
(2020) 01 JH CK 0109

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 251 Of 2018, I.A. No.10123 Of 2019

Prem Chand Rai

APPELLANT

Vs

Damodar Valley Corporation And Ors

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 01 JH CK 0109

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

Bench : Division Bench

Advocate : Manoj Tandon, R.N. Sahay, Tapasa Kabiraj

Final Decision : Dismissed

Judgement

I.A. No.10123 of 2019:

1. The instant interlocutory application is under Section 5 of the Limitation Act for condoning the delay of 633 days in preferring the instant appeal.

2. Mr. Manoj Tandon, learned counsel for the appellant/writ-petitioner has submitted while pressing the instant interlocutory application that delay in

filing the appeal has occasioned due to filing of civil review against the order passed in writ petition being Civil Review No.102 of 2017 but the same

was allowed to be withdrawn on 23.02.2018 with a liberty to prefer the Letters Patent Appeal. Thereafter the appellant/writ-petitioner since is having

no means of income has collected money to engage a lawyer and filed appeal which caused delay.

Further submission has been made that the delay is not intentional and if the delay in filing the appeal would not be condoned, the appellant/writ-

petitioner will suffer irreparable loss and injury as because the issue will remain

undecided.

3. Mr. R.N. Sahay, learned senior counsel appearing for the DVC has raised serious objection to the averment and plea taken in the interlocutory application by filing a rejoinder to the limitation petition.

4. This Court, after having heard the learned counsel for the parties and considering the reason for delay in filing the instant appeal as also the objection filed by the respondent-DVC, is of the view that the delay has sufficiently been explained by the appellant/writ-petitioner.

5. This Court is further of the view that instead of going on technicality by dismissing the appeal on the ground of delay it would be in the ends of justice to decide the appeal on merit, therefore, is of the view that it is a fit case where the delay in filing the appeal is to be condoned.

6. Accordingly, the interlocutory application stands allowed and the delay in preferring the instant appeal is hereby condoned.

L.P.A. No.251 of 2018:

7. The instant intra-court appeal is against the order passed in W.P.(S) No.5921 of 2016 by the learned Single Judge of this Court whereby and whereunder the order passed by the respondent-DVC rejecting the claim of the appellant/writ-petitioner for appointment on compassionate ground has been declined to be interfered with.

8. The brief facts in narrow compass as has been pleaded by the appellant/writ petitioner before the writ court as also in the present memo of appeal is hereunderas:

The father of the appellant/writ petitioner, Late Bhola Nath Rai died in harness on 13.09.2002 while posted at Bokaro Thermal Power Station (in short

BTPS), Bokaro as Security Guard.

The appellant/writ petitioner who claims to be qualified person having qualification of intermediate of Science as on the date of death of his father i.e., on 13.09.2002, has applied for appointment on compassionate ground within the stipulated period before the competent authority of the respondents.

The Personnel Officer of the respondent DVC, Thermal Power Station, Bokaro has issued a certificate on 20.07.2004 to the effect that the

appellant/writ petitioner is empaneled candidate of compassionate category by panel No.105 dated 29.04.2007. The appellant/writ petitioner when has

not been issued with the offer of appointment, had filed a writ petition being W.P. (S) No.6976 of 2007 before this Court in which the respondent DVC

has contested the case by filing counter affidavit, inter alia taking the stand that the appellant/writ petitioner could not be offered compassionate

appointment due to dearth of vacancy as per the policy of the DVC for appointment on compassionate ground. A co-ordinate Bench of this Court has

disposed of the writ petition vide order dated 20.11.2008 by which the direction was issued upon the respondents to consider the case of the

appellant/writ petitioner on compassionate ground in accordance with the certificate as has been issued by the respondent authorities.

