

M. KENDRA DEVI

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v.

THE GOVERNMENT OF TAMIL NADU AND OTHERS

(Civil Appeal No(S). 1918 - 1919 of 2022)

MARCH 10, 2022

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[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Service Law: Tamil Nadu State and Subordinate Services Rules, 1955 – r.35(aa) – Seniority – Appellants were selected as Assistant Engineer – They were direct recruits of first batch selected in 1991-1992 and the second batch in 1993-1995 but got appointment in 1995 and 1998 – Candidates appointed on compassionate basis stood regularized from 1993 – Seniority assigned to compassionate appointees in the seniority list published on 1 January 2004 – Claim by appellants-direct recruits for seniority qua compassionate appointees – High Court, keeping the humanitarian consideration, declined to interfere and dismissed claim – On appeal, held: The compassionate appointments were made after the judgment in Nagpal's case – In Nagpal's case, compassionate appointments were restricted to the posts in Class III and Class IV with an object to give relief to the family of the deceased – The judgment in Nagpal's case became the law and binding on the state government under Art.141 – Therefore, compassionate appointments were made de hors the said judgment by the state government under its executive fiat, prima facie, not sustainable in law – However, at the same time, the compassionate appointments and the regularisation were not challenged and the question was raised after long time and after seniority list came to be published – Moreover, there was no allegation of their ineligibility for post of Assistant Engineer – Thus, in the peculiar facts and circumstances, compassionate appointees are entitled to seniority as per the list for the reason that all compassionate appointments were made at different point of time, and if that is taken at its face value, there was no infirmity in the seniority – Prior to the joining of the appellants, first and second batch of compassionate appointments was regularized – The seniority being consequential was rightly assigned to the compassionate appointees – Taking into consideration the humanity aspect and the fact that compassionate

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- A *appointees are in service for more than two decades, seniority list not disturbed and not interfered – Constitution of India – Art. 141.*

Dismissing the appeals, the Court

HELD: 1. This Court can take a judicial notice that

- B appointments were earlier made in Class II posts which are under purview of the Commission and that was the reason for which this Court in Nagpal's case came heavily while holding that compassionate appointment is not a vested right and held that such appointments shall be restricted to the posts in Class III and Class IV with an object to give relief to the family of the C deceased from financial destitution who have suddenly lost their breadwinner and to help it to get over the emergency. The compassionate appointments made on the post of Assistant Engineer after the judgment of this Court in *Nagpal's case* which became the law and was binding upon the State Governments under Article 141 of the constitution. If the appointments are D made *de hors* the judgment of this Court by the State Government under its executive fiat, *prima facie*, are not sustainable in law and that indeed denies consequential seniority. [Paras 28, 31 and 35][272-E-F; 274-F; 275-H; 276-A]

- E *Umesh Kumar Nagpal v. State of Haryana and Others*
[1994] 3 SCR 893 - referred to.

2. In the peculiar facts and circumstances, the question still emerges as to whether such compassionate appointees are entitled to claim their seniority in the cadre of Assistant Engineers as published on 1st January, 2004. The question appears to be

- F affirmative for the reason that all compassionate appointments were made at different point of time. The first batch of compassionate appointees regardless of their nature of appointment stood regularized w.e.f. 16th July, 1993 and the second batch of compassionate appointees were treated to be G regular from the date of their initial appointment and became entitled to claim consequential seniority in terms of Rule 35(aa) of the scheme of Rules, 1955 and if that is taken at its face value, there appears no infirmity in the seniority which has been assigned to the compassionate appointees published on 1st January, 2004. [Paras 39, 40][277-B-E]

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3. The fact which has come on record and reflected from the seniority list dated 1st January, 2004 is that the appellants are direct recruits who joined service after their selection on the recommendations made by the Commission and prior to their becoming member of service, first and second batch of compassionate appointments stood regularized and that being so, the seniority being consequential has been rightly assigned to the compassionate appointees, vis-à-vis, direct recruits as reflected in the seniority list published on 1st January, 2004, which is in conformity with Rule 35(aa) of Rules 1955. [Para 41][277-E-G]

4. Although this court deprecates the practice of State Government in making such compassionate appointments under Group ‘B’ post after the judgment of this Court in *Nagpal’s case*, still this Court refrain to disturb the seniority list which has been assigned to the respective compassionate appointees, vis-à-vis, direct recruits Assistant Engineers to whom consequential seniority has been assigned undisputedly under Rule 35(aa) of Rules, 1955 which may not call for interference, at this belated stage, after each of them is in service for more than two decades and indeed right is being conferred to each of them and an individual although a beneficiary but was not at fault at any given point of time either at the time of entry into service or thereafter. [Paras 46 and 47][279-B-D]

Case Law Reference

[1994] 3 SCR 893

referred to

Para 10

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1918- F
1919 of 2022.

From the Judgment and Order dated 22.01.2013 of the High Court of Judicature at Madras in W.A. Nos.1826 and 1827 of 2011.

With

Civil Appeal Nos.1920-1922 of 2022.

Guru Krishna Kumar, Sr. Adv., Y. Arunagiri, Raghunatha Sethupathy B., P. Soma Sundaram, Anand Sathiaseelan, Rajat Sehgal, Pranav Sachdeva, N. Subramaniyan, Jatin Bhardwaj, Ms. Neha Rathi, Advs. for the Appellant.

