

Before P.B. Bajanthri, J.

MAYA DEVI—Petitioners

versus

STATE BANK OF PATIALA AND OTHERS—Respondents

CWP No. 26213 of 2016

November 7, 2017

Constitution of India, 1950—Art.14—Scheme for appointment on Compassionate Grounds in exceptional Cases—Criteria being, employee dying while performing duty as a result of violence/terrorism and secondly, employee dying within 5 years of his first appointment or before reaching the age of 30 years—Held, the main object of compassionate appointment is to relieve the members of the family of an employee from economic distress—Petitioner (wife of the deceased employee) was denied appointment as the employee was aged 44 years and remained in service for more than 16 years—Such exceptional criteria was set aside being arbitrary and contrary to the object of compassionate appointment—Respondents were directed to consider the case of the petitioner.

Held that, in view of the various decisions cited supra, in the circular dated 03/04.08.2011 (Annexure P/4) para no.2(ii) exceptional case would be unreasonable and it is contrary to object of compassionate appointment like the very object of compassionate appointment is to relieve the members of the family of an employee who dies leaving his family in penury, from economic distress. The object of securing social justice is defeated while restricting dependent of deceased employee to secure compassionate appointment if the deceased employee has completed more than five years of his first appointment or before reaching the age of 30 years. Whereas in the present case, deceased employee was a Peon and was a class IV employee and died at the age of 44 years, he had remain 16 years of service. He died while leaving behind his wife and two minor children. Due to exceptional clauses for the purpose of compassionate appointment in particularly para 2(ii) of the Circular which is hurdle for class of persons, her case was rejected. Imposing such criteria would defeat the very object of giving compassionate appointment to dependent distress family of a deceased employee. Government of India and other States have also evolved scheme for appointment on compassionate ground. None of the scheme provides exceptional

clauses like para 2(ii) to the extent employee dying within five years of his first appointment or before reaching the age of 30 years. Therefore, it is highly unreasonable and arbitrary to introduce such criteria.

(Para 17)

R.K. Gautam, Advocate,
for the petitioner.

H.N. Mehtani, Advocate,
for the respondents.

P.B. BAJANTHRI, J. (ORAL)

(1) During pendency of this writ petition, respondents-State Bank of Patiala which is sister concern of State Bank of India was amalgamated into State Bank of India w.e.f. 22.02.2017. In this regard, learned counsel for the respondents intends to represent State Bank of India in the present case.

(2) In the instant writ petition, petitioner has prayed the following reliefs:-

"i) issue a writ in the nature of certiorari thereby quashing the impugned circular No. PER/15 dated 03/04.08.2011 (Annexure P-4) to the extent of providing appointment on compassionate ground in exceptional cases and the impugned circular No. PER/4/15-16 dated 24.04.2015 (Annexure P-5), depriving the petitioner and other similarly situated person, who do not fall under the so called exceptional cases and the impugned order dated 23.06.2016 (Annexure P-8), rejecting the just and legitimate claim of the petitioner by passing a totally vague and non speaking order, as per the grounds taken in the writ petition;

ii) issue a writ in the nature of mandamus, thereby directing the respondents, to treat the petitioner as eligible, for consideration of her case, for appointment on compassionate ground and direct the consideration on merits and issue the offer of appointment within the specified time as may be fixed by this Hon'ble Court."

(3) Petitioner's husband late Sh. Gurmail Singh was appointed as a Peon/Frash on 07.03.1998 and he had joined service on 16.03.1998 in the State Bank of Patiala, Branch Jalandhar. Petitioner's husband died on 03.06.2016 while leaving behind the petitioner and two minor

daughters who are aged about 14 and 12 years.

(4) Petitioner submitted application for compassionate appointment on 17.06.2016. Her application was rejected on 23.06.2016 on the score that petitioner do not fulfill the criteria for compassionate appointment vide SBP scheme for compassionate grounds in exceptional cases circular No./PER/04 dated 24.04.2015 (Annexure P/8). Petitioner is feeling aggrieved by one of the criteria [2(ii) of the Circular No. PER/15 dated 03/04.08.2011] and rejection of her claim for compassionate appointment vide communication dated 23.06.2016 (Annexure P/8). Hence, present petition.

