
(2017) 04 AP CK 0024
In the Andhra Pradesh High Court
Case No : 8614 of 2013

Smt B. Suvarna

APPELLANT

Vs

The APSRTC

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Citation : (2017) 04 AP CK 0024

Hon'ble Judges : P. Naveen Rao

Bench : SINGLE BENCH

Advocate : S.M. Suban, A. Rama Rao, S.V. Ramana, A. Ravi Babu, P. Durga Prasad

Judgement

1. Heard Sri. S.M. Suban, learned counsel for petitioners in all writ petitions, Sri A.Rama Rao, learned standing counsel for APSRTC in W.P. Nos.8614, 23891 of 2012; 31535, 15761 and 15893 of 2013; 15475, 15756, 15916, 20141 of 2014; 4943 and 24432 of 2015; Sri S.V. Ramana, learned standing counsel for APSRTC in W.P. Nos. 20849 of 2012 and 7779 of 2015; Sri A.Ravi Babu, learned standing counsel for TSRTC in WP Nos.23637 of 2012; Sri P. Druga Prasad, learned standing counsel for APSRTC in W.P. Nos. 12777, 31947 and 37259 of 2013. 2. In all these writ petitions, claim of petitioners for compassionate appointment under the "Bread Winner Scheme" is rejected/not considered. Since the issue for consideration in all the writ petitions is same, these writ petitions are disposed of by this common order. 3. State of Andhra Pradesh, when it was united, formulated scheme of compassionate appointment to the dependents of deceased government employees. This scheme was later extended to State Level Public Enterprises. However, having noticed that there were financial constraints and many Public Sector Enterprises are running in losses, Government dispensed with the provision of appointment on compassionate grounds in PSUs and instead, introduced the scheme of granting ex-gratia depending on the category of deceased employee. On a review of this policy, Government reintroduced the scheme in State Public Sector Enterprises and Cooperatives subject to such

Enterprises and Cooperatives are having positive net-worth, which are financially sound and earning profits for the last five years and not dependent on Government for any kind of budgetary support. 4. The scheme of compassionate appointment was dispensed with in A.P. State Road Transport Corporation (APSRTC) in the year 1998. When the State was united, the combined APSRTC persuaded the Government to reintroduce the scheme of compassionate appointment. Though the Corporation informed the Government that Corporation is not making profits, but endeavour was being made to improve profitability; that for long time no recruitment was made; and large number of claims have accumulated and requested to grant permission to make appointments on compassionate grounds to all eligible dependents of the employees, who have died in harness. Government was informed that 1120 claims were pending w.e.f. 01.01.1998. Government issued orders in G.O.Ms. No.2, Transport, Roads & Buildings (TS.II) Department, dated 05.01.2013 permitting the Corporation to reintroduce the scheme of compassionate appointments w.e.f. 01.01.1998. Vide orders in G.O.Ms. No.15 Transport, Roads and Buildings (TR.II) Department, dated 07.02.2014, Government clarified that the scheme shall be in force for future claims also. 5. In these Corporations, the scheme is called as "Bread Winner Scheme" (BWS). Earlier, vide Circular No. PD-30/2000 dated 05-05-2000 Corporation notified comprehensive guidelines on provision of employment under the bread winner scheme. 6. With effect from 02.06.2014, State of Andhra Pradesh was bifurcated and separate State of Telangana was carved out with ten (10) districts. However, the APSRTC continued as common RTC for two States. On processing the applications received, the Corporate Office noticed that though the Corporation intended to fill up 1120 vacancies, only 734 candidates were considered. There were representations from individuals as well as unions that the benefits of the scheme have not reached the truly deserving and requested to provide one more opportunity to consider the request for relaxations and modifications to the scheme. To consider the said request, Committee of Officers was constituted by the Vice Chairman and Managing Director. The report of the Committee was considered and comprehensive guidelines were notified in Notification No. PD-02/2015, dated 10.02.2015, which are in addition to the guidelines notified on 5-5-2000. These instructions prescribe eligibility qualifications for the respective posts and criteria for consideration of eligibility of a claim. 7. Compassionate appointment is restricted initially to the posts of Driver Grade-II, Conductor Grade-II and Shramik (Cleaner to Khalasi). Later, APSRTC extended to the post of RTC Constable also. 8. As the instructions in Notification No. PD-02/2015 dated 10.02.2015 are comprehensive and require consideration vis-a-vis the claims of petitioners, it is necessary to extract the full instructions: "1.Applications shall be invited afresh from the dependents of deceased employees who died from 01-01-1998 to 04-01-2013 as one time measure subject to the conditions that (i) the family should not have availed AMB and (ii) the family should not have obtained compassionate appointment to any of the family members under BWS even though such family member who received compassionate appointment is separated from the family for whatever

reasons that might be. In other words, this notification is applicable to only those families of the deceased employees who have failed to register applications for compassionate appointment of one of the eligible family members during the above mentioned ban period without reference to the stipulated time of registration of 3 years from the date of death of the employee which was later enhanced to 5 years. 1. Such applications shall be considered as per the comprehensive instructions issued on the subject through Circular No. PD 30/2000 dated 05-05-2000 and instructions or clarifications issued thereafter from time to time. 2. Applications shall be entertained for the post of Conductor Gr.II, Driver Gr.II and Shramiks only subject to the candidates fulfilling the eligibility for the respective posts as amended from time to time. 3. Though application is made for the AMB but is not availed by the family or the sanctioned AMB is not debited from the Corporation Account, application shall be entertained now from the eligible dependent Applications must not be entertained even if the dependent come forward to repay the AMB received even with interest. 4. Upper age limits specified for different posts and different castes as per APSRTC Employees" (Recruitment) Regulations shall be followed. In terms of Recruitment Regulation, no candidate above the age of 45 years shall be appointed. However, because of the ban for a very long period of 15 years, several candidates under BWS might have crossed 45 years though they might have been within the prescribed upper age limits within the prescribed time of registration from the date of death of employee. This is an unusual situation wherein the BWS applicants are not at fault and hence the upper age relaxation to the extent of requirement may have to be given to consider their compassionate appointment. Hence, the Regional Managers are hereby authorised to grant upper age relaxation provided that on granting such relaxation, the age of the candidate does not cross 45 years. In cases it requires upper age relaxation of the candidate beyond 45 years till almost the date of superannuation in certain extreme cases, necessary sanction from the ED(Zone) concerned shall be obtained in individual cases. 5. Under aged applicants must not be considered at all as the same was objected to by the Government. 6. Height can be relaxed to the extent of 2 cms only in case of Conductors by the Executive Director concerned in terms of the existing circular instructions. No height relaxation in the case of Drivers is permitted under any circumstances as it is concerned with the safety of operations. 7. Qualifications : No relaxation is permissible in the Educational Qualifications. The qualification required for different posts are reiterated as follow: Conductors: The existing qualification of having cleared SSC successfully will be continued. Drivers: The present requirement of holding a Heavy Vehicle (Transport) Driving License for a period for 1½ years as on the date of interview shall be made applicable. While determining the period of holding valid Heavy Transport Vehicle Driving License, the instructions issued through Circular No. PD-10/1999 dated 28-01-1999 shall be followed. Shramiks: The qualifications that were applicable at the relevant point of time shall be applied for recruiting Shramiks i.e., (i) ability to read and write for the deaths that occurred prior to 10.05.99 (ii) 8th Class pass for the deaths occurred