- A Amit Anand Tiwari, AAG, Rakesh K. Sharma, T. Harish Kumar, Navneet Dugar, Dr. Joseph Aristotle S., Ms. Mary Mitzy, Ms. Devyani Gupta, D. Kumanan, R. Chandrachud, D. Venkata Krishna, Venkateshwara Moorthy, V. Ramasubramanian, Sriram P., S. Gowthaman, G. Venkateswara Moorthy, Ms. M. Venmani, Advs. for the Respondents.
- B The Judgment of the Court was delivered by
RASTOGI, J.
1. Leave granted.
- C 2. The instant appeals have been preferred by the officers who are direct recruits selected as Assistant Engineers after going through the process of selection held by the Tamil Nadu Public Service Commission(hereinafter being referred to as the “Commission”), claiming their seniority qua such of the candidates who were appointed as Assistant Engineers at different points of time as compassionate appointees and
- D prayed that in the seniority list of Assistant Engineers which came to be published by the State authorities as on 1st January 2004, the present batch of appellants who are direct recruits appointed as Assistant Engineers be ranked senior to the candidates who were appointed as Assistant Engineers on compassionate ground.
- E 3. Their grievance primarily is that after the process of selection was initiated by issuance of an advertisement by the Commission, such of the candidates who had either not participated in the process of open selection or had failed to qualify but because of losing their breadwinner, have been directly appointed as Assistant Engineers as compassionate appointees and are placed en bloc senior to the direct recruits Assistant Engineers and that is in violation of Articles 14 and 16 of the Constitution and of Rule 35 of the Tamil Nadu State and Subordinate Services Rules, 1955(hereinafter being referred to as the “Rules 1955”).
- F 4. Seniority either inter se or between direct recruits and promotees or recruitment made by different sources is being governed by a statutory scheme of rules laying down the principles according to which the seniority list has to be determined but experience shows that it has never been finalized and always remain a subject matter of challenge and that challenge is not restricted upto the High Courts, but such challenges are always settled after the final judgment of this Court and this creates a lot
- G H of disharmony amongst the officers and since this Court is also not in a

position to settle such matters at the earliest, delay remains inevitable and becomes fatal to the right of individual and indeed impairs the efficiency, commitment and devotion with which the employee is supposed to work and discharge his public duty to the satisfaction of the authority.

5. The case before us is also a live illustration of this kind. The service condition of the Assistant Engineers who became member of the Tamil Nadu Highways Engineering Service are governed by the Special Rules to the Tamil Nadu Highways Engineering Service and the post of Assistant Engineer with which we are presently concerned is indicated in the Schedule appended thereto in category (5) which provides the modes of recruitment to the service which reads as under:-

5.	Assistant Engineers	...	<p>1. Direct recruitment; or 2. Recruitment by transfer –</p> <p>(i) from the Junior Engineers who possess B.E., Degree or a pass in Sections A and B of the A.M.I.E. (India) Examination renamed as a pass in Sections – A and B of the Institution Examination or from Assistant Engineers in the Tamil Nadu Engineering Service working in the Road Section; or from Assistant Engineers in the Tamil Nadu Engineering service working in the Highways and Rural Works Department or from Assistant Engineers who are probationers in the Tamil Nadu Engineering Service; or</p>
			<p>EXPLANATION :</p> <p>Notwithstanding anything contained in rule - 2(15) in Part-I of the Tamil Nadu State and Subordinate Service Rules, the appointment of such Assistant Engineers from the Tamil Nadu Engineering Service shall be regarded as recruitment by transfer;</p>
			<p>ii. from Assistant Engineers or overseers of the Tamil Nadu Minor Irrigation subordinate Service working on or before the 1st April 1961 or from panchayat Overseers; or</p>
			<p>iii. from the Head Draughting Officer or Senior Draughting Officer of the Tamil Nadu Highways Engineering Subordinate Service who possess A.M.I.E. or B.E., degree with service for a period of not less than three years in the Tamil Nadu Highways Engineering Subordinate Service; or</p> <p>iv. for special reasons recruitment by transfer from any other service.</p>
			<p>Provided that no Minor Irrigation Overseer taken over to the Highways and Rural Works Department by recruitment by transfer of Overseer recruited direct, shall be eligible for appointment to the post of Assistant Engineer unless his name has been included in the seniority list maintained by the Chief Engineer (Highways and Rural Works Department). Persons who are qualified and fit for recruitment by transfer shall be selected from the said list for appointment as Assistant Engineers.</p>