(5) Learned counsel for the petitioner submitted that deceased employee joined respondent-Bank at the age of 26 years as a Peon/Frash and he died at the age of 44 years, still he had 16 years of service. In this background, petitioner has no income after her husband's death except retiral benefits. Whatever the dues which were due to the deceased employee after death has already been adjusted towards the loan raised by the petitioner. Thus, petitioner has to borne her responsibility by giving education to her two minor daughters and to lead her life. The respondents have evolved a scheme on compassionate grounds in exceptional cases vide circular dated 03/04.08.2011 (Annexure P/4), exceptional cases are:

- (i) employee dying while performing his official duty, as a result of violence, terrorism, robbery, dacoity;
- (ii) employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a departmental spouse and/or minor children.

The respondent - Bank have taken note of the category of exceptional cases so as to contend that petitioner do not fulfill the criteria. Consequently, her request for compassionate appointment has been rejected. Perusal of second criteria, it is crystal clear that there is no rational in fixing criteria, namely, employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later. Such criteria would be arbitrary for the reasons that minimum age for recruitment is around 18 to 30 years and for SC/ST/OBC is maximum age would be around 38 to 40 years. With reference to this minimum age and maximum age for recruitment should have been stipulated. Suppose, if an employee joined

respondent-Bank service at the age of 30 years and if he died after serving one year of service or five years of service, in that event, legal heirs of deceased employee are not entitled to claim compassionate appointment. Therefore, criteria is highly arbitrary. It was further 3 of 23 contended that the object of providing compassionate appointment is to meet immediate harness in the deceased family as and when deceased employee died. The employer has to verify the financial status of the deceased employee both assets and liabilities and not the criteria of an employee dying within five years of his first appointment or before reaching the age of 30 years. No doubt, no right is created for compassionate appointment at the same time when the respondents-Bank have evolved a scheme on compassionate appointment in order to meet social justice at the same time, criteria should be reasonable and it should meet the object of the compassionate appointment scheme. Death of an employee would be unexpected. Therefore, exceptional cases mentioned in the scheme do not meet the objectives in extending compassionate appointment. Government of India and State Government and various organizations evolved scheme for compassionate appointment none of the scheme stipulate the conditions / criteria like the impugned criteria.

(6) Insofar as challenge to condition No.2(ii) of circular dated 03/04.08.2011 (Annexure P/4) to the extent that it is arbitrary, illegal and irrational, learned counsel for the petitioner relied on the following decisions:-

I. The State of West Bengal vs. Anwar Ali Sarkar, reported in AIR 1952 SC 75 (Constitution Bench):

"It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or

according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.

" II) Budhan Chaudhary vs. State of Bihar reported in AIR 1955, SC 191 (Constitution Bench):

"It is now well established that while Article 14 of the Constitution forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and, (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely geographical, or according to objects or occupations or the like. What is necessary is that there must be nexus

between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemn discrimination not only by a substantive law but also by a law of procedure." **III. D.S. Nakara vs. Union of India, reported in AIR 1983 SC 130 (Constitution Bench), Para Nos. 15 and 16 read as under:-**

"15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differntia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexUs to the object sought to be achieved by the statute in question.

16. As a corrolary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succor. Legislative and executive

action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCR 1014 at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In view of the Supreme Court rulings (supra), criteria mentioned at para no. 2(ii) of circular dated 03/04.08.2011 (Annexure P/4) is liable to be set aside.

