

A.F.R.

Court No. - 3

Case :- SPECIAL APPEAL No. - 148 of 2022

Appellant :- Iqbal Khan

Respondent :- The State Of U.P. And 2 Others

Counsel for Appellant :- Devesh Mishra, Rishabh Kesarwani

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Sri Devesh Misra learned counsel for the appellant and Sri B.P. Singh Kachhawah, learned standing counsel for the State respondents.

Facts

2. This Special Appeal has been filed praying to set aside the judgment and order dated 18.07.2019, passed by the learned Single Judge in WRIT - A No. - 9064 of 2019 (Iqbal Khan Vs. State Of U.P. And 2 Others).

3. The impugned judgment and order dated 18.7.2019, passed by the learned Single Judge is reproduced below :-

“Petitioner had applied for compassionate appointment, consequent upon death of his father. An order was passed on 14.5.2015, declining appointment on the post of Pharmacist and offering him appointment on the post of Lab Attendant or any other post for which petitioner possess requisite qualification. Pursuant to this direction, petitioner applied for the post of Lab Attendant and has been offered appointment also. Petitioner has been working since July, 2015. He has now approached this Court with the grievance that qualification for the post of Pharmacist had been amended and that amended rule had not been taken note of as per which he is eligible for appointment to the post of Pharmacist.

Learned Standing Counsel has obtained instructions, according to which, appointment on the post of Pharmacist is to be made through U.P. Subordinate Service Selection Commission and, therefore, in view of the provision contained in Rule 5 read with rule 3 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the 'Rules of 1974'), no compassionate appointment can be granted on such post. It is stated that the vacancies have otherwise been notified on the post of Pharmacist to the Selection Commission. Rules of 1974 clearly provides that appointment can be offered only on a post for which recruitment is not required to be undertaken by the U.P. Subordinate Service Selection Commission. Since post of Pharmacist is earmarked to the Commission for recruitment, the petitioner's claim for compassionate on it cannot be considered. The petitioner has been appointed on the post of Lab Attendant in July, 2015, and therefore, he has otherwise acquiesced to his appointment on the said post. There is no challenge laid to the order declining petitioner's claim on the post of Pharmacist. In that view of the matter, no relief can be granted to the petitioner. The writ petition is dismissed."

4. It is admitted to the petitioner that compassionate appointment was offered to him on 14.05.2019 and he accepted the offer and joined on the post of Lab Attendant. After about four years he filed the aforesaid writ petition claiming that he has the qualification for the post of Pharmacist and, therefore, a mandamus may be issued to the respondents to give appointment/absorb the petitioner on the post of Pharmacist in place of the post of Lab Attendant considering his qualification.

5. The aforesaid contention of the petitioner has been rejected by the impugned judgment and order passed by the learned single Judge on two grounds **firstly** the appointment on the post of Pharmacist is to be made through U.P. Subordinate Service Selection Commission which has been notified by the Commission for selection and **secondly**, the petitioner has otherwise acquiesced to his appointment on the post of Lab Attendant.

6. Aggrieved with the aforesaid judgment passed by the learned Single Judge, the appellant has filed the present appeal.

Submissions

7. Learned counsel for the petitioner submits that as per Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as the 'Rules 1974') the appointment has to be given by the employer in accordance with the qualification of the candidate applying for compassionate appointment under Rules 1974. He further submits that even if the petitioner has accepted the appointment on the post of Lab Attendant under the Rules 1974 yet his claim for the post of Pharmacist on the basis of qualification, can not be denied by the respondents.

8. Learned standing counsel supports the impugned judgment.

Discussion & Findings

9. We have carefully considered the submissions of learned counsels for the parties and perused the records of the writ petition.

Object and principles of Compassionate Appointment:-

10. The Apex Court in the case of ***Hamza Haji vs. State of Kerala*** reported in **2006 (7) SCC 416** in paragraphs 28 and 29 has observed as under: -

*“In Hip Foong Hong vs. H. Neotia and Company (1918 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In Rex vs. Recorder of Leicester (1947 (1) K B 726) it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. **The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof.** In this situation, the High Court in this case, could have clearly either quashed the decision of the Forest Tribunal in OA No.247 of 1979 or could have set aside its own judgment in*

MFA No.328 of 1981 dismissing the appeal from the decision of the Forest Tribunal at the stage of admission and vacated the order of the Forest Tribunal by allowing that appeal or could have exercised its jurisdiction as a court of record by invoking Article 215 of the Constitution to set at naught the decision obtained by the appellant by playing a fraud on the Forest Tribunal. The High Court has chosen to exercise its power as a court of record to nullify a decision procured by the appellant by playing a fraud on the court. We see no objection to the course adopted by the High Court even assuming that we are inclined to exercise our jurisdiction under Article 136 of the Constitution of India at the behest of the appellant.”

