



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 199 of 2022**

1. State of Chhattisgarh through its Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. State of Chhattisgarh, through its Secretary, Department of General Administration, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
3. The Director, Directorate of Public Instructions (Lok Shikshan Sanchalanaalay) Naya Raipur, District Raipur (Wrongly mentioned as Directorate – Public Education in the writ petition)
4. The Collector, District Bilaspur, Chhattisgarh.
5. The Collector, District Surajpur, Chhattisgarh.
6. The Joint Director, School Division, Bilaspur, District Bilaspur, Chhattisgarh.
7. The District Education Officer, District Bilaspur, Chhattisgarh.
8. The District Education Officer, District Surajpur, Chhattisgarh.
9. The Principal, Government Higher Secondary School, Lakhasar, Block Takhatpur, District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

Smt. Sweta Singh

---- Respondent

(Cause Title taken from Case Information System)



For Appellants : Mr. Gagan Tiwari, Deputy Govt. Advocate
For Respondent : Mr. A.N. Bhakta, Advocate
Date of hearing : 03.08.2022
Date of Judgment : 19.09.2022

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. Parth Prateem Sahu, Judge

C A V Judgment

Per Arup Kumar Goswami, Chief Justice

1. Heard Mr. Gagan Tiwari, learned Deputy Government Advocate, appearing for the appellants as well as Mr. A.N.Bhakta, learned counsel, appearing for the respondent.

2. This writ appeal is directed against an order dated 28.01.2022 passed by the learned Single Judge in WPS No.6828/2021 by which the writ petition was allowed setting aside the order dated 23.11.2021 revoking the order of compassionate appointment of the writ petitioner/ respondent herein, and directing that the writ petitioner be reinstated on the post of Assistant Grade-III along with all consequential service benefits.

3. Manmohan Singh Pawar, father-in-law of the writ petitioner died-in-harness on 16.12.2018 while working as Block Education Officer, Surajpur. The writ petitioner's husband, namely, Basant Pratap Singh and brother of the husband of the petitioner, namely, Akhilendra Pratap



Singh were Shiksha Karmis on the date of death of Manmohan Singh Pawar.

4. It is not in dispute that in view of the decision of this Court in *Harnarayan Yadav v. Chhattisgarh Public Service Commission, Raipur & Another*, reported in *ILR 2017 Chhattisgarh 1864*, Shiksha Karmis are not held to be government servants or holders of civil post.

5. At the outset, it is relevant to state that the appointment on compassionate ground is based on Consolidated Revised Instructions on Compassionate Appointment – 2013, for short, the Policy. Having regard to the issue arising in this appeal, at the outset, it will be relevant to take note of clauses 5 and 6A, which translated into English, read as under:

“5. Eligible candidates for compassionate appointment: -

One of the dependent family member of the deceased Government servant in the order shown below, i.e. (a) on rejection or not being eligible (b) and afterwards in the same sequence (c). (d) and (e) will be considered for compassionate appointment respectively:

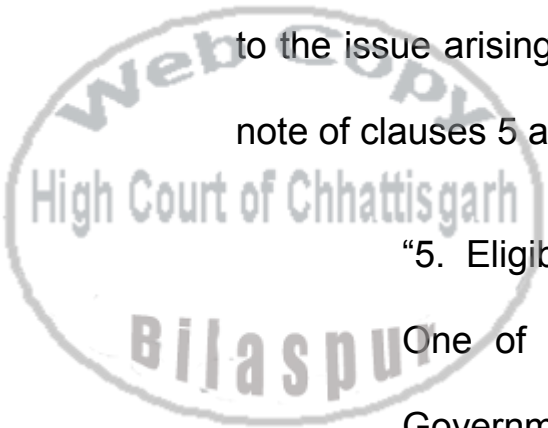
(a) Spouse of deceased government employee,

(b) Son/adopted son,

(c) Unmarried daughter/unmarried adopted daughter,

(d) Dependent widowed daughter/dependent adopted widowed daughter

(e) Dependent divorced daughter/dependent divorced





adopted daughter and,

(f) Daughter-in-law

“6A. In the family of the deceased married government servant,

if any other member of the family is already in government service, then the other member of the family will not be eligible for compassionate appointment.

Explanation. Dependents of the family of deceased married and unmarried government servant shall include the following members:

A) In case of married government servant – Dependent mother, dependent parents, widow/widower, son and daughter (including adopted son/daughter, widow/ divorced daughter) and daughter in law.

B) In case of unmarried government servant (or widower having no son/daughter) – dependent father, mother, brother and sister.”

