

Vinoth Kumar Vs. the Director of Agriculture and ors.

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Court : Chennai

Decided On : Mar-19-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Article 226, 14, 16; Tamil Nadu State and Subordinate Service Rules. - Rule 10(a)(i),; General Rules

Appeal No. : W.P.Nos.49346 of 2006, 1226 and 4620 of 2007 (O.A.Nos.6535, 6377, 6222 of 2001) and W.P.Nos.17520 & 26802 of 2011 W.P.No.49346/2006 (O.A.No.6535 of 2006)

Appellant : Vinoth Kumar

Respondent : The Director of Agriculture and ors.

Judgement :

PRAYER IN W.P.No.4620 of 2007 (O.A.No.6222 of 2001)

This petition came to be numbered by transfer of O.A.No.6222 of 2001 from the file of the Tamil Nadu Administrative Tribunal, for issuance of a writ in the nature of Certiorari, to quash the order of the first respondent dated 22.10.2000 issued Mu.No.97309 J2/2000 and the order passed in Mu.No.5259/a1/2000 dated 28.11.2000 of the second respondent with consequential relief for issuance of a writ in the nature of mandamus, directing the respondents to consider the petitioner's name for the post of P.G. Assistant on compassionate ground. W.P.No.17520 of 2011

The writ petition has been filed under Article 226 of the [Constitution of India](#) for issuance of a writ in the nature of Certiorari to quash the G.O.Ms.No.185, Labour and Employment (O2) Department, dated 04.10.2006 in so far as the petitioner is concerned and the consequential order of the third respondent bearing Na.Ka.No.2117/2008/A1 dated 31.05.2011 with consequential relief for issuance of a writ in the nature of mandamus, directing the respondents to give employment on compassionate ground to the petitioner. W.P.No.26802 of 2011

The writ petition has been filed under Article 226 of the [Constitution of India](#) for issuance of a writ in the nature of declaration, declaring the orders of rejection passed by the respondent Board dated 31.03.2005 and 28.04.2004 are illegal and consequently direct the respondent to give the benefits given in the orders passed by this Court in W.P.No.25926 of 2010 dated 25.11.2010.

COMMON ORDER

1. This judgment shall dispose of the following writ petitions, as the petitioners in all these writ petitions have prayed for compassionate appointment.

SL.No.

W.P.No.

Name of the petitioner

1

49346 of 2006

A. Vinod Kumar

2

1226 of 2007

M.Shankar

3

4620 of 2007

D.Muthu

4

17520 of 2011

V.Senguttuvam

5

26802 of 2011

J.Panjanathan

W.P.No.17520 of 2011:

2 The petitioner has challenged the order of the respondent No.3, dated 31.05.2011 rejecting the plea of the petitioner for compassionate appointment.

3 The mother of the petitioner was employed as Junior Assistant in the office of Elementary Educational Officer, Mannargudi. The father of the petitioner predeceased his mother in the year 1990.

4 The petitioner passed Diploma in Electrical and Electronics Engineering in second class in 1990 and got his name registered with the Employment Exchange. The petitioner has not been sponsored by the Employment Exchange till the date of filing of the writ petition. The petitioner is doing electrical repair works and got married in the year 2002.

5 The submission of the petitioner is that his mother was looked after his family. The mother of the petitioner died on heart attack on 13.06.2003 while in service.

6 The petitioner after death of his mother applied for appointment on compassionate ground in October 2003. The petitioner was informed that there was ban on recruitment and that his application would be considered only after the ban is lifted in April 2006. The Government lifted the ban on employment, the

petitioner was informed that his application was not traceable and therefore, he was directed to send copy of the application filed through Assistant Elementary Educational Officer, Thiruvavarur. The direction was complied with. On enquiry, the petitioner was informed that his application is under consideration. But on 13.12.2007, the petitioner was informed that his application was rejected on the ground that it was belated. 7 The petitioner filed W.P.No.297 of 2008 in this Court which was allowed holding that the application of the petitioner was filed well within the time and direction was issued to the respondents to consider the application of the petitioner in accordance with law.

8 Vide order dated 15.04.2008, the petitioner was informed that his request for compassionate appointment was rejected under the orders of the respondent No.1, but the copy of the order was not supplied to the petitioner.

9 The petitioner filed W.P.No.13652 of 2008 against the order dated 15.04.2008. The said writ petition was again allowed and the order dated 15.04.2008 was set aside and the respondent No.2 was directed to consider the case of the petitioner against Group 'C' and 'D' posts and pass orders.

10 The respondents instead of complying with the order filed a review petition No.106 of 2008 which was dismissed by this Court on 24.01.2011. The petitioner again filed representation for appointment on compassionate ground, the impugned order dated 31.05.2011 was passed stating that the case of the petitioner can be considered on the basis of seniority of the person seeking employment on compassionate ground as per G.O.Ms.No.185 Labour & Employment dated 04.10.2006. The Government order reads as under: Public Services Scheme of Compassionate ground appointment fixing of seniority of the legal heirs of the deceased Government Servants Orders issued.

Labour and Employment (02) Department

G.O.(Ms.) No.185 Dated : 04.10.2006

Read:

From the Deputy Secretary, Tamil Nadu Legislative Assembly Secretariat, D.O. Lr.No.11314/2001-30 TNLA Secretariate (CAC) Dated 7.8.2001 and Assurance No.596/97.

ORDER

For the appointment under compassionate grounds, the question of fixing of seniority for adopting either the date of death of the Government Servant (or) the date of application produced by the legal heirs of the deceased Government servant has to be decided.

2 The Government after careful examination of the matter have decided that the date of death of the deceased Government servant be taken for fixing seniority for appointment under compassionate grounds and accordingly direct that the date of death of Government servant should be taken for fixing seniority for making appointments under compassionate grounds.

3. This order will take effect from the date of issue of the order.

(By order of the Governor)

L.K.Tripathy

Chief Secretary to Government

11 The order referred to above does not show whether it is issued in exercise of powers under Article 309 or it is merely the Government instruction. The order is challenged on the ground that it is contrary to law and therefore not valid.

12 The submission of the petitioner is that the object behind compassionate appointment is to enable the family of the employee died in harness to tide over the crisis by giving employment on compassionate ground to his/her legal heir. This object is said to have been violated by the impugned order.

13 The Government order is also challenged on the ground that it is violative of Article 14 of the [Constitution of India](#) being rational and unfair.

14 The impugned order informing the petitioner that his case would be considered as per seniority is also challenged on the ground that the Government order dated 04.10.2006 is only prospective and therefore, cannot apply to the case of the petitioner.

15 Though no plea has been raised in the writ petition to challenge the order, the learned Senior counsel for the petitioner at the time of arguments, contended that the order passed by the respondents is hit by the principle of constructive res judicata, therefore not sustainable in law.

16 In support of this contention, the learned Senior counsel for the petitioner referred to the judgment of this Court in W.P.No.297 of 2008 holding that the application of the petitioner was filed within the time, therefore, could not be said to be belated. 17 The learned Senior counsel for the petitioner referred to the judgment of this Court in W.P.No.13652 of 2008 wherein the stand of the respondents is that the petitioner was overaged on the date of death of his mother was not accepted on the ground that the petitioner was entitled to benefit of period of ban on appointment from 29.11.2001 to 07.02.2006. 18 The reference was also made to the review petition where the contention of the learned counsel for the respondents that extension of time for ban period was not applicable to compassionate appointment was rejected. 19 The contention of the learned Senior counsel for the petitioner that once the plea of seniority was open to the respondents in the earlier writ petition, therefore, it cannot be now raised for the first time, being hit by the principle of constructive resjudicata.