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A		Provided further that Assistant Engineers may, in individual cases be temporarily appointed as Senior Draughting Officer, Draughting Officer or Junior Draughting Officer in the office of the Chief Engineer (Highways and Rural Works) by the Chief Engineer (Highways and Rural Works) according to the exigencies of service without prejudice to their appointment as Assistant Engineers and the Assistant Engineers so appointed shall draw the pay admissible to them as Assistant Engineers as long as they are retained as Senior Draughting Officer, Draughting Officer or Junior Draughting Officer as the case may be;
B		Provided also that Assistant Engineers may, in individual cases, be temporarily appointed as Senior Draughting Officer, Draughting Officer or Junior Draughting Officer according to exigencies of service without prejudice to their appointment as Assistant Engineers -
C		(i) by the Superintending Engineer concerned with the approval of the Chief Engineer (Highways and Rural Works) in his circle;
D		(ii) by the Chief Engineer (Highways and Rural Works) in respect of appointment in the Office of the Chief Engineer (Highways and Rural Works) and the Assistant Engineers so appointed shall draw the pay admissible to them as Assistant Engineers so long as they are retained as Senior Draughting Officer, Draughting Officer or Junior Draughting Officer as the case may be :
E		Provided also that the Draughting Officers, Junior Draughting Officers or Overseer in the Highways and Rural Works Department who have acquired A.M.I.E., or B.E., degree after the 2 nd August 1980 shall not be eligible for appointment as Assistant Engineers in the Highways and Rural Works Department and they shall be appointed, along with fresh candidates appointed by direct recruitment, to the post of Assistant Engineer in the Tamil Nadu Highways Engineering Service.
F	6. The appellants are aggrieved by the judgment impugned passed by the Division Bench of the High Court of Madras dated 22 nd January, 2013. They are direct recruits of first batch selected after going through the process of selection initiated in the year 1991-1992 and the second batch in the year 1993-1995 by the Commission but they were appointed in the year 1995 and 1998 and their names are mentioned at Sr. Nos. 194, 288, 336, 456 and 571 in the seniority list of Assistant Engineers as on 1 st January, 2004 published by the respondent State on 15 th April, 2004 which came to be determined in terms of Rule 35 (aa) of the Rules, 1955.	
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7. At the same time, the Government issued G.O. No.225 dated 15th February, 1972 in the first instance providing compassionate appointment in the services which are outside the purview of the Commission but that came to be later amended by G.O. No.1119 dated 20th May, 1981 permitting to appoint qualified professionals/dependents on temporary basis to the technical posts coming under the purview of the Commission with a proviso that such compassionate appointees have to appear later before the Commission in the open competition for regular appointment. But G.O. No.1119 dated 20th May, 1981 came to be further modified by G.O. No.156 dated 16th July, 1993 permitting compassionate appointees who are technically qualified dependents to be appointed on regular basis or such of the compassionate appointees who are appointed prior thereto, to get their service regularized after getting concurrence from the Commission in terms of Regulation 16(b) of the Tamil Nadu Public Service Commission Regulations, 1954.

8. In consequence thereof, such of the candidates who were temporarily appointed on compassionate basis pursuant to G.O. dated 20th May, 1981 stood regularized w.e.f. 16th July, 1993, the date on which the revised G.O. became effective and those who are appointed subsequent to G.O. dated 16th July, 1993 were considered to be regular appointees from the date of initial appointment as Assistant Engineers on compassionate ground.

9. All candidates who were appointed on compassionate ground as Assistant Engineers are falling under two categories:- (i) those compassionate appointees as Assistant Engineers who were appointed initially on temporary basis after 20th May, 1981 and stood regularized w.e.f. 16th July, 1993 and became member of service; and (ii) those who are compassionate appointees after 16th July, 1993 and their initial appointment itself is considered to be regular appointment for all practical purposes and they became member of service from the date of entry into service. The extracts of G.O. No.1119 dated 20th May, 1981 and G.O. No.156 dated 16th July, 1993 are reproduced hereunder:-

“GOVERNMENT OF TAMILNADU

ABSTRACT

Employment Assistants – Employment assistance to the Defendants of deceased Government Servants – Appointment to

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- A the dependants according to their educational qualifications –
Orders – Issued
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LABOUR AND EMPLOYMENT DEPARTMENT

G.O.Ms. No. 1119

Dated : 20.05.1981

- B Read Again
1. G.O.Ms.No. 225, Labour and Employment dated 15.02.72
 2. G.O.Ms.No. 560, Labour and Employment dated 03.08.77.

Read also:

- C 3. From the Secretary, Tamil Nadu Public Service Commission
Letter No. 8301 / B2 / 77 dated 28.12.77.
4. Govt. Letter No. 157 / N-I / 78-5, dated 22.07.78.
5. From the Secretary, Tamil Nadu Public Service Commission
- D Letter No. Lr.No. 8301 / B2 /77 dated 02.09.78.

ORDER:-

- E In the G.O. first read above, the Government have permitted the recruitment of son / unmarried daughter and near relative of the Government servant who died in harness without reference to Employment Exchange to all the posts when fall outside the purview of the Tamil Nadu Public Service Commission subject to certain conditions.
- F 2. In the G.O. second read above, the above concession was extended to families of the deceased Government Servants who died in harness prior to 15-2-72 and the concession was made applicable for the posts within the purview of the Tamil Nadu Public Service Commission also. It was also ordered therein that the dependant of the deceased Government servant can be appointed in any department if the qualifications of the applicant do not permit his/her appointment to a post in the same department in which his parent or husband or wife served or if he/she possesses better qualifications for appointment in the outside department provided the Head of the other Department also gives his concurrence. The dependant should however apply for

appointment only to the office in which the Government servant was in service at the time of his death, so that office can verify the facts in the petition like, date of death, the indigent circumstances of the family etc. In the Government letter fourth read above, the Tamil Nadu Public Service Commission was informed that the indigent circumstances under with the family of the Government servant died in harness and the destitute nature might warrant the appointment commensurate to the extent possible with the Educational/Technical qualification of the individual and that the appointment could be made available in any department, and hence the orders issued in G.O.Ms.No. 560 Labour and Employment dt. 3-8-77 in this regard need no revision.