The order passed by the authority in terms of the order passed by this Court in W.P.(S) No. 6976 of 2007 has been assailed by the appellant/writ

petitioner in W.P.(S) No.2517 of 2011 by which the claim has been rejected again on the ground of non-availability of the vacancy

The appellant/writ petitioner has made representation bringing the aforesaid order dated 20.11.2008 to the notice of the respondents vide

representation dated 18.12.2008 but when no decision was taken by the authorities. A contempt petition was filed before this Court which was

disposed of on 08.02.2016 and in course of its pendency the order has been passed by the authority on 06.03.2014, which has been brought on record

by way show cause therein. Finally contempt petition was disposed of.

The appellant/writ petitioner, thereafter has challenged the order passed by the authority on 06.03.2014 by filing a fresh writ petition being W.P(S)

No.5921 of 2016 which was dismissed by judgment dated 25.08.2017 against which review has been preferred being Civil Review No.102 of 2017

which subsequently has been withdrawn with the liberty to file the instant appeal, in pursuance thereto, the present appeal has been filed inter alia on

the following grounds.

i. It has been contended by the learned counsel for the appellant/writ petitioner that even though there is a scheme to provide appointment on

compassionate ground but the claim of the appellant/writ petitioner has not been considered even though the death has occurred way back on

13.09.2002.

ii. The appellant/writ petitioner has been subjected to hostile discrimination in appointing other similarly situated dependents of the deceased employee

while denying the claim of appointment on compassionate ground which is against Article 14 of the Constitution of India.

iii. The specific stand has been taken about appointment of one Shimoti Devi who was offered appointment on compassionate ground on

26.09.2003 whose husband namely Talo Manjhi died accidental death on 13.06.1999.

iv. The further ground has been agitated in assailing the stand taken by the respondent DVC in discriminating on the ground of death on duty and

death after duty in residential accommodation provided by the respondent authority.

9. Mr. R. N. Sahay, learned senior counsel appearing for the respondent DVC has vehemently opposed the grounds and submissions advanced by the

learned counsel for the appellant/writ petitioner defending the impugned order inter alia for the following reasons.

He has placed the order passed by the respondent DVC in terms of the order passed by this Court in W.P.(S) No.6976 of 2007 whereby and

whereunder the reasons for rejection of claim has been assigned that there is dearth of adequate vacancy in unskilled category of Bokaro Thermal

Power Station (BTPS), Bokaro. However last appointment on compassionate ground was given to one Shri Motilal Choudhury at BTPS whose father

expired on 04.10.1995. Appointment of Shri Prem Chand Rai, the appellant/writ petitioner herein, has been rejected on the ground that a good number

of candidates senior to him are waiting in the list for appointment on compassionate ground at BTPS and therefore to provide immediate relief, a

decision had been taken by the respondent DVC to provide Rs.5,00,000/- in lieu of appointment in DVC on compassionate ground, if the person

existing in the list exercises option in the prescribed form meant for the same. But no such option has been exercised by the appellant/writ petitioner in

this regard.

He, therefore, submits that since there is dearth of vacancy hence appointment could not have been made as because in view of the circular of DVC

dated 07.02.1995, 25 per cent of unskilled vacancies are filled up from amongst the empanelled eligible candidates awaiting appointment on

compassionate ground but vacancy being not available, there cannot be appointment.

The order passed by the authority in terms of the order passed by this Court in W.P.(S) No. 6976 of 2007 has been assailed by the appellant/writ

petitioner in W.P.(S) No.2517 of 2011 by which the claim has been rejected again on the ground of non-availability of the vacancy and by making

assertion therein that due to lack of vacancy no appointment has been made.

The other ground has been taken in the impugned order that as per the circular the appointment on compassionate ground is to be made on priority

basis categorizing it in five categories as would appear from the office circular dated 17.07.1984 and the first priority is to be given in a case of death

on duty and death due to other reasons has been categorized in category no. (d) and as such according to the respondent DVC the appointment which

has been provided in the year 1995 keeping the issue of priority into consideration since death thereof was while on duty but herein father of

appellant/writ petitioner admittedly had died after completion of duty hour in his quarter due to electric shock and hence the plea which is being

agitated by the appellant/writ petitioner about discrimination is not valid one.

