

A STATE OF HIMACHAL PRADESH & ANR.

v.

SHASHI KUMAR

(Civil Appeal No.988 of 2019)

B JANUARY 16, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

- Service Law – Compassionate appointment – The State, if entitled to take into account family pension and other terminal benefits in determining whether compassionate appointment should be granted to the dependant of a deceased employee – Held: The terms on which compassionate applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the policy – In instant case, policy was formulated on 18.01.1990, which was designed to meet the needs of those families where death of a government servant has left them in indigent circumstances, requiring immediate means of subsistence – Policy recognized that the benefits which were received by a family on account of welfare measures were required to be considered – The policy did not preclude the dependants of a deceased employee from being considered for compassionate appointment merely because they are in receipt of family pension – What the Policy mandated was that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence – The receipt of family pension is, therefore, one of the considerations which is to be taken into account.*

- Service Law – Compassionate appointment – Prescription of income slab – On 18.01.1990, the State Government framed a policy/ scheme for making compassionate appointments – A income criteria/ income slab was prescribed by the Finance Department by a letter dated 29.09.2008 – High Court was of the view that it was not open to the Finance Department to amend the scheme – The State contended that income slab reduces the element of discretion and obviates a case by case analysis of what should or should not be an income criterion for deciding the indigent circumstances of a*

H

family – Held: The fixation of an income slab is a measure which diluted the element of arbitrariness – Fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making – Circulars issued by the Finance Department cannot be construed to be an amendment to the policy – Circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the scheme – Thus, decision of the State Government to fix income limits confirmed – Further, the State directed to periodically revise the income limits at intervals of three years or earlier, and consider whether a revision is warranted having regard to the cost of living, inflation and other relevant facts and circumstances.

A

B

C

Delay/Laches – Compassionate appointment – Held: In the instant case, the respondent waited for a period in excess of seven years to move a petition u/Art.226 of the Constitution – Supreme Court in Umesh Kumar Nagpal case has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee – This sense of immediacy was evidently lost by the delay on the part of the defendant in seeking compassionate appointment – Thus, respondent debarred from seeking compassionate appointment by the delay as well as by the lapse of time. – Service Law.

D

E

Constitution of India – Arts.14 and 16 – Compassionate appointment – Held: Compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Arts.14 and 16 of the Constitution – Defendants of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment.

F

Father of the respondent, who was working in the Horticulture Department died in the year 2005 while he was in service. In 2007, the respondent submitted an application for compassionate appointment. The application was forwarded to the competent authorities. Additional Secretary (Horticulture) required that a certificate of income, including pension should be obtained from the concerned SDM by the appellant. In 2015, writ

G

H

A **petition was filed by the respondent. The High Court held that the State is not entitled to take into account family pension and other terminal benefits in determining whether compassionate appointment should be granted to the defendant of a deceased employee. Hence, the present appeal.**

B **Disposing of the appeal, the Court**

HELD: 1. The compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution.

C **Defendants of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a defendant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a defendant member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.**

[Para 20] [447-E-H; 448-A-B]

G **2. The policy in the present case which was formulated on 18 January 1990 categorically speaks of providing employment assistance to defendants of government servants who have died while in service, "leaving their families in indigent circumstances". The Policy, in other words, is designed to meet the needs of those families where the death of a government servant has left them in indigent circumstances, requiring**

H

immediate means of subsistence. The policy recognizes that the benefits which are received by a family on account of welfare measures are required to be considered. Among them, the policy stipulates that family pension and death gratuity are required to be taken into account in assessing the financial circumstances of the family. The Policy does not preclude the dependants of a deceased employee from being considered for compassionate appointment merely because they are in receipt of family pension. What the Policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence. The receipt of family pension is, therefore, one of the considerations which is to be taken into account. Paragraph 10(c) of the Policy sets out the measures provided by the State which have a bearing on the financial need of the family. [Para 21][448-B-E]