20 However, this contention is totally misconceived. The Hon'ble High Court on the earlier occasion ordered to consider the case of the petitioner in accordance with law, the ground of rejection is not barred by the principle of res judicata, as the issue regarding appointment on compassionate ground was not finally decided by this Court.

21 However, the question as to whether the instruction are applicable to the case of the petitioner is to be independently considered at appropriate stage.

22 The writ petition is opposed by the respondents on the ground that G.O.Ms.No.135, Labour and Employment dated 04.10.2006 is for fixing the seniority among the applicants for compassionate appointment, and therefore is valid in law, as it applies to a specified class of the persons, who form one class.

23 The stand of the respondents is that G.O.Ms.No.135 issued by Labour and Employment department is not contrary to the object of compassionate ground, but to consider request for appointment in fair manner, and to give equality to various applicants similarly situated to avoid any discrimination. The Government instructions therefore are said to be fair and reasonable.

24 The stand of the respondents is that the petitioner has only been informed that his case will be considered as per seniority.

25 The petitioner has not placed on record, the scheme framed by the State Government for appointment on compassionate ground of the year 1972, which can be the basis for regulating the appointment on compassionate ground.

26 The petitioner however placed G.O.Ms.No.9 dated 19.01.1998, wherein the age limit for son/unmarried daughter was raised from 32 to 35 and therefore, the upper age limit for appointment of son/unmarried daughter on compassionate ground is fixed at 35.

27 The Government vide G.O.Ms.No.61 dated 19.07.2006, has decided that detailed guideline for appointment on compassionate ground would be issued separately.

28 Thereafter, vide G.O.Ms.No.154 dated 19.09.2006, it ordered that 25% of the vacancies in the post of Junior Assistant (Group C) is required to be filled by recruitment in Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service are to be reserved for appointment on compassionate ground subject to the fulfillment of the other conditions prescribed by the Government for such appointment from time to time.

29 As already noticed above, vide G.O.Ms.No.135 dated 04.10.2006 the Government decided to fix seniority for appointment under compassionate ground.

30 The State Government thereafter, issued instructions by way of guidelines for appointment on compassionate ground which reads as under:

Public Services Appointment on compassionate grounds Recommendations of the Staff Committee orders issued.

Labour and Employment (Q1) Department

G.O.(Ms.) No.42

Dated: 12.03.2007

Read:

G.O.(Ms) No.62 L & E(Q1) Department dt.10.7.2006.

ORDER

In the G.O. first cited, the Government constituted a staff committee under the Chairmanship of Chief Secretary to Government, Recommendations of the Staff Committee have been placed before the Cabinet on 3rd March 2007 and the Cabinet, after detailed discussion decided as follows:-

to accept the recommendations of the Staff Committee constituted under the Chairmanship of the Chief Secretary regarding guidelines on compassionate appointment.

To extend the period for receiving applications for appointment on compassionate ground for three months considering the ban order on filling up of vacant posts in force from 29.11.2001 to 21.02.2006 and to examine the issue of inter-departmental appointments in 'C' and 'D' category posts where adequate vacancy is not available, in respect of compassionate ground appointments. 2 Based on the decisions taken by the Cabinet, accepting the recommendations of the Staff Committee, the Government hereby issue the following guidelines for appointment on compassionate grounds.

2.1 The conditions laid down by the Supreme Court regarding appointment on compassionate grounds shall strictly be followed.

2.2 Appointments on compassionate grounds are being given to the dependant of the deceased Government servant who died in harness. The existing guidelines with regard to dependents shall be continued.

2.3 The observation of Supreme Court is that the posts in Class III and IV are the lowest level posts and hence, they alone can be offered on compassionate grounds. Accordingly, orders have been issued in G.O.Ms.No.61, L & E, dated 19.7.2006 that Compassionate appointments shall be made to the posts in 'C' and 'D' Groups only. The above orders shall be continued.

2.4 As regards indigent circumstances, the appointing authorities shall examine the financial condition of the family of the deceased Government servant and offer a job to an eligible member of the family only after satisfying themselves that, but for the provision of employment the family will not be able to meet the crisis. A certificate from the Tahsildar regarding the indigency of the family should be obtained. Issue of certificate by Tahsildar should be based on detailed enquiry. Orders have already been issued in G.O.Ms.No.61, L & E dated 19.7.2006 to continue the existing guidelines related to indigent circumstances and these guidelines shall be continued. The family pension of the deceased employee and the immovable property like living house of the employee need not be taken into account while assessing the income of the family.

2.5 The existing time limit of 3 years for filing application from the date of death of the Government servant shall be continued as per orders issued in the G.O. first read above.

2.6 Appointment on compassionate grounds shall be made only against the actual vacancies and no supernumerary posts shall be created.

2.7 Dependants of only regular Government servants who died in harness shall be given appointment on compassionate grounds. No appointment on compassionate grounds shall be given to dependants of casual or adhoc or temporary

Government servants appointed under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules.

2.8 Compassionate grounds appointment to the post of Assistant in the Departments of Secretariat shall be made by the Personnel and Administrative Reforms Department for which applications received by the departments shall be processed and recommended for appointment.

2.9 Appointment to the posts of Office Assistants and Record Clerks in the Departments of Secretariat shall be made by the respective Departments in the existing vacancies. The appointing authority shall take necessary action for issue of orders after observing the guidelines in vogue.

2.10 The Heads of Departments of Collectors or District level officers, who are appointing authorities, shall appoint eligible applicants to the posts in 'C' and 'D' Groups. Existing guidelines and Government orders regarding regularisation of service of the persons appointed on compassionate grounds shall be strictly followed.

3 Priority to the dependants of the deceased Government servants and teachers, who were working on regular basis and died during the strike period in July 2003, shall be given appointment on compassionate grounds, as ordered in G.O.Ms.No.123 L & E dated 8.9.2006 observing the guidelines issued in G.O.Ms.No.61, L & E dated 19.7.2006 and other formalities in vogue.

4 Appointment on compassionate grounds are made in 'C' and 'D' groups only. Neither the qualification of the applicant nor the post held by the deceased employee is relevant. Appointment to the posts in 'B' Group cannot be made as laid down by the Supreme Court. The appointing authority shall, however, consider if the dependant of the deceased employee wishes to accept employment in 'C' Group and if otherwise eligible. Pending application seeking compassionate appointments under 'B' Group be disposed off accordingly. 5 Existing provisions for appointment on compassionate grounds to the dependants of defence personnel, who died or disabled in war shall be continued and the revised guidelines issued in G.O.Ms.No.61 L & E dated 19.7.2006 be followed while

making such appointments.

6 As regards appointment on compassionate grounds to the dependants of the persons belonging to Scheduled Castes killed in a communal clash, the existing provisions as laid down in G.O.Ms.No.896, Labour & Employment dated 09.07.1990 shall be continued subject to the guidelines issued in G.O.Ms.No.61 L & E dated 19.7.2006.

7 The Government hereby extend the period for receiving application for appointment on compassionate grounds for three months from the date of this order, considering the ban order on filling up of vacant posts, which was in force from 29.11.2001 to 21.2.2006.

8 The Government decided to examine the issue of inter-departmental compassionate appointments in 'C' and 'D' category posts, where adequate vacancy is not available in a department to which the deceased Government servant belonged.