He has also taken shelter of the modified scheme for appointment of compassionate ground dated 11.11.2004 whereby and whereunder the existing

list of applicant for appointment on compassionate ground as on 31.10.2004 shall stand frozen and since the name of the appellant/writ petitioner was

treated to be under list-B since on the basis of the date of death which is prior to 31.10.2004 and as such decision has been taken by the authority in

terms of the order passed by the Honâ??ble Apex Court in the case of Umesh Kumar Nagpal vs. State of Harayana and Ors., (1994) 4 SCC 138.

The provision of compensation has been decided to be provided to the dependents of the deceased employee.

In view of such grounds, the submission has been made by learned senior counsel appearing for the respondent DVC that the learned single Judge has

not committed any error rather the learned Single Judge has gone into the object and intent of the appointment to be provided under compassionate

scheme that is to provide immediate relief due to sudden death of the bread earner but admittedly herein the death has occurred way back in the year

2002 and therefore the object and spirit of the compassionate appointment will not meet after such delay.

10. In response to such submission Mr. Manoj Tandon, learned counsel appearing

for the appellant/writ petitioner has advanced his submission about applicability of the circular dated 11.11.2004 on the ground that the said circular will not be given effect retrospectively since the date of death is 13.09.2002 as such the case of the appellant/writ petitioner will be governed through office circular dated 17.07.1984 and to substantiate his arguments, he has relied upon a judgment passed by Honâ??ble Apex Court in the case of Canara Bank and Anr. vs. M. Mahesh Kumar with other analogous cases, (2015) 7 SCC 412.

11. This Court, after having heard the learned counsel for the parties and after appreciating their rival submissions, is of the view to first deal with the applicability of the Circular before entering into the legality and propriety of the impugned order taken by the authorities as also the order passed by the learned Single Judge of this Court.

12. It is not in dispute that the appointment on compassionate ground is not a fundamental right rather it is exception to Article 14 and 16 of the Constitution of India. It is equally settled that the appointment on compassionate ground is to be made on the basis of a scheme floated by the establishment. The DVC came out with a Circular dated 17.07.1984 which contains provision restricting it only to the case of dependents (son/unmarried daughter/widow) of an employee who dies in harness during serviced period leaving his family in immediate need of assistance, there being an earning member in the family. The Clause 5 of the aforesaid Circular is relevant for the present, which reads hereunderas:

5. Compassionate appointment will be made in the order of priority as below :

- a) Death due to accident while on duty.
- b) Permanently and totally disabled due to accident on duty and declared unfit for further service of any kind on medical ground by a medical board constituted for the purpose.
- c) Death due to prolonged illness, such as Cancer, TB and Leprosy.
- d) Death due to other reasons.
- e) Permanently and totally disabled and declared unfit for service of any kind on medical ground by a medical board constituted for the purpose.

This order of priority will be within the cases of the calendar year concerned and

the cases of the next year will be taken up only on the disposal of the cases of the preceding year, but this will not be applicable in respect of the cases of death due to accident on duty which will have instant priority over other pending cases. In respect of the death taking place during the calendar year the date of death will determine the seniority for the purpose of appointment.â??

It is evident from the aforesaid condition that appointment on compassionate ground is to be provided in order of priority and the first priority is to be given in a case of death due to accident while on duty and the death due to other reasons has been kept at serial No.(d).

13. It further appears that the order of priority will be within the cases of the calendar year concerned and the cases of the next year will be taken up only on the disposal of the cases of the preceding year, but this will not be applicable in respect of the cases of death due to accident on duty which will have instant priority over other pending cases, meaning thereby, in a case due to accident while on duty has to be given top priority over and above other cases of death.

