

(2015) 05 UK CK 0018
In the Uttarakhand High Court
Case No : S.A. No. 211 of 2012

State Bank of India and Others	Vs	APPELLANT
Manoj Thakur		RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 142, 226, 227, 32

Citation : (2015) 3 LLJ 28

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : A.S. Rawat, Senior Advocate, assisted by D.S. Patni, for the Appellant; Arvind Vashistha, Senior Advocate, assisted by Monika Pant, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, C.J—Appellants are the respondent Bank and others in the writ petition. This Special Appeal is lodged against the judgment dated 14.06.2012 passed by the learned Single Judge. The writ petition was filed on 19.07.2003 seeking the following prayers:-

"I. To, issue a writ order or direction in the nature of mandamus commanding the respondents to appoint the petitioner under the harness rules on a post in accordance to the qualification of the petitioner so that the distress, which has befallen on the family may be mitigated.

II. Issue a writ, order or direction, which this Hon"ble Court may deem fit and proper under the circumstances of the case."

In short, the case of the writ petitioner was as follows. The family of the writ petitioner consists of the widowed mother, son Mukesh and an unmarried sister Kalpana. It is stated in the writ petition that the writ petition was filed challenging the order dated 06.02.2001 passed by the second respondent, Branch Manager of the Bank, intimating rejection of the claim of the petitioner

for appointment under the Rules of compassionate appointment passed pursuant to order dated 11.01.2001. The father of the writ petitioner was working with appellant No. 2 as 2 Record Keeper. He died in an accident on 13.10.1999. In the said accident, the sister of the writ petitioner also died. Writ petitioner remained under treatment for a considerable period of six months. Writ petitioner is the eldest male member, who had to shoulder the responsibility of the entire family. He is qualified to be appointed in the Bank. He made representation through his mother on 25.10.1999. It is stated that the respondents kept silent and there was no order passed. The representation was filed in compliance of the request of the Deputy General Manager, who asked the writ petitioner to file the representation (Annexure No. 4). It is a case of the writ petitioner that it has to be considered in accordance with the qualification that the petitioner possesses. In para 12 of the writ petition, it is stated as follows:-

"72. That the petitioner became inquisitive and he approached the office of the respondents to make a probe about the propriety of the orders if any passed on the petitioner's application for appointment under the harness rules dated 25.10.1999 and 12.2.2001. In this process the officials of the department has communicated to the petitioner that his candidature for appointment under the harness rules has not been considered in view of the fact that the family was already receiving the post retirement benefits and secondly on the ground that since in Sept, 1999 i.e. the last salary paid was 2183 only since the family has been able to subsists on the said meager amount no appointment under the harness rules was called."

2. It is the complaint that the reasons remained un-communicated and even the two grounds that are taken are untenable in the eyes of law. It is stated that the total earning of Rs. 2183/- in September, 1999 cannot be taken as to an exemplar of subsistence under the backdrop of the fact that, in the family, there is a widowed mother, a younger brother pursuing higher studies and a younger sister of a marriageable age. It is, further, stated in paragraph 15 of the writ petition as follows:-

"That the order impugned of rejecting the petitioner's claim under the harness rules is untenable for the reasons that the basis of passing the order since was the order passed by the Zonal Office mentioned there as the order of the Zonal Office being order No. 21/3400 dated 11.1.2001 despite of request has not been served upon the petitioner he reserve his right to place forward his submission with regards to the propriety of passing the order 3 impugned. A true copy of the order dated 6.2.01 is annexed as Annexure 5 to the petition."

3. It is, further, stated that the order rejecting his claim is untenable for the reasons that the same has been passed in derogation of principles of natural justice. There is reference to persons appointed by the Bank subsequently. There is a plea of discrimination. Hence, the writ petitioner is before this Court.

4. A counter affidavit was filed by the Bank, with which the Bank has produced a

Scheme as Annexure No. 1 and Annexure No. 2, which purports to be a consideration of the case. Writ petitioner filed a rejoinder affidavit, in which, in paragraph 8, he inter alia stated as follows:-

"5. That the contents of para 6 of the counter affidavit are false misconceived and denied and the contents of para 1 of the writ petition may be reiterated. The order dated 6.2.2001 rejecting the petitioner's application seeking appointment under the Harness Rules was without application of mind, for the reasons that prior to passing of the order no opportunity of hearing of any nature what so ever was ever provided to the petitioner."

