Class-IV post on 27.12.2005,

however, he preferred writ petition before this Court being W.P.(S) No.821 of 2007 which was disposed of vide order dated 08.08.2012 directing the authority to consider the case of Shri Pramod Kumar. In pursuance thereto, representation of Pramod Kumar was rejected against which a writ petition was filed being W.P. (S) No.7519 of 2012 and a learned Single Judge of this Court vide order dated 06.07.2015 quashed and set aside the order date 12.11.2012 and remitted the matter before the competent authority for consideration of his case for appointment on Class-III post. On [5] consideration, said Pramod Kumar was appointed on Class-III post against the existing vacancy.

Further ground has been agitated that one Nand Kishore Anand, has been appointed on Class-III post in the light of the order passed by a learned Single Judge of this Court in W.P.(S) No.7219 of 2005 as also one Satyendra Prasad Gupta has been appointed on Class-III post pursuant to the order passed by this Court in W.P.(S) No.166 of 2008, however, the aforesaid aspect of the matter has not been considered either by the authority while rejecting the claim of the writ-petitioners or by the learned Single Judge while passing the impugned judgments.

5. Mr. Anil Kumar Sinha, learned counsel for the appellants/writ-petitioners has tried to make out a case of discrimination as according to him, the case of Pramod Kumar, Nand Kishore Anand and Shailendra Kumar have been considered along with the cases of the writ-petitioners. These candidates were also provided appointment on Class-IV posts but, due to intervention of this Court in different writ petitions, they have been provided appointment under Class-III category but the authorities had rejected the claim of the writ-petitioners which has elaborately been agitated before the learned Single Judge by raising a point of hostile discrimination as pick and choose policy has been adopted by the respondent authority, however, their respective cases were not being considered in right perspective by the learned Single Judge and as such, the present intra-court appeal has been preferred.

6. The State-respondent has appeared and defended the order passed by the learned Single Judge vehemently opposing the submission and ground agitated by the appellants. It has been submitted that the appointment on compassionate ground is purely on compassion having no accrued right to the dependant of the deceased family rather the same is to be provided merely on compassion based upon the provision of the scheme which is an exception to Articles 14 and 16 of the Constitution of India.

7. Further submission has been made, taking aid of the scheme which is governing the field and which contains a provision that once the appointment on compassionate ground has been accepted, there cannot be change in the cadre. As such, the appellants since have accepted their appointment under the Class-IV category in the year 2004-06, they cannot be allowed to raise a demand for change in their cadre from Class-IV to Class-III after lapse of about more than 10 years. Taking into consideration these aspects of the matter, the authority has rightly rejected the claim of the writ-petitioners by taking the impugned decisions

which have been approved by the learned Single Judge considering the object and intent of the appointment on compassionate ground as also the principle that once the appointment on compassionate ground is consummated, there cannot be any change in the cadre subsequently.

8. The case of the appellants has got no parity with the case of Shri Pramod Kumar as the said Pramod Kumar, at the initial stage itself, had questioned his appointment on Class-IV category but the appellants, after accepting appointment under Class-IV category [7] which was provided to them in pursuance to the recommendation made by the District Compassionate Appointment Committee in its meeting held on 27.12.2005 without any demur and protest and after appointment, started protesting against the appointment provided to them under Class-IV category and as such, the case of the appellants have been rejected by the Deputy Commissioner vide order dated 19.03.2012.

9. The said Pramod Kumar has challenged the rejection made by Deputy Commissioner by filing writ petition being W.P.(S) No.7519 of 2012 which was disposed of vide order dated 06.07.2015 but the appellants did not challenge the rejection at that point of time and after almost four years, the same was challenged.

10. According to the respondents, there was vacancy available under Class-III post after retirement of the employees in the office of Civil Surgeon-cum-Chief Medical Officer, Koderma where Pramod Kumar was working and as such the said Pramod Kumar was appointed on Class-III post vide order dated 26.02.2016. The appellants since have challenged the rejection order passed by the Deputy Commissioner on 19.03.2012 by filing writ petitions before this Court being W.P. (S) Nos.2430 of 2016 and 2489 of 2016 whereas Pramod Kumar had challenged his rejection in the year 2012 itself. When the order has been passed by this Court in the case of Pramod Kumar for consideration of his appointment on Class-III post in place of Class-IV, since there was vacancy under Class-III category, the said Pramod Kumar was appointed but when the writ petition of the writ-petitioners was disposed of, in absence [8] of vacancy, the case of the appellants was rejected vide order dated 25.08.2018.