3. That leads the Court to the next aspect of the matter relating to the fixation of an income slab. The fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. The High Court was of the view that it was not open to the Finance Department to amend the Scheme. The circulars which are issued by the Finance Department cannot be construed to be an amendment of the policy. They are really clarificatory of the intent and purpose of the Scheme. The circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the Scheme. [Para 39] [455-D-F]

4. What should be the appropriate income criterion is undoubtedly a matter of policy for the State Government to determine. However, it is impressed upon the State Government the need to periodically revise the income limits preferably at intervals of three years. Inflation and the increase in the cost of living have an important bearing on financial exigencies faced by families of serving as well as deceased employees. In fixing the

A

B

C

D

E

F

G

H

- A income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals. [Para 39] [456-B-C]
5. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that
- B the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal case, this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part
- C of the defendant in seeking compassionate appointment. The respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place. [Paras 40 and 42] [456-D-F; 457-B]

- E *Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138 ; Union of India v. Shashank Goswami (2012) 11 SCC 307 : [2012] 6 SCR 98 ; State Bank of India v. Surya Narain Tripathi (2014) 15 SCC 739 – relied on.*
- F *Govind Prakash Verma v. Life Insurance Corporation of India (2005) 10 SCC 289 ; APSRTC, Musheerabad v. Sarvarunnisa Begum AIR 2008 SCW 198 : [2008] 8 SCR 453 ; Canara Bank v. M. Mahesh Kumar (2015) 7 SCC 412 : [2015] 9 SCR 724 ; General Manager (D&PB) v. Kunti Tiwary (2004) 7 SCC 271 ; Punjab National Bank v. Ashwani Kumar Taneja (2004) 7 SCC 265 : [2004] 3 Suppl. SCR 597 ; State Bank of India v. Somvir Singh (2007) 4 SCC 778 : [2007] 2 SCR 509 ; Mumtaz Yunus Mulani v. State of Maharashtra (2008) 11 SCC 384 : [2008] 5 SCR 241 ; State Bank of India v. Jaspal Kaur (2007) 9 SCC 571 : [2007] 2 SCR 101 ; State of J&K v. Sajad Ahmed Mir (2006) 5 SCC*
- H

766 : [2006] 3 Suppl. SCR 576 ; *Local Administration Department v. M. Selvanayagam* (2011) 13 SCC 42 : [2011] 4 SCR 244 – referred to. A

Case Law Reference

(2005) 10 SCC 289	referred to	Para 17	B
[2008] 8 SCR 453	referred to	Para 17	
[2015] 9 SCR 724	referred to	Para 17	
(1994) 4 SCC 138	relied on	Para 23	
(2004) 7 SCC 271	referred to	Para 25	C
[2004] 3 Suppl. SCR 597	referred to	Para 27	
[2007] 2 SCR 509	referred to	Para 27	
[2008] 5 SCR 241	referred to	Para 30	
[2012] 6 SCR 98	relied on	Para 31	D
(2014) 15 SCC 739	relied on	Para 32	
[2007] 2 SCR 101	referred to	Para 34	
[2006] 3 Suppl. SCR 576	referred to	Para 40	
[2011] 4 SCR 244	referred to	Para 40	E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 988 of 2019

From the Judgment and Order dated 06.10.2015 of the High Court of Himachal Pradesh, Shimla in CWP No.3652 of 2015. F

Vikas Mahajan, AAG, P.S. Patwalia, Sr. Adv., Aakash Verma, Anil Kumar, Abhinav Mukerji, Ms. Bihu Sharma, Ms. Purnima Krishna, Ms. Pratishtha Vij, Ajay Marwah, Atul Kumar, Ishan Dewan, Plak Bagchi, Abhimanyu Sharma, Ishan Dewan, S. K. Verma, Suryanarayana Singh, Ms. Pragati Neekhra, Ms. Kaveri Vats, Varinder Kumar Sharma, Ms. Radhika Gautam, Rajul Shrivastav, K. Krishna Kumar, Vikrant Narayan Vasudeva, Ashwani Kumar, Ms. Iti Sharma, Jay Kr. Bhardwaj, Ravinder Nain, Puneet Sharma, Jogy Scaria, Reegan S. Bali, Ms. Beena Victor, Ravi Homod, Veeranjaneyvilu K.L.N.V., Anil Nag, Ravi Bakshi, Aditya Dhawan, Ms. Kiran Dhawan, Shashank Kumar, Chander Shekhar G