5. The learned Single Judge proceeded to consider the matter and allowed the writ petition issuing a writ of mandamus to give appointment to the writ petitioner on the post, which is available for such appointments considering his qualification. We find, in course of the judgment, the learned Single Judge would say that the application was rejected on 15.12.2000, after a period of more than one year. This, apparently, is in reference to Annexure No. 2 produced along with the counter affidavit. The learned Single Judge proceeds to refer to the reasons for rejecting the claim of the writ petitioner being that the writ petitioner and his family are not living in a stage of penury and, therefore, the writ petitioner cannot be appointed. Thereafter, there is reference to the scheme and, in the scheme, there is reference to aspects, which are to be considered, namely:-

- i. Family pension.
- ii. Gratuity amount received.
- iii. Employee's/employer's contribution to Provident Fund.
- iv. Any compensation paid by the Bank or its welfare fund. 4
- v. Proceeds of LIC Policies and other investments of the deceased employee.
- vi. Income of family from other sources.
- vii. Income of other family members from employment or otherwise.
- viii. Size of the family and liabilities, if any.

6. Thereafter, paragraph Nos. 2 and 3 of the judgment read as follows:-

"2. Based on that scheme, the Bank has calculated the terminal benefits which are liable to be given to the family of the deceased as Rs. 4.51 and the liabilities of the family has also been calculated which according to the Bank comes to Rs. 6.16 Lakh. In other words, it is an admitted case of the Bank that the liabilities of the family are much more than the terminal benefits, which the family has received. Apart from this, though Bank has also calculated certain investments done by the deceased, which is Rs. 0.99 lakh as NSC and Rs. 0.25 lakh as LIC, as such there is total investment of Rs. 1.24 lakh. While calculating the investment, liabilities as well as terminal benefits given to the family of the deceased employee the Bank has come to the conclusion that the family will also

get pensionary benefit of Rs. 5809/- per month. Therefore according to the Bank, this family will not be in a state of penury and consequently the member of the family (i.e. present petitioner) cannot be considered for appointment on compassionate grounds. It must be stated that this Court has no quarrel with the scheme made by the Bank for making such appointments, nor can it be disputed that appointments on compassionate grounds are an exception to the rule. All the same, in view of this Court, the Bank has violated its own scheme, and has also failed to consider two vital aspects - (a) the deceased has left behind four members of the family which has already been stated above and (b) the deceased was the only bread-winner of the family. The scheme mandates that the Bank must consider all the aspects, while determining the state of the family. These fact Others as have been referred in Para 1 above, include fact Others such as (1) "income of family from other sources" as well as (2) "income of other family members from employment or otherwise" and (3) "size of family and liability, if any." The first two fact Others have not been considered at all, presumably as there is no "income" of family from these sources. As far as the third aspect is concerned there is a categorical finding of the Bank in favour of the family, which shall shortly be referred.

3. It is an admitted case of the Bank that liabilities of the family exceed its assets in the form of terminal benefits and investments. Moreover, there was also a finding of the Bank in its order dated 15.12.2000, which is as follows:-

"From the above assets and liabilities, it is observed that the family, instead of receiving any terminal benefits will not have enough surplus even to liquidate the different loans due to the Bank."

7. Still further, the learned Single Judge proceeded to reject the case of the Bank based on State Bank of India and Others Vs. Jaspal Kaur, (2007) 112 FLR 1037 : (2007) 3 JT 35 : (2007) 2 LLJ 385 : (2007) 146 PLR 754 : (2007) 2 SCALE 397 : (2007) 9 SCC 571 : (2007) 2 SCC(L&S) 578 : (2007) 2 SCR 101 : (2007) 3 SLJ 1 : (2007) 1 UJ 247 : (2007) AIRSCW 6861 : (2007) 7 Supreme 274 . The learned Single Judge was of the view that that was a case, where the scheme was implemented properly. Thereafter, the learned Single Judge also referred to Govind Prakash Verma v. Life Insurance Corporation of India and Others, (2005) 10 SCC 289. This is, apparently, by way of discountenancing the reliance placed on terminal benefits being granted to the family of the deceased employee by the appellant Bank. The learned Single Judge proceeds to find that the grant of terminal benefits is the right of the family and it is not a bounty. It is on this reasoning that the learned Single Judge allowed the writ petition.