between 10.05.1999 and 11.07.01 and (iii) ITI (Diesel Mechanic) for the deaths occurred on or after 12.07.2001. 8. The existing system of denying employment to the applicant in case any other member of the family is employed elsewhere either in APSRTC or Government or Private sector will continue. Thorough verification of the employment status of the other members of the family by the Vigilance Department as per the existing Circular instructions will be continued. 9. Change of applicants is permitted on the conditions that (i) the initial applicant fulfilling the eligibility criteria should have applied for the post within five years from the date of death of the employee (ii) the new alternate applicant should have attained the eligibility criteria for the post applied for within five years from the date of death of the employee. 10. Change of post applied for can also be entertained in respect of the original applicant or by the alternate applicant provided such candidate fulfils the eligibility criteria for the changed post applied for within 5 years from the date of death of the employee. 11. It was noticed that several dependents could not be selected for not fulfilling eligibility criteria during the selections held for filling 1120 vacancies accumulated during the ban period from 01.01.1998 to 31.12.2010. In order to mitigate hardship to such families, it is decided that change of applicants shall be entertained even in case the original applicant has attended the interview and was found unsuitable for the post applied for. The condition to entertain such application is that such alternate dependent should have attained the eligibility for the same post for which the original applicant was rejected or another post permitted under BWS within 5 years from the date of death of the employee. This provision is exclusively for the candidates rejected during the selection process to fill up 1120 vacancies that arose during the period 01.01.1998 to 31.12.2010 only. 12. Remarried spouse or his/her children are not eligible. 13. In case spouse of the deceased employee is employed either in APSRTC or Government or Private Sector irrespective of mode of employment, the children are not eligible for either AMB or compassionate appointment as they are not wholly dependent on the income or the deceased employee. 14. These instructions are not applicable for the cases arising on or after 05-01-2013." 9. Salient features of this scheme are, 1) the dependent child should attain the minimum age of 18 years as on the date of submission of application; and not to consider applications of under aged persons; (2) application should be made within three years from the date of death of employee (later extended to five years); (3) candidate should possess requisite qualifications as prescribed in the recruitment rules; (4) there should be sanctioned vacancies; (5) 2 Cms relaxation in height is extended to women for appointment to the post of Conductor Grade-II; (6) no employment was provided to children or spouse of ex-employee in the Corporation or elsewhere; (7) family has not received additional monetary benefit; (8) upper age limit can be relaxed upto 45 years by the Regional Manager and with the approval of ED(Zone) beyond 45 years; (9) change of applications and change of post is permitted; (10) posts of Driver and Shramik are not offered to women; and (11) the BWS is not extended to the dependent members of the family of contract employee. 10.1. On further review of the claims, A.P. Corporation decided to grant

relaxation of eligibility qualifications prescribed to the post of Shramik from the existing educational qualification of possessing ITI (Diesel Mechanic) and instead possessing of SCC or its equivalent qualification is prescribed. As a consequence to the relaxation of the educational qualifications, fresh willingness was sought from the male candidates for such appointment. Decision was also taken to invite applications afresh from the dependents of the deceased employees, who fulfil the eligibility criteria of pass in SCC or its equivalent and whose cases arose during the banned period, as one time measure, before 30th July, 2016 (vide Circular No. PD-29/2016, dated 17.06.2016). At this stage, it is appropriate to note that the posts of Shramik and Driver are offered to male candidates only. Female dependent members are entitled to apply for the post of Conductor Grade-II only. Further relaxation granted was, dependents of the deceased employees can register their applications as and when they would acquire eligibility, but within one year from the date of acquiring the eligibility. A.P. Corporation extended the consideration of appointment on compassionate grounds to RTC Constable also vide Circular No. PD-27/2015, dated 02.11.2015. In Circular No. 39/2015, dated 25.12.2015, qualifications are prescribed for the post of RTC Constable. A.P. Corporation also granted 5 years age relaxation to female dependents for the post of Constable (Corrigendum dated 29.01.2016). These relaxations are not applicable to TSRTC. 10.2. For the post of Conductor, minimum height prescribed in the recruitment regulations is 153 Cms. This was relaxed by 2 Cms to consider the claims of the dependents of the deceased employees under "Bread Winner Scheme". However, having found that in spite of granting relaxation, several women candidates could not be selected because of height restriction and on consideration of the representations of the Unions, further relaxation in height is extended and the height requirement is reduced to 146 Cms, as one time measure. However, this concession is extended only to lady dependents of the deceased employees, whose death occurred on or before 4.11.2000. In other words, for a limited category of lady dependents, this relaxation is extended and the normal relaxation of 2 cms stands with reference to all other claims. 11. In Circular No. PD-19/2015, dated 03.06.2015, the scheme of appointment on compassionate grounds is extended to spouse/child of an employee declared medically unfit. Circular lays down detailed guidelines for consideration of such claims. In the cases on hand, no claim is made under this scheme and, therefore, the contents of circular are not discussed in detail. 12. Further, the erstwhile monolithic Road Transport Corporation is divided. By carving out from its parent Corporation, Telangana State Road Transport Corporation (TSRTC) is formed and now two Corporations are independently functioning in the respective States. 13. In this batch of writ petitions, petitioners are wives or children of the deceased claiming employment under the "Bread Winner Scheme". Their claims are rejected/not considered by the respondent Corporation for various reasons, such as, candidate does not have requisite educational qualifications prescribed; claim is time barred; dependents of the ex-employee received additional monetary benefit. In some cases, the objection raised is, their request was rejected and decision was communicated, but such

decision is not under challenge. 14. The individual claims have to be examined separately in each of the cases having regard to the principle of law on the subject and the terms prescribed in the "Bread Winner Scheme". Suffice to note at this stage that according to the stand of the employers, none of the petitioners are eligible to secure employment under the "Bread Winner Scheme" and, therefore, their claims are rejected/not considered. It is categorical assertion of the respondents Corporation that all eligible claims were processed and employment is provided. Only where the persons found to be not suitable, their claims are rejected. All the cases are falling into the category where the candidates' eligibility is processed and found to be not eligible to be appointed under the scheme. 15. First appointment to public post whether it is in State/Central service or service in the public sector undertakings has to be in accordance with the Rules/Regulations governing the services. Such recruitment should be open to all eligible candidates and selections are to be made in transparent manner and should stand the test of Articles 14 and 16 of the Constitution of India. Certain exemptions are carved out to this constitutional norm to make recruitment to public posts and one such exception is "appointment on compassionate grounds". This scheme of compassionate appointment is in recognition of the employer's commitment to look after the members of the family of the employee who had premature death/forced to retire from service on him/her being declared as medically unfit, much before he/she would attain the age of superannuation leaving the family members in the lurch. The scheme is intended to give a kind of protection to the members of the deceased family on account of loss of breadwinner in the family or premature retirement of bread winner on health grounds upsetting the family financial calculations. 16. The compassionate appointments are regulated by the scheme formulated by the employer. Ordinarily such scheme envisages provision of appointment to posts classified as Class-III and Class-IV which are at the bottom of hierarchical structure of any organization. Such appointment is extended to wife or children of the deceased employee/ retired on medical invalidation and appointment should be provided soon after the occurrence of event. Claim for such appointments should be made within the time prescribed by the employer. Some employers prescribe ceiling on consideration of such claims and some employers provide financial package in lieu of such appointment. 17. Consideration of claim for compassionate appointment depends on various factors, such as, the nature of employment of former employee, the financial strength of the family, the number of dependents of ex-employee, status of the family members and date of submission of application. The foremost factor for consideration by employer is destitute circumstances prevailing in the family requiring such employment. Thus, proximity to occurrence of event is very significant. If family has survived the calamity and sustained for reasonable time without the financial support in the form of salary of the earlier bread winner, it is presumed that the family is not in destitute circumstances requiring such appointment. However, respondents corporation made an exception and offered employment to dependents of employees who died on or after 01-01-1998. 18.