(7) Per contra, learned counsel for the respondents while resisting the petitioner's claim, it was submitted that for seeking compassionate appointment, no right has been created. In order to streamline the implementation of compassionate appointment, the respondents-Bank have incorporated two exceptional cases under which compassionate appointment could be given, namely, para no.2 (i) and 2(ii) of circular dated 03/04.08.2011. There is no arbitrariness in the criteria 2(ii) of the circular dated 03/04.08.2011. The object of criteria 2(ii) is to see that deserving deceased employee's family members are entitled to compassionate appointment. Therefore, there is no arbitrariness in assigning the number of years of service and age criteria. Thus, the respondents have rightly rejected the petitioner's claim that petitioner's case would not fall under the criteria 2(ii) of circular dated 03/04.08.2011. Learned counsel for the respondents relied on the following decisions:-

I. State Bank of India and others vs. Surya Narain Tripathi reported in 2014(3) R.S.J., 208, Para No.9 reads as under:-

"9. As stated earlier, the deceased left behind a large family. The fact however, remains that by now 15 years have gone since then. Besides the Bank has made appropriate financial provision at par with similar arrangement that was noted

by this Court in the case of M.T. Latheesh (supra). Therefore it is not possible for us to say that the Court could have directed the Bank to consider compassionate appointment. In the circumstances, the appeal is allowed. The judgment rendered by the learned Single Judge as well as the Division Bench are set aside. The writ petition No. 5045 of 1999 filed by the respondent shall stand dismissed."

II. Canara Bank and another vs. M. Mahesh Kumar reported in 2015 (3) SCT 186, Para No. 4 reads as under:-

"4. Learned counsel for the appellant-bank contended that consideration for appointment on compassionate ground is contrary to Articles 14 and 16 of the Constitution of India and is only in the nature of concession and, therefore, it does not create a vested right in favour of the claimant/respondent. It was submitted that 'Dying in Harness Scheme' is a non-statutory scheme and is in the form of a concession and it does not create a vested right in favour of the claimant/respondent to be enforced through a writ of mandamus. It was further submitted that the compassionate appointment is justified when it is granted to provide immediate succour to the deceased-employee and cannot be granted on the passage of time and in all these cases, the concerned employee died about two decades ago and, therefore, the High Court was not justified in directing the appellant-bank to reconsider the claim of the respondent for compassionate appointment. In support of his contention, learned counsel for the appellant relied upon number of judgments: Umesh Kumar Nagpal vs. State of Haryana and others, (1994) 4 SCC 138; Steel Authority of India Ltd. vs. Madhusudan Das & Ors., (2008) 15 SCC 560; Union of India & Anr. vs. B. Kishore, (2011) 4 SCALE 298; State of Haryana vs. Naresh Kumar Bali, (1994) 4 SCC 448; State Bank of India & Ors. vs. Jaspal Kaur, (2007) 9 SCC 571 and State Bank of India & Anr. vs. Raj Kumar, (2010) 11 SCC 661."

III. Umesh Kumar Nagpal vs. State of Haryana and others, reported in 1994 (3) RSJ,317, Para No. 2 reads as under:-

"2. The question relates to the considerations which should

guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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 dependents 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 dependents 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 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 dependent 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."

In view of the above facts and circumstances, petitioner has not made out a case so as to interfere with policy.

(8) Heard learned counsel for the parties.

(9) For consideration of the petitioner's claim in the petition, it is necessary to reproduce the circular No.PER/15 dated 03/04.08.2011, which reads as under:-

"State Bank of Patiala
Personnel Admn. Department
Head Office, The Mall, Patiala - 147 001
Email: cmpersnl@shp.co.in Telephone: 2214776 Exts 284-290

Circular No./PER/15
Dated:03/04.08.2011

**SBP SCHEME FOR APPOINTMENT ON
COMPASSIONATE GROUNDS IN EXCEPTIONAL
CASES.**

Please refer to Circular No.Per/33 dated 24.11.2005 containing inter-alia Scheme for payment of ex-gratia lump sum amount in lieu of appointment on compassionate grounds.

1. The matter has been examined afresh and the Executive Committee of the Board in its meeting held on 29th July, 2011 has approved scheme for appointment on compassionate grounds in exceptional cases. The "SBP Scheme for Appointment on Compassionate Grounds in Exceptional Cases" shall be effective from 06.10.2005, the date on which the scheme of payment of ex-gratia lump

sum amount replaced the earlier scheme of compassionate appointment scheme.