11. It has been submitted that the appointment on compassionate ground since is an exception to Articles 14 and 16 of the Constitution of India and the same is only to be made against available vacancy. At the relevant point of time when the appellants had approached this Court, there was no available vacancy under Class-III category, therefore, they cannot claim parity with the said Pramod Kumar.

12. This Court after having heard the learned counsel for the parties and on perusal of their rival submissions as also the findings recorded by the learned Single Judge is of the considered view that the learned Single Judge has considered the object behind the appointment on compassionate ground, which cannot be claimed as a matter of right even being the dependant of the ex-

employee. The settled position is that an applicant cannot have a choice of post and he cannot insist for appointment on a particular post that too after lapse of a decade from the date of the death of his father and after almost accepting the appointment of a post. The claim of the parity which was agitated by the writ-petitioners before the writ Court has also been rejected on the ground that one Vinay Kumar was appointed on Class-III post, however, on his submission of certificate he was given appointment on Class-IV post.

Further the District Compassionate Appointment Committee has considered the case of Pramod Kumar in the meeting held on 27.12.2005 who was holding a qualification of [9] graduation whereas the writ-petitioners were having intermediate qualification. Further ground has been recorded in the impugned order that the appointment on compassionate ground is to be made in the light of the recommendation of the District Compassionate Appointment Committee and admittedly the District Compassionate Appointment Committee made recommendation for appointment of the writ-petitioners in Class-IV category, therefore, they cannot claim appointment on Class-III post once the appointment provided in their favour under class-IV category on the basis of the recommendation made by the District Compassionate Appointment Committee was accepted by them.

This Court on the basis of the scrutiny of the material available on record has found therefrom that the case of Mr. Nand Kishore Anand is also on different footing in comparison to that of the case of the writ-petitioners. Mr. Nand Kishore Anand filed a writ petition being W.P.(S) No.1869 of 2005 for a direction upon the respondents to consider his case for compassionate appointment. In the said case, this Court had directed to dispose of the application within a period of three months from the date of receipt of copy of the order. In the meantime, the District Compassionate Committee had disposed of the matter in its meeting held on 09.04.2000 and recommended the name of Mr. Nand Kishore Anand for appointment in Class-III which was circulated by the Deputy Commissioner, Koderma vide memo dated 24.05.2005 but the recommendation of the District Compassionate Committee, when not acted upon, he again approached this Court by filing a writ [10] petition being W.P.(S) No.7219 of 2005 which was disposed of vide order dated 19.04.2006 granting liberty to Mr. Nand Kishore Anand to move before the Court for initiating a proceeding of contempt against the officers concerned or bring to the notice of the Regional Deputy Director of Education, Hazaribagh who will pass appropriate order within two weeks from the date of receipt/production of the copy of the order. Thereafter, he was appointed on Class-III post vide decision dated 28.08.2006, therefore, the case of Nand Kishore Anand was finally set at rest in the year 2006 itself while the writ-petitioners herein, had been recommended by the District Compassionate Appointment Committee for the appointment in Class-IV post to which they had given joining in the year 2006 and for the first time they had assailed the recommendation for appointment on Class-IV post in the year 2008 by filing being W.P.(S). No.2323 of 2008 which was disposed of vide order dated

10.01.2011. The claims of the writ- petitioners was rejected vide order dated 19.03.2012 but the said order had been challenged by the writ-petitioners in the year 2016 by filing a writ petition being W.P.(S) Nos.2430 of 2016 and 2489 of 2016, therefore, the case of writ-petitioners cannot be said to be at par with the case of Mr. Nand Kishore Anand.

13. This Court deems it fit and proper, before considering the legality and propriety of the impugned order, to refer certain settled proposition of law pertaining to appointment on compassionate ground.