Normally, certain percentage of posts in specified cadres is earmarked for such recruitment. Even if claim for compassionate appointment is valid, securing employment depends on the availability of vacancies. If there is less number of posts than the persons claiming employment on compassionate grounds under the scheme, the competent authority should adopt a transparent selection process to select more deserving candidate from among the claimants for appointment, contingent upon fulfilment of above aspects. 19. The scheme of compassionate appointment being an exception to the normal mode of recruitment to public service, it has to receive strict and narrow interpretation. 20. It is wrong to assume that a right is vested in the dependent of ex-employee to seek employment at any time irrespective of date of demise/retirement on medical grounds and irrespective of the financial status of the family and after long lapse of time. 21. This exception is carved out to meet a specific contingency, i.e., to provide succour in the form of employment to dependents of ex-employee who were suddenly deprived of an earning member and the death/medical invalidation would lead them to penury unless employment is provided. It is intended to tide over the sudden crisis engulfing the family. It is something akin to fire fighting mechanism. This crisis cannot be treated as continuous. If claim is belated, the very fact that family has survived for a long time without such employment would militate against such claim. It is to be born mind that there are millions of Indians who need succour and their families are also in dire need of employment. Highly educated people are driven to seek low paid class-IV employment out of desperation. 22. In the long line of precedent decisions issue of compassionate appointment has come up for consideration before Supreme Court. It is necessary and expedient to consider few of the precedent decisions. 23. In *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 Supreme Court was highly critical of High Courts giving directions to grant appointment on compassionate grounds without regard to the nature of appointment, the policy of the employer and the necessity to grant such appointment. Supreme Court held, "2..... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or

required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned. 3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible. 4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. 5.If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. 6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over." (emphasis supplied) 24.1. In *Union of India v. Bhagwan Singh*, (1995) 6 SCC 476, a Senior Clerk in the Railways died on 12-9-1972 leaving behind his wife, two major sons and the respondent who was a minor aged 12 years then. The respondent passed the Higher Secondary Examination in 1983. Stating that he attained majority in 1980/1981, he sought appointment on compassionate grounds which was rejected by orders dated 21-9-1987, 19-6-1990 and 11-6-1991. The Authorities took the view that the application was beyond the period of limitation (five years), that the case of the respondent was not covered by the relevant rules, that at the time of demise of Ram Singh, there were two major sons of the deceased who did not seek employment and that the family was not in financial distress. The Central Administrative Tribunal held that the rejection of the application of the respondent simply on the ground that two elder brothers of the applicant/respondent, who were majors, were available at the time of the death of the father, was unjustified and, therefore, the application of the respondent should be reconsidered and an appointment on compassionate grounds should be provided, if the respondent is otherwise qualified. 24.2. Following the decision in *Sushma Gosain v. Union of India*, (1989) 4 SCC 468 Supreme Court held, "5. It is common ground, that normally all appointments on compassionate grounds

should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed. In this case Ram Singh died on 12-9-1972. He left behind his wife, two major sons and the respondent, a minor aged 12 years then. The respondent attained majority in 1980/1981. There is no material on record to show that the respondent applied within 5 years of "the event" or within one year from the date of his attaining majority. As early as 21-9-1987 an application filed by the respondent was dismissed. The subsequent applications filed in that behalf were dismissed on 19-6-1990 and 11-6-1991. There is material on record to show that the respondent was aged 33 years at the time of making the application and the last application which was allowed by the Tribunal was one filed nearly 20 years after the death of Ram Singh. Patently the application is barred. 6. The facts of this case disclose that on the date when Ram Singh died (12-9-1972) he had, besides the respondent, who was a minor then, two major sons and a wife. The two major sons and the wife did not seek any appointment on compassionate grounds. As stated by this Court in *Sushma Gosain v. Union of India* [(1989) 4 SCC 468] "... 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." 25. In *Director of Education (Secondary) v. Pushpendra Kumar*, (1998) 5 SCC 192 Supreme Court held, "8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general 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 being made on compassionate grounds of the dependant of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it

is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in Classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual categories...." (emphasis supplied) 26.1. In *Eastern Coalfields Ltd. v. Anil Badyakar*, (2009) 13 SCC 112 similar issue was considered by the apex Court. 26.2. To appreciate the issue the facts in a nutshell are as under: Employee died on 31.12.1981 while in service. Immediately his wife made an application for provision of employment on compassionate appointment. On 07.03.1983 his daughter submitted application for provision of employment. It took some time among the family members to reach a consensus on who should be sponsored and on consent being given by other family members, claim of the husband of the daughter was considered. By orders dated 10.05.1993, the respondent was appointed under the scheme and he joined service. While so, the higher authority in the company reviewed that appointment and by his order dated 23.09.1993 cancelled the provisional appointment issued in favour of the respondent on the ground that it was belated appointment and, therefore, not entitled for such appointment. On challenge, the learned single Judge of the High Court set aside the said cancellation, which was affirmed by the Division Bench. 26.3. On appeal by the company, Supreme Court reviewed the case law on the subject and held as under: "20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over. 21. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependants of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personnel Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so-called dependant of the deceased employee." (emphasis supplied) 27. In *Bhawani Prasad Sonkar v. Union of India*, (2011) 4 SCC 209 Supreme Court held, "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 exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. xxxxx 20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind: (i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme. (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time. (iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be. (iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts." (emphasis supplied) 28. In CCE & Customs v. Prabhat Singh, (2012) 13 SCC 412 Supreme Court held, "15. Had the High Court or the Tribunals applied their mind to the aforesaid precondition for eligibility for appointment on compassionate grounds, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfilment of the terms and conditions stipulated in the rules/regulations/policy instructions/office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again. 16. In the instant case, on a simple issue of compassionate appointment, there have been repeated rounds of litigation, the first time before CAT, Allahabad Bench, then before CAT, Lucknow Bench, and thereafter, before the High Court. From the High Court the matter has now been carried to this Court. If only the prerequisite eligibility of Prabhat Singh for appointment on compassionate grounds had been examined, it would not have been necessary to examine the matter again, and yet again. The instant observations have been recorded only to demonstrate how judicial time at different levels has been wasted by entertaining a frivolous litigation. Surely, because Prabhat Singh had approached a judicial forum nine years after the death of his father, whereas, appointment on compassionate grounds is permissible only within three years of the death of the breadwinner, the matter deserved to have been rejected at the stage of first entertainment. 17. We are constrained to record that even compassionate appointments are

regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate grounds exceed the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair play and non-arbitrariness. 18. The very object of making provision for appointment on compassionate grounds, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole breadwinner. Delay in seeking such a claim is an antithesis for the purpose for which compassionate appointment was conceived. Delay in raising such a claim is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate grounds had died on 2-3- 1996, Prabhat Singh sought judicial redress, for the first time, by approaching CAT, Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate grounds under the OM dated 5-5-2003. As already noticed above, appointment on compassionate grounds under the OM dated 5-5- 2003 is permissible within three years of the death of the breadwinner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment. 19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion." (emphasis supplied) 29. In MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 the father of the respondent who was working as a Class III employee with the appellant Bank died on 19-4-2006 while in harness. The respondent applied for compassionate appointment on 12-5-2006. During the pendency of the application filed by the respondent, a new scheme dated 12-6-2006 came into force with effect from 6-10-2006. Clause 14 thereof provides that all applications pending on the date of commencement of the scheme shall be considered for grant of ex-gratia payment

to the family instead of compassionate appointment. As the appointment on compassionate ground was denied to the respondent, he preferred the writ petition before the High Court and the learned Single Judge took the view that as the cause of action had arisen prior to the commencement of the new scheme, therefore, the case was to be considered as per the then existing scheme i.e. the 1983 Scheme which provided for compassionate appointment and not for grant of ex gratia payment. The Court directed the appellant not only to consider the case of appointment of the respondent on compassionate grounds but rather directed the appellant to appoint him. This direction of the High Court is set aside and liberty is granted to respondent to apply under the new scheme. Supreme Court held, "8. An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated. 9. The courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments." (emphasis supplied) 30.1. In SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 father of the first respondent was working in State Bank of India from 27.12.1969 and died on 19.1.1998 while working as an Assistant Manager after completing more than 28 years of service. Respondent 1 applied for a job on compassionate basis and his application was turned down by the Bank which led to the writ petition. The writ petition was allowed by the learned Single Judge and the appeal of the Bank there from was dismissed. In the year 1979 there was a different scheme prevalent in the matter of compassionate appointment, and amongst others there was a provision for an interview under Clause 7.5 (f) of the Hand Book on Staff Matters. The Bank framed another policy in the year 1998. It is provided therein as an objective that when the Bank is satisfied that the financial condition of the family is such that it requires employment that compassionate appointment will be offered. The Bank contended that as far as the present appointment is concerned all relevant factors were considered. It was noticed that the salary of the deceased at the time of his death was Rs. 8,970/-. His family was given an amount of Rs. 5,98,092/- plus Rs. 0.25 lakhs as terminal benefits. If the said amount was to be invested properly, it would get interest at least of Rs. 5000/- p.m. This was apart from the family pension of Rs. 4,208/- + admissible DA. The Bank, therefore, took the view that the circumstances do not warrant the compassionate appointment for the respondent which was applied for. It was contended for the respondent that this was a hard case, and the deceased has left behind a large family. Apart from the widow, he had two sons and five daughters and three of them were unmarried. Considering this fact it was expected that the Bank should provide appointment to one of the members of the family when the main bread earner had passed away. 30.2. Considering the above facts and rival contentions, Supreme Court held, "9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the bread-

