

**(2010) 08 DEL CK 0019**  
**In the Delhi High Court**  
**Case No : LPA 181 of 2010**

Rajpal Kumar and Another

APPELLANT

Vs

Food Corporation of India

RESPONDENT

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**Date of Decision :** 16-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2010) 171 DLT 687

**Hon'ble Judges :** Dipak Misra, C.J.; Manmohan, J

**Bench :** Division Bench

**Advocate :** Manmohan Sharma, for the Appellant; Neelam Singh, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dipak Misra, C.J.—The present intra court appeal preferred under Clause 10 of the Letters Patent is directed against the order dated 20th January, 2010 passed by the learned Single Judge in WP(C) No. 7284/2008.

2. The writ petitioners (hereinafter referred to as the "appellants") are the sons of ex-employees of the Food Corporation of India (for short "the FCI"). Their respective fathers sought voluntary retirement inspired by the circular of the FCI dated 3rd July, 1996. It is not in dispute that the fathers had sought voluntary retirement on medical grounds as a promise was held out to them that consequent upon their such retirement, their dependents would be given compassionate appointments in their place. In their letters, they had requested that their sons should be provided jobs in their place. They were sent for medical check-up and eventually, their request for retirement on medical grounds was accepted and they were relieved from their posts on 3rd July, 2003, 12th March, 2003 and 5th June, 2003 respectively but the request to provide employment to their sons was not accepted. Because of such denial, the appellants invoked the extraordinary jurisdiction of this Court for issuing a command to the respondent to give them the benefit of compassionate appointment.

3. The respondent-FCI resisted the stand put forth in the writ petition and contended, inter alia, that though the fathers of the appellants had sought retirement on medical grounds, yet they were not entitled to compassionate employment as certain conditions had to be satisfied and there were no vacancies. It was also highlighted that after the fathers of the appellants sent their letters seeking voluntary retirement and before the same were accepted, another circular bearing No. 5/2003 dated 4th March, 2003 had come into force which had laid down that only 5% of the vacancies at the entry level would be filled up by direct recruitment on compassionate ground. Regard being had to the consequent circular and keeping in view the 5% quota which was set apart for compassionate appointment, the cases of the appellants could not be considered as the vacancies were filled up. Before the learned Single Judge, it was not disputed that the basic circular was dated 3rd July, 1996 which stipulated certain conditions and, most importantly, the availability of vacancies. It had also laid a postulate that employment on compassionate ground is not a matter of right but purely at the discretion of the competent authority. The subsequent circular dated 4th March, 2003 fixed a ceiling of 5% at the entry level and there was no vacancy in the said category against which the appellants could be appointed.

4. The learned Single Judge posed a question to the effect whether the ceiling of 5% for compassionate appointment as laid down by the circular dated 4th March, 2003 could also apply to those applicants who had sent their papers for voluntary retirement prior to coming into force of the said circular. While answering the said issue, the learned Single Judge referred to the decision in Food Corporation of India and Anr. v. Food Corporation of India Workers Union LPA No. 1672/2005 decided on 30th January, 2006 wherein it has been held that the application for compassionate appointment made whether before or after 4th March, 2003 would be subject to the ceiling limit of 5%.

5. It is worth noting that before the learned Single Judge, reliance was placed on the decision in Food Corporation of India and Another Vs. Ram Kesh Yadav and Another, . The same was distinguished by the learned Single Judge on the ground that the fathers of the petitioners had not put any condition while seeking voluntary retirement and only made a request that on their retirement, their sons may be provided jobs. That apart, the learned Single Judge also opined that in the case of Ram Kesh Yadav and Anr. (supra), the FCI had advanced a technical plea that when the petitioner therein had applied for voluntary retirement, he had crossed the age of 55 years and hence, not covered by the circular but in the case at hand, there is no vacancy available within the 5% quota reserved for compassionate appointment at the entry level.

6. We have heard Dr. Manmohan Sharma, learned Counsel for the appellants, and Ms. Neelam Singh, learned Counsel for the respondent.

7. Dr. Sharma, learned Counsel for the appellant, has raised the following contentions:

(a) The learned Single Judge has flawed by distinguishing the decision rendered in Ram Kesh Yadav and Anr. (supra) though the ratio laid down therein is clearly applicable to the case at hand.