8. We have heard Mr. A.S. Rawat, learned Senior Counsel, assisted by Mr. D.S. Patni, learned counsel for the appellants Bank and also Mr. Arvind Vashistha, learned Senior Counsel for the respondent/writ petitioner.

9. Learned Senior Counsel for the appellants Bank would submit that the learned Single Judge has erred in issuing a writ of mandamus. He would submit that the

Bank has already considered the matter and it is found that the writ petitioner was not entitled to appointment, as he would submit that appointment under the compassionate scheme is always an exception. He would submit that, in these matters, judicial review must be limited and the learned Single Judge has proceeded in excess of the limits of judicial review.

10. Per contra, learned Senior Counsel for the writ petitioner would point out that the reasons given by the learned Single Judge sufficed for the court to interfere. He would point out that, as found by the learned Single Judge, even after receipt of the terminal benefits from the Bank in an amount of about Rs. 4 lacs, it was not sufficient even to wipe-out the existing liabilities and the amount, which the Bank would say is sufficient for the purpose of survival, may not be sufficient having regard to the needs of the family. The size of the family was not kept in view, as noted by the learned Single Judge. Even on the Bank's own showing, relevant fact Others have not been considered. As far as the reliance placed on the judgment in Govind Prakash Verma v. Life Insurance Corporation of India and others (supra) is concerned, no doubt, he would submit that each case would have to be considered in the context of the scheme and, in this case, point Nos. (i) and (ii) in the scheme do enable the Bank to look into the amounts paid by way of terminal benefits.

11. The first thing we must notice is that this is a case, where the writ petitioner had approached this Court seeking a writ of mandamus. We have noticed that, in the very first paragraph of the writ petition, there is reference to order dated 06.02.2001. The writ petition was filed in the year 2003. The order dated 06.02.2001 is produced as Annexure No. 5. It reads as follows:-

"2000/2001/129 06.02.2001 Appointment on Compassionate grounds to Sh. Manoj Thakur S/o. Late Sh. Vinod Thakur, Record Keeper.

With reference to Z.O.S.L. No. 21/3400 dt. 11.01.2001, we enclose herewith the photocopy of the notes/observations of the Supreme Court on compassionate appointment. Hence, the declination proposal for your appointment is self explicit.

Yours faithfully

Sd/- Branch Manager"

12. There is no challenge to order dated 06.02.2001 in the prayer portion. Therefore, even though the writ petition is purported to be maintained against the order dated 06.02.2001, interestingly, there is no prayer sought to challenge the same. Furthermore, the learned Single Judge has proceeded to address himself to the order dated 15.12.2000, which is, actually, Annexure No. 2 produced along with the counter affidavit, and sat in judgment over the reasons given in the said order. This, the learned Single Judge has purported to do even though there is no challenge to the same. It is, at this stage, we must also notice the position 7 as to the writ of mandamus, which has come up very often in the courts. We may only refer to a few decisions. We may, first, advert to the

judgment of the Hon'ble Apex Court in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, AIR 1987 SC 537 : (1986) 1 SCALE 1077 : (1986) 2 SCC 679 : (1986) 2 SCR 17 : (1986) 2 SLJ 1 which has been referred to and followed in many other cases also. It is apposite to refer to the following paragraphs from the said judgment:-

"18. The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission-both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the Respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, AIR 1966 SC 81 : (1965) 57 ITR 349 : (1965) 3 SCR 536 this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hochtief Gammon Vs. State of Orissa and Others*, AIR 1975 SC 2226 : (1975) 31 FLR 279 : (1975) LabIC 1608 : (1975) 2 LLJ 418 : (1975) 2 SCC 649 : (1976) 1 SCR 667 this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester v. Regina*, (1858) E.B. and E. 1024, 1032, 1034 said:-