14. The respondent DVC has subsequently modified the scheme on 11.11.2004 after the judgment having been pronounced by Honâ??ble Apex

Court holding the law laid down in the case of Sushma Gosain and Ors. vs. Union of India, (1989) 4 SCC 46 8as not a good law rendering the said

judgment in the case of Umesh Kumar Nagpal vs. State of Haryana (supra) whereby and whereunder it is evident from condition No.7 for

consideration of cases of compassionate appointment arising on or after 01.11.2004 the same is to be dealt with in pursuance to the scheme dated

11.11.2004 in a case of appointment arising on or after 01.11.2004 keeping the name of such eligible persons in a separate list as List-A while under

condition No.7(B) old cases of compassionate appointment will be dealt with under:

(i) The existing list of eligible applicants for appointment on compassionate ground as on 31.10.2004 shall stand frozen.

(ii) The existing frozen list will be split into two parts as under:

(a) List â??Bâ?? â?" to include the cases which are upto 3 years old as on 31.10.2004.

(b) List â??Câ?? â?" to include the cases which are more than 3 years old as on

31.10.2004.

15. It further contains a provision pertaining to cases in List â?"B, the name of the individual shall stand deleted after lapse of 3 years of the

spouse/legal heir if not employed in DVC shall be entitled for a lump sum grant of Rs.1,00,000/- on submission of an undertaking in the prescribed

form at Annexure-â??Aâ??.

16. The question which has been raised by learned counsel for the respondent DVC about applicability of scheme dated 11.11.2004 while the same

has seriously been disputed by the learned counsel for the appellant/writ petitioner so far as its applicability is concerned on the ground of

retrospectivity and to that effect the judgment rendered by Honâ??ble Apex Court in the case of Canara Bank and Anr. vs. M. Mahesh Kumar

(supra) has been relied upon.

17. This Court has gone across the aforesaid judgment more particularly paragraph 17 & 22 wherein it has been laid down about applicability of

scheme which was in existence on the date of the death.

There is no quarrel about the aforesaid settled position of law that in a case of appointment on compassionate ground the cause of action for

consideration would be the date of death and the scheme which is prevailing on the date of death will only be applicable but the same depends upon

the fact and the scheme as also the content of the scheme/statute/regulation or the Act, however, we are not going into that aspect of the matter since

it is also the case of the respondent DVC about applicability of the scheme of the year 1984, therefore, we are proceeding to decide as to whether the

appellant/writ petitioner has been able to make out a case on the basis of the scheme floated on 17.07.1984.

18. This Court has further proceeded to examine the factual aspect in scrutinizing the impugned decision by which the claim of the appellant/writ

petitioner has been rejected which according to the appellant/writ petitioner is nothing but hostile discrimination based upon unreasonable classification.

19. It is not in dispute that Article 14 is the fundamental right conferred to the citizen of the country as provided under the Constitution of India but it is

also settled that Article 14 will only attract if there is unreasonable classification and it is not applicable in a case of reasonable classification as has

been held by Honâ??ble Apex Court in the case of State of Jammu & Kashmir vs.

Triloki Nath Khosa and Ors., (1974) 1 SCC 19 wherein the Court

[Chandrachud, J. (as he then was)] in para 20 succinctly held thus:

“The challenge, at best, reflects the respondent’s opinion on promotional opportunities in public services and one may assume

that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the

legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the

theory advocated by the respondents is not to be preferred. Classification is primarily for the legislature or for the statutory authority

charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the

classification is found to rest on a reasonable basis, it has to be upheld.”

It was also observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if

it rests on an unreasonable basis and it was for the respondents to establish that classification was unreasonable and bears no rational

nexus with its purported object. Further, dealing with the right to equality, the Court (in paras 29 & 30) held thus:

“But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for

equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment. Since the constitutional code of equality

and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for

persons who fall, substantially, within the same class.”