// BY ORDER OF THE GOVERNOR//

L.K.TRIPATHY

CHIEF SECRETARY TO GOVERNMENT

31 The reading of the guidelines shows that the conditions laid down by the Hon'ble Supreme Court regarding appointment on compassionate ground are to be strictly followed.

32 One of the conditions laid down is that a certificate from Tahsildar regarding indigency of family is required to be obtained and limitation of three years for moving the application is retained. W.P.No.4620 of 2007

33 The father of the petitioner while working as Primary School Head Master died on 06.11.1996.

34 The case of the petitioner is that except the family pension of Rs.1250/-, no other source of income to the family and therefore, was in indigent condition. The

petitioner therefore, filed representation for appointment on compassionate ground which was rejected on the ground that there was no provision for appointment as P.G. Assistant on compassionate ground and also on the ground that the petitioner crossed the age of 30 years on the date of death of his father.

35 The petitioner challenged the impugned order on the ground that the respondent has not taken note of the fact that age limit for the said post was 30 to 35 years and that there was no ban for appointment as P.G. Assistant. W.P.No.1226 of 2007

36 The father of the petitioner was working as Gang Mazdoor in Highways in Highways Department, Kodaikanal, when he died in harness on 10.06.2000. The petitioner failed in S.S.L.C. Examination and therefore claim appointment as per qualification.

37 It is pleaded that family was indigent, there is no source of income and therefore, an application was made on 12.10.2007 for appointment on compassionate ground, but till date no decision has been taken thereto. 38 On the pleading referred to above, the petitioner has prayed for direction to consider the case of the petitioner for appointment on compassionate ground.

W.P.No.26802 of 2011

39 The petitioner has challenged the order of rejection of the request of the petitioner for appointment on compassionate ground.

40 The father of the petitioner died on 01.09.1992 when the petitioner was aged 5 years. The petitioner was brought up with great difficulties and due to the financial condition the family members were not given proper education, but the petitioner studied upto S.S.L.C. and thereafter, due to financial crisis, he was compelled to discontinue education.

41 The mother of the petitioner applied for appointment on compassionate ground, but she was informed that she was not qualified for any post and she was asked to file application after the petitioner attained the age of 18 years. The petitioner on attaining the age of 18 years, filed an application for appointment on

compassionate ground on 03.03.2009 which stand rejected by the Board.

42 The petitioner thereafter made another request on 29.01.2007 which is yet to be considered. Thereafter on 13.03.2007, the Superintendent Engineer directed the petitioner to submit the documents for considering his case for job assistance. The necessary documents were submitted on 10.01.2008. But his request was again rejected on 24.08.2008. 43 The case of the petitioner is that he was orally informed that his application can only be considered under the instruction of this Court.

44 The petitioner has challenged the order of the respondents without specifying as to which order is under challenge whether order dated 31.03.2005 or 24.08.2008 ?

45 The writ petition also does not give any explanation for delay and laches in challenging the order except that the delay was on financial reason. The rejection of his application is challenged to be illegal and contrary to the Regulation of Tamil Nadu Electricity Board and on the ground that his application dated 29.01.2007 was pending. W.P.No.49346 of 2006:

46 The father of the petitioner died on 6.3.1984. The petitioner applied for appointment on compassionate ground, after 15 years of death of his father. It is submitted that petitioner has one sister who had also married and living independently.

47 The case of the petitioner is that application for compassionate appointment was forwarded to the Secretary to the Government, Agriculture department, on 8.12.1999 with all necessary documents required for appointment on compassionate ground. The petitioner also submitted certificate from Tahsildar that there was no one from his family in the Government service and his family was indigent condition, but the application was rejected.

48 The reason for rejection was that application was highly belated. The case of the petitioner is that subsequently, representation was given to the Director of the Agriculture department was also rejected.

49 The petitioner has challenged the order of rejection only on the ground that some persons were appointed on compassionate ground after 11 years and one case after 18 years and therefore, there is no hard and fast rule for appointment on compassionate ground.

50 This writ petition on the face of it is misconceived and contrary to settled law. No fault can be found with the impugned order, as the application was admittedly, filed after 15 years of death of his father.

51 In support of W.P.No.26802 of 2011, the learned counsel for the petitioner placed reliance on the judgment of this Court in W.P.No.25926 of 2010 decided on 25.11.2010 (M.Priya vs The Superintendent Engineer, Udumalpet Electricity Distribution Circle, Tamil Nadu Electricity Board, Tiruppur District) wherein this Court was pleased to lay down as under: 16. Though we are conscious of the directions of the Supreme Court which we have already referred to in the earlier part of our order, in view of the Board s Proceedings referred to above and of the fact that the petitioner has made an application within three years from the date of death of her husband i.e., within the prescribed period and also made subsequent application as directed by the second respondent and also taking note of the assertion of the petitioner that after her husband s death, in the absence of any income, she is living in poverty, her claim has to be considered. In this regard it is worthwhile to refer the case of the Supreme Court in the case of Balbir Kaur vs. Steel Authority of India Ltd., reported in 2000 (6) S.C.C. 493, wherein their Lordships have held that in the case of appointment considering the social and economic justice as enshrined in the Constitution, denial of deserving cases are liable to be set aside. Further, the purpose of providing compassionate ground to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigent circumstances. Hence in considering the case for compassionate appointments, the authorities are supposed to adopt a humane outlook. We do not find any delay or laches on the part of the petitioner, we are unable to accept the conclusion arrived at by the learned single Judge in our case and we are satisfied that the petitioner has made out a case for consideration of her claim. Accordingly, the order of the learned single Judge as well as the order impugned in the writ petition, viz., W.P.No.21512

of 2003 are set aside and the respondents are directed to consider the petitioner s application dated 13.01.2003 on merits and provide necessary relief. Consequently, the writ appeal is allowed. The said judgment was affirmed by the Supreme Court in Civil Appeal No.2039 of 2006, dated 30.3.2010. The said order reads as follows:-

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.2039 of 2006

Chief Engg. T.N. Electricity

Board & Another .. Appellants

Versus

Indiraniammal .. Respondent

WITH

Civil Appeal Nos.2858-2859 of 2010

(Arising from SLP (C) Nos.5068-5069/2009)

ORDER

Civil Appeal No.2039 of 2006

Heard learned counsel for the parties.

On the facts of the case, we are not inclined to exercise our discretion under Article 136 of the [Constitution of India](#).

The Civil Appeal is dismissed accordingly. No costs.

However, the impugned judgment shall not operate as a precedent in future.

Therefore the petitioner herein is justified in not approaching the Court during the period when the Division Bench Judgment in (2006) 4 MLJ 1080 (cited supra) was in operation.

7. It is admitted by the parties that in the subsequent Division Bench decision in W.A.No.42 of 2007 dated 2.7.2009 also every aspect was considered, which was also confirmed by the Supreme Court in S.L.P.(C)No.8305 of 2010 dated 6.7.2010. In the decision reported in (2010) 7 MLJ 644 (Uma v. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and Another) I have followed the Division Bench Judgment and allowed a similar writ petition.