2. We enclose, for your information and necessary action the scheme for appointment on compassionate grounds in exceptional cases. The scheme will be applicable in the following cases:

i. **Employee dying while performing his official duty, as a result of violence, terrorism, robbery, dacoity.**

ii. **Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a departmental spouse and/or minor children.**

3. The cases of death related to the period prior to 06.10.2005 will not be considered or compassionate appointment under the scheme.

4. The cases where the dependents have been paid ex-gratia lump sum amount will not be considered for compassionate appointment under the scheme.

5. Application for employment under the scheme in respect of past eligible cases of death on and after 06.10.2005 and up to 29.07.2011 shall be obtained by the Branch/Office, where the deceased employee had last worked. The concerned branch / office shall immediately contact the family of the deceased employee and provide them prescribed applications and complete all necessary formalities in this regard. Any laxity / delay in communicating this scheme to the family of the deceased employee will be viewed seriously.

The time limit for last date of submission of applications by the dependents / family in respect of past cases is 31st December, 2011.

The time limit for submission of applications by the dependents / family in respect of death cases after 29.07.2011 will be six month from the date of death.13 of 23

6. All the Branch Managers and Departmental Heads at Head Office/Regional Offices are advised to bring the

contents of this Circular to the notice of all concerned and act accordingly.

Sd/-

General Manager,
(Operations)."

Scheme for compassionate appointment on compassionate ground in the respondents-Bank is only with reference to exceptional cases, namely, employee dying while performing his official duty, as a result of violence, terrorism, robbery, dacoity. Further, if an employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a departmental spouse and/or minor children. Petitioner's claim for compassionate appointment has been declined with reference to later portion of the exceptional cases i.e. petitioner's husband's service condition to the extent that he had entered into service at the age of 26 years and he had died at the age of 44 years.

(10) Stipulation of exceptional cases where employee died within five years of his first appointment or before reaching the age of 30 years, whichever is later, would be arbitrary, illegal and irrational or not is the issue in the present case.

(11) The very object of compassionate appointment is to provide certain relief to the members of the family of a deceased employee as he/she is leaving in penury, from economic distress. The compassionate appointment being a measure designed to give relief from financial destitution, it is aimed at securing social justice. In fact, the object of appointment on compassionate ground is to meet the immediate need for an appointment, analysing dependents status and further requisite qualification possessed by one of the dependent of deceased employee or not. It was also required to be examined whether unexpectedly the family of the concerned employee have been put to extreme financial distress or not and not whether deceased employee served for number of years of service and his/her age.

(12) Learned counsel for the respondents submitted that petitioner was extended all monetary benefits which is about Rs. 3 lacs and odd. Further, her income is around Rs.10,000/- per month. Therefore, she is not deserving for compassionate appointment. On the other hand, perusal of the record it is evident that the deceased

employee had already raised various loans and the respondent-Bank have adjusted the whole amount which were dues of the deceased employee to such loans. Thus, the petitioner has not been paid any amount and moreover petitioner's claim was rejected with reference to para 2(ii) of criteria. Therefore, the above contention of the respondents isto be rejected.

(13) Exceptional clause 2(ii) which is hurdle for petitioner's appointment which is under challenge is required to be examined with reference to Article 14 of the Constitution of India as it is a guarantee against arbitrariness in the action while preparing scheme for compassionate appointment. Even though Article 14 of the Constitution permits classification, it completely prohibits class legislation. The classification is to be reasonable, must be based on some real and substantial bearing and reasonable relation to the object sought to be achieved. The classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Such differentia must have a rational relation to the object sought to be achieved. There must be a clear nexUs between the basis of classification and the object sought to be achieved. It is well settled that the power of judicial review could be extended to test as to whether the classification is founded upon reasonable, intelligible differentia and whether it has got nexUs to the object sought to be achieved. Supreme Court in the case of *Union of India* versus *Dinesh Engineering Corporation*¹ dealt with the scope of judicial review in respect of policy matters wherein it is held as under:-

"There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinies whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record."