H

- A Ashri, Jayant Mohan, Sunil Kumar Jain, Abhishek Jain, Ms. Anusha Agarwal, Punya Garg, Abhishek Jain, Srilok Nath Rath, Y.P. Singh, Sharan Thakur, Mahesh Thakur, Vijay Kumar Pardesi, Dr. Sushil Balwada, Karan Chauhan, Ms. Manjeet Chawla, Ms. Bharti Tyagi, Ms. Divya Jyoti Singh, Vinod Sharma, Pawan Reley, Gopal Prasad, Satish Kumar, Aravindh S., A. Lakshmi Narayan, Mrs. Nanita Sharma, Vivek Sharma, Bajrang Lal Jat, Baldev Singh, D.S. Patial, Binay Kumar Das, Yogesh Kumar Mathur, Ms. Amita Singh Kalkal, M. C. Dhingra, Piyush Kant Roy, Ms. Indira Kanora, Gaurav Dhingra, Ms. Shobha Gupta, Ashwani Kr. Gupta, Vikrant Yadav, P. N. Puri, Reeta Dewan Puri, Abhishek Puri, Dhiraj, Parmanand Gaur, Ekansh Bansal, Yash Pal
- B Dhingra, Baldev Singh, D.S. Patial, Vinay Kumar Das, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. Leave granted.

- D 2. The present appeal arises from a judgment of a Division Bench of the High Court of Himachal Pradesh in a batch of cases which dealt with the issue of compassionate appointment.
- E 3. The facts, insofar as they are material to this appeal, are thus:
- F 4. The father of the respondent, who was working as HFO in the Horticulture Department at Kullu, died on 29 March 2005 while he was in service. On 8 May 2007, the respondent submitted an application for compassionate appointment. The application was forwarded by the Deputy Director, Horticulture at Kullu to the competent authorities on 14 September 2007. On 15 January 2008, the Additional Secretary (Horticulture) to the Government of Himachal Pradesh addressed a communication to the Director of Horticulture stating that the income certificate which had been forwarded together with the application did not include the pension which the family was receiving from the Government. Accordingly, the Additional Secretary required that a certificate of income, including pension, should be obtained from the concerned SDM by the applicant.
- G 5. The Writ Petition before the High Court was instituted on 11 May 2015, well over seven years thereafter. The respondent has averred

H

that he had made representations, but to no avail, as a result of which he was eventually compelled to initiate proceedings under Article 226 of the Constitution of India before the High Court. The High Court consolidated a batch of cases, both Letters Patent Appeals and Writ Petitions for hearing. They emanated from a Policy dated 18 January 1990 framed by the State Government for providing employment assistance on compassionate grounds to dependents of government servants who have died in harness, leaving a family in need of assistance. The High Court, during the course of the judgment, framed as many as nine issues which were in the following terms:

- “(i) Whether the amount of family pension and other retiral benefits, received by the family of the deceased-employee, can be included in the family income for denying the compassionate appointment? A
- (ii) Which date would be relevant for applicability of the Policy - whether the date of death of the employee or the date when the application was presented, for the first time, for seeking employment on compassionate ground or the date on which the application came up for consideration before the Authorities, and whether a claim for compassionate appointment can be decided on the basis of subsequent amendment, when the application was presented prior to such amendment? B
- (iii) If an applicant was in lis and his case was directed to be reconsidered, whether the claim of such applicant is to be determined as per the policy which was existing at the time of passing the order or as per the policy which was in place at the time of staking claim for the first time or as per the policy existing at the time of consideration? C
- (iv) Whether the applicant can claim appointment on compassionate ground against a higher cadre, once he had been appointed in the lower cadre? D
- (v) In case a person is appointed on contract basis, whether he is within his rights to seek appointment on regular basis? E
- (vi) In a given set of cases, in one case the appointment on compassionate ground has been offered against a Class-III post and in other case, the appointment has been offered to a Class-IV post, whether it amounts to discrimination? F
- G
- H