earner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent. 10. As stated earlier, the deceased left behind a large family. The fact however, remains that by now 15 years have gone since then. Besides the Bank has made appropriate financial provision on a par with similar arrangement that was noted by this Court in *M.T. Latheesh [Union Bank of India v. M.T. Latheesh, (2006) 7 SCC 350 : 2006 SCC (L&S) 1646]*. Therefore, it is not possible for us to say that the Court could have directed the Bank to consider compassionate appointment. In the circumstances, the appeal is allowed. The judgment rendered by the learned Single Judge as well as by the Division Bench are set aside. Writ Petition No. 5045 of 1999 filed by the respondent shall stand dismissed." (emphasis supplied)

31. In *Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412* several cases were heard. The Supreme Court noted facts in Civil Appeal No. 260 of 2008. The respondent applied to the appellant Bank on 30-11-1998 claiming to be considered for compassionate appointment on account of death of his father, a clerk in the appellant Bank who while on duty died on 10.10.1998. The respondent had applied for the compassionate appointment on account of "Dying in Harness Scheme" with effect from 8.5.1993 then in vogue in the appellant Bank. The Bank vide its communication dated 30.06.1999 rejected the claim of the respondent on the ground that the respondent's family's financial position does not show any indigent circumstances warranting to provide employment on compassionate ground. The respondent filed O.P.No.21630 of 2002(Y) before the High Court of Kerala, Ernakulam seeking to quash Ext. P-4 and direction to the appellant Bank to appoint him as per "Dying in Harness Scheme" then in force in the appellant Bank. The learned Single Judge of the High Court directed the appellant Bank to reconsider the claim of the respondent for appointment in accordance with law. The Division Bench upheld the order of the Single Judge dismissed the writ appeal. The appellant Bank filed assailing the correctness of the above order. "11. During the pendency of the matter before the Division Bench, Indian Banks Association (for short "IBA") formulated a scheme based on the guidelines issued by the Government of India. As per the said Scheme, the banks have scrapped the scheme of compassionate appointment and introduced the new scheme of ex gratia payment in lieu of compassionate appointment by HO Circular No. 35 of 2005 dated 14-2-2005. According to appellant Bank, as on date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under "Dying in Harness Scheme". It is therefore the contention of the Bank that the new 2005 Scheme applies to all pending applications for appointment on compassionate ground, the respondent's case could not be considered and as per the new Scheme, they are only entitled to ex gratia payment in lieu of compassionate appointment. xxxx

17. Applying these principles to the case in hand, as discussed earlier, the respondent's father died on 10-10-1998 while he was serving as a clerk in the appellant Bank and the respondent applied timely for compassionate appointment as per the scheme "Dying in Harness Scheme" dated 8-5-1993 which was in force at that time. The appellant Bank rejected the respondent's claim on 30-6-1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7-11-2001, the appellant Bank sought for particulars in connection with the issue of the respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when Circular No. 154 of 1993 dated 8-5-1993 was in force. Thus, as per the judgment referred in Jaspal Kaur case [(2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] , the claim cannot be decided as per 2005 Scheme providing for ex gratia payment. The Circular dated 14-2-2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per Circular of 1993.

18. It is also pertinent to note that 2005 Scheme providing only for ex gratia payment in lieu of compassionate appointment stands superseded by the 2014 Scheme which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant Bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

19. Insofar as the contention of the appellant Bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of the 1993 Scheme says that in case the dependant of the deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the Bank would keep the appointment open till the minor attains majority.

xxxx 21. Referring to SAIL case [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] , the High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the Bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

32. The principles deducible from the above precedent decisions are: 1. The appointment on compassionate grounds is an exception to the normal recruitment procedure to public posts. An exception can not subsume the main provision. 2. The object of granting compassionate employment is to relieve the family of financial constraints on account of untimely demise of bread winner/ bread winner developed serious health problem losing his job and to enable the family to tide over the sudden crisis. 3. Employment under the scheme can be provided only if the employer is satisfied that unless the employment is provided the family will not be able to meet the crisis and only after assessment of

financial condition. 4. Posts in class III and class IV should alone be offered. 5. The consideration for employment on compassionate grounds is not a vested right which can be exercised at any time in future. 6. Claim for compassionate employment should be made within a reasonable time or within the time specified in the scheme formulated by employer. It cannot be claimed and offered after lapse of time and after crisis is over. Delay in seeking such a claim is anti thesis to the very objective of the scheme. 7. The scheme and the policy of compassionate appointment are binding both on the employer and the employee. 8. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. 9. The claim has to be considered within a reasonable period of time. 10. The Courts/Tribunals should not fall prey to any sympathy syndrome. The Courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a Court's intervention. 11. Consideration of claims should be to available vacancies. If there are more claims than available vacancies a fair and transparent selection process should be conducted based on a comparative compassion gradient or on some such like criteria. 12. An ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. Courts/Tribunals cannot confer benediction impelled by sympathetic consideration. 33. At this stage, it is appropriate to note that in these cases, question of delay in making claim for provision of employment under the bread winner scheme, is not attracted. From 1998, Corporation dispensed with the bread winner scheme and reintroduced only in the year 2013, though various executive orders/circulars are issued laying down the guidelines but it is not clear how these guidelines were formulated and how some claims are accepted when there was ban. Apparently, the claims of the petitioners are not processed for some reason or the other. In some of the cases, objection of belated claim is raised. However, a bare look at the scheme as introduced now show that whether an application is made earlier or not has no significance, as a fresh cut-off date is prescribed, calling the family members of the deceased employees to submit application for consideration of claims. Thus, all the claims where death occurred after 01.01.1998 require consideration. 34. Guided by the above principles, the claims of individual petitioners require consideration vis-a-vis the policy of the respondent corporation. 35. Based on the claims, the stand of the corporation and the bread winner scheme, these writ petitions can be broadly classified under the following headings, viz., as Educational qualifications, Time barred claims, Additional monetary benefits received Deceased was causal employee, Disciplinary action and Other cases not falling into above categories. The following writ petitions fall into the respective categories: I. Educational qualifications : WP Nos. 20849 of 2012, 15475 of 2014, 15756 of 2014 and 15916 of 2014 II. Time barred claims : WP Nos. 31947 of 2013 and 4943 of 2015 III. Additional monetary benefits received : WP Nos. 12777 & 15893 of 2013 and 7779 of 2015 IV. Deceased was causal employee: WP No. 23637 of 2012 V. Disciplinary action: WP Nos. 15761 of 2013 and 24432 of 2015 VI. Other cases not falling into above categories: WP Nos. 8614,