Now, we would next refer to the decision in *Air India v. Nergesh Meerza and others* [(1981) 4 SCC 335], which propounds the right of

equality under Article 14 after considering various decisions. In that case, constitutional validity of Regulation 46(i)(c) of Air India

Employees’ Service Regulations was challenged, which provides for retiring age of an Air-Hostess. The Court (in paragraph 39)

summarized thus:

“39. Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following

propositions emerge:-

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and

the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Art. 14 can- not be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of

their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members

belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be

achieved so that in such cases Art. 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a

separate class by itself and no difference or discrimination between such category and the general members of the other class would

amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to

be examined:-

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category.

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not to be found in other classes, and the like.â??â??

20. Now the factual aspect in the touch stone of the aforesaid position of law has

been scrutinized by us.

It is evident from the scrutiny of the impugned orders whereby and whereunder the ground of rejection is the dearth of vacancy. The admitted fact

herein is that 25 per cent posts is to be filled up by way of compassionate appointment as has been discussed hereinabove that the appointment on

compassionate ground is not a fundamental right rather it is exception to Article 14 and 16 of the Constitution of India and the appointment purely

govern under the scheme floated by the establishment.

21. It is further evident from the office order dated 17.07.1984 that the appointment on compassionate ground has been decided to be provided on

priority basis, categorizing it under five categories, first one is in a case of death due to accident while on duty, second one permanently and totally

disabled due to accident on duty and declared unfit for further service of any kind on medical ground by a medical board constituted for the purpose,

third one is death due to prolonged illness, such as Cancer, TB and Leprosy, fourth one is death due to other reasons and fifth one is permanently and

totally disabled and declared unfit for service of any kind on medical ground by a medical board constituted for the purpose.

Herein the admitted case of the appellant/writ petitioner is that his father has not died on duty rather death occurred in the quarter when his father had

returned from duty due to electric shock and as such it is not a death while on duty rather it is a death due to other reasons.

22. The respondent DVC has rejected the claim of the appellant/writ petitioner by differentiating his case to that of the other similarly situated namely,

one Shri Motilal Choudhury whose father expired on 04.10.1995 on duty but the reason has been assigned in the first impugned order passed in terms

of the order passed by this Court in W.P.(S) No.6976 of 2007 by assigning the reason of not considering the claim of the appellant/writ petitioner since

the death of his father is not on duty.

23. Further case has been made out by making out a case of Article 14 of the Constitution of India wherein according to the appellant/writ petitioner

one Smt. Shimoti Devi had been provided with appointment due to death of late Talo Manjhi but as would appear from the list appended whereby and

whereunder Talo Majhi had died due to normal death and the death was in the year 1999 but admittedly herein the death of the father of the

appellant/writ petitioner is in the year 2002 and hence, the ground which has been taken in the impugned order by the respondent DVC that the

appointment is being provided on the basis of the list prepared cannot be said to have suffered with any arbitrariness as because the dependent of Talo

Manjhi has been provided appointment considering his death which has occurred in the year 1999 while the death of the father of the appellant/writ

petitioner is in the year 2002, therefore, in view of the fact that the father of the appellant/writ petitioner has not died while on duty rather in the

quarter after discharged of his duty, hence, no parity can be made with the dependents who have been provided with appointment died while on duty

and as such, it cannot be said to be unreasonable classification rather classification is based on reasonableness and therefore, it is not a case of Article

14 of the Constitution of India.

Further argument has been made by Mr. Manoj Tandon, learned counsel for the appellant/writ petitioner that death is death whether on duty or after

the duty and therefore, there should not have been any discrimination but this argument is having no foundation in view of the specific decision of the

respondent DVC as has been taken in the office order dated 17.07.1984 categorizing the category to provide appointment on compassionate ground

wherein the death due to accident while on duty has been given top priority in comparison to that of the death in the other cases.

It is the cardinal rule of interpretation that where the statute provides that a particular thing should be done, it should be done in the manner prescribed

and not in any way, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of State of Uttar Pradesh vs.

Singhara Singh and Ors., AIR (1964) SC 358, wherein it has been held at paragraph 8 as under:

25. ".....its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be

exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the

rule is that if this were not so, the statutory provision might as well not have been enacted...."