- A (vii) Whether a person can claim compassionate appointment after a considerable delay?
- (viii) Whether requisite qualification or age can be relaxed?
- (ix) In case one or more dependants of a deceased-employee is/ are in service, though living separately, whether that can be made a ground to deny compassionate appointment to the other dependant of the deceased-employee?"
- B 6. Insofar as the present appeal is concerned, the State of Himachal Pradesh has contested the decision of the High Court on issues (i) and (vii). Hence, for the purposes of this appeal, the present judgment governs only the above aspects of the case.
- C 7. In order to appreciate the nature of the controversy, it would be necessary to advert to the genesis of the policy of the State Government.
- D 8. On 18 January 1990, the Government of Himachal Pradesh framed a policy for making compassionate appointments. The policy indicates that it applies to requests for the appointment of sons, daughters and near relatives of government servants who die in harness, leaving the family in immediate need of assistance. Insofar as it is material, the Policy provides thus:
- E "Subject;- Appointment of sons/daughters/near relations of a government servant who died in harness, leaving his family in immediate need of assistance.
- ...
- F 1) Policy:- The employment on compassionate grounds to the dependents of Govt. servants who die while in service is not to be provided as a matter of right. It should be given only in deserving cases where the family of deceased Govt. servant is left in indigent circumstances requiring immediate means of subsistence. The concerned Administrative Departments would satisfy themselves about the indigent circumstances of the family before appointment on compassionate grounds is made."
- G 9. Paragraph 2 of the policy provides for its applicability, in order of priority only to a widow, son or an unmarried daughter and in the case of an unmarried government servant to the father, mother, brother or unmarried sister. Paragraph 2(a) reads as follows:
- H

“2) To whom the policy is applicable:- The employment assistance on compassionate grounds will be allowed in order of priority only to widow or a son or an unmarried daughter (in case of unmarried Govt. servant to father, mother brother and unmarried sister) of:

(a) a Govt. servant who dies while in service (including by suicide) leaving his family in immediate need of assistance.”

10. Paragraph 4 of the policy stipulates that an appointment on compassionate grounds can be made only to the lowest rung of Class-III and Class-IV posts carrying a prescribed pay scale. Paragraph 8 of the Policy stipulates that requests for the grant of employment assistance should be received within three years of the death of the government servant. However, where none of the children of the deceased government servant had attained majority at the time of death, the time limit for receipt of a request for appointment will be postponed to the attainment of the age of twenty one years by the eldest son or unmarried daughter. Paragraph 8 is in the following terms:

“8) Belated requests for compassionate appointments: Requests for grant of employment assistance should be received in the Deptt. concerned within three years of the death of the Government servant. In case where none of the sons/daughters of the deceased Government servant attain majority (age of 18 years) at the time of the death of the Government servant, the time limit for receipt of request for employment assistance in department concerned will be attainment of age of 21 years by the eldest son/un-married daughter. No relaxation will be allowed in entertaining requests beyond the above age except in the case of sons/un-married daughter/widow of deceased Govt. servants belonging to the difficult areas as laid down in the Transfer Policy.

11. Paragraph 10 of the policy stipulates that the government has introduced a number of welfare measures, which have made a significant difference to the financial position of families of government servants who die in harness. Hence, the policy stipulates that benefits received by the family on account of those welfare measures “may be kept in view” while considering cases of employment assistance on compassionate grounds. The policy proceeds to enumerate the