23891 of 2012; 31535 of 2013, 37259 of 2013 and 20141 of 2014 I. Educational qualifications : 36. WP No. 20849 of 2012 36.1. Father of the petitioner while working as mechanic died on 24.10.2006. He was survived by wife, two sons and a daughter. Petitioner is second son of late employee. Petitioner claims to have submitted representation in the year 2007. He holds ITI in Welder Trade and claims to have worked as mechanic with a private contractor from February 2008 to November 2010. Petitioner again submitted a representation on 10.3.2009. According to petitioner, vide proceedings dated 19.2.2010 Smt T.Vijaya Laxmamma was appointed, whose husband died in the year 2003, whereas, same benefit is not extended to the petitioner. Petitioner submits that he is willing to work as cleaner. 36.2. Stand of the respondents in the counter affidavit is, petitioner failed in 10th class and therefore is not eligible for appointment to any post. The contention of the petitioner that Smt. T. Vijaya Laxmamma was appointed under bread winner scheme is denied. 37. WP No. 15475 of 2014 37.1. By the order impugned the claim of the petitioners to provide employment under the BWS was rejected on the ground that the second petitioner does not have the educational qualification to hold the post of Shramik and Driver; further, he was also informed that he does not have the required driving licence to hold the post of Driver. Husband of the first petitioner and father of second petitioner died on 1.7.2006 while working as Driver. Petitioner alleges that initially she made a representation to provide compassionate appointment and the same was orally rejected on the ground that she has no educational qualification and there is a ban on compassionate appointments. Petitioners made a representation on 12.10.2007 to consider second petitioner for a suitable post. The offer to provide additional monetary benefit was rejected by petitioners. 37.2. In the counter affidavit, basic facts are not denied. It is stated that petitioner has not made application within the stipulated time of 5 years; that first petitioner made application on 23.12.2011 to provide employment to her son, second petitioner, who studied only upto 5th class, does not possess the required educational qualification, as such petitioners were advised to receive additional monetary benefit. 38. WP No. 15756 of 2014 38.1. By the order impugned claim of petitioner to provide employment under the BWS is rejected on the ground that petitioner does not have the educational qualification. Husband of the petitioner died on 19.8.2010, while working as Driver. Though, petitioner was informed that her application is registered, so far employment is not provided. Petitioner was advised to receive additional monetary benefits. Petitioner by representation dated 2.11.2010 refused to receive additional monetary benefit and urged to provide employment. Earlier petitioner filed WP No. 9373 of 2012. The said writ petition was allowed by order dated 18.9.2012. Corporation preferred W A No. 1613 of 2012. Writ Appeal was disposed on 9.12.2013 with direction to consider the case of the petitioner as per bread winner scheme, as introduced. Order was passed on 26.3.2014 rejecting the request of the petitioner on ground that she does not possess educational qualifications and therefore not qualified to be appointed. Petitioner alleges that not providing employment is discriminatory and amounts to arbitrary exercise of power. Petitioner referred to the name of Smt D.

Vijayalaxmi to contend that selectively such appointments were provided. According to the petitioner, even unqualified persons were appointed. 38.2. According to respondents as petitioner studied only upto 6th class, she was not eligible to any post. For the post of Conductor minimum qualification required is SSC and for the post of Shramik qualification required is ITI Diesel Mechanic. Her entitlement was considered and having found that she is not qualified, she was accordingly informed vide proceedings dated 26-03-2014, impugned in the writ petition. Contention of the petitioner that Smt D Vijayalaxmi was appointed as Shramik is denied. The contention of the petitioner that unqualified persons are appointed as Shramik is also denied. The information furnished under the RTI Act, relates to appointment of Sweepers during the year 1980-81 under the bread winner scheme. It is averred that as there was ban on recruitment of Shramiks and to adjust the excess staff in Sweepers and Attenders category, policy decision was taken to re-categorize Sweepers as Shramiks in the year 2002. It is further asserted that though these persons were designated as Shramiks but they are being utilized as sweepers only. 39. WP No. 15916 of 2014 39.1. By the order impugned the claim of the petitioner to provide employment under the BWS was rejected on the ground that the petitioner does not have the educational qualification to hold the post of Conductor, Shramik and Driver; further, he was also informed that he does not have the required driving licence to hold the post of Driver. Petitioner was advised to receive AMB. Father of petitioner died on 26.1.2011 due to cardiac arrest, while working as Driver, leaving behind wife, two sons and two daughters. Mother of petitioner made an application on 2.3.2011 to consider petitioner for appointment on compassionate grounds. On 12.3.2011 Depot Manager advised to avail the additional monetary benefits, which was refused by petitioner and insisted to provide appointment. Petitioner made further representations on 1.4.2011 and 10.5.2012. Vide proceedings dated 19.3.2014 the request of the petitioner was rejected on the ground that he does not possess required qualifications for the posts of conductor, driver or Shramik. Petitioner alleges that as many as 11 candidates who have no qualification were appointed and continuing and petitioner was denied employment. 39.2. In the Counter affidavit, it is averred that petitioner studied only 9th class and does not possess the required qualification for posts of Conductor, Driver or Shramik, as such he was advised to avail the additional monetary benefit by Depot Manager. The contention of the petitioner that unqualified persons are appointed as Shramik is also denied. The information furnished under the RTI Act, relates to appointment of Sweepers during the year 1980-81 under the bread winner scheme. It is averred that as there was ban on recruitment of Shramiks and to adjust the excess staff in sweepers and Attenders category, policy decision was taken to re-categorize Sweepers as Shramiks in the year 2002. It is further asserted that though these persons were designated as Shramiks but they are being utilized as Sweepers only. 40. In all the above cases, as persons claiming employment under the BWS do not possess the qualifications required to hold the posts, I do not see any illegality in the rejection of their claims. Writ Petition Nos. 20849 of 2012, 15475 of 2014, 15756

of 2014, 15916 of 2014 are liable to be dismissed and are accordingly dismissed. However, as their claims have been pending consideration and the policy of the respondents corporation is to provide additional monetary benefit wherever employment cannot be provided under the BWS and while rejecting the claims, respondents offered to provide AMB, the respondents are directed to provide AMB without raising the plea of delay, subject to the families of the deceased fulfilling the parameters to grant AMB. II. Time barred claims : 41. WP No. 31947 of 2013 41.1. Father of the petitioner while working as driver died on 9.10.2005. He left behind mother, two sons and a daughter. Mother of the petitioner claimed to have made an application on 1.3.2006 to provide employment under bread winner scheme. Said petition was withdrawn and further representation was made to provide employment to petitioner as Conductor/Shramik or any other suitable post. On 2.7.2013 petitioner's application was rejected on the ground that their claim for appointment is belated. It is contended that as early as in the year 2006 an application was made, therefore, rejection on the ground that it was a belated claim is not valid. Petitioner relied on lifting of ban and reintroduction of scheme and claim that petitioner should be considered to provide employment. According to petitioner he passed SSC and ITI in Electrician trade and also did apprenticeship in APSRTC. 41.2. No counter affidavit is filed. 41.3. From the facts noted above it is seen that death of father of petitioner occurred on 09.10.2005. Petitioners' application was received on 11.06.2013. It is not in dispute that there was ban on appointments from 1998 till the Government passed orders in G.O.No.2, dated 05.01.2013. It is not clear from the counter-affidavits in various writ petitions as to how applications were received and processed during the ban period when it is categorical stand of the respondent-Corporations that there was ban on appointment on compassionate grounds during the above period. Thus, non-submission of application during the said period has no relevance. After the scheme was introduced, notification No.PD-02/2015 was issued on 10.02.2015. Through this notification, Corporation indicated that applications would be invited from the dependents of the deceased employees afresh who died while in service during the ban period i.e., from 01.01.1993 to 04.01.2013 as one time measure. The application of the petitioner was received much before this date. Therefore, it cannot be said that application of the petitioner is belated and petitioner is entitled to be considered for provision of employment under BRS. It appears, so far no decision is made on the claim of the petitioner. Thus, writ petition is disposed of directing the respondents to consider entitlement of the petitioner, take appropriate decision and communicate its decision within two months from the date of receipt of copy of this order. 42. WP No. 4943 of 2015 42.1. Father of petitioner died on 6.11.2002 while working as Driver in Adoni Depot. The mother of petitioner filed an application in the year 2005 seeking compassionate appointment to petitioner and denied the additional monetary benefits offered by the corporation. The mother of the petitioner died on 15.2.2005. While so, second wife of deceased employee filed a suit for grant of death benefits. While so, in A.S.No.25 of 2008 the rival claimants have entered into compromise to the effect that second wife