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3. In the letter third and fifth read above, the Tamil Nadu Public Service Commission has express its view that the subject of the Government is to provide immediate means of livelihood when the bread-winner dies in harness and that it would be more than sufficient if a close relative of the deceased is provided with employment in a POST NOT HIGHER THAN THAT OF A JUNIOR ASSISTANT. The commission has also held that it would however, be open to the candidate, who is qualified for a higher post, to apply to it through normal course. The Commission is also of the view that the orders issued in the G.O.Ms.No. 560, Labour and Employment, dated 03.8.77 may result in the appointment of an individual possessing a degree outside the normal course, as Deputy Collector or to similar posts. If a graduate is appointed as Deputy Collector or Deputy Superintending of Police or to similar posts and if another graduate is appointed only as Junior Assistant taking into account the indigent circumstances of the family of the deceased, it would amount to discrimination. The Commission has, therefore, requested the Government to examine the matter in detail and issue suitable orders on the suggestion made by it.

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4. The Government have carefully examined the above suggestion of the Tamil Nadu Public Service Commission. They consider that it would be proper and fair to appoint the candidate with reference to the qualifications possessed by him/he and that it will not be administrative expedient to appoint the candidate possessing technical/professional Qualifications like B.E. M.B.B.S. etc., to the post of Junior Assistant. The Government therefore, in partial

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- A modification of the orders issued in G.O.Ms.No. 560 Labour and Employment dt. 3.8.77 direct that the defendant of the deceased Government servant who possess the technical and professional qualification be appointed temporarily without referring to Employment Exchange and Tamil Nadu Public Service Commission to the initial or starting category of post for which his qualifications are the minimum prescribed, either in the department where the parent at the time of his/her death or in any other departments, in which such posts exist, by way or illustration, if the defendants of the deceased Government Servants possess B.E. or M.B.B.S. or B.Sc (Agri) Degree they may be appointed
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 - C as Assistant Engineer, Civil Assistant Surgeons and Deputy Agricultural Officers respectively temporarily. Like wise Diploma holders will be appointed to the lowest category in the concerned subordinate service. All such candidates subsequently shall apply to the TNPSC in the normal channel and get selected for regular appointment in the post. As regards the defendants of the deceased Government servants who possess suitable requisite qualification other than technical/professional they shall be appointed as Junior Assistant regularly without reference to Employment Exchange subject to the concurrence of the Tamil Nadu Public Service Commission being obtained under the latter of regulation 16(b) of the TNPSC regulation 1954.
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- 5) This order take effect from the issue of the Government order.

Sd/-
 F Secretary to Government,
 Labour and Employment Department
 (BY ORDER OF THE GOVENOR)
 R. VARADARAJULU,
 SECRETARY TO GOVERNMENT.

G To,
 The All Heads of Department."

"GOVERNMENT OF TAMILNADU
ABSTRACT

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PUBLIC SERVICES – Appointment on compassionate grounds of procedure for appointment of a dependant who possess technical/professional qualifications – Regularisation of services in consultation with Tamil Nadu Public Service Commission – Orders – Issued.

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LABOUR AND EMPLOYMENT DEPARTMENT

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G.O.Ms.No.156

Dated: **16.07.93**

Read:-

1.G.O.Ms.No.1119 Labour and Employment 20.05.81

2. G.O.Ms.No.23 Labour and Employment dated 10.2.93

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Read Also:-

3. Tamil Nadu Public Service Commission, Madras Lr.no.1089/E4/92 dated 22.5.92.

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ORDER:-

In the Government order first read above it has been ordered that the dependant of a deceased Government Servant with technical or professional qualification be appointed temporarily to the initial or starting category of a post for which his qualification is the minimum prescribed in the Service Rules. It has also been ordered that such appointment would only to the Tamil Nadu Public Service Commission, subsequently in the normal channel and get themselves selected for regular appointment in the post.

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2. The inherent risk in this procedure is the possibility of non-selection of the dependant of the Tamil Nadu Public Service Commission in the normal channel. He/she will then lose the job and thus defeating the very purpose for which this scheme had been formulated. It would also run counter to the Government's instruction that persons appointed under compassionate grounds should not be ousted. Once the Government recognise the need to provide employment consistent with the qualifications possessed by the candidate, it does not seem fair to put one class of persons alone in jeopardy merely because they get appointment as Engineers, Civil Assistant Surgeons etc. on account of higher qualification possessed by them.

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- A 3. The Government have re-examined the existing procedure and addressed the Tamil Nadu Public Service Commission for its views. The Tamil Nadu Public Service Commission has in its letter read above agreed to dispense with the distinction mentioned above. The Government therefore direct that the orders issued in the G.O. first read above and these issued in Para 11 of the G.O. Second read above are partially modified to the effect that in the matter of appointment on compassionate grounds, the distinction made in respect of technically or professionally qualified candidates be dispensed with. The Government direct that the dependants of deceased Government Servants who are technically or professionally qualified be appointed by the appointing authorities concerned, in the lowest category of post/ or which his/her qualification is the minimum prescribed in the relevant service rules for direct recruitment, temporarily in the first instance, provided there are vacancies and the condition described for appointment on compassionate grounds are satisfied. Thereafter their services will be regularised with effect from date of appointment after obtaining the concurrence of the Tamil Nadu Public Service Commission under latter part of Regulation 16(b) of Tamil Nadu Public Service Commission Regulations, 1954.
- E 4. In the cases of dependants of technically and professionally qualified who have already been appointed subject to the condition that they will have to get themselves selected by the Tamil Nadu Public Service Commission, in the normal course, their services may be regularised with effect from the date of issue of this order, after obtaining the concurrence of Tamil Nadu Public Service Commission under latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission Regulations, 1954.

(BY ORDER OF THE GOVERNOR)

R.VARADARAJUL
SECRETARY TO GOVERNMENT

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To

All Heads of Department.