6. The writ petitioner submitted an application for compassionate appointment on 07.01.2019. Later on, by an order dated 02.06.2021, she was granted compassionate appointment. However, a show-cause notice dated 26.10.2021 was issued on the ground that she had suppressed the fact that her husband was working as Shiksha Karmi Grade-I with effect from 30.08.2013 and her brother-in-law as Shiksha Karmi Grade-II with





effect from 16.07.2010. In compliance of the show-cause notice dated 26.10.2021, the writ petitioner submitted her reply on 30.10.2021. Not being satisfied with the reply, the order dated 23.11.2021 was passed cancelling the order of appointment of the writ petitioner.

7. In the application for compassionate appointment, in the column meant for indicating whether any family member is in service, which could be government service, semi-government or private, it was mentioned as 'No'.

8. The services of the husband of the writ petitioner being absorbed on 01.11.2020 and that of her brother-in-law on 01.07.2019 in a Government Department, they became government servants with effect from such dates.

9. The learned Single Judge, at paragraph 11 of the impugned order, stated as follows:

“11. Now coming to the facts of the case, it is quite vivid that the petitioner's husband namely Basant Pratap Singh and her husband's brother namely Akhilendra Pratap Singh both were Shiksha Karmis on the date of death of her father-in-law Manmohan Singh Pawar and even the date on which the petitioner made an application for grant of compassionate appointment on 7.1.2019, till then they were working as Shiksha Karmis and subsequently they have been absorbed in Government Department on 1.7.2019 and 1.11.2020 respectively, but that will not make the petitioner ineligible for

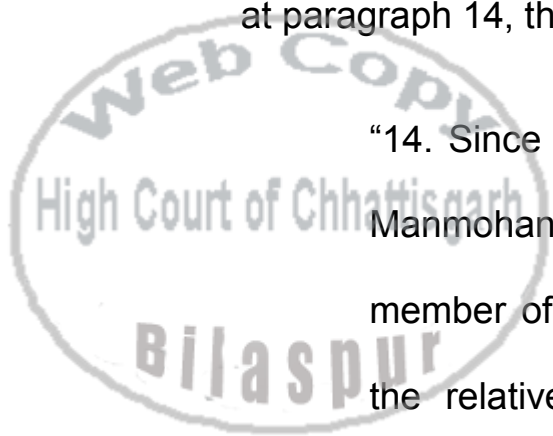


the reasons that the petitioner was eligible to be appointed on the date of sad demise of her father-in-law on 16.12.2018 for which the petitioner had already made an application on 7.1.2019 as on that date and immediately thereafter her both relatives were working as Shiksha Karmis and they were not in Government service as it is well established by principle of law laid down by this Court in Harnarayan Yadav (supra).”

10. Relying on the decision of the Hon’ble Supreme Court in *Indian Bank & Others v. Promila & Another*, reported in (2020) 2 SCC 729, at paragraph 14, the learned Single Judge observed as follows:

“14. Since on the date of death of the petitioner's father-in-law Manmohan Singh Pawar and immediately thereafter no family member of the petitioner was in Government service and both the relatives were Shiksha Karmis and not in Government service as on that date, the petitioner's appointment on 2.6.2021 (Annexure P13) could not have been interdicted on the ground that subsequently the petitioner's husband and her husband's brother both have become Government servant and in Government service by virtue of absorption in Government Department and policy applicable bars compassionate appointment on that ground.”

11. Mr. Tiwari has relied on the decisions in *N.C. Santosh v. The State of Karnataka and Others*, reported in (2020) 7 SCC 617, *State Bank of India & Others v. Sheo Shankar Tewari*, reported in (2019) 5 SCC 600, *State Bank of India v. Raj Kumar*, reported in (2010) 11





SCC 661, wherein it was held that the scheme prevalent on the date of consideration of the application was relevant to contend that on the date when appointment was granted to the writ petitioner, admittedly, two of her family members, her husband and her brother-in-law were in government service, and therefore, she was not entitled to be appointed on compassionate basis. He submits that though her husband and brother-in-law being in government employment was not cited and what was cited was that her husband and brother-in-law were Shiksha Karmis, which facts were suppressed, the same would not make any difference as it is an undeniable position that two of her family members are in government employment, and thus, ineligible to be appointed on compassionate ground.

12. Per contra, relying on the order of the learned Single Judge, Mr. Bhakta contends that no interference is called for with the order of the learned Single Judge.