would claim monetary benefits and petitioner to seek appointment under bread winner scheme. Pursuant to the said compromise the death benefits of the father of petitioner were granted to his step mother. The claim of petitioner for appointment was rejected on the ground that it is belated one and advised to claim additional monetary benefits. Learned counsel for petitioner contends that petitioner has refused to receive additional monetary benefits and that he is entitled to compassionate appointment in terms of notification No. PD 02/2015 dated 10.2.2015. It is also contended that initially his mother made an application for appointment on compassionate grounds and since she was informed that she does not possess qualification, his mother filed application to consider the case of petitioner. The petitioner stated to have filed an application in May 2009 which is also not considered. 42.2. Counter affidavit denies submission of application in the year 2005. It is further contended that the deceased employee had two wives. The first wife filed maintenance case in M.C.No.3 of 1999 before the Judicial Magistrate Court, Alur which was disposed of by order dated 24.8.1999 granting maintenance of Rs. 500/- . On death of employee the second wife filed O S No. 48 of 2003 which was decreed on 26.12.2007, where under ¼th share of terminal benefits have to be paid to first wife and son and second wife, daughter and son were entitled for balance death benefits of the deceased employee. 42.3. It is further asserted that till finalization of proceedings before Lok-Adalat, no application was filed for appointment and that only on 12.9.2014 petitioner submitted application for compassionate appointment and on examining the same the Personnel Officer held that the applicant is not eligible for appointment under the bread winner scheme since application was submitted after a gap of about 12 years. The contention of the petitioner that he has submitted an application within stipulated time specifically denied. 42.4. In the reply affidavit, petitioner contends that the suit was compromised in the year 2014 and in terms of the compromise recorded before the Lok Adalath dated 19.7.2014, the first wife and her children had taken all the amounts and it was agreed that petitioner would be entitled to claim appointment on compassionate grounds. 42.5. It is not in dispute that father of the petitioner died on 06.11.2002 and mother on 15.02.2005. Thereafter, first wife of the father instituted civil litigation on the entitlement for terminal benefits. The civil litigation was compromised before Lok-Adalat on 19.07.2014. In terms of the compromise recorded, the terminal benefits were paid to the first wife of the deceased employee. In terms of the said settlement, on 12.09.2014, petitioner applied for provision of employment on compassionate grounds. In view of extension of time to submit applications under the BWS as per the comprehensive guidelines notified vide notification No.PD-02/2015 dated 10.02.2015, it cannot be said that the application submitted by the petitioners is time barred. Guidelines clearly indicate that application should be invited afresh as one time measure from all those dependents of the deceased employees who died between 01.01.1998 and 04.01.2013. Thus, application submitted by the petitioner on 12.09.2014 is maintainable and in terms of the scheme, petitioner is entitled to be considered. Thus, writ petition is disposed of directing the

respondents to consider the claim of the petitioner to provide employment under BRS subject to petitioner fulfilling all the requirements of the scheme. III. Additional monetary benefits received : 43. WP No. 12777 of 2013 43.1. Husband of the petitioner, while working in the respondent corporation died on 11.9.2003. He left behind wife-first petitioner and 5 sons. As early as on 3.9.2005, representation was submitted to provide employment to her first son or second son. First son refused to receive additional monetary benefits. Petitioners would submit that since appointment under BWS is available, employment should be provided to the family member. Petitioners submitted that persons by name Smt Parvathi, Smt D Rajeshwari were provided employment under the scheme but erroneously same is denied to the petitioners. 43.2. In the counter affidavit, it is contended that application received on 6.10.2003 was forwarded to the Regional Manager's office on 2.4.2004 but no further steps could be taken since there was a ban on appointments on compassionate grounds. While so, on 25.7.2006 application was submitted to sanction additional monetary benefit and accordingly on 7.11.2006 an amount of Rs. One lakh was paid in the Office of the Depot Manager, Guntur depot II. 44. WP No. 15893 of 2013 44.1. Husband of the first petitioner while working as Driver died on 30.5.2006. As such petitioner submitted an application to provide employment on compassionate grounds. The offer given to the petitioners to receive additional monetary benefit was refused and first petitioner filed another representation informing the respondents that she is not interested to receive additional monetary benefit and sought to provide employment. According to the petitioner, contrary to their willingness, amount was sent by way of cheque and under protest, first petitioner received the amount. First petitioner would submit that as she was misguided under bona fide mistake, she received the amount. Petitioners refer to the names of Smt Parvathi and Smt D Rajeshwari who were provided employment to contend that the action of the respondents is discriminatory. By referring to the introduction of BWS, further representation was made to provide employment, but so far, same is not provided. 44.2. While basic facts are not denied. It is contended that on 26.9.2006 application was received for payment of additional monetary benefits and same was paid vide cheque dated 26.4.2007. This amount was claimed as first respondent was not eligible and children were minors. It is contended that as per the policy of the corporation, if once additional monetary benefit is received, they are not entitled to claim employment under bread winner scheme. 45. WP No. 7779 of 2015 45.1. Husband of the first petitioner died on 11.1.2006 while working as Driver in Razole depot. The representation made by the first petitioner for compassionate appointment was rejected on the ground that she is not eligible for any post. It is stated that the Depot Manager orally stated that the second petitioner is not entitled to any post and advised to claim additional monetary benefit. Thereafter first petitioner filed representation dated 2.12.2008 stating that she is not interested in additional monetary benefit and to provide appointment to her son. In spite of same, the additional monetary benefit was sent to the residential address by way cheque and the same was accepted by first petitioner under

protest. They referred to the names of Smt Parvathi and Smt D. Rajeshwari to contend that selective appointments were made and they were denied appointment though eligible. The second petitioner stated to have filed representations dated 7.6.2011 and 28.10.2013 requesting to appoint as conductor and willingness to refund the additional monetary benefit received earlier. 45.2. No counter affidavit is filed. 45.3. Petitioners admit that the family of deceased employee received additional monetary benefit. 46. In W.P. Nos. 12777 of 2013, 15893 of 2013 and 7779 of 2015, family members of the deceased employee have received additional monetary benefits, which is payable in lieu of employment under the BWS. According to paragraph-1 of the notification No.PD-02/2015, dated 10.02.2015, the claim for compassionate appointment can be considered after it is reintroduced only if family members have not availed additional monetary benefits. Since in these writ petitions, as family members have already availed the additional monetary benefits, they are not entitled to seek employment under the BWS. Thus, writ petitions are liable to be dismissed and they are accordingly dismissed. IV. Deceased was casual employee : 47. WP No. 23637 of 2012 47.1. Father of petitioner died on 22.2.2008 while working as Driver. His mother and petitioner submitted application to provide appointment on compassionate grounds. Petitioner asserts that the family refused to receive additional monetary benefit. According to the petitioner person by name Smt Parvathi wife of deceased employee and Smt D.Rajeswari, wife of another deceased employee were provided employment, whereas same benefit is not extended to him. He contended that in the year 2011 notification was issued to fill up 30 posts of Attenders and it would show that there were vacancies, whereas, benefit is not extended to petitioner. According to petitioner, the family is in destitute circumstances and requires employment for their sustenance. 47.2. According to respondents, father of the petitioner was casual driver and on 4.6.2007 he was put off duty since involved in accident occurred on 6.5.2007 while he was driving the bus. Disciplinary proceedings were initiated. He did not attend to the enquiry before the Enquiry Officer. Since petitioner was son of casual employee, petitioner is not eligible to seek employment on compassionate grounds. 47.3. The claim of compassionate appointment is not extended to the family members of casual employee of TSRTC. The claim for compassionate appointment would arise only as per the scheme formulated by the employer. No person can claim as a matter of right to provide employment. When the employer does not choose to extend the scheme to the dependents of the casual employee, no mandamus can be issued to provide employment. Thus, relief prayed in the writ petition cannot be granted and writ petition is accordingly dismissed. However, this order does not come in the way of such consideration if BRS is also extended to casual employees. V. Disciplinary action : 48. WP No. 15761 of 2013 48.1. Husband of the first petitioner while working as driver died on 2.9.2007. Petitioners would contend that by order dated 14.9.2004 employee was removed; the appeal and review were dismissed. Aggrieved thereby, late employee raised industrial dispute in I.D. No.297 of 2005 on the file of the Labour Court, Anantapur. During the