8. Following the above said judgments, the impugned order is set aside and the writ petition is allowed. The respondent is directed to issue appointment order to the petitioner on compassionate ground, within a period of six weeks from the date of receipt of a copy of this order. The petitioner is directed to produce a fresh Income Certificate obtained from the Tahsildar to show the indigenous circumstance of the petitioner's family as on today. No costs. Connected miscellaneous petition is closed. 52 Reliance was also placed on the judgment of this Court in W.P.No.15407 of 2011 decided on 16.08.2011 (K.Anbarasan vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and another) wherein this Court was pleased to lay down as under: 5. The learned counsel appearing for the petitioner submitted that the similarly placed persons who were the legal heirs of the deceased employees of the Tamil Nadu Electricity Board approached this Court and this Court considered the issue regarding belated application and granted relief to the persons and one such order was passed on 13.07.2010 in W.P.No.20981 of 2001. The learned counsel also relied upon another order passed on 28.02.2011 in W.P.No.27486 of 2010. The said writ petition was also allowed with a direction to the respondents to consider the issue without reference to the ground of delay and pass orders within a period of twelve weeks. 6 Similar matter was also considered by the Division Bench of this Court in W.A.No.735 of 2009 and by order dated 13.07.2009, this Court disposed of the writ appeal by observing as follows: 2. The appellant is aggrieved by the order passed by the learned Single Judge, dated 17.12.2007 dismissing the petition filed by the appellant. The appellant was a minor on the date on which his father passed

away. The appellant's father was employed in the Electricity Board and under the relevant Rule of the Electricity Board prevalent at that time, the children of the employees were to be considered for compassionate employment after they attain majority. That was the rule governing as per the order dated 18.03.2002. The appellant attained majority in the year 1999 and so what he expected was that his case would be considered by the Electricity Board for compassionate appointment. 3 The learned Judge has not examined the issue from this point of view and, therefore, there is an error on his part. The appeal, is therefore, allowed. However, there will be no order as to costs. The respondents are directed to consider the application of the appellant for compassionate appointment. 4 We, however, make it clear that while examining the application of the appellant, it will be open to the respondents to consider the present condition of the appellant as to whether he is employed, what is the income of the family and whether there is any subsisting need for compassionate employment.

7. The learned counsel for the respondents submitted that the Board may be directed to consider the claim of the petitioner in the light of the Division Bench order referred to above within the given time. The said submission made by the learned counsel for the respondents is recorded.

8 In the light of the above orders of this Court, the impugned orders of the respondents are set aside and the matter is remitted to the first respondent to consider the claim of the petitioner without reference to the delay in submitting the application for compassionate appointment and to grant relief on satisfaction of the financial condition of the petitioner as on today. 9 Further, the petitioner is also directed to get income certificate from the revenue authorities and produce the same along with a copy of this order before the first respondent by registered post within a period of four weeks from the date of receipt of a copy of this order and the first respondent is directed to pass necessary orders within a period of three months from thereon. 10 The writ petition is disposed of accordingly. However, no order as to costs.

53 The petitioner has not placed on record the Scheme framed by the Tamil Nadu Electricity Board for appointment on compassionate ground.

54 The learned counsel for the petitioners in all these writ petitions in support of their claim for appointment on compassionate ground placed reliance on the following judgments. (i) (1999)1 S.C.C. 243 (Durg Rajnandgaon Grameen Bank vs Suresh Kumar Shukla and others) wherein the Hon'ble Supreme Court was pleased to lay down as under:

6. In the complaints of the suits which have given rise to these appeals the plaintiff-respondents assailed the said selection that was made by the Selection Committee on 28-7-1989 and the order of promotion passed on the basis of such selection. Since in the earlier writ petition that was filed by them, the plaintiff-respondents had sought the same relief, viz., challenge to the validity of the selection made by the Selection Committee on 28-7-1989 and the said writ petition had been dismissed on merits by the High Court by order dated 20-9-1989, which order had become final, the suits filed by the plaintiff-respondents for the same relief and against the same parties could not be entertained, being barred by res judicata. The High Court, in our opinion, was in error in not entertaining the plea in this regard raised by the appellant-Bank in their second appeals. The said submission urged on behalf of the appellant-Bank must be allowed and the suits filed by the plaintiff-respondents must be dismissed. (ii) 1998 S.C.C. (L&S) 1415 = 1998(5) S.C.C. 530 (Union of India and others vs Southern Railway Employees Cooperative Stores Workmen Union and others) wherein the Hon'ble Supreme Court was pleased to lay down that the judgment of Central Administrative Tribunal was binding on the Union of India and it is not possible to escape the liability under the judgment on the plea that the another Bench of Central Administrative Tribunal has taken a contrary view in the similar case. This judgment was relied upon by the learned Senior counsel Mr.N.G.R.Prasad appearing for the petitioner in W.P.No.17520 of 2011 in support of his plea of constructive res judicata. (iii) (2010)11 S.C.C. 661 (State Bank of India and another vs Raj Kumar) wherein the Hon'ble Supreme Court was pleased to lay down as under:

5. A learned Single Judge of the High Court by order dated 8-5-2008 directed the appellant to reconsider the case of the respondent for appointment on compassionate grounds, holding that the old Scheme applied and the new

Scheme was only prospective in operation. The said order was affirmed by the Division Bench by order dated 1-9-2008, which is under challenge in this appeal by special leave. 6. The learned counsel for the Bank submitted that even though the respondent's father died on 1-10-2004, the application for compassionate appointment was made only in June 2005; that before the application could be processed, the Compassionate Appointment Scheme was abolished and was replaced by a new Scheme on 4-8-2005; and that therefore, the Bank was justified in calling upon the respondent to apply under the new ex gratia scheme.

7. On the other hand, the learned counsel for the respondent submitted that on the date of death of his father and on the date of making the application, the compassionate appointment scheme was in force and therefore, he was entitled to be considered for compassionate appointment under the said scheme.

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it 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 eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria

prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.

55 It was held that the claim for compassionate appointment is traceable only to the specific scheme framed by the employer thereto. There is no right whatsoever outside such scheme. The compassionate appointment is a concession and not a right. The employer may wind up or modify the scheme at any time depending on his policy, financial capacity and availability of the posts.

56 It was held that appointment under the Scheme can be made only if the Scheme is in force and not after its abolition or withdrawn. Any pending application seeking appointment under abolished scheme also ceased to exist unless saved and furthermore, there can be no immediate or automatic appointment merely on an application.

57 It was also held that compassionate appointment is an exception to general rule, that recruitment by Public Services should be on the basis of merit, by open invitation, providing equal opportunity to all eligible persons to participate in the selection process. Therefore, the conditions of compassionate appointment need strict compliance with terms of scheme.

58 Reliance was also placed on the judgment of the Hon'ble Supreme Court in *State Bank of India and others vs Jaspal Kaur* [(2007)9 S.C.C. 571] wherein it was held that the matter is to be decided within the parameter of the Scheme prevailing when the application for compassionate appointment was filed and not as prevailing on the date of decision of the Court. It was also held that financial condition of the family of the employee who died in harness is main criterion under the Scheme. It was reported in the judgment that compassionate appointment cannot be claimed by way of right, nor public office is heritable. In the said case, the findings of the Court that the family of the deceased was not Penurious condition was not interfered with.

59 The reliance thereafter placed on the judgment of the Hon'ble Supreme Court in Bhawani Prasad Sonkar vs Union of India & others [(2011(3) L.L.N. 37 (SC)] wherein the Hon'ble Supreme Court was pleased to lay down as under: 15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the [Constitution of India](#). No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

16. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the factors to be taken into consideration while examining the claim for appointment on compassionate ground, we may refer to a few decisions.