The reference may be made to the judgment rendered in the case of Sushma Gosain and others vs. Union of India and others, reported in (1989) 4 SCC 468 wherein at paragraph-9 the Hon'ble Apex Court has held as under:

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, 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."

Subsequently, the ratio laid down by the Hon'ble Apex Court in Sushma Gosain and others vs. Union of India and others (supra) was held to be not a good law so far as it relates to creation of supernumerary post to accommodate the applicant. In Umesh Kumar Nagpal Vrs. State of Haryana and Others, reported in (1994) 4 SCC 138, it has been held that as a rule, appointments 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 interests 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, in view of the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision was 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 the member of such family a post much less a post held by the deceased. 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 only if it is satisfied that the family will not be able to meet the crisis, a job is to be offered to the eligible member of the family.

In *Jagdish Prasad Vrs. State of Bihar and Another*, reported in (1996) 1 SCC 301, Hon'ble Apex Court, while considering the object of compassionate appointment, has held that the object of appointment of a dependent of the deceased employees who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

In *Haryana State Electricity Board Vrs. Naresh Tanwar and Another*, reported in (1996) 8 SCC 23 the Hon'ble Apex Court declined to grant relief to the dependent of an employee who was minor at the time of death of the Government employee.

In *State of U.P. and Others Vrs. Paras Nath*, reported in AIR 1998 SC 2612, the Hon'ble Apex Court has held that the purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. It was further observed that none of these considerations can operate while the application is made after a long period of time.

In *Commissioner of Public Instructions and Others Vrs. K. R. Vishwanath*, reported in (2005) 7 SCC 206, the Hon'ble Apex Court, after taking into consideration its various judgments, reiterated that the appointment to the public service can only be made on the touchstone of Article 14 or 16 of the Constitution of India and compassionate appointment is an exception to general constitutional mandate in the interest of justice under peculiar circumstances.

In *MGB Gramin Bank vs. Chakrawarti Singh*, reported in (2014) 13 SCC 583, it has been observed that compassionate appointment cannot be granted as a right and the application would be required to be decided as expeditiously as possible and held as under:

6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the [14] financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter

of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

The above consistent view has been reiterated in various judgments by the Hon'ble Apex Court, v.i.z., in *State of Manipur vs. Mohd. Rajaodin*, reported in (2003) 7 SCC 511, *SAIL vs. Madhusudan Das*, reported in (2008) 15 SCC 560 and *Sanjay Kumar vs. State of Bihar*, reported in (2000) 7 SCC 192.

In *Bhawani Prasad Sonkar vs. Union of India and others*, reported in (2011) 4 SCC 209, it has been held as under:

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an [15] exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

14. On the issue that in case the candidate accepted the offer of appointment made on compassionate ground and rendered his duty for considerable period, meaning thereby, he had consummated the right of appointment on compassionate ground and not only accepting rather being satisfied for a period of 10 years but raises his case for getting higher post thereafter, the Hon'ble Apex Court in *State of Rajasthan vs. Umrao Singh*, reported in (1994) 6 SCC 560, has held as under:

"8. Admittedly, the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3- 1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14- 12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless compassion'. Eligibility to be appointed as Sub Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was

persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case."

It is thus evident that appointment on compassionate ground cannot be claimed as a matter of right since it is exception to Articles 14 and 16 of the Constitution of India and further, once the offer of appointment has been accepted there cannot be any consideration for getting the higher post that too after the lapse of considerable period.

In the light of the aforesaid settled position of law, this Court now proceeds to examine the factual aspect. Admittedly, the fathers of the appellants died in harness in the year 2004-05. Their cases were considered in the meeting held on 27.12.2005 by the District Compassionate Appointment Committee in which they were recommended for appointment in Class-IV cadre. The writ- petitioners accepted the offer of appointment and started discharging their duties. They subsequently raised their grievance for consideration of their cases for their appointment in class-III post by changing their cadre from Class-IV to Class-III first time in the year 2008 by filing writ petition being W.P.(S) No.2323 of 2008 which was disposed of on 10.01.2011 granting liberty to the writ- petitioners to submit representation before the authority. Pursuant thereto, the representation was submitted but the claim was rejected vide order dated 19.03.2012. The order dated 19.03.2012 was challenged again before this Court in the year 2016 by preferring writ petitions being W.P.(S) Nos.2430 of 2016 and 2489 of 2016. The decisions of learned Single Judge rendered in those writ petitions are the subject matter of the instant intra-court appeals.