(b) When the fathers of the appellants had applied for voluntary retirement, the circular that was in vogue was to be implemented inasmuch as they had a right at that time and, therefore, they cannot be governed by the subsequent scheme. The circular which was in force at the time of submission of the applications has to be made applicable and not the circular at the time of consideration of the applications and when the original circular is made applicable to their cases for compassionate appointment, the question of attracting the concept of ceiling which is a facet of the subsequent circular cannot be taken recourse to. The learned Counsel, to bolster the aforesaid contention, has placed reliance on Maharani Devi and Anr. v. Union of India and Ors. (2009) 2 SCC(L& S) 323.

8. Ms. Neelam Singh, learned Counsel for the respondent, while resisting the aforesaid submissions, has canvassed as follows:

(i) The learned Single Judge has correctly distinguished the decision in Ram Kesh Yadav and Anr. (supra) as the factual matrix is totally different and further the said decision has already been distinguished by the Apex Court in Food Corporation of India and Another Vs. Nizamuddin and Another, .

(ii) The decision rendered in Maharani Devi and other (supra) is not a precedent for the proposition that the circular, policy or scheme which is in vogue at the time of submission of the application would apply as the Apex Court had remanded the matter to the High Court for consideration on the said issue.

(iii) The order passed in the case of Food Corporation of India Workers Union (supra) by the Division Bench in LPA No. 1672/2005 is a binding precedent and, hence, the order passed by the learned Single Judge is absolutely defensible.

9. First, we shall deal with the facet whether the decision rendered in Ram Kesh Yadav and Anr. (supra) has been correctly distinguished by the learned Single Judge. In Ram Kesh Yadav and Anr. (supra), their Lordships have held as follows:

9. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed de hors the policy. In Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, this Court stressed the need to examine the terms of the rules/scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment. In this case, the scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the

employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on medical grounds and thereby virtually creating employment by "succession". It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory.

10. As rightly contended by FCI, the issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment to a dependent of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the Scheme dated 3-7-1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no "right" to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in Nizamuddin<sup>1</sup> that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate appointment on the ground of non- fulfilment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous.

10. After so stating, their Lordships proceeded to hold as follows:

11. But on facts, this case is different. The second respondent's application dated 26-4-1999 was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds if his son was provided with employment in his place. The second Respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. There lies the catch.

12. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counteroffer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the

condition subject to which the offer is made.

11. In the case at hand, the fathers of the appellants had not put any condition while seeking voluntary retirement. We think it apt to reproduce one such application:

Sub: on the basis of Medical Unfit and replace of Service with relation.

...I am Birbal Mehto S/o Late Sh. Kratik Mehto employed of the post at F.C.I. Maya Puri Depot in Gang No. 14 on handling workers in these I am physically and medically unfit due to this region I am not capable to do work at your firm. I requesting you to provide the service Raj Pal who is my son because I am not physically fit due to this medical region provide job him because they promise me to provide help on my family support whole life and I have not any other person excepted Raj Pal. With provide the service and help whole life....

12. On a perusal of the said letter, it is clear as noonday that the offer was not a conditional offer which was so in the case of Ram Kesh Yadav and another. At this juncture, we may refer with profit to the decision in Nizamuddin and Anr. (supra) wherein a two-Judge Bench of the Apex Court considered a similar application and referred to the decision in Ram Kesh Yadav and Anr. (supra) and held that keeping in view the peculiar wording of the letter, this Court had held that the aforesaid general principle would not apply. Their Lordships referred to paragraph 14 of the decision in Ram Kesh Yadav (supra) wherefrom it was evident that the FCI had accepted the offer unconditionally. After referring to the said paragraph, their Lordships proceeded to express thus:

12. In this case the offer of voluntary appointment in the application was neither conditional nor interlinked. The words used are "I therefore request that the management may kindly retire me on medical grounds and at the same time give appointment to my son." It merely contains two requests (that is , permission to retire voluntarily on medical grounds and request for appointment for his son), without any interlinking. Nor was the voluntary retirement conditional upon giving employment to his son. Therefore, Ram kesh Yadav<sup>1</sup> will not apply. Each request had to be considered on its own merits with reference to the rules/scheme applicable. When so done it is clear that the first respondent will not be entitled to compassionate appointment.

13. In view of the aforesaid pronouncement of law, in our considered opinion, the learned Single Judge has correctly distinguished the decision in Ram Kesh Yadav and Anr. (supra).