17. In Umesh Kumar Nagpal v. State of Haryana¹, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2) 2. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in

Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

18. Similarly, in *SAIL v. Madhusudan Das*² this Court has observed that: (SCC p. 566, para 15)

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the [Constitution of India](#) mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See also: *General Manager, State Bank of India & ors. V. Anju Jain*, 2008(8) SCC 475 para 33)

19. In *V. Sivamurthy v. State of A.P.*⁴ this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well-

recognised exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule: (SCC p. 741, para 18) (i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme. (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be. (iv) Compassionate employment is permissible only to one of the dependants of the deceased/ incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

60 Reliance was also placed on the judgment of this Court in *J.Jeba Mary vs The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai 2 and others* [2011(3) L.L.N. 405 (Mad)] wherein this Court was pleased to direct that the petitioner's application for compassionate appointment in lieu of her mother, was quite in order and therefore direction was issued to consider the case of the petitioner expeditiously.

61 Reliance thereafter was placed on the judgment of this Court in Punjab National Bank and another vs R.Latha holding therein as under:

22. Hence, after hearing the counsel on either side, we are satisfied that the husband of the writ petitioner died in December 2003. In February 2004, the writ petitioner applied for appointment on compassionate grounds as per the existing scheme of 97 and as per the terms and conditions of the scheme, the application of the writ petitioner was forwarded to the Head Office and accordingly, the Head office directed the Regional Office to conduct the interview of the writ petitioner. It is seen that there is no indication for appointment. But only to re-assess the certificates of the writ petitioner to know for which post she is suitable to be appointed. Further, the new scheme came into force on October 29, 2004. Accordingly, they have taken the decision to pay the ex gratia instead of compassionate appointment. In view of the terms and conditions of the new scheme, the question of giving appointment on compassionate grounds does not arise. The only solution is to pay ex gratia as per the post held by the deceased husband of the writ petitioner. Therefore, the writ petitioner is entitled for Rs. 7 lakhs.

23. As held by the Hon'ble Supreme Court, the right to appoint the writ petitioner on compassionate ground is neither a fundamental right nor a legal right. It is only an exception of the General Rules. Therefore, as rightly contended by the learned Counsel for the appellant. Bank, we have to see the law in operation as on the date of consideration of the writ petitioner's application, though the application was made in the year 2003. As per the new scheme which came into operation from October 29, 2004, the writ petitioner is entitled for ex gratia instead of compassionate appointment and we see that there is any delay caused by the appellant Bank to deprive the writ petitioner to have appointment on compassionate grounds from the date of application, they have processed it. Meanwhile, the new scheme came into force, Therefore, we are unable to appreciate the orders passed by the learned single Judge based on the interpretation made by the Assistant Manager while circulating the scheme to various Departments on January 7, 2005, which is contrary to the terms and conditions of the Scheme, more so to Clause 9.6 of the scheme.

24. Therefore, we consider it appropriate to set aside the order passed by the learned single Judge and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

62 It was for the first time that in the year 1972, a Scheme was framed for appointment on compassionate ground vide G.O.Ms.No225 Labour and Employment dated 15.02.1972. It was laid down therein as under: 3. The proposals mentioned in para 1 and 2 above have been examined by Government in detail. The Government direct that the general procedure of recruitment through the Employment Exchanges to all the posts which fall outside the purview of the Tamil Nadu Public Service Commission be relaxed in favour of the Son/Daughter/Near relative who would take care of the family of a Government Servant who dies in harness leaving his family in indigent circumstance, subject to the following conditions:- (a) The candidates should possess all the prescribed qualification for the post concerned.

(b) The power to waive the normal procedure of recruitment through the Employment Exchange will be vested with Secretaries to Government of the departments concerned; and

(c) The concurrence of the Labour Department should be obtained before making such appointment.

63 Thereafter, vide memo No.23660/N2/74-3 dated 20.09.1974 issued by the Labour & Employment and Housing department, that the Scheme was modified to read as under:

4 The Government have carefully examined the request of the Association and pass the following orders: In modification of the orders in para 3 of the G.O. First read above, have as subsequently modified in the Memo, second cited, the Government direct that the general procedure of recruitment through Employment Exchange to all the posts which fall outside the purview of the Tamil Nadu Public Service Commission be relaxed in favour only of the sons/unmarried daughters/wife of the Government servants, who dies in harness, subject to the followign conditions: (a) that the candidates should possess allthe prescribed

qualification for the post concerned.

(b) that the power to waive the normal procedure of recruitment through the Employment Exchange be vested with all appointing authorities, excepting cases covered by item (c) below: (c) that the power to waive the normal procedure in so far as provision of employment to the near relative of the Government servant who will support the family of the Government servant dying in harness is concerned should be exercised only by the Heads of departments concerned as hitherto and: (d) that all such cases should be reported by the appointing authorities concerned to the Government in Labour, Employment and Housing department, the concerned administrative department in the Secretariat, the Head of the department and the Director of Employment and Training, Madras 5.

64 The Scheme was also extended to the Government employees who retired from service on medical investigation. The members of the defence service personnel killed/disabled in action were also included subsequently. Thereafter, by memo dated 31.12.1976, it was decided as under: (a) The Government servant who dies should have been the only bread winner in the family;

(b) the family should be in indigent circumstances;

(c) the candidate should possess all the prescribed qualifications for the post concerned.

65 Thereafter, vide G.O.Ms.No.516 issued by Labour & Employment department, dated 03.08.1977 it was laid down that application for appointment of the dependents of the Government servant would be considered only on presumptive date of superannuation of the Government servant. It was also one of the conditions that appointing authorities require to satisfy themselves about indigent circumstance of the deceased Government servant before appointment is offered.

66 Vide memorandum No.34107/1/77-1 dated 04.05.1978, it was clarified that concession under the Government orders is not to be granted to more than one dependent in family of the deceased Government servant. The right granted under rule of reservation could be ignored while making appointment on compassionate

ground.

67 Vide letter No.2563/N1/82-02 issued by the Labour & employment dated 11.03.1982, the age limit for sons/unmarried daughter/widow was fixed as 30/40 years on the date of death of the Government servant.

68 On 15.11.2007, the Scheme for compassionate appointment has been framed vide G.O.Ms.No.216 dated 15.11.2007 which reads as under:

ORDER

In the Government Order first read above, the following consolidated instructions have already been issued by the Government to all the Heads of Departments, all Collectors, Departments of Secretariat, the Registrar of High Court of Madras and to the Secretary, Tamil Nadu Public Service Commission:-

(1) normally the dependant of a deceased Government servant should apply for appointment on compassionate grounds only to that office, where the Government servant was in service at the time of his death.

(2) The Head of the Office should then verify the facts in the petition like the date of death, the indigent circumstances of the family, the eligibility of the applicant for employment on compassionate grounds with reference to his educational qualification, etc.

(3) After verification, the Head of the Office should, within a month from the date of receipt of application from the dependant, submit the application along with his report to the Head of the Department indicating also whether any vacancy exists in his office for providing employment to the applicant.

(4) After considering the request, if any vacancy exists either in the Office in which the deceased Government servant was working at the time of his death or in his office, the Head of the Department should issue orders of appointments immediately and in any case within 15 days from the date of receipt of the report from the Head of the Office, provided the applicant satisfies all conditions relating to age, educational qualification etc. if any relaxation is necessary, he should send

necessary, proposals within 15 days to the Government in administrative Department for orders.