¹ (2001) 8 SCC 491

(14) No doubt, the compassionate appointment is not a regular source of recruitment, that it is an exception to the general rule of recruitment and cannot be claimed as a matter of right. However, if the action of the employer is found to be arbitrary on a challenge being laid, in such circumstances, Court can strike down the relevant specification/clause/criteria. At the same time, Court cannot go beyond the policy, however, when there is a challenge to the criteria, in that event, it is necessary to examine the criteria whether it is a reasonable and so also is there any arbitrariness or not.

(15) Supreme Court in the case of *The State of West Bengal vs. Anwar Ali Sarkar* (supra) examined that Article 14 prohibits class legislation but not reasonable classification. For the purpose of examination test of reasonable classification, two conditions were required to be fulfilled, namely, the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from those left out and the other one is the differentia must have a rational relation with the object sought to be achieved by the legislation.

(16) Supreme Court in the case of *Sushma Gosain and others* versus *Union of India and others*² held in para no.9 as under:-

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment.

The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

Supreme Court held that criteria of compassionate appointment would be with reference to "to mitigate the hardship due to death of the bread earner" and not with reference to service and age criteria. Supreme Court in the case of *MGB Gramin Bank* versus *Chakrawarti Singh*³, held in para no.6 as under:-

"6. Every appointment to public office must be made by

² (1989) 4 SCC 468

³ (2014) 13 SCC 583

strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

Supreme Court in the case of *Bhawani Prasad Sonkar* versus *Union of India and others*⁴, held in para no. 15 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 recognized 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

⁴ (2011) 4 SCC 209

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."

Supreme Court in the case of *Umesh Kumar Nagpal* versus *State of Haryana and others*⁵, held in para no.2 as under:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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 dependents 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

⁵ (1994) 4 SCC 138

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 dependent 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."

Supreme Court in the case of *Balbir Kaur and another* versus *Steel Authority of India Ltd. and others*⁶, held in para no. 13 as under:-

"13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the

⁶ (2000) 6 SCC 493

management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation".

In the aforesaid decisions, Supreme Court has examined under what circumstances compassionate appointment could be given, even the object of compassionate appointment has been considered. Overall criteria is to meet immediate harness in the family and financial status.

(17) In view of the various decisions cited supra, in the circular dated 03/04.08.2011 (Annexure P/4) para no.2(ii) exceptional case would be unreasonable and it is contrary to object of compassionate appointment like the very object of compassionate appointment is to relieve the members of the family of an employee who dies leaving his family in penury, from economic distress. The object of securing social justice is defeated while restricting dependent of deceased employee to secure compassionate appointment if the deceased employee has

completed more than five years of his first appointment or before reaching the age of 30 years. Whereas in the present case, deceased employee was a Peon and was a class IV employee and died at the age of 44 years, he had remain 16 years of service. He died while leaving behind his wife and two minor children. Due to exceptional clauses for the purpose of compassionate appointment in particularly para 2(ii) of the Circular which is hurdle for class of persons, her case was rejected. Imposing such criteria would defeat the very object of giving compassionate appointment to dependent distress family of a deceased employee. Government of India and other States have also evolved scheme for appointment on compassionate ground. None of the scheme provides exceptional clauses like para 2(ii) to the extent employee dying within five years of his first appointment or before reaching the age of 30 years. Therefore, it is highly unreasonable and arbitrary to introduce such criteria. Thus, clause 2(ii) of the circular dated 03/04.08.2011 (Annexure P/4) is struck down as the criteria is absolutely capricious and not informed by objects or totally arbitrary of Article 14 of the Constitution. In view of setting aside of clause (ii), order dated 23.06.2016 (Annexure P/8) is set aside. Consequently, respondents- Bank are hereby directed to reconsider the petitioner's name for compassionate appointment within a period of three months from the date of receipt of certified copy of this order.

(18) Writ petition stands allowed.

Payel Mehta