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all err Others which tend to the oppression of the subject or other misgovernment, and ought to be used

when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute:-Comyn's Digest, Mandamus (A)..... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *King v. Revising Barrister for the Borough of Hanley*, (1912) 3 K.B. 518, 528-9, 531. In *Hochtief Gammon's Case* this Court pointed out (at page 675 of Reports:-SCC P656) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food and Others*, 1968 A.C. 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, Fourth Edition, Volume I, Paragraph 89, it is stated that the purpose of an order of mandamus is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. 20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the

discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

13. Interestingly, on the merits in Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another (supra), the Court, after referring to Article 142, had taken the view that the Government must add 25 marks to SC/ST candidates, who had taken examination for promotion as Section Officers and also that in future, reduced minimum marks must be provided and announced before the examination. The decision of the Hon'ble Apex Court in Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another (supra), on merits, insofar as it related to the power of the Court to issue mandamus to provide for reservation or relaxation came to be considered in subsequent rulings and, though it was followed in Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others, AIR 1997 SC 2133 : (1997) 2 JT 508 : (1997) 2 SCALE 138 : (1997) 9 SCC 199 : (1997) SCC(L&S) 1044 : (1997) 1 SCR 454 : (1997) 1 UJ 742 : (1997) AIRSCW 1985 : (1997) 2 Supreme 738 in Ajit Singh and Others Vs. The State of Punjab and Others, AIR 1999 SC 3471 : (1999) 7 JT 153 : (1999) 5 SCALE 556 : (1999) 7 SCC 209 : (1999) 2 SCR 521 Supp : (1999) AIRSCW 3460 : (1999) 8 Supreme 211 , a Constitution Bench took the view that the view in Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another (supra) case and in Superintending Engineer, Public Health, U.T. Chandigarh and Others v. Kuldeep Singh and Others (supra) case that a mandamus can be issued either to provide for reservation or relaxation is not correct and hence, the judgments were treated as not laying down the correct law. In similar vein runs the judgment of the Hon'ble Apex Court in Union of India (UOI) and Another Vs. S.B. Vohra and Others, AIR 2004 SC 1402 : (2004) 1 CTC 217 : (2004) 1 JT 38 : (2004) 1 SCALE 131 : (2004) 2 SCC 150 : (2004) SCC(L&S) 363 : (2004) 2 SCR 36 : (2004) 2 SLJ 188 : (2004) AIRSCW 321 : (2004) 1 Supreme 471 in Dr. Gulshan Prakash and Others Vs. State of Haryana and Others, AIR 2010 SC 288 : (2009) 14 JT 533 : (2009) 14 SCALE 290 : (2010) 1 SCC 477 : (2009) 16 SCR 1 : (2010) 2 SLJ 360 : (2009) 6 SLR 710 : (2009) 10 UJ 4979 .

14. A perusal of paragraph 20 in Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another (supra), would show that a writ of mandamus is normally issued to compel the performance in a proper and lawful manner of a discretion conferred upon a public authority. No doubt, the court has held that in a proper case, in order to prevent injustice, the Court may itself pass an order or give directions, which the Government or the authority should have passed had it lawfully exercised its discretion; but, the general rule is that, if the court finds that a decision is made ignoring consideration of relevant material or is afflicted with the vice of being guided by

irrelevant consideration or non-application of mind, the matter will be directed to be redone keeping in view the relevant principles and ignoring irrelevant principles. This is because by the very nature of the writ of mandamus, the object sought to be achieved is that the authority exercises the discretion vested with it in law guided by the relevant considerations and avoiding irrelevant considerations. So, primarily, it is for the authority to apply its mind to the facts and be guided by the relevant considerations avoiding irrelevant considerations. No doubt in an appropriate case, in the interest of justice, the court may itself pass an order which the authority should have passed. In this connection, we may also notice the judgment of the Hon''ble Apex Court in the case of General Manager, State Bank of India and Others Vs. Anju Jain, (2008) 119 FLR 714 : (2008) 9 JT 272 : (2009) 1 LLJ 319 : (2008) 11 SCALE 647 : (2008) 8 SCC 475 : (2009) 1 SLJ 83 : (2009) 1 SLR 463 : (2008) 2 UJ 1040 . Incidentally, that related to a case of compassionate appointment under the same Bank. Therein, the Hon''ble Apex Court, inter alia, has held as follows:

"The respondent's husband was an employee of the appellant Bank. In 1996, he was found guilty of embezzlement/mis-appropriation for which major penalty of reduction of his pay by two stages and stoppage of five increments with cumulative effect was imposed on him. The husband died on 25.1.2000 and thereafter in March 2000, the respondent made a request for compassionate appointment. This request was rejected by the appellant Bank on the ground that punishment had been imposed on the respondent's husband on account of serious misconduct. Subsequently, another representation by the respondent was also rejected on 16.7.2001.11.

37. Even on second ground, the submission of the Bank is well-founded. As noted earlier, the learned Single Judge issued direction to the Bank to appoint the writ petitioner-widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person.

38. In State of Mysore and Another Vs. Syed Mahmood and Others, AIR 1968 SC 1113 : (1968) LabIC 1291 : (1970) 1 LLJ 370 : (1968) 3 SCR 363 , promotion to the higher post was to be given on the basis of seniority-cum-merit. A was not promoted. He, therefore, filed a petition in the High Court of Mysore by invoking Article 226 of the Constitution claiming promotion. The High Court issued a writ of mandamus directing the Government to promote A. The aggrieved State approached this Court. Allowing the appeal and setting aside the direction of the High Court ordering the State to give promotion, this Court held that at the most, the High Court could have issued mandamus directing the State to reconsider the case of the writ petitioner on the correct principle. It could not have issued a direction to the employer to promote the writ petitioner with retrospective effect. Syed Mahmood was followed by this Court in several cases.

39. The learned counsel for the respondent, no doubt, referred to a decision in

The State of Bihar Vs. Dr. Braj Kumar Mishra and Others, AIR 2000 SC 106 : (1999) 8 JT 634 : (1999) 7 SCALE 49 : (1999) 9 SCC 546 : (2000) SCC(L&S) 181 : (1999) 4 SCR 333 Supp : (2000) 2 SLJ 119 : (2000) 1 UJ 188 : (1999) AIRSCW 4065 : (1999) 9 Supreme 106 wherein this Court held that normally mandamus can be issued by a writ Court directing the authority to consider the case of the writ petitioner. In exceptional circumstances, however, a positive direction can be issued by granting relief in favour of the writ petitioner if the Court is otherwise satisfied. Court stated: (The State of Bihar Vs. Dr. Braj Kumar Mishra and Others, AIR 2000 SC 106 : (1999) 8 JT 634 : (1999) 7 SCALE 49 : (1999) 9 SCC 546 : (2000) SCC(L&S) 181 : (1999) 4 SCR 333 Supp : (2000) 2 SLJ 119 : (2000) 1 UJ 188 : (1999) AIRSCW 4065 : (1999) 9 Supreme 106)

"7. It is true that normally the Court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the concerned authority particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court to issue directions when all the facts were admitted regarding the eligibility of the respondent No. 1 and his possessing of the requisite qualifications. Remand to the authorities would have been merely a ritual and ceremonial. Keeping in mind the lapses attributable to the Commission which had failed to take appropriate action despite recommendation made in favour of the respondent No. 1, the learned Single Judge as also the Division Bench of the High Court felt it necessary to declare the respondent No. 1-promoter with effect from 1.2.1985. We do not find any illegality or error of jurisdiction. Learned counsel appearing for the appellants were apprehensive that if the impugned judgment is not set aside, it may become precedent and in other cases pertaining to the University, such directions may be issued in future also preventing the authorities and the State Government from exercising their statutory powers. The apprehension is misconceived and without any substance. To allay even such apprehension we deem it appropriate to clarify that the impugned judgment has been passed under peculiar circumstances of the case and is no precedent with respect to the subject regarding which the appellants have conceived an apprehension".

(emphasis supplied)

Apart from the fact that in "peculiar circumstances", a positive direction was issued by this Court and it was stated that the decision "is no precedent" with respect to the subject, in our opinion, in the present case, the second stage did not arise at all."