pendency of the said I.D., he died in a road accident. In the award dated 17.1.2008 Labour Court modified the punishment to that of compulsory retirement. Labour Court directed payment of retirement cum death benefits of the deceased employee, but denied all other benefits. According to the petitioners, corporation paid all the benefits. Employee is survived by wife and three children. Since family was living in destitute circumstances, first petitioner submitted representation to provide appointment to any suitable post. According to petitioners, though no written reply is given to them, they were orally informed that since husband died after he was removed from service no appointment can be provided under the bread winner scheme. 48.2. Basic facts are not denied by respondents. However, stand of the respondents is, since husband was removed before his death and Labour Court modified removal order to compulsory retirement, it would mean that death occurred after his date of compulsory retirement and therefore dependants are not entitled to employment under the bread winner scheme. 48.3. Facts as noted above would disclose that Labour Court while upholding the disciplinary action modified the punishment from removal to that of compulsory retirement. Thus, employ was not completely exonerated. Further, the death occurred after the date of compulsory retirement and, therefore, the Bread Winner Scheme is not applicable. The scheme envisages that on account of sudden loss of bread winner his family should not be subjected to hardship. Thus, scheme cannot be extended to family even after retirement, in whatever manner a person retires. The appointment under the scheme is an exception to normal method of recruitment and therefore it must receive strict interpretation. The stand of the respondent corporation that petitioner is deemed to have died only after the date of retirement, in the facts of this case and having regard to the BWS, cannot be faulted. There is no indefeasible right to petitioner to claim employment under the BWS. Writ Petition is liable to be dismissed and is accordingly dismissed. 49. WP No. 24432 of 2015 49.1. Father of the petitioner died due to liver failure on 22.11.2005 while working as conductor in Atmakur depot. Mother of petitioner made representation on 10.2.2006 to provide employment to dependent but her claim was orally rejected on the ground that there is a ban on compassionate appointments and that she does not possess the requisite qualification for the post of Conductor and they were orally advised to claim additional monetary benefit. However, family refused additional monetary benefit and requested to provide compassionate appointment. After lifting the ban in 2013, the mother of petitioner stated to have once again submitted representation to the Regional Manager and also to the Vice Chairman and Managing Director. The petitioner contends that his two elder brothers got separated and he is third son and he is looking after his mother. That he passed SSC and eligible for appointment as conductor or to any other suitable post. Vide proceedings dated 17.1.2015, his claim was rejected on the ground that deceased employee was out of employment as he failed to report for duty in pursuance to revoking his suspension. It is averred that though his father rendered 18 years of service till date terminal benefits are not paid. The petitioner alleges that in similar claims,

appointments were provided without following seniority and discriminated him and illegal denied employment. 49.2. In the Counter affidavit, it is contended that father of petitioner was initially appointed on 8.9.1978 as casual conductor and subsequently his services were decasualized from the date of initial appointment and later as per the orders of the Labour Court, he was appointed on 11.3.1993 as conductor afresh. While so, he was placed under suspension w.e.f. 3.4.1995 for having involved in cash and ticket irregularities and on 1.8.1995 suspension was lifted and he was advised to report before the Regional Manager, Kurnool for further posting orders pending disciplinary action. Subsequently, he was again posted to Adoni depot on raising suspension and on modification he was posted to Yemmiganur depot vide Divisional Manager order dated 8.8.1995. But he did not report to Yemmiganur depot and later he expired on 22.11.2005. It is contended that the family members have not intimated to the depot authorities about his ill-health, till his death. 49.3. It is further contended that nominee of the employee has submitted a representation to the Regional Manager, Kurnool along with death certificate on 23.5.2013 for providing job to her son under bread winner scheme and requested to pay the settlement dues and accordingly settlements were made to the nominee. On 24.3.2014 a representation was submitted requesting to provide employment to petitioner and the same was forwarded to the competent authority. On examination of the same, the Personnel Officer informed that the case of the petitioner was not considered since his father (ex-employee) has not reported for duty on raising suspension and posting place and subsequently expired without reporting for duty. 49.4. From the averments made in the counter affidavit, the stand of the respondents is that since petitioner did not report to duty on the revocation of suspension from service, the family members of the deceased employee are not entitled to the benefits. The respondents stand appears, though not specifically averred, that as petitioner absented from duty for long time, the family members have to bear the brunt of such illegal absence by the former employee. The counter affidavit is silent as to what action was taken against employee when it is alleged that he did not report to duty after revocation of suspension. Employee died on 22.11.2005. In other words, for 10 years, respondents kept quiet. Apparently, no disciplinary action was taken against ex-employee on the alleged absence from duty till he died. Therefore, it is deemed that the employee died while in service. It would be entirely different thing what benefits the family members are entitled to on account of long absence but the claim for compassionate appointment is entirely on different parameters. It appears there is no prohibition in the BRS to deny claim for appointment under the scheme in cases of this nature. Thus, without regard to the objection of the respondents that father of the petitioner did not report duty after raising the suspension, the claim of the petitioner shall be considered for provision of appointment under the bread winner scheme if the petitioner is otherwise entitled. Such decision shall be taken and communicated to the petitioner within a period of six weeks from the date of receipt of copy of this order. This writ petition is disposed of accordingly. VI. Other cases not falling into

above categories : 50. WP No. 8614 of 2012 50.1. Petitioner claims that her husband was employed as driver, he died in harness on 10.3.2011. She claims to have submitted representation for consideration to provide appointment, but there was no response. Petitioner refers to the names of Smt Parvathi, Smt D. Rajeshwari and Smt T. Vijayalaxmamma, in whose favour appointments were granted and contends that though family of the petitioner is in distress condition, same benefit is not extended to them. Fact that in the year 2011 recruitment process was taken up to fill 30 vacancies of attenders would show that there are several number of vacancies available, therefore it is illegal not to consider her claim. 50.2. Counter affidavit is deposed on 9.7.2012 i.e., prior to restoration of the scheme. It is averred that there is no scheme of compassionate appointment in force and therefore petitioner can apply for provision of additional monetary benefits. Though respondents sought to contend that petitioner is not having educational qualification, along with writ petition petitioner filed copy of SSC. 50.3. Since the death of employee occurred on 10.03.2011, which falls within the period mentioned in G.O.Ms. No.2, Transport, Roads and Buildings (TR.II) Department, dated 05.01.2013, the entitlement of the petitioner for provision of compassionate appointment shall be considered subject to fulfilment of other eligibility criteria. The writ petition shall be taken as the application for consideration of such claim. On examination of the claim of petitioner, petitioner shall be suitably informed about the decision by a reasoned order. The entire exercise shall be completed within a period of six weeks from the date of receipt of copy of this order. 51. WP No. 23891 of 2012 51.1. Petitioner is wife of Driver, who died on 6.4.2007. Petitioner claimed that she submitted an application to provide appointment on compassionate grounds. She filed representation on 2.11.2010 refusing to receive additional monetary benefits but the amount was sent to her residential address. She referred to the names of Smt Parvathi, Smt D.Rajeshwari and Smt Rukminamma, who were provided with employment on compassionate grounds. Petitioner also relied on notification issued in the year 2011 to fill up 30 vacancies of Attenders to contend that vacancies are available. 51.2. In the counter affidavit, respondents denied submission of the representation to provide employment under the bread winner scheme. Further, denied contention that persons under bread winner scheme were appointed in Kurnool. It is further submitted that if petitioner submits application, same would be registered and if bread winner scheme is introduced, he would be considered. 51.3. The basic facts are not in dispute. The only statement made in the counter affidavit is that if application is registered under Bread Winner Scheme, as and when the scheme is introduced, she would be considered. It is strange to note that such affidavit was deposed on 14.12.2016, by which time, the scheme was already introduced. Since respondents do not deny the eligibility of petitioner for consideration under Bread Winner Scheme, petitioner shall be considered for provision of employment under Bread Winner Scheme subject to fulfilment of all other requirements. By treating the affidavit filed in support of the writ petition as her representation submitted, such consideration shall be made within a period of six weeks from the date of receipt of copy of the order. 52. WP No.