(5) If no vacancy exists either in his office or in the Office in which the deceased Government servant was working, then he should ascertain from the various Heads of offices under his control whether any vacancy exists in any one of these office to provide employment to the dependant with reference to his educational qualifications etc. This exercise should be completed within a period of 60 days. Vacancies that may arise in the near future, that is to say for the next 12 months should also be taken into consideration for the purpose. If vacancy is likely to arise in the near future, the applicant may be informed of the fact and advised to wait till then and as soon as a vacancy arises, he should be given employment.

(6) In case the Head of the Department finds that there is no vacancy in any of his office or in the near future or where the dependant of the deceased Government servant possesses qualifications which do not permit his or her appointment to any post in that Department also where the dependant possesses better qualification for appointment in other Departments, then, the Head of the Department should send the name and all relevant particulars to the Collector of the District in which the deceased Government servant last worked.

(7) The Collector of each District should maintain a Special Registrar for this purpose and enter therein the name and other details of such dependants. This Registrar will be maintained separately.

(8) Whenever a vacancy in the category of Office Assistant/Record Clerk/Junior Assistant/Typist etc. arises in any Department including the Head of the Department, referred to in instruction above, the Head of the Department should first address the Collector of the District in which the vacancy has arisen and find out whether any dependant of a deceased Government servant is available for consideration for appointment to that post.

(9) On receipt of such enquiry from a Head of Department, the Collector shall send the name or names and details of dependant from the Special Registrar, depending upon the number of vacancies and as per the seniority, for

consideration for appointment in that Department.

(10) Before notifying any such vacancy to the Tamil Nadu Public Service Commission or Employment Exchanges, each Head of the Department should first address the Collectors and only after obtaining from them a certificate of non-availability of the candidate in the Special Registrar maintained by them with reference to instruction(7) above. The Tamil Nadu Public Service Commission/Employment Exchange should be addressed. (11) If any persons are already available with the Collectors as per G.O.Ms.No.1179, P.&A.R. Dated 17.10.1979, for providing employment assistance under compassionate grounds, such cases should be re-examined by the Head of Departments concerned on the lines of instructions (1) to (10) above. (12) The District Collectors should send a quarterly report to the Government in Labour and Employment Department to watch the progress of the Special Registrar proposed for dependents of the deceased Government Servant. The reports should be sent by 15th of the month following the quarter. 2 In the Government Order third read above, based on the recommendations of the Staff Committee and decision taken by the Cabinet on 3.3.2007, certain guidelines were issued among others for appointment on compassionate ground in item No.8, as detailed below:- The Government decided to examine the issue of inter-departmental Compassionate appointments in C and D category posts, where adequate vacancy is not available in a department to which the deceased Government Servant belonged. 3 The Government have decided to reiterate its earlier instructions issued in Government order first read above and accordingly direct that the District Collectors, Heads of Departments and all other appointing authorities have to follow the instructions issued in the above Government order whenever vacancies are not available in their departments for providing of compassionate ground appointment as per the requisite qualifications to the dependants of the deceased Government servants who died in harness while in service in their department by fixing the seniority of such appointees from the date of their appointment in that departments without affecting the service rights of the existing persons in that department, and also to follow the orders issued in G.O.Ms.No.154, Personnel & Administrative Reforms Department, dated 19.9.2008, i.e. 25% of the vacancies in the post of Junior Assistant be reserved for appointment on compassionate ground. 4 The

Government also direct that the above instructions shall be followed while making compassionate ground appointments in respect of 'C' and 'D' category in the Departments of Secretariat also. (By order of the Governor)

L.K.TRIPATHY

CHIEF SECRETARY TO GOVERNMENT

69 Now, it would be appropriate to consider the judgments relied upon by the learned counsel for the petitioners in support of the writ petitions.

70 The judgment in M.Priya vs The Superintendent Engineer, Udumalpet Electricity Distribution Circle, Tamil Nadu Electricity Board, Tiruppur District (supra) on which strong reliance was placed, cannot be said to be laying down good law and is treated to be per infusion, as reliance in that case was placed on the judgment of the Hon'ble Supreme Court in Civil Appeal No.2039 of 2006 (Chief Engineer, Tamil Nadu Electricity Board vs. Indirani Ammal).

71 It may be noticed that the Hon'ble Supreme Court do not laid down that Indiraniammal was entitled to compassionate appointment as of right, wherein the Hon'ble Supreme Court merely declined to interfere by specifically recording therein that However, the impugned judgment shall not operate as a precedent in future, which means that the judgment of this Court was not approved.

72 Reliance on the judgment of this Court in W.P.No.15407 of 2011 decided on 16.08.2011 (K.Anbarasan vs The Chief Engineer (personnel), Tamil Nadu Electricity Board and another) also cannot advance the case of the petitioner, wherein no precedent of law was laid down in the judgment, and the writ was merely disposed of with direction to the respondents to consider the case of the petitioner in the said writ petition.

73 The judgments in Durg Rajnandgaon Grameen Bank vs Suresh Kumar Shukla and others (supra), Union of India and others vs Southern Railway Employees Cooperative Stores Workmen Union and others (supra), State of Bank of India and another vs. Raj Kumar (supra) relied upon by the learned counsel for the petitioners, also do not advance the case of the petitioners, to hold that the

decision of the Government in W.P.No.17520 of 2011 was hit by constructive resjudicata. In order to attract the provisions of constructive resjudicata, it is to be proved that matter has been finally decided between the parties. The earlier writs filed by the petitioner were remitted back for reconsideration. It was therefore, open to the department to take independent decision in accordance with law with the only limitation that the representation could not have been rejected again on the previous ground which was set aside by this Court.

74 Reliance on the judgment of the Hon'ble Supreme Court in the case of State of Bank of India and another vs. Raj Kumar (supra) by the learned counsel for the petitioner is also misconceived, wherein it was held by the Hon'ble Supreme Court that no right is created in favour of the petitioner, merely an application is made for compassionate appointment. Thus, this judgment is also against the petitioner.

75 Similarly, reliance on the judgment in the case of State Bank of India and others vs. Jaspal Kaur (supra) and Bhawani Prasad Sonkar vs. Union of India & others (supra) also cannot advance the case of the petitioner, as it only reiterate the settled law that the compassionate appointment is to tide over sudden financial crisis and cannot be claimed as a matter of right.

76 It was on the facts and circumstance of the particular case that the Hon'ble Supreme Court ordered appointment on compassionate ground, stipulating therein that the conditions under the scheme are required to be complied with. The scheme in force in Tamil Nadu clearly stipulates that guidelines laid down by the Hon'ble Supreme Court are to be strictly followed.

77 Reliance on the judgment of this Court in J.Jeba Mary vs. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai 2 and others (supra) also cannot advance the case of the petitioner, as it was decided on the facts of the case. Therefore, in view of the settled law by the Hon'ble Supreme Court referred to above, this judgment also do not serve purpose to the petitioners.

78 The Scheme for compassionate appointment was framed for the first time in the year 1972. It was decided that son/daughter/ near relative who would take care of the family of the Govt. servant who died in harness leaving the family in indigent

circumstance, could be appointed in case, the candidates possessed all the qualifications prescribed.

79 Thereafter, the scheme was modified on 31.12.1976 wherein it was stipulated that the Govt. servant who died should be the only bread-winner in the family and that the family should be in indigent circumstance and the candidates should possess all the qualifications prescribed.