11. A Full Bench of this Court in the case of ***Shiv Kumar Dubey and others vs. State of U.P. and others, 2014(2) ADJ, 312 (Para 29)***, considered various aspects relating to compassionate appointment and held as under :-

“We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate

financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a

period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”
(Emphasis supplied by us)

12. In Civil Misc. Writ Petition No. 13102 of 2010, ***Union of India Vs. Smt. Asha Mishra***, decided on 7.5.2010, a Division Bench of this Court has observed as under: -

*“The principles of consideration for compassionate appointment have been firmly settled and have been reiterated from time to time. **Compassionate appointment is not a vested right or an alternate mode of employment.** It has to be considered and granted under the relevant rules. **The object of compassionate appointment is to tide over an immediate financial crisis. It is not a heritable right to be considered after an unreasonable period,** for the vacancies cannot be held up for long and that appointment should not ordinarily await the attainment of majority. **Where the family has survived for long, its circumstances must be seen before the competent authority may consider such appointment. It is not to be ordinarily granted, where a person died close to his retirement.** The Court, however, has emphasised time to time and more authoritatively in *National Institute of Technology Vs. Neeraj Kumar Singh*, (2007) 2 SCC 481 that such appointment can be granted only under a scheme. **It should not be considered after a long lapse of time.**”*

13. The judgment in the case of ***Smt. Asha Mishra (supra)*** has also been taken notice by the Full Bench of this Court in ***Shiv Kumar Dubey (supra)*** reiterating the legal principles so mandated therein. Recently, the Apex Court in Civil Appeal No. 897 of 2021, in the matter of ***Central Coalfields Limited Through its Chairman an Managing Director and Ors. Vs. Parden Oraon*** decided on **09.04.2021**, in **paragraph 9** has observed as under:-

*“9. ... The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent’s husband had gone missing. **As the object of compassionate appointment is for providing***

immediate succour to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing."

14. The object of compassionate appointment is to enable the family of the deceased - employee to tide over the sudden financial crisis due to death of the bread earner which has left the family in penury and without means of livelihood, it is an exception to the normal rule of public employment, it is a concession; vide; **V. Sivamurthy vs. State of A.P., (2008) 13 SCC 730 (Paras 13-18), Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138 (Para-2), Haryana SEB vs. Hakim Singh, (1997) 8 SCC 85 at 87, Director of Education (Secondary) vs. Ankur Gupta, (2003) 7 SCC 704 (Para-6), Food Corporation of India vs. Ramkesh Yadav, (2007) 9 SCC 531 (Para.9), Indian Bank vs. Promila, (2020) 2 SCC 729, State of U.P. vs. Pankaj Kumar Vishnoi, 2013 (11) SCC 178 (Paras 11-15), N.C. Santosh vs. State of Karnataka (2020) 17 SCC 617 (Para 18), State of H.P. vs. Shashi Kumar, (2019) 3 SCC 653 (Para 18), State of Gujarat vs. Arvind Kumar Tiwari, (2012) 9 SCC 545 (Para-8), MGB Gramin Bank V. Chakrawarti Singh (2014) 13 SCC 583 (Para 6-9), Union of India vs. P. Venkatesh (2019) 15 SCC 613 (Para.7), Union of India vs. V. R. Tripathi, (2019) 14 SCC 646 (Para 13).** The basic intention to grant compassionate appointment is that on the death of the employee concern his family is not deprived of the means of livelihood vide **PNB Vs. Ashwini Kumar Taneja, (2004) 7 SCC 265 (para 4)**. It can not be claimed by way of inheritance vide **State of Chhatisgarh & others Vs. Dhirjo Kumar Sengar (2009) 13 SCC 600 (para 10 and 12)**. In **Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481 (para 11 & 12)**, the Apex Court held that **Compassionate Appointment can not be treated as a Bonanza**.

15. In **Chief Commissioner, Central Excise & Customs, Lucknow & others Vs. Prabhat Singh (2012) 13 SCC 412 (para 19)**, Hon'ble Supreme Court has held that **it is not disbursement of gift**. It is not sympathy syndrome. In **State of U.P. Vs. Pankaj Kumar Vishnoi 2013(11) SCC 178 (paras 7,12,13 & 20)**. The Apex Court held that **it is meant to provide minimum relief for meeting immediate hardship to save the bereaved family** from sudden crisis due to death of sole bread winner. Similar view has been expressed in **SAIL Vs. Madhusudan (2008) 15 SCC 560 (para 15)** and **SBI Vs. Anju Jain (2008) 8SCC 475 (Para 33)**.

16. In **SBI Vs. Surya N. Tripathi, (2014) 15 SCC 739 (paras 4,9)**, the Apex Court held that if employer finds that **Financial Arrangement** made for family subsequent to death of the employee is **adequate** members of the family can not insist for compassionate appointment.

17. In **General Manager (D & PB) and others Vs. Kunti Tiwary and other (2004)7 SCC 271 (Para 9)**, Hon'ble Supreme Court held that the Division Bench erred in diluting the criteria of penury to one of "not very well-to-do.

18. In **Union of India Vs. Shashank Goswami, (2012) 11 SCC 307 (Paras 9, 10)** the Apex Court held that an applicant has no right to claim compassionate **appointment in a particular class or group. It is not for conferring status on the family**. In **Pepsu Road Transport Corporation Vs. Satinder Kumar, 1995 Supp. (4) SCC 597 (Para 6)** the Apex Court held that **while minimum qualification** for eligibility may be matriculation, generally graduate and even post graduate degree holders respond and offer themselves for clerical appointments. **Courts can not ignore this fact and direct that possession of minimum qualification alone would be sufficient**.