14. The second aspect that requires to be dwelled upon is whether the circular that is in vogue at the time of submission of the application or the scheme or circular which comes into operation at the time of dealing with the application would be applicable. The learned Single Judge has referred to the circular dated 3rd July, 1996 which deals with the recruitment procedure for appointment of next kin of departmental workers who seek retirement on medical grounds at

their own request in relaxation of the procedure of getting sponsored from employment exchange. In the said circular, there was a condition which stipulated that notwithstanding anything contained in the circular, the compassionate ground appointment is not a matter of right but purely at the discretion of the competent authority taking into account the circumstances and conditions of the family of the medically retired workers and also subject to the availability of vacancies. The submission of the learned Counsel for the appellants is that when the applications were submitted, there were number of vacancies but thereafter, by the circular dated 4th March, 2003, it has been restricted to 5% of the vacancies. In the case of Food Corporation of India Workers Union (supra), a Division bench of this Court has held thus:

9. In our opinion, there is an obvious reason for putting the ceiling of 5% because in this country, experience has shown that there was a great abuse of the rule regarding compassionate appointment. A compassionate appointment is really a back door appointments. Prima facie it violates Article 16 of the Constitution. However, it is permitted in exceptional cases, but such exceptional cases must be strictly construed. What has been actually happening, as experience shows from a large number of cases in various High Courts that there was gross abuse of the rule for compassionate appointment. Fake claims were being made under such rules including claim of being adopted etc., for getting back door appointments.

10. Moreover, if the submission of learned Counsel for the respondent is accepted, it will mean that even 100% vacancies may have to be filled by compassionate appointment if that the applications were made before 4.3.2003.

11. It must be understood that ordinarily an appointment is made on merit so that a suitable person can be appointed. Under the compassionate appointment scheme even persons who are not meritorious are appointed. Obviously, a limit should be set to the number of such non-meritorious candidates otherwise the department may not be able to function.

12. In view of the above, the order passed in CM 10560/2004 in WP(C) No. 3362/2004 is set aside and it is made clear that the applications for compassionate appointment made whether before or after 4.3.2003 will be subject to the ceiling limit of 5%.

15. The learned Counsel for the appellants submitted that the decision rendered in Food Corporation of India Workers Union (supra) does not lay down the law correctly in view of the decision rendered by the Apex Court in Maharani Devi and Anr. (supra). In Maharani Devi and another, a two-Judge Bench of the Apex Court was dealing with the case of a widow who had claimed compassionate appointment in the railways. The claim of the appellant therein was rejected by the respondents on the ground that she had received family pension on account of the death of her husband. Being grieved, she had approached the tribunal and the tribunal held that the office circular on which the appellant had relied and

which was in force on the date of death of her husband was not available at the time of submission of the application on which date the amended circular was in force and, accordingly, held that the amended circular would be applicable to the facts of the case. Being of this view, the tribunal negated the prayer of the widow. Being dissatisfied with the said order, the appellant preferred a writ petition which was dismissed in limine. Before the Apex Court, reliance was placed by the appellant on Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, and a contention was canvassed that the amended circular could not be retrospective inasmuch as the right for being considered for compassionate appointment had accrued on the date of death of the employee and that was the only relevant date. Their Lordships took note of the fact that the High Court had not expressed any opinion on the said score. After stating, their Lordships directed thus:

22. However, in our view the question posed by us as to what would be the relevant date for consideration, whether it would be the date of death of the employee or whether it would be the date of making the representation? That has not been considered by the High Court. We, therefore, remand this matter to the High Court with a request to the High Court to decide the same. We request the High Court to dispose of the matter within six months of the writ reaching the High Court as the matter pertains to the rights of a poor widow.

16. On a perusal of the aforesaid decision, we are of the view that the same does not decide the issue as there is a remit to the High Court on the said score. In this context, we may refer with profit to the decision in *Ambica Quarry Works Vs. State of Gujarat and Others*, wherein it has been held thus:

18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

17. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* (2003) 2 SCC 579, the Apex Court has observed thus:

59. ...It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

18. In *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, , the Apex Court has ruled thus:

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not

to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737, Lord MacDermott observed (All ER p. 14 C-D):

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...

10. In *Home Office v. Dorset Yacht Co. Ltd* 1970 AC 1004, Lord Reid said,

Lord Atkin's speech...is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. (All ER p. 297g)

Megarry, J in *Shepherd Homes Ltd. v. Sandham (No. 2)* (1971) 1 WLR 1062 observed (All ER p. 1274d):

One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;

And, in *British Railways Board v. Herrington* 1972 AC 877, Lord Morris said (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

\* \* \* \* \* Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

19. In *Oriental Insurance Co. Ltd. Vs. Smt. Raj Kumari and Others*, , the following principle has been laid down:

...A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Observations of courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context.