15. It is further admitted position that the writ-petitioners have tried to make out a case of discrimination in course of argument by raising the issue of appointment of one Pramod Kumar.

The admitted position with respect to Pramod Kumar is that he was also appointed pursuant to the recommendation made by the District Compassionate Appointment Committee in its meeting held on 27.12.2005 on class-IV post in the office of Forest Division, [17] Koderma but had challenged the said offer of appointment by filing writ petition in the year 2007 itself being W.P.(S) No.821 of 2007 which was disposed of on 08.08.2012 granting liberty to the Pramod Kumar to make representation before the Deputy Commissioner- cum-Chairman, District Compassionate Appointment Committee, Koderma. Pursuant thereto, the said Pramod Kumar made a representation but his claim was rejected which was again been assailed by filing another writ petition in the same year being W.P.(S) No.7519 of 2012 which was disposed vide order dated 06.07.2015 by remitting the matter before the competent authority for consideration of his claim for shifting his cadre from class-IV to class-III on his qualification by taking into consideration the order passed by this Court in W.P.(S) No.962 of 1999 rendered in the case Digvijay Kumar Singh vs. State of Bihar and others. Finally Pramod Kumar was appointed on Class-III post vide decision dated 26.02.2016 but the distinguishable fact is that the writ-petitioners have assailed their appointment

made in Class-IV in the year 2008 by filing writ petition being W.P.(S) No.2323 of 2008, in pursuance thereto, the claim was rejected by the competent authority vide order dated 19.03..2012 but the order dated 19.03.2012 was challenged after lapse of four years by filing writ petitions in the year 2016 being W.P.(S) Nos.2430 of 2016 and 2489 of 2016. Pramod Kumar had approached this Court challenging the rejection of his claim for shifting of his cadre from Class-IV to Class-III post in the year 2012 itself, the year when his claim was rejected but the writ-petitioners have waited for four years and only in the year 2016 they have preferred a writ petition.

This Court in course of his hearing has directed the respondent authorities vide order dated 13.01.2020 being Order No.07 to file an affidavit apprising about the vacancy position of the concerned district on the date when the consideration was being done with respect to Pramod Kumar and why at that point of time the case of these appellants could not be considered for appointment and also what was the vacancy position when the cases of the appellants were being considered for appointment.

In the light of the aforesaid order, an affidavit has been filed by the State authority inter alia taking stand that the appellants were recommended for appointment on compassionate ground in its meeting held on 27.12.2005. At that point of time, there was no vacancy of Class-III post in the office of Divisional Forest, Koderma. There was no vacancy in the District Collectorate also in the year 2005-06 as per the Civil Surgeon Letter No.1209 dated 17.10.2005.

The appellants joined on the Class-IV post without any demur and protest and after joining, the writ petition was filed in the year 2008 being W.P.(S) No.2323 of 2008 which was disposed of on 10.01.2011 with a direction to consider the case of the appellants but their cases were rejected by the Deputy Commissioner vide order dated 19.03.2012. The reference of Pramod Kumar has been made at paragraph-9 of the said counter affidavit who had filed his writ petition being W.P. (S) No.821 of 2007 in the year 2007 itself then again challenged the rejection order of the Deputy Commissioner in W.P.(S) No.7519 of 2012 in the year 2012 which [19] was disposed of on 06.07.2015 but the writ-petitioners did not challenge their rejection order at that point of time and after almost four years, the writ petitions have been filed.

It has further been stated that there was vacancy under Class-III after retirement of persons in the office of Civil Surgeon- cum-Chief Medical Officer, Koderma where Pramod Kumar was working, as such, Pramod Kumar was appointed on Class-III post vide order dated 26.02.2016 but there were no such vacancies at the time of appointment of the appellants. The case of the writ-petitioners fails on this count also.