13. We have considered the submissions of learned counsel for the parties and perused the materials on record.

14. It is well-settled that appointment on a compassionate ground is not a source of recruitment and that is an exception to the general rule that recruitment to public services should be on the basis of merit by an open invitation providing equal opportunity to all the eligible persons to participate in the selection process. The dependent of employees, who die-in-harness, do not have any special claim or right to employment, except by way of concession that may be extended by the employer



under the rules by separate scheme, to enable the family of the deceased to get over the sudden family crisis.

15. The question that arises in this appeal is whether the scheme prevalent at the time of demise of the father-in-law of the appellant or the scheme in force at the time of consideration would be the basis for consideration of the application for grant of compassionate appointment.

16. The issue raised in this appeal was considered in WPS No. 931 of 2022, *Jitendra Kumar Jaiswal v. The State of Chhattisgarh & Others*, which was disposed of on 06.09.2022 alongwith WPS No. 6689 of 2018, *Purendra Kumar Sinha v. State of Chhattisgarh & Others* and batch.

17. It will be appropriate to quote the following paragraphs from *Jitendra Kumar Jaiswal* (supra):

“54. In *Raj Kumar* (supra), the Hon’ble Supreme Court held that the scheme for compassionate appointment that is in force when the application is actually considered and not the scheme that was in force earlier when the application was made, would be applicable.

55. In *MGB Gramin Bank v. Chakrawarti Singh*, reported in (2014) 13 SCC 583, it was observed as follows:

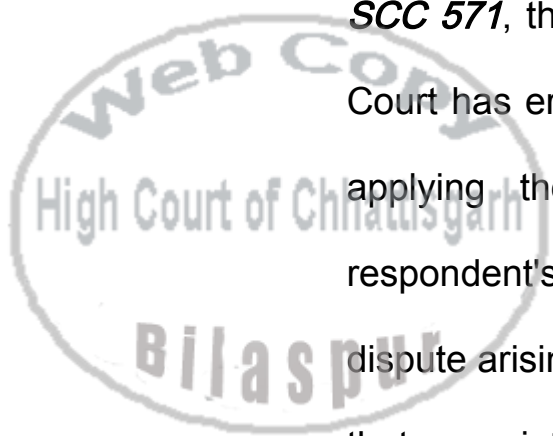
“15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and



financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.”

56. In ***State Bank of India v. Jaspal Kaur***, reported in (2007) 9 SCC 571, the Hon'ble Supreme Court had observed that the High Court has erred in deciding the matter in favour of the respondent applying the scheme formulated on 04.08.2005, when the respondent's application was made in 2000 and it was held that a dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute had arisen.

57. In ***Canara Bank and Another v. M. Mahesh Kumar***, reported in (2015) 7 SCC 412, the Hon'ble Supreme Court held that cause of action to be considered for compassionate appointment arose when the particular 'Dying in Harness Scheme' dated 08.05.1993 in that case was in force, under which the writ petitioner therein was not found to be eligible for compassionate appointment. The Hon'ble Supreme Court held that his case could not be considered as per the subsequent scheme, which came into being in 2005 providing for ex-gratia payment.



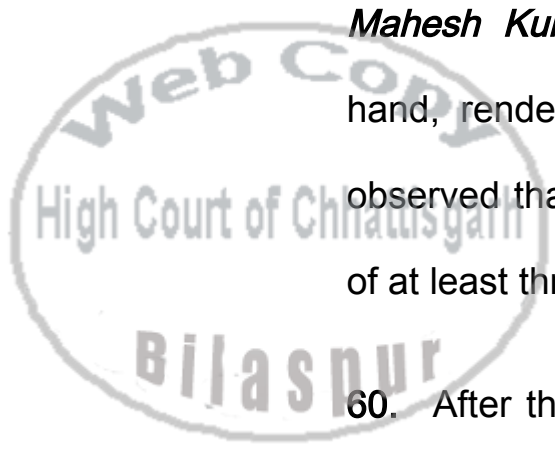


58. In *Indian Bank and Others v. Promila and Another*, reported in (2020) 2 SCC 729, the Hon'ble Supreme Court reiterated the proposition laid down in *M. Mahesh Kumar* (supra) that relevant scheme prevalent on the date of demise of the employee is applicable.

59. In *State Bank of India and Others v. Sheo Shankar Tewari*, reported in (2019) 5 SCC 600, noticing the divergent principles emanating from the two lines of decisions, namely, *Raj Kumar* (supra) and *Chakrawarti Singh* (supra) on the one hand and *M. Mahesh Kumar* (supra) and *Jaspal Kaur* (supra) on the other hand, rendered by the Benches of two Hon'ble Judges, it was observed that the matter requires consideration by a larger Bench of at least three Hon'ble Judges of the Hon'ble Supreme Court.