Sd/-

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Superintendent”

10. Despite the judgment of this Court reported in *Umesh Kumar Nagpal vs. State of Haryana and Others*¹ decided on 04th May, 1994 wherein it was specifically held that compassionate appointments shall be restricted to Class III and Class IV or Group ‘C’ and Group ‘D’ as per the nomenclature, the State Government still allowed this policy to continue and put restrictions on compassionate appointments confined to Group ‘C’ and Group ‘D’ posts by its G.O. No.61 dated 19th July, 2006. As a corollary, this Court can take a judicial notice that even after the judgment of this Court in *Nagpal’s case* (decided on 04th May, 1994) which indeed became the law and has a binding force under Article 141 of the Constitution, still the Government failed to take cognizance and allowed this practice of making compassionate appointment to Class II posts which was completely prohibited by this Court upto the date till G.O. stood revised on 19th July, 2006.

11. The seniority list of Assistant Engineers for the first time as on 1st January, 2004 came to be published by the State respondent on 15th April, 2004. Assistant Engineers who were appointed under compassionate ground initially on adhoc basis and regularized w.e.f. 16th July, 1993 have been separately categorized and their names are shown in the seniority list from Sr. Nos.172 to 181 and the second batch of candidates who were appointed under compassionate ground undisputedly after the judgment of this Court in *Nagpal’s case*(supra) in the year 1995 or thereafter, have been shown in a separate block commencing from Sr.Nos.288-307 and thereafter, the candidates who were selected through open selection in reference to the process of selection initiated in the year 1991-1992 came to be appointed in the year 1995 and the selection process of second batch of candidates initiated in the year 1993-1995 came to be appointed in the year 1998. Since the direct recruits of the said period became junior to compassionate appointees in the seniority list published by the State respondent as on 1st January 2004, that became the subject matter of challenge at the behest of the direct recruits Assistant Engineers by filing of their writ petitions before the High Court of Madras.

12. Initially, when the writ petitions were filed at their instance, the very appointment of compassionate appointees as Assistant Engineers was questioned and consequently, it was prayed that writ petitioners be placed higher in seniority qua compassionate appointees.

¹ (1994) 4 SCC 138

- A 13. The learned Single Judge dismissed the writ petitions on the premise that the compassionate appointments were made initially pursuant to G.O. dated 20th May, 1981 and later by G.O. dated 16th July, 1993 and are not open to challenge at a belated stage after such a long lapse of time and that was the reason which prevailed upon the learned Single
- B Judge not to interfere in the appointments of compassionate appointees as Assistant Engineers in the interregnum period and further it was held that seniority is consequential and assigned from the date of regular appointment in terms of Rule 35(aa) of Rules, 1955 being strictly in accordance with the rules and needs no interference.
- C 14. On appeal being preferred at the instance of the present appellants before the Division Bench, the Division Bench in its impugned judgment indeed has recorded its anguish and strong exception regarding the manner in which such appointments are made in the interregnum period to the posts of Assistant Engineer on compassionate ground overlooking the judgment of this Court in *Nagpal's case* (supra) but
- D keeping the humanitarian consideration and the fact that much water is flown in the Ganges and such compassionate appointments being made in accordance with the G.O dated 20th May, 1981 followed by G.O. dated 16th July 1993, the Division Bench was not inclined to interfere and accordingly, dismissed their appeals by judgment impugned dated 22nd January, 2013, which is a subject matter of challenge in appeals before us.
- E 15. Learned counsel for the appellants with usual vehemence at their command submit that compassionate appointments are exception to the open selection and is not a regular mode of recruitment prescribed under the statutory scheme of rules and undisputedly, the present batch
- F of compassionate appointees were appointed on adhoc basis merely on the basis of their academic qualifications and the first batch of compassionate appointees were regularized w.e.f. 16th July, 1993 and the second batch from the date of appointment in contradistinction to the regular selection held by the Commission and the time consumed in
- G completing the process of selection was beyond control of the applicants and their appointments are later made on the recommendations made by the Commission in the year 1995 or 1998 and at least, such compassionate appointees cannot have a march over them.
- H 16. Learned counsel further submits that compassionate appointment on the posts of Assistant Engineer from its inception was in

violation of Articles 14 and 16 of the Constitution with a limited exception being carved out to provide solace to get over the financial crisis who have lost their breadwinner and can be compensated by offer of compassionate appointment to the post in the category of Group 'C' and Group 'D' and that too because of medical invalidation of the breadwinner of the family and such compassionate appointments cannot be a boon to them and that too overstepping the rights of such of the applicants who are appointed through open selection after going through a cumbersome procedure of competitive selection process held by the Commission.

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17. Learned counsel for the appellants further submits that second batch of compassionate appointments undisputedly, were made in the year 1995 onwards and by that time, this Court came heavily upon the Governments in making appointment on compassionate ground in Class I/II services and by the intervention of this Court in *Nagpal's case* (supra), it was finally held that the compassionate appointments shall confine to the posts of Class III and Class IV and such appointments cannot be permitted to be a boon in seeking appointments in Class I and Class II posts.

18. Learned counsel further submits that despite the judgment of this Court became a law and binding upon the State Governments under Article 141 of the Constitution, still appointments made in the year 1995 & onwards in Class II to the post of Assistant Engineer, are ex-facie illegal and the explanation tendered by the Government regarding such compassionate appointments is nothing but a lame excuse and an eye wash and the appellants became aggrieved only when they were placed higher in seniority which came to be published as on 1st January, 2004 and, at least, in the given facts and circumstances, delay in no manner could be attributed to them and thus the finding which has been recorded by the learned Single Judge and affirmed by the Division Bench of the High Court under the impugned judgment is not sustainable in law and should be interfered by this Court.