16. The question may arise, when there were vacancies on the date when the said Pramod Kumar was being considered in the light of the order passed by this Court in W.P.(S) No.7519 of 2012 and taking into consideration the fact that

there was vacancy in the office, a decision was taken by the competent authority by shifting the cadre of Pramod Kumar from Class-IV to Class-III, why the writ petitioners could not be given such benefit. However, for this the writ petitioners themselves are to be blamed as they delayed to file the writ petition which was ultimately filed after four years, i.e., in the year 2016 after working on class-IV post for about 10-11 years and their case have been found to be not worth to be considered in the absence of any vacancy.

17. The earlier view of the Hon'ble Apex Court, as has been referred hereinabove, i.e., in the judgment rendered in *Sushma Gosain and others vs. Union of India and others* (supra) that appointment on compassionate ground is to be made even if there is no post by [20] creating a supernumerary post, was subsequently reversed by laying down the proposition that the appointment on compassionate ground cannot be claimed as a matter of right as the same is an exception to the Articles 14 and 16 of the Constitution of India. Therefore, the normal conclusion would be that appointment on compassionate ground is only to be made against the available vacancy and if there is no vacancy there cannot be any appointment on compassionate ground, therefore, on the basis of the facts and discussion made hereinabove, the appellants cannot claim parity with Pramod Kumar.

Further, admittedly the writ-petitioners have consummated their appointment on Class-IV post and after lapse of considerable period they have agitated their grievance for the first time in the year 2008 and in the year 2012 when their claims were rejected the said order was challenged after four years in the year 2016 for the reasons best known to them.

18. This Court, therefore, is of the view that the appointment on compassionate ground cannot be claimed as a matter of right being exception to Articles 14 and 16 of the Constitution of India and the writ-petitioners had accepted their offer of appointment made in their favour under Class-IV post and as such, they had consummated their appointment on compassionate ground, no further consideration of superior cadre can be made as has been held by the Hon'ble Apex Court in *State of Rajasthan vs. Umrao Singh* (supra) that once the appointment on compassionate ground has been accepted and consummated no further consideration on [21] compassionate ground would ever arise otherwise, it would be a case of endless compassion.

19. The writ-petitioners are claiming on the ground of parity with Pramod Kumar but, as has been discussed hereinabove elaborately, the case of Pramod Kumar is not falling under the similar footing to the case of the writ-petitioners and even accepting that the case of Pramod Kumar is having parity with the writ-petitioners, as has been held by Hon'ble Apex Court in *State of Rajasthan vs. Umrao Singh* (supra), once the offer of appointment on compassionate ground has been consummated there would be no further consideration on compassionate ground otherwise it would be a case of endless compassion. As such, if any decision has been taken by the authority in pursuance to the

direction passed by this Court by allowing the writ petition and setting aside the order passed by the authority in the case of Pramod Kumar negating the claim for appointment in Class-III post, there cannot be a further direction by this Court making reliance upon order passed by the learned Single Judge in W.P.(S) No.7519 of 2012 in view of the judgment rendered by Hon'ble Apex Court in State of Rajasthan vs. Umrao Singh (supra). Therefore, we are of the view that if any order is passed in favour of the writ-petitioners by interfering with the order passed by the learned Single Judge, the same would be in the teeth of the judgment rendered by Hon'ble Apex Court in State of Rajasthan vs. Umrao Singh (supra).

20. We, on the basis of the discussion made hereinabove and the finding recorded by the writ Court in the order impugned wherein [22] the case of the writ-petitioners have been found to be not sustainable by passing a positive direction for their appointment in Class-III post by shifting their cadre from Class-IV to Class-III post and taking into consideration the object and intent of appointment on compassionate ground and the distinguishable fact in between the writ-petitioners and Pramod Kumar who at the time of consideration for appointment under Class-III post was having graduation, therefore, considering the object and intent of the appointment on compassionate ground, are of the view that once the offer of appointment made in favour of the writ-petitioners under Class-IV post has been accepted and object and intent of appointment on compassionate ground has been achieved, it is not available to the writ petitioners to come forward for changing their cadre from Class-IV to Class-III post since the appointment on compassionate ground is an exception to Articles 14 and 16 of the Constitution of India.

21. In view thereof, we find no error in the order impugned.

Accordingly, both the appeals fail and are dismissed.

22. Pending interlocutory application(s), if any, also stand disposed of.