19. In **State of Madhya Pradesh & others VS. Ramesh Kumar Sharma (1994) Supp.(3) SCC 661**, the Apex Court held that **a candidate for compassionate appointment has no right to any particular post of choice**. He can only claim to be considered.

20. In the case of **The Director of Treasuries in Karnataka & Anr. vs. Somyashree, in Civil Appeal No.5122 of 2021, decided on 13.09.2021**, Hon'ble Supreme Court reiterated the object and principles of compassionate appointment, as under:

*“7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that **the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of 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. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:*

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

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8.2 *Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25.03.2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25.03.2012. Immediately on the death of the deceased employee, the respondent initiated the divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 for decree of divorce by mutual consent. By Judgment dated 20.03.2013, the Learned Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21.03.2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground. **The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground.** Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as 'divorced daughter'. This is one additional ground to reject the application of the respondent for appointment on compassionate ground."*

(Emphasis supplied by us)

21. In a most recent judgment in the case of **The State of Uttar Pradesh and others vs. Premlata in Civil Appeal No.6003 of 2021, decided on 05.10.2021**, Hon'ble Supreme Court considered the

provisions of U.P. Rules 1974 and summarized the principles of compassionate appointment in the context of U.P. Rules, 1974, as under:

“9. As per the law laid down by this court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1 In the case of State of Himachal Pradesh and Anr. vs. Shashi Kumar reported in (2019) 3 SCC 653, this court had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this court in case of Govind Prakash Verma vs. LIC reported in (2005) 10 SCC 289, in para 21 and 26, it is observed and held as under:-

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , SCC pp. 139-40, para 2)

*“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. **Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post.** However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one*

of the dependants of the deceased who may be eligible for such employment. **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 nonmanual 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.”

“26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [*Mumtaz Yunus Mulani v. State of Maharashtra*, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

10. Thus as per the law laid down by this court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and

without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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 such family a post much less a post held by the deceased.

*10.1 Applying the law laid down by this court in the aforesaid decisions and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the submissions on behalf of the respondent and the interpretation by the Division Bench of the High Court on **Rule 5 of Rules 1974, is required to be considered.***

10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of Rules 1974 and has held that 'suitable post' under Rule 5 of the Rules 1974 would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. 'Suitable post' has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment. In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class-II or Class-I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.

10.3

11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the 'suitable post' under Rule 5 of the Dying-In-Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground.

(Emphasis supplied by us)

22. In the case of **Navendra Kumar Upadhyay Vs. State of U.P. and others (Special Appeal No.1601 of 2012) decided on 22.10.2021**, a Division Bench of this Court considered in detail the principles and object of Compassionate appointment and concluded as under :-

35. *We have discussed **above** in detail the case of the petitioner / appellant and the principles of law on compassionate appointment laid down by this Court and by Hon'ble Supreme Court, which are briefly summarized as under: -*

*(a) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only **those situations which subserve the basic object and purpose which is sought to be achieved;***

*(b) The object of compassionate appointment is to enable the family of the deceased - employee to tide over the sudden financial crisis due to death of the bread earner which has left the family in penury and without means of livelihood, it is an exception to the normal rule of public employment, it is a concession. The basic intention to grant compassionate appointment is that on the death of the employee, his family is not deprived of the means of livelihood. It can not be claimed by way of inheritance. **Compassionate Appointment can not be treated as a Bonanza. It is not disbursement of gift. It is not sympathy syndrome. It is meant to provide minimum relief for meeting immediate hardship to save the bereaved family from sudden financial crisis due to death of sole bread winner.** If employer finds that Financial arrangement made for family subsequent to*

death of the employee is adequate members of the family can not insist for compassionate appointment.

(c) 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.

(d) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(e) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(f) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(g) An applicant has no right to claim compassionate appointment in a particular class or group. It is not for conferring status on the family. A candidate for compassionate appointment has no right to any particular post of choice. He can only claim to be considered.

(h) The dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post.

(i) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

(j) The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

(k) Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. The whole object of granting compassionate employment is to enable the family to tide over the sudden financial crisis.

(l) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(m) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(n) The father of the petitioner died on 07.07.1991 when petitioner was aged about eight years. He applied for compassionate appointment sometime in the year 2006-07 and the District Basic Education Officer granted appointment unauthorisedly, without grant of relaxation by the Competent Authority/ State Government. Thus, the petitioner unauthorisedly and in contravention of the government order, without relaxation of period for submission of application, obtained appointment on compassionate ground, which is nullity. Therefore, the appointing authority has lawfully cancelled the order of appointment of the petitioner. Hence impugned order of the learned Single Judge does not suffer from any manifest error of law.

23. In view of the law laid down by Hon'ble Supreme Court and this Court referred above, we do not find any error of law in the impugned Judgment. Hence, the Special Appeal is **dismissed**.

Order Date :- 1.4.2022/vkg