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19. Learned counsel for the appellants in alternate, submits that looking to the tenure of service being rendered by the compassionate appointees, there may be a reason for which their appointment may not be likely to be interfered with but at the same time, it cannot be saved at the cost of causing injury to the present appellants who were appointed through open selection which took two to three years in its finalization and their appointments made after the entry of compassionate appointees

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- A into service in no manner can be read in detriment to their interest. At least, to this extent, the present appellants are entitled to save their seniority qua compassionate appointees who have no legitimate right to be retained in service and to serve as Assistant Divisional Engineers into service.
- B 20. Per contra, learned counsel for the respondents, while supporting the finding recorded by the High Court under the impugned judgment submits that compassionate appointments are made in accordance with the Government Order issued from time to time and such of the compassionate appointees joined service in the year 1985 or 1986 or thereafter and despite serving for sufficient long time, they were regularized after their suitability being adjudged pursuant to G.O. dated 16th July, 1993 and accordingly, seniority has been assigned to them and later appointees were substantively appointed from the date of appointment. At the same time, the present appellants have joined service and taken berth in the department much after their service being regularized and became member of service. Thus, in all circumstances, the seniority assigned to the compassionate appointees is in accordance with the scheme of Rule 35(aa) of Rules 1955.
- C 21. Learned counsel for the respondents further submits that after they have served for more than two to three decades and at this belated stage, it may not be open for the appellants either to question their appointment or consequential seniority to tinker with and submits that even their date of regularization/date of appointment is 16th July, 1993 or thereafter and, at the same time, the direct recruits who are in the first batch of appointees of 1991-1992 are appointed in the year 1995, and the second batch of direct recruits whose selection process was initiated in the year 1993-1995 were appointed in the year 1998 or thereafter. As such, by no stretch of imagination, such direct recruits could claim seniority above the compassionate appointees who joined service much prior thereto and became member of service on being regularized by the competent authority.
- D 22. In addition, learned counsel for the State submits that since the compassionate appointments have been made in accordance with the G.O. issued by the Government from time to time and seniority list of Assistant Engineers was accordingly published as on 1st January 2004, which is in conformity with the scheme of Rules, 1955 and after being

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affirmed by the High Court under the impugned judgment, needs no A further interference by this Court.

23. After the matter being heard by this Court and before we conclude that matter, we called upon the State counsel by order dated 23rd February, 2022 to file affidavit indicating as to what was the reason that after the judgment of this Court reported in *Nagpal's case* (supra) (decided on 04th May, 1994) wherein, it was specifically held that compassionate appointment shall be restricted to Class III and Class IV or Group 'C' and Group 'D', as the case may be, still the Government allowed this policy of making appointments in Class II to continue, until withdrawn by G.O. dated 19th July, 2006. B

24. Pursuant thereto, explanation has been furnished by the State respondent in paragraph (6) of the explanation and it has been stated that the judgment of this Court in *Nagpal's case* (supra) was communicated to the State Government by the Law Department vide its letter dated 27th September, 2001 and pursuant thereto, the Government put a ban on compassionate appointments except leaving certain category of posts such as teachers, doctors and police constabulary being essential posts by letter dated 29th November, 2001 and it has been informed by the learned counsel for the State that four compassionate appointments in the teachers category of Class II were made and later the decision was taken on 19th July, 2006 to restrict the compassionate appointments to the posts of Group 'C' and Group 'D' category. C

25. We have heard learned counsel for the parties and with their assistance perused the material available on record. D

26. Before we proceed, we make it clear that notice was issued by this Court on 20th September, 2013 and the limited issue that remain open for consideration is confined to inter se seniority of compassionate appointees vis-a-viz direct recruits. The order dated 20th September, 2013 passed by this Court reads as under:- E

"Delay condoned. F

Heard Mr. P. P. Rao, learned senior counsel in support of this special leave petition. Mr. Rao states that the petitioner is not challenging the appointment of respondent Nos.5 to 37. He, however, states that though they were appointed prior to the petitioner, their regularisation has come subsequent to her G

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- A appointment by G.O. dated 26.9.1996 with retrospective effect. The petitioner is aggrieved because though these respondents have been appointed on compassionate basis, in a highly irregular manner they are being given seniority over her though she is a direct recruit on merit. He is confining this petition only to the issue of seniority.
- B In view thereof, issue notice on the special leave petition. Issue notice on the prayer for interim relief also."
27. It is not disputed that the post of Assistant Engineer is in Class II category and as per the scheme of Rules 1955, it is to be filled by direct recruitment or through recruitment by transfer. These are two modes of recruitment permissible for holding regular selection under the scheme of rules and so far as the appointment through direct recruitment is concerned, it is to be made strictly through open selection by the Commission.
28. It is well settled that the compassionate appointment is an exception to the general rule of public employment through open selection in conformity of Articles 14 & 16 of the Constitution and the object of granting compassionate appointment is to enable the family to tide over certain crisis and to grant relief to the family against financial destitution who have lost their breadwinner. Compassionate appointments are invariably made looking to the eligibility of the dependent seeking employment and the post held by the deceased who was the member of service and this Court can take a judicial notice that appointments were earlier made in Class II posts which are under purview of the Commission and that was the reason for which this Court in *Nagpal's case* (supra) (decided on 04th May, 1994) came heavily while holding that compassionate appointment is not a vested right and held that such appointments shall be restricted to the posts in Class III and Class IV with an object to give relief to the family of the deceased from financial destitution who have suddenly lost their breadwinner and to help it to get over the emergency. In *Nagpal's case* (supra), this Court held as under:-
- G "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
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is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in 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 defendant 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

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- A in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

(emphasis supplied)

- B 29. In the instant case, the compassionate appointments were made to the post of Assistant Engineer which is categorized in Class II but undisputedly were made in terms of the Government Order dated 20th May, 1981 followed with G.O. dated 16th July, 1993 and the State Government finally withdrew these G.Os. pursuant to which compassionate appointments were restricted to Class III and Class IV in compliance of the judgment of this Court in *Nagpal's case* (supra) by C its G.O. dated 19th July, 2006.