80 The different circulars were issued from time to time prescribing the time limit for making application for appointment on compassionate ground. Thereafter, in the year 1982, the age limit for compassionate appointment was prescribed to be 30/40 years in case of son/unmarried daughter and widow.

81 It was vide G.O.Ms.No.62 L&E(Q1) dated 10.07.2006 stipulating therein that the conditions laid down by the Hon'ble Supreme court regarding appointment on compassionate ground are to be strictly followed.

82 Thereafter, vide G.O.Ms.No.216 dated 15.11.2007, the scheme for compassionate appointment was consolidated. By this order, the Government has reserved 25% of the vacancies in the post of Junior Assistant for appointment on compassionate ground.

83 In view of the instructions referred to above, stipulating that compassionate appointment is to be made as per the guidelines issued by the Hon'ble Supreme Court, it is necessary to consider the law laid down by the Hon'ble Supreme Court with regard to compassionate appointment.

84 The policy with regard compassionate appointment was considered by the Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Harayana (1994(4) SCC 138) wherein the Hon'ble Supreme Court was pleased to lay down as under:
6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the

compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

85 The Hon'ble Supreme Court thereafter in the case of Punjab National Bank vs. Ashwini Kumar Taneja (A.I.R. 2004 SC 4155 = (2004)7 SCC 265) upheld the rejection by the employer for compassionate appointment on the ground that there was no financial hardship to the family of the deceased, as they had received substantial amount after the death of the employee. In coming to this conclusion, the Hon'ble Supreme Court discussed the settled law in various judgments and was pleased to lay down as under: 5. As was observed in State of Haryana v. Rani Devi, it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the [Constitution of India](#). However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case, it was held that the Scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of India v. Asha Ramchandra Ambekar it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana that as a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object

is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

6. In *Sushma Gosain v. Union of India*⁴ it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India*⁵ and *Union of India v. Bhagwan Singh*. In *Director of Education (Secondary) v. Pushpendra Kumar*⁷ it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

7. In *State of U.P. v. Paras Nath*, it was held that the purpose of providing employment to the dependent of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the

deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

8. These aspects were highlighted in *State of Manipur v. Mohd. Rajaodin*, *State of Haryana v. Ankur Gupta*, *Haryana SEB v. Naresh Tanwar*¹¹ and *Haryana SEB v. Hakim Singh*.

86 The Hon'ble Supreme Court in *Mumtaz Yunus Mulani Vs. State of Maharashtra and others* [(2008)¹¹ SCC 384] while holding that in view of the family pension, compassionate appointment cannot be denied though it is one of the considerations, but at the same time, it was held that the appointment cannot be granted after a lapse of number of years.

87 The Hon'ble Supreme Court in *State of Jharkhand v. Shiv Karampal Sahu*, (2009)⁽¹¹⁾ SCC 453) was pleased to lay down as under:

11. The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate grounds, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the [Constitution of India](#). Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate grounds must, therefore, receive a strict construction.

12. In *State of J&K v. Sajad Ahmed Mir*¹ the law was laid down in the following terms: (SCC pp. 770-71, para 11)

11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought compassion, the

Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say goodbye to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution. (See also *Mumtaz Yunus Mulani v. State of Maharashtra*.)

13. A circular letter providing for appointment on compassionate grounds in case of death of a government servant cannot be extended in case of the dependants of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the Rules framed under the proviso appended to Article 309 of the [Constitution of India](#). A circular letter issued by the State cannot be issued dehors the constitutional scheme of making offer of public appointment. [See *Official Liquidator v. Dayanand*³ (SCC para 52), *State of Bihar v. Upendra Narayan Singh*⁴ (Scale para 19) and *Man Singh v. Commr., Garhwal Mandal*] 88 The matter regarding compassionate appointment was again considered by the Hon'ble Supreme court in *Eastern Coalfields Limited v. Anil Badyakar*, (2009) 13 SCC 112 wherein the Hon'ble Supreme Court was pleased to lay down as under: 20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

21. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependants of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for

appointment on compassionate grounds. The request so made was accepted by the Personnel Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so-called dependant of the deceased employee.

22. In our considered view, the decision of the employer was in consonance with Umesh Kumar Nagpal case¹ and the same should not have been interfered with by the High Court. Accordingly, we allow this appeal and set aside the orders passed by the High Court. There will be no order as to costs. 89 The Hon'ble Supreme Court in Local Administration department and another vs. M.Selvanayagam @ Kumaravelu [(2011(2) SCT 763 = (2011) 13 SCC 42], was pleased to lay down as under: 3. After about five-and-a-half years of his father's death, the respondent passed the SSLC examination in April 1993. And then, for the first time on 29-7-1993, the respondent's mother made an application for his appointment on compassionate grounds. No action was possible on this application since the respondent was still a minor. Later on, another application was made for his appointment on compassionate grounds after 7 years and 6 months of the death of his father.

7. In the order dated 19-4-2000, two reasons were assigned for rejecting the respondent's claim for appointment on compassionate basis. First, on the death of Meenakshisundaram, his wife, the mother of the respondent did not make any request for appointment and this showed that the demise of the employee concerned had not caused a very serious financial crisis in the family. In this connection it was also stated that in case on the death of Meenakshisundaram, his wife had made a request for appointment on compassionate grounds, her application might have been considered giving her relaxation of age and academic qualification.

8. The second reason given for rejecting the respondent's claim was that following the death of Meenakshisundaram, the family was given Rs 26,674 as terminal

benefits besides family pension to the widow. Thus, the dependants of the deceased employee were not left completely without any financial resources.

9. The second reason given for not accepting the respondent's claim was rejected outright by the Division Bench relying upon a decision of this Court in *Balbir Kaur v. SAIL*¹. And on this score, the decision of the High Court cannot be faulted. But the Division Bench also disapproved the first reason assigned for rejecting the respondent's claim. It accepted the respondent's explanation for her mother not applying for a job on the death of his father and held that that could not be a ground for denying appointment to him on compassionate basis. In this connection, the Division Bench said: So far as the first reasoning is concerned, at the time of death of father of the petitioner, the petitioner was just 11 years old. In the SSLC examination conducted in April 1993, he came out successful and made an application on 12-7-1993 for compassionate appointment. Thereafter, number of representations were sent to Karaikal Municipality and this Court finds in one such representation dated 13-9-1996 (as found in the file produced by the Municipality), it has been stated as under: My mother could not immediately seek for self-employment, as she was suffering from anaemia and hypotension. Though my family was really in harness (sic distress), my mother managed to maintain the family with the help of her pension amount and that of her earnings from attending menial works from house to house. This claim was made in fact three years prior to the filing of the first writ petition. In the affidavit filed in support of the present writ petition also in para 2, a specific mention about this has been made. If that is so, obviously that was the reason as to why she did not apply for the job immediately after the death of her husband in the Municipality, that is, due to bad health. In these circumstances, this Court does not find any substance in the first reasoning as well that the failure on the part of the mother of the appellant to apply immediately for appointment relaxing the relevant rules would show that the family was not in difficulties.

90 The Hon'ble Supreme Court in the case of *Union of India and another vs. B.Kishore* (2011(3) S.C.T. 18 = (2011)13 SCC 131) was pleased to lay down as under:

4. On 9-7-1996, the respondent made another representation for appointment on compassionate grounds. His case was finally considered by the Circle Selection Committee and he was informed by the letter dated 26-2-1998, that he was not found entitled to appointment on compassionate grounds because he was not considered to be in indigent circumstances .