15. In regard to the writ of mandamus, we may also advert to the judgment of the Hon"ble Apex Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, AIR 1989 SC 1607 : (1989) JT 129 Supp : (1989) 2 LLJ 324 : (1989) 1 SCALE 1116 : (1989) 2 SCC 691 : (1989) 2 SCR 697 : (1989) 2

UJ 130 . Therein, the Hon"ble Apex Court has, inter alia, held as follows:

"16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":

At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge. The Statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are-and who are not-public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them mean every body which is created by statute-and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities

and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, AIR 1969 SC 1306 : (1969) 19 FLR 140 : (1969) 2 LLJ 749 : (1969) 2 LLJ 479 : (1969) 1 SCC 585 : (1969) 3 SCR 773 , this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not public officials or statutory body. It was observed:- (SCC p. 589, para 6:-SCR p. 778) It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf. HALSBURY'S LAWS OF ENGLAND, 3rd Edn., Vol. II, p. 52 and onwards).

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states:- "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

16. On the one hand, there can be no dispute that the writ of mandamus is a powerful weapon in the hands of the Court, which strike at injustice and the Courts in India may not be trammled by the technicalities, which may bog down the courts in England; but, it certainly must be subject to the principles as laid down by the Hon"ble Apex Court in *General Manager, State Bank of India and Others v. Anju Jain* (supra) and also what necessarily flows from what was held in *Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jagannathan and Another* (supra), that a writ of mandamus would be issued for compelling the exercise of discretion by the authority with reference to the relevant criteria and avoiding irrelevant considerations and it is

only in an extraordinary case, where interest of justice is so compelling, that the court may, no doubt, command the doing of a thing, which the authority should have done by itself, on the basis of that, it is a thing, which it should have done in accord with the need of justice.

17. In this case, we notice that the issue relates to right to compassionate appointment. The writ petitioner approached the Court seeking a writ of mandamus. There was an order dated 06.02.2001, which he, in fact, set about to challenge going by the averments in paragraph 1 of the writ petition; but, coming to the relief portion, however, any challenge to the same is conspicuous by its absence. Equally, there is no challenge to the reasoned decision of the authority. No doubt, the learned Senior Counsel for the writ petitioner would point out that the same is not communicated, as is sought to be made out from the fact that it was only subject to approval; according to the learned Senior Counsel for the Bank, there was approval granted. Whatever that be, we notice, that was a document, which was produced along with the counter affidavit and, what is more, the learned Single Judge has proceeded to sit in judgment over the said document without there being a challenge against the same. We are of the clear view that such a course was clearly impermissible for the Court, as what was before the Court was only a prayer for writ of mandamus. When there was already a decision taken and without quashing the said decision, we are of the view that the learned Single Judge could not have sat in judgment over the said decision. It is precisely what he purported to do.

18. The learned Senior Counsel for the writ petitioner would submit that, in the circumstances of this case, he may be given an opportunity to amend the writ petition and challenge the decisions. This is a case, where the father of the writ petitioner died in 1999 in a tragic accident. No doubt, the learned Senior Counsel for the Bank would point out that, now, there is a fresh scheme, as per which, writ petitioner would not be entitled to appointment; the learned Senior Counsel for the writ petitioner would submit that, in fact, the case would have to be decided in terms of the scheme as it existed.

19. In the interest of justice, we are of the view that, while we cannot uphold the judgment by reason of the fact that the learned Single Judge has gone beyond the scope of the writ petition, in the sense, without there being a challenge to the impugned decisions, be it the order dated 06.02.2001 or the decision dated 15.12.2000; after setting aside the judgment, the matter should be remitted back so that an opportunity is given to the writ petitioner to amend the writ petition, with opportunity also to the appellants to file appropriate pleadings to the same and the matter must be heard thereafter. Accordingly, we allow the appeal; set aside the judgment passed by the learned Single Judge; and remit the matter back to the learned Single Judge with liberty to the writ petitioner to seek amendment of the writ petition in view of the orders dated 06.02.2001 and 15.12.2000. It will also be open to the appellants to file appropriate pleadings if the Application for amendment is allowed. In view of the fact that the matter has

been pending for quite some time, we request the learned Single Judge to give priority to this case and dispose of the same at the earliest.