20. In *Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra and Others*, , the Apex Court referred to certain observations made by Lord Halsbury which are as follows:

14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leatham* 1901 AC 495: (All ER p.7G-I)

Before discussing *Allen v. Flood* 1898 AC 1, and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before - that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumed that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

21. Yet in another decision in *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, , their Lordships have expressed thus:

34. The decision of a Court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent.

35. In *State of Punjab Vs. Baldev Singh*, , a Constitution Bench of this Court observed (vide SCC para 43) that a decision is an authority for what it decides (i.e. the principle of law it lays down) and not that everything said therein constitutes a precedent.

36. In *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , (Vide SCC para 23) this Court observed that the only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided.

37. As observed by this Court in *State of Orissa v. Sudhansu Sekhar Misra* AIR 1968 SC 467, (vide AIR para 13): (AIR pp. 651-52, para 13):

13. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor

what logically follows from the various observations made in it....

22. In view of the aforesaid enunciation of law, there cannot be scintilla of doubt that the decision in Maharani Devi and Anr. (supra) is not a precedent on the proposition canvassed by the learned Counsel for the appellants. We are disposed to think so as their Lordships have not answered the issue, though raised, but have remanded the matter to the High Court to decide.

23. Presently coming to the case at hand whether the date of submission of the application or the date of consideration of the application would be the relevant date, we may state that compassionate appointment is fundamentally an exception to the normal rule for appointment to public service. The appointment to public service has to be through open invitation and on merits. In Haryana State Electricity Board and another Vs. Hakim Singh, , it has been held that an appointment on compassionate basis is to fulfil the object of providing ameliorating relief to a family whose breadwinner has died in harness.

24. In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , it has been opined that a scheme for compassionate appointment is an exception and an exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. It has been further observed therein that care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them but for the provision enabling appointment of the dependent of a deceased employee being made on compassionate grounds.

25. In Commissioner of Public Instructions and Others Vs. K.R. Vishwanath, , after taking note of the principles laid down earlier, their Lordships have held thus:

9. As was observed in State of Haryana and Others Vs. Rani Devi and Another, , it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employees. In State of Haryana and Others Vs. Rani Devi and Another, it was held that scheme regarding appointment on compassionate ground it extended to all types of

casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal Vs. State of Haryana and Others*, that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial conditions of th family of the deceased.

26. In *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , their Lordships* have opined thus:

11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say "goodbye" to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

12. In *State of Haryana and Others Vs. Rani Devi and Another, ,* it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

(Emphasis supplied)

27. In I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, , the constitutional scheme of equality as envisaged under Articles 14 and 16 of the Constitution was adverted to and after adverting to the same, their Lordships have held thus:

7. 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.

28. In National Institute of Technology v. Niraj Kumar Singh 2007 (1) SCC (L &S) 668, it has been ruled by the Apex Court that all public appointments should be in consonance with Article 16 of the Constitution of India.

29. In Punjab National Bank and Anr. v. R. Latha W.A. (MD) No. 411/2006 and W.A.M.P. (MD) No. 1/2006 dated 8th January, 2007, the Madras High Court has held that the right to compassionate appointment is neither a fundamental right nor a legal right. It is only an exception to the general rule and that being so, the same has to be decided as per the scheme which is prevalent at the time of consideration and not on the basis of the earlier scheme.

30. In view of the aforesaid pronouncement of law, it can safely be concluded that compassionate appointment cannot be treated as a vested right. It cannot be construed as a hereditary right and definitely it cannot be bequeathed. Thus, the submission of the learned Counsel for the appellants that their cases were to be considered in terms of the circular which was prevalent at the time of submission of the applications and not the circular which was in vogue at the time of consideration of the applications is unacceptable.

31. In the case at hand, as is discernible from the order of the learned Single Judge and the material brought on record, there is no vacancy at present. The filling up of a post on compassionate ground is restricted to 5%. The respondent has considered the applications of the appellants and has rejected the same on the ground that there was no vacancy. Thus, we do not perceive any error in the said rejection and the affirmation of the same by the learned Single Judge cannot be found fault with.

32. Consequently, we find no merit in this appeal and, accordingly, the same is dismissed without any order as to costs.