Babu Verghese and Ors. vs. Bar Council of Kerala and Ors., (1999) 3 SCC 422, wherein it has been held at paragraphs 31 & 32 as under:

31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must

be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord

Roche in *Nazir Ahmad v. King Emperor* who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of V.P.* and again in *Deep Chand v. State of*

Rajasthan. These cases were considered by a three-judge bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in

Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized

as a statutory principle of administrative law."

Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors., reported in (2002) 1 SCC 633, wherein it has been held at paragraph 27 as

under:

"..... it is a normal rule of consideration that when a statute vests certain power in an authority to be exercised in a particular manner

then the said authority has to exercise it only in the manner provided in the statute itself...."

State of Jharkhand & Ors. vs. Ambay Cements & Anr., (2005) 1 SCC 368, wherein it has been held at paragraph 26 as under:

"....it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the

manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be

strictly construed and followed...."

Zuari Cement Ltd. vs. Regional Direction ESIC Hyderabad & Ors. (in Civil Appeal No.5138-40/2007), (2015) 7 SCC 6,9 wherein it has been held at

paragraph 14 as under:

"14. As per the scheme of the Act, the appropriate Government alone could grant or refuse exemption. When the statute prescribed the

procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In

State of Jharkhand v. Ambay Cements, it was held that: (SCC p. 378, para 26)

26.... it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the

manner prescribed and not in any other way.â??

As such this Court is of the considered view that the scheme cannot be interpreted rather action has to be taken strictly in pursuance to the scheme,

which has been taken by the authority, so the argument is rejected.

25. It is the further settled position of law that the very object of a scheme to provide appointment on compassionate ground is to meet out the crises

due to sudden demise of the bread earner and it has been settled in catena of decisions by Hon'ble Apex Court that when a family has survived

for such a long period no appointment on compassionate ground is to be provided otherwise the same will frustrate the very object and scheme to

provide appointment on compassionate ground, reference in this regard be made to the judgment rendered in the case of Jagdish Prasad Vrs. State of

Bihar and Another, (1996) 1 SCC 301, Hon'ble Apex Court, while considering the object of compassionate appointment held that the object of

appointment of a dependent of the deceased employees who die 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 the case of 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 bread earning Government employee.

In the case of State of U.P. and Others Vrs. Paras Nath reported in AIR 1998 SC 2612 the Hon'ble Apex Court 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 the case of 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 and compassionate appointment is an exception to general constitutional mandate in the interest of justice under peculiar circumstances.

It was further observed that where law prescribes provisions for making an application for compassionate appointment, it has to be adhered to.

From the laws laid down by the Hon'ble Apex Court in various judgments referred herein above, it is settled proposition that compassionate

appointment cannot be considered to be a source of recruitment or another mode of recruitment to government / public service. The object and

purpose of compassionate appointment for the dependent of the deceased-Government servant is to provide immediate financial assistance to the

family whose sole bread earner died leaving the family in lurch. The purpose is to enable the family to overcome its immediate financial needs. The

compassionate appointment cannot be given as a matter of course, and depends upon various factors, including the financial condition of the family of

the deceased and other relevant factors.

Since compassionate appointment is deviation from the constitutional mandate contemplated by Article 14 and 16 of the Constitution of India, which

permits employment providing equal and fair opportunity to all the eligible persons, it is necessary that the compassionate appointment is regulated by

law / rules so as not to nullify the constitutional spirit.

26. This Court, after discussing the fact as also the legal position in detail as above and after going across the judgment passed by learned Single

Judge, is of the view that the order passed therein cannot be faulted with, accordingly, the instant appeal stand dismissed.

27. Before parting with the order and considering the submission made on behalf of the appellant/writ petitioner with respect to disbursement of

amount of compensation to the tune of Rs.5,00,000/-, it is made clear that the dismissal of writ petition as also the instant appeal will not come in the

way of disbursing the said amount in accordance with law.