- D 30. It is also not disputed that the compassionate appointments on the post of Assistant Engineer made prior to 16th July, 1993 were on adhoc/temporary basis and are regularized by a single stroke of pen pursuant to G.O. dated 16th July, 1993, and all later compassionate E appointments on the post of Assistant Engineer made after 16th July, 1993 were considered to be regular appointments from the date of initial appointment and since the seniority has to be assigned from the date of regular appointment in terms of Rule 35(aa) of the scheme of Rules 1955, in consequence thereof, the seniority to each of the compassionate appointee as Assistant Engineer was assigned from the date of regular appointment when published as on 1st January, 2004.

- F 31. This fact cannot be ruled out that the compassionate appointments made on the post of Assistant Engineer after the judgment of this Court in *Nagpal's case* (supra) which became the law and was binding upon the State Governments under Article 141 of the Constitution G but still it is unfortunate that Government of Tamil Nadu continued to make such compassionate appointments in Group ‘B’ posts thereafter from the year 1995 onwards which indeed were de hors the judgment of this Court but still allowed such compassionate appointments to continue who later became member of service and by this time, they are serving H for the last more than two decades. At the same time, their appointments have not been interfered at any stage in the course of proceedings initiated at the instance of the appellants and it is informed that they are further promoted and few of them are on the verge of retirement.

- I 32. If we look into the seniority list of Assistant Engineers which is a cause of grievance raised by the appellants, the first batch of Assistant

Engineers appointed on various dates under compassionate ground are indicated from Sr. Nos.172 to 174. These applicants were appointed initially from 14th December, 1988 to 9th September, 1992 and were regularized by a single stroke w.e.f. 16th July, 1993 and rest of them from Sr. Nos.175 to 181. Later, compassionate appointees are indicated from Sr. Nos.288-307 who were appointed from 20th February, 1995 to 12th January, 1998 and their initial appointment was considered to be the regular appointment. As regards the direct recruits, they are indicated in the category of 1991-1992 (Tamil Nadu Public Service Commission Selection), shown from Sr. Nos.182-202 who were appointed from 03rd May, 1995 to 07th March, 1996, undisputedly, much after the regular appointments of compassionate appointees in the first batch. So far as direct selection of second batch is concerned, they are shown in the category of the year 1993-1995 (Tamil Nadu Public Service Commission Selection) and their names are indicated from Sr. Nos.308-475 and all were appointed from 29th January, 1998 to 13th October, 1999.

33. To make it further clear so far as the candidates selected through the Commission are concerned, their seniority in the cadre of Assistant Engineer has been assigned according to the order of inter se merit assigned by the Commission but placed below the compassionate appointee Assistant Engineers who are indeed regularly appointed much prior to the entry of direct recruits appointed as Assistant Engineers on their open selection through the Commission.

34. The seniority list of Assistant Engineers, for the first time, came to be published as on 1st January, 2004 which has been placed on record and the cause of grievance projected by the appellants by filing writ petitions under Article 226 of the Constitution was that the appointments of compassionate appointees to the post of Assistant Engineer were void from its inception and not in conformity with Articles 14 & 16 of the Constitution and being an exception to the general rule of appointment in the public services to be made by open selection, disentitles compassionate appointees to claim seniority above the direct recruit Assistant Engineers in the seniority list published as on 1st January, 2004. The submission although did not find favour before the High Court.

35. We are of the view that after the judgment of this Court in *Nagpal's case* (supra) (decided on 4th May, 1994) became the law and binding on the State Governments, still if the appointments are made de hors the judgment of this Court by the State Government under its

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- A executive fiat, *prima facie*, are not sustainable in law and that indeed denies consequential seniority.

36. At the same time, this Court cannot be oblivious of the situation that the compassionate appointments in Group 'B' (Assistant Engineers in the instant case) were made, in the first instance, pursuant to G.O. dated 20th May, 1981 wherein it was specifically mentioned that such compassionate appointments shall be on ad-hoc basis just to overcome the financial crisis because the family has lost their breadwinner and such incumbent has to qualify and undergo the process of regular selection to be held by the Commission but later, by G.O. dated 16th July 1993, the stipulation of qualifying to hold the post after selection to become member of service was deleted. In consequence thereof, all such earlier appointments made in Group 'B' (Assistant Engineers in particular to which we are concerned), made prior to 16th July, 1993 were admittedly made on ad-hoc basis and because of stipulation being deleted under G.O. dated 16th July, 1993, all such compassionate appointees stood regularized by a single stroke by the Government w.e.f. 16th July, 1993 and later compassionate appointments which were made on the post of Assistant Engineers, their initial appointment was considered to be the regular appointment for all practical purposes.