5. The respondent challenged the decision of the Circle Selection Committee before the Central Administrative Tribunal, Madras Bench in OA No. 610 of 1998. The Tribunal dismissed the OA by order dated 16-7-1998. Against the order passed by the Tribunal, the respondent went to the Madras High Court in Writ Petition No. 12225 of 1998. A Division Bench of the High Court allowed the writ petition with the direction to the appellants to include his name in the list of candidates waiting for appointment on compassionate basis.

6. The High Court in the judgment coming under appeal observed as follows:

In deserving cases even when there is an earning member in the family, compassionate appointment may be offered, if the family is found to be in distress, with the prior approval of the Secretary of the department concerned. It went on to say:

The scheme, therefore, does not lay emphasis on the indigency as a criterion for withholding or offering compassionate appointment. Compassionate appointment is to be made as a result of the death of the deceased official and when his/her family is in immediate need of assistance. (emphasis added) It further said:

Admittedly, there is a young son who has to be looked after and brought up. It cannot, therefore, be said that the family is not in need of income. The fact that the family receives pension is also no ground to decline appointment (sic) nowhere provides that in case where the family is paid pension (sic).

7. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court s observation, indigence of the dependants of the deceased employee is the first precondition to bring the case

under the scheme of compassionate appointment. The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependants of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

8. In *SBI v. Raj Kumar*¹, elucidating the nature of the scheme of compassionate appointments this Court observed: (SCC p. 664, para 8)

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it 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 eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

91 The Hon'ble Supreme Court in *State of J&K v. Sajad Ahmed Mir* (2006)5 SCC 766) declined the right to compassionate appointment even when the Court have decided the matter regarding compassionate appointment after 15 years of the death of the father of the applicant. It was laid down by the Hon'ble Supreme Court as under: 11. We may also observe that when the Division Bench of the High

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

92 From the judgments referred to above, it can safely be held that the compassionate appointment cannot be ordered after the lapse of reasonable period which must be specified in the rules as compassionate appointment is not vested right which can be exercised at any time in future, as its object is to enable the family to get over the financial crisis it faces at the time of death of sole breadwinner. The compassionate appointment therefore cannot be claimed or offered after the considerable lapse of time when the crisis is over.

93 The object of appointment of the dependent of the deceased employee, who dies in harness, is to relieve unexpected, immediate hardship and distress caused to the family by sudden demise of the earning member.

94 The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment, as mere death of employee does not entitle his family to compassionate appointment.

95 The appointment on compassionate ground is different from general rule provided for appointment to the post by following prescribed procedure. It is in the nature of exception to the general rule. Therefore, it is to be seen that this exception should not unduly interfere with the right of the persons who are

eligible for appointment to seek employment against the vacant posts.

96 The compassionate appointment cannot be granted after a long lapse of period, as it would defeat the very purpose of compassionate appointment, which is to tide over sudden financial crisis. 97 The application for compassionate ground after considerable time cannot be entertained or expected, as it is not a source of recruitment, rather an exception to general rule regarding appointment by open invitation on merit.

98 In the background of the law laid down by the Hon'ble Supreme Court that the Scheme framed by the State Government is to be followed while giving appointment on compassionate ground, I find that the writ petitions deserve to be dismissed.

99 In W.P.No.17520 of 2011, it is seen that the mother of the petitioner had died on heart attack on 13.06.2003, whereas before the death, the petitioner was self employed and got married in the year 2002. It is also not disputed that at the time of death of the mother of the petitioner, there was ban on recruitment which was lifted only in the year 2006. 100 The writ petition filed by the petitioner was allowed with direction to consider his case in accordance with law by treating the application was within the time, thus, order rejecting his request on 15.04.2008 was again set aside with direction to consider the claim of the petitioner for appointment on compassionate ground. 101 Finally, the order passed is that the case of the petitioner should be considered on the basis of seniority in pursuance to G.O.Ms.No.185. The G.O.Ms.No.185 dated 04.10.2006 is prima facie unconstitutional being violative of Article 14 and 16 of [Constitution of India](#), as it creates a new class of reservation in appointment for the family members of an employee who dies in harness. The G.O.Ms.No.185 is therefore, contrary to the very object of the scheme of compassionate appointment, i.e. to tide over immediate financial crisis. This order also contrary to the scheme stipulating conditions required to be fulfilled for making application for compassionate appointment are not taken note of.

102 As already observed that the petitioner was admittedly, self-employee and married before the death of her mother and no material was placed on record to

prove the income from self employment. Therefore, in view of the settled law by the Hon'ble Supreme Court, the compassionate appointment cannot be granted to the person after a lapse of so many years when the financial crisis is over and the family is able to sustain for all these years, W.P.No.17520 of 2011 deserves to be dismissed.

103 W.P.No.4620 of 2007 also shows that father of the petitioner died on 6.11.1996. It discloses that the family was granted pension. The petitioner filed representation for compassionate appointment as P.G. Assistant. The request was rejected on the ground that no compassionate appointment could be granted to the post of P.G. Assistant. No fault can be found with this finding. Admittedly, the Hon'ble Supreme Court was pleased to lay down that the appointment on compassionate ground can be made only to 'C' and 'D' categories of posts and not as per the qualification as claimed by the petitioner, as the object is only to tide over the sudden financial crisis. There is no merit in this writ petition also.

104 Even otherwise, compassionate appointment cannot be claimed or offered after a lapse of more than 16 years from the date of death of the Government employee. Therefore, this writ petition also deserves to be dismissed.

105 In W.P.No.1222 of 2007 also, father of the petitioner died in the year 2000. It is also disclosed in the petition that application for compassionate appointment was made on 12.10.2007, i.e. after a lapse of 7 years. It is not understood in view of the settled law, how such an application is maintainable or can be considered or writ in the nature of mandamus can be issued directing the respondents to consider the representation filed by the petitioner. This petition also does not have any merit and deserves to be dismissed.

106 In W.P.No.26802 of 2011 also, father of the petitioner died on 01.09.1992, when the petitioner was aged 5 years. The case of the petitioner is that he filed an application for appointment on compassionate ground on attaining majority.

107 It is pleaded that the writ petition has been filed on the instruction of the department to approach this Court to consider the case for appointment on compassionate ground. The writ does not disclose the name of person who gave

advise to the petitioner.

108 In W.P.No.49346 of 2006, the father of the petitioner died on 6.3.1984. The petitioner applied for appointment on compassionate ground, after the lapse of 15 years of death of his father. It is also disclosed that petitioner has one sister who had also married and living independently. The application was rejected on the ground that it was highly belated. 109 The petitioner has challenged the order of rejection only on the ground that some persons were appointed on compassionate ground after 11 years and one case after 18 years and therefore, there is no hard and fast rule for appointment on compassionate ground. This writ petition on the face of it is misconceived and contrary to the settled law. No fault can be found with the impugned order, as the application was admittedly, filed after the lapse of 15 years of death of his father. This writ petition also deserves to be dismissed.

110 Though it is claimed that scheme of Tamil Nadu Electricity Board to give appointment to minor child on attaining majority, but no such scheme has been placed on record. In any case, any such scheme would be unconstitutional and violative of article 14 and 16 of the [Constitution of India](#), as the State is not competent to make reservation for appointment on compassionate ground, as compassionate appointment is an exception to general rule, cannot be interpreted to override general rule vide which eligible persons can be considered for appointment.

111 Consequently, these writ petitions are ordered to be dismissed, but with no order as to cost.

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