60. After the aforesaid decision in *Sheo Shankar Tewari* (supra), in *State of Madhya Pradesh v. Amit Shrivastava*, reported in (2020) 10 SCC 496, a two-Judge Bench of the Hon'ble Supreme Court held that as per the policy prevailing on the date of death, a work-charged/ contingency fund employee was not entitled to compassionate appointment and reiterated that the relevant scheme prevalent on the date of demise of the employee is applicable.

61. In *Ashish Awasthi*, reported in *AIR Online 2021 SC 1047*, another two-Judge Bench of the Hon'ble Supreme Court held that the scheme prevalent on the date of death of an employee is only to be considered.





62. In *N.C. Santosh* (supra), a three-judge Bench of the Hon'ble Supreme Court, at paragraphs 14,15,16,17 and 19, observed as follows :

“14. This Court in State Bank of India v. Raj Kumar, (2010)11 SCC 661 while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer’s right to modify the scheme depending on its policies was recognized in this judgment. Similarly in MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

15. However in Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8.5.1993), ex gratia payment was proposed (under the circular dated 14.02.2005), the Court adopted a different approach. Noticing the extinguishment of, the right to claim appointment, this Court held the “dying in harness scheme” which was prevalent on the death of the employee, be the basis for consideration.

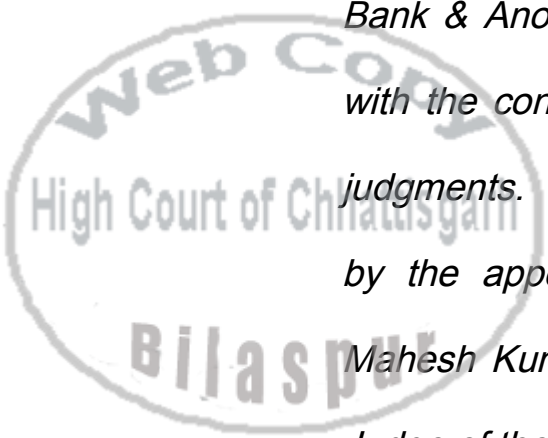
16. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court’s view in State Bank of India v. Raj Kumar, (supra) and MGB Gramin Bank v. Chakrawarti Singh, (supra) on



one side and the contrary view in Canara Bank v. M. Mahesh Kumar (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in State Bank of India & Others v. Sheo Shankar Tewari, (2019) 5 SCC 600, the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

17. The above discussion suggest that the view taken in Canara Bank & Another v. M. Mahesh Kumar (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on Canara Bank & Another v. M. Mahesh Kumar (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik v. State of Karnataka & Others, it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of

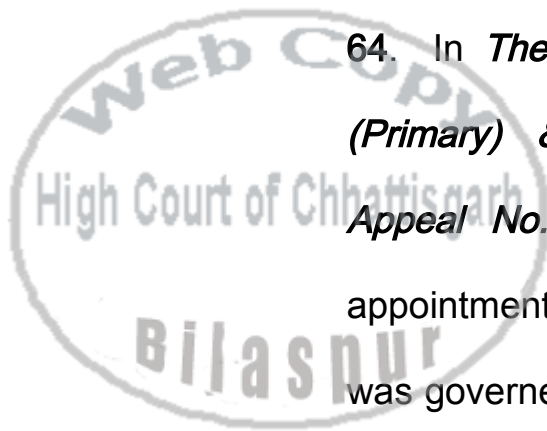




his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

63. It is to be noticed that the decisions in *Promila & Another* (supra), *N.C. Santosh* (supra) and *Ashish Awasthi* (supra), came to be delivered after the reference was made to a larger Bench in *Sheo Shankar Tewari* (supra). In *Promila & Another* (supra), *Amit Shrivastava* (supra) and *Ashish Awasthi* (supra), reference made to a larger Bench was not noticed.

64. In *The Secretary to Government, Department of Education (Primary) & Others v. Bheemesh alias Bheemappa (Civil Appeal No.7752 of 2021)*, the facts were to effect that the appointment on compassionate ground in the State of Karnataka was governed by a set of Rules known as Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 issued in exercise of the powers conferred by Section 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978. On the date on which the sister of the respondent died-in-harness *i.e.* 08.12.2020, the Rules did not include an unmarried brother, within the definition of the expression “dependent of a deceased government servant” under Rule 2(1)(a) of the said Rules *vis-a-vis* a deceased female unmarried government servant. By a notification dated 11.07.2012, an unmarried brother of a deceased female unmarried government servant was included within the definition. The Hon'ble Supreme Court, after noticing the reference made in *Sheo Shankar Tewari*





(supra), observed that the apparent conflict between those two lines of decisions was on account of the difference between an amendment by which an existing benefit was withdrawn or diluted and an amendment by which the existing benefit was enhanced and that the interpretation adopted by the Hon'ble Supreme Court varied depending upon the nature of the amendment.