37. Neither the G.O. dated 20th May, 1981 nor the latter G.O. dated 16th July, 1993 were the subject matter of challenge, and by the time the question was raised assailing compassionate appointments, much water was flown by that time and on the date when the seniority list came to be published of Assistant Engineers as on 1st January, 2004, such compassionate appointees, by that time had attained seniority in service for 7 to 12 years.

- F 38. This Court can take a judicial notice that appointments on compassionate basis as Assistant Engineers are made under the respective G.O.s. dated 20th May, 1981 or 16th July, 1993 and it is not the case of the appellants that when such compassionate appointments were made, either of them was ineligible at the time of initial appointment or appointed due to misrepresentation/concealment on the part of the appointee. By the time the matter has travelled to this Court, each of the compassionate appointee has now been in service for almost more than two decades and as informed, are further promoted and few of them are on the verge of their retirement. At this point of time, any adverse comments made at this stage may certainly jeopardize the right and

interest of the compassionate appointees, who were although beneficiaries but were never at fault that indeed lies with the State authorities in making compassionate appointments de hors the judgment of this Court which was the law and binding upon the State Government under Article 141 of the Constitution.

39. In the peculiar facts and circumstances, the question still emerges as to whether such compassionate appointees are entitled to claim their seniority in the cadre of Assistant Engineers as published on 1st January, 2004.

40. The question, in our *prima facie* view, appears to be affirmative for the reason that all compassionate appointments were made at different point of time. The first batch of compassionate appointees regardless of their nature of appointment stood regularized w.e.f. 16th July, 1993 and the second batch of compassionate appointees were treated to be regular from the date of their initial appointment and became entitled to claim consequential seniority in terms of Rule 35(aa) of the scheme of Rules, 1955 and if that is taken at its face value, there appears no infirmity in the seniority which has been assigned to the compassionate appointees published on 1st January, 2004. It is also not the case of the appellants that after they became member of service, the compassionate appointees are later regularized retrospectively from the date of their initial appointment.

41. To the contrary, the fact which has come on record and reflected from the seniority list dated 1st January, 2004 is that the appellants are direct recruits who joined service after their selection on the recommendations made by the Commission and prior to their becoming member of service, first and second batch of compassionate appointments stood regularized and that being so, in our considered view, the seniority being consequential has been rightly assigned to the compassionate appointees, *vis-à-vis*, direct recruits as reflected in the seniority list published on 1st January, 2004, which is in conformity with Rule 35(aa) of Rules 1955.

42. We, at one stage, were of the view that whether such appointments which were de hors the judgment of this Court, deserve to be interfered with but taking into consideration the humanity aspect and the fact that they are in service for more than two decades, we became reluctant to make adverse comments which may cause prejudice to them.

- A At this stage, before we decided to conclude the matter, we called upon the learned counsel for the State Government to file an additional affidavit as to under what circumstances the appointments are being made on the post of Assistant Engineers which is a Group 'B' post, at least, after the judgment of this Court in *Nagpal's case* (supra) (decided on 4th May, 1994).
- B 43. In compliance of our order, an additional affidavit has been filed by the Secretary to the Government, Labour Welfare and Skill Development and the explanation tendered by the State Government is far from satisfaction that the judgment in *Nagpal's case* (supra) of this Court dated 4th May, 1994 was for the first time made available to the Government by the Law Department vide letter dated 27th September 2001. Taking note of the judgment of this Court in *Nagpal's case*(supra), the State Government primarily proceeded and put a complete ban on compassionate appointments, leaving aside certain categories of posts such as teachers, doctors and police constabulary by letter dated 29th November, 2001 and learned counsel has further informed to this Court that four appointments in the cadre of teachers which is Group 'B' Post were made by the State authorities thereafter and still the Government was so cognizant of the judgment of this Court, the detailed guidelines for compassionate appointments were notified with a clear direction that such compassionate appointments shall be restricted only to Group 'C' and 'D' posts for the first time, by a letter dated 19th July 2006.
- C 44. At the same time, this fact has not been disclosed in the affidavit that apart from the post of Assistant Engineer to which the controversy is brought before this Court, how many compassionate appointments in Group 'B' posts are made by the State Government in various departments after the judgment of this Court in *Nagpal's case* (supra) decided on 4th May, 1994. This fact remains conspicuously silent for various reasons which could be discerned by this Court from the material available on record.
- D 45. After going through the explanation which has been tendered by the State Government, this Court, records its anguish to say that this attitude of the Government of Tamil Nadu in avoiding the judgment of this Court in *Nagpal's case* (supra) dated 4th May 1994, which was not only the law but binding on the State Government under Article 141 of the Constitution, if still overlooked and flouted in this manner, such an
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act of the State Government is unpardonable and cannot be countenanced A
by this Court.

46. After taking note of the rival submissions and the view which we have expressed, although we deprecate the practice of State Government in making such compassionate appointments under Group 'B' post after the judgment of this Court in *Nagpal's case* (supra), still this Court refrain to disturb the seniority list which has been assigned to the respective compassionate appointees, vis-à-vis, direct recruits Assistant Engineers to whom consequential seniority has been assigned undisputedly under Rule 35(aa) of Rules, 1955 which may not call for our interference, at this belated stage, after each of them is in service for more than two decades and indeed right is being conferred to each of them and an individual although a beneficiary but was not at fault at any given point of time either at the time of entry into service or thereafter.

47. Consequently, these appeals fail and accordingly dismissed with above observations. No costs.

48. Pending application(s), if any, shall also stand disposed of.

Devika Gujral
(Assisted by : Shubhanshu Das, LCRA)

Appeals dismissed.