31535 of 2013 52.1. Father of the petitioner was Driver in the corporation. He died on 08.11.2007 leaving behind his wife and three sons. Mother of the petitioner made an application in the year 2008 for appointment on compassionate grounds. In the year 2010, petitioner made an application to provide employment. At the time of death of father, petitioner was minor but attained majority within 5 years from the date of death, therefore, eligible for consideration for appointment on compassionate grounds. Petitioner would submit that Government issued orders in G.O.Ms. No.2, dated 5.1.2013 introducing bread winner scheme, therefore, he ought to have been considered. He would submit that an enquiry was caused about the genuineness of his SSC certificate and on their request No Objection Certificate from the family members was furnished in the year 2011. There after, there is no further progress. According to petitioner, the family is also given letter not to take additional monetary benefit. 52.2. No counter affidavit is filed. 52.3. It appears, petitioner filed application for compassionate appointment on 26.07.2011, but so far there is no consideration. According to the petitioner, enquiry was caused on genuineness of the certificate produced by him. But, there is no communication to him. From the averments made in the affidavit filed in support of the writ petition, death of the father of petitioner occurred between two dates mentioned in G.O.Ms. No.2, dated 05.01.2013. Therefore, in terms of the said G.O., and the new guidelines formulated in the year 2015, petitioner's entitlement should be considered and appropriate decision be communicated to the petitioner. For any reason, respondents do not trace the representation stated to have been filed by the petitioner on 26.07.2011, they shall consider the affidavit filed in support of the writ petition as representation and examine the entitlement of the petitioner in accordance with the scheme. The decision should be taken and communicated to the petitioner within a period of six weeks from the date of receipt of copy of this order. 53. WP No. 37259 of 2013 53.1. Father of the petitioner while working as driver died on 18.3.2007. Petitioner along with his mother submitted an application to provide employment under bread winner scheme as early as in the year 2008 and again on 16.4.2009. Though petitioner was advised to receive additional monetary benefit, petitioner insisted to provide employment. Questioning the inaction to provide employment, petitioner filed W.P. No.24825 of 2013. By order dated 23.8.2013 Court directed respondents to consider the petitioner's case for appointment on compassionate grounds. Petitioner was informed that application for registration to provide employment under the bread winner scheme lapsed on 18.03.2012, therefore not possible to register his application. According to the petitioner their names were already registered, therefore rejection was erroneous. Petitioner referred to the names of Smt Parvathi and Smt D. Rajeshwari to contend that selectively such appointments are made. Family of petitioner is in destitute circumstances and requires employment for sustenance. It is contended that respondents ought to have followed seniority based on date of death. 53.2. By order dated 19.12.2013 this Court directed consideration of the petitioner for appointment on compassionate grounds without reference to delay in submission of application. 53.3. No counter

affidavit is filed. 53.4. Compliance of interim order is not reported to the court. It is also relevant to note that after reintroduction of the scheme, the Corporation formulated detailed guidelines and notified on 10.02.2015 and by these guidelines, the time limit for submission of applications was extended. The death of the father of petitioner occurred on 18.03.2007 and, therefore, it is within the period for which the compassionate appointment scheme is revived. Thus, if the petitioner claim is not considered so far in terms of the interim direction, respondents are directed to consider the petitioner for provision of employment under bread winner scheme subject to petitioner's suitability and eligibility. Such decision shall be taken by a reasoned order and decision shall be communicated to the petitioner within a period of six weeks from the date of receipt of copy of this order. 54. WP No. 20141 of 2014 54.1. Father of petitioner was working as Driver. He was removed from service vide proceedings dated 19.9.2005 on the allegation of unauthorized absence. Against removal order, he preferred appeal and during the pendency of the appeal, he died on 6.10.2007, leaving behind wife, two sons and a daughter. Mother of the petitioner raised industrial dispute in I.D.No.91 of 2008 before the Labour Court. Vide Award dated 21.1.2011 the Labour Court set aside the order of removal and directed to pay all the death benefits by treating the employee died while in service. Petitioner states that his mother made an application to consider his younger brother for appointment on compassionate grounds. However, as his younger brother was not interested to do any job, in the year 2011 mother of petitioner stated to have made a representation to consider petitioner for appointment as Cleaner. As no action was taken petitioner filed W.P.No.31670 of 2013 and the same was disposed of by order dated 22.11.2013 directing the corporation to consider the case of petitioner. Pursuant thereon, corporation passed order dated 17.4.2014 holding that case of younger brother of the petitioner will be considered in the next selection committee. In this writ petition, Petitioner is challenging the order dated 17.4.2014 on the ground that pending his claim for appointment, consideration of his younger brother for appointment is illegal. 54.2. In the counter affidavit, the basic facts are not denied. It is stated that the award of the Labour Court was complied with and the corporation settled the accounts of the deceased employee treating that the employee died while in service. That petitioner filed W.P. No.31670 of 2013 wherein he has requested job chance to his younger brother and as per the directions in the said writ petition impugned order dated 17.4.2014 was issued holding that the case of Sri K.M. Raja, younger brother of petitioner, will be considered by the Appropriate Selection Committee for the post of conductor under bread winner scheme, if he is otherwise eligible. It is further stated that petitioner studied upto VII class and he does not possess the required educational qualification for the post of Conductor, Driver or Shramik. That during the enquiry, petitioner himself requested to provide job to his younger brother. After verification, the claim of his brother would be considered in the next recruitment as per the Rules in force, subject to eligibility criteria. 54.3. Petitioner who is the elder son of the deceased employee has been prosecuting the litigation. Earlier he filed W.P. No.31670 of 2013. This Court

disposed of the said writ petition by order dated 22.11.2013 to consider the claim of the petitioner for provision of employment under Bread Winner Scheme. By order impugned in the writ petition, the claim of the petitioner was rejected on the ground that person must possess SSC to seek employment as Conductor and ITI Diesel Mechanic to seek employment as Shramik and to have completed 21 years within the stipulated time from the date of death and petitioner has stated in security report to offer the job to his brother K.M. Raja. 54.4. Petitioner challenged the said proceedings contending that he never gave up provision of employment and that he is qualified. 54.5. It appears from the averments of the petitioner himself in the affidavit filed in support of the writ petition that he only possess VII Class certificate. According to the qualifications prescribed to the posts of Conductor and Shramik, minimum education qualification required is SSC and petitioner does not possess such qualification. Though stand of the respondents that petitioner gave up his claim for employment, may not be appreciated, if petitioner has not qualified, he cannot be provided employment. 54.6. Having regard to the peculiar facts of this case, writ petition is disposed of directing the respondents to call the wife of the deceased employee, petitioner and his brother, verify the eligibility of the petitioner and his brother. If petitioner is found to be eligible, they shall obtain declaration from the mother specifying the son in whose favour employment should be provided and provide accordingly. In case, if petitioner is not qualified, his brother may be considered for employment subject to consent of the wife of the deceased employee. Before parting with this case, it is appropriate to mention that in WP No.31670 of 2013, there was no declaration by the petitioner that he does not want employment and there was no direction from the Court, whereas in the counter-affidavit filed in this writ petition, statement is made as if in earlier round of litigation, petitioner gave up his claim. It shows non-application of mind and not devoting time to verify the facts on record. 55. In the result, i) WP Nos.20849 of 2012, 15475 of 2014, 15756 of 2014, 15916 of 2014 are dismissed. However, the Corporations are directed to provide additional monetary benefits to the family members of the deceased employees in the said writ petitions. ii) WP Nos.8614 of 2012, 23891 of 2012, 31535 of 2013, 31947 of 2013, 37259 of 2013, 20141 of 2014, 4943 of 2015 and W.P. No.24432 of 2015 are disposed of with directions. iii) WP No.23637 of 2012, WP Nos.12777 of 2013, 15761 of 2013, 15893 of 2013, 7779 of 2015 are dismissed. Miscellaneous petitions if any pending in these writ petitions shall stand closed. There shall be no order as to costs. .