65. In ***Bheemesh alias Bheemappa*** (supra), the two-Judge Bench of the Hon'ble Supreme Court, at paragraphs 17 and 18 had observed as follows :

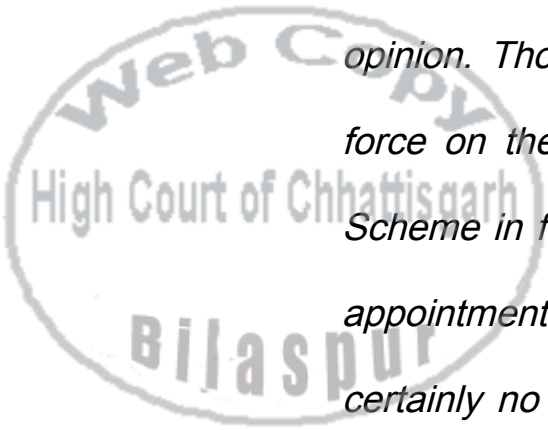
“17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in



harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.”

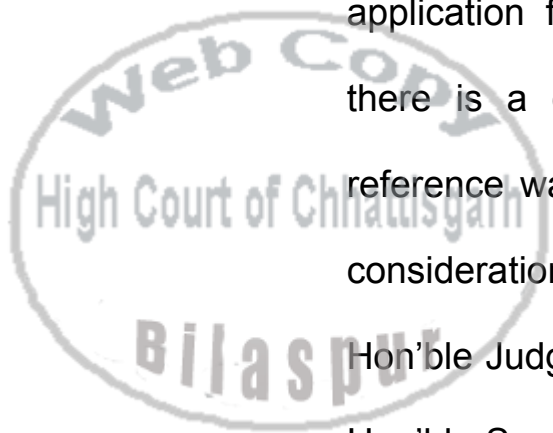
66. The Hon'ble Supreme Court in ***Bheemesh alias Bheemappa*** (supra), proceeded to hold that the date of death alone is a fixed factor and therefore, interpretation as to the applicability of the modified scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor. In light of the facts as obtaining in the case, the Hon'ble Supreme Court held that only because of the fact that the





application for compassionate appointment was taken up for consideration after the amendment was incorporated, the respondent could not have sought the benefit of the amendment and resultantly, the application of the respondent for compassionate appointment was dismissed while allowing the appeal.

67. It is seen that with regard to the question as to whether the Policy in force on the date of death of the government employee is to be applied or the Policy at the time of consideration of the application for compassionate appointment is to be considered, there is a divergence of opinion. It is already noticed that a reference was already made in *Sheo Shankar Tewai* (supra) for consideration of this issue by at least a Bench of minimum three Hon'ble Judges. It is to be noticed that a three Judge Bench of the Hon'ble Supreme Court had taken a view that it is the scheme that is holding the field on the date of consideration has to be applied. After noticing the judgment in *N.C. Santosh* (supra) delivered by a three-Judge Bench, a two-Judge Bench in *Bheemesh alias Bheemappa* (supra) had noted that the Policy which was in force on the date of death of the government employee should be the basis for consideration of a claim for compassionate appointment. It was highlighted by the Hon'ble Supreme Court in the aforesaid case that where the benefit under the existing Policy was taken away or substituted with a lesser benefit, the Court directed the application of the new Policy, and in cases where the benefits under an existing Policy were enlarged by a modified Policy after





the death of the employee, the Court applied only the Policy that was in force on the date of death of the employee. The same was also explained to the effect that such interpretation was fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

68. As of now, there is only one three-Judge Bench decision on the aforesaid issue *i.e.* in *N.C. Santosh* (supra) while all other judgments noticed above are of two-Judge Bench. In the above circumstance, this Court deems it appropriate to follow the principle laid down in *N.C. Santosh* (supra).”

18. Thus, the policy in force at the time of consideration of the application of the petitioner for compassionate appointment is relevant and as the said policy provides that if any other member of the family is already in government service, then the other member of the family will not be eligible for compassionate appointment, we are of the considered opinion that the order of the learned Single Judge needs interference.

19. Accordingly, in view of the above discussion, the order of the learned Single Judge dated 28.01.2022 is set aside. The writ appeal is allowed. No cost.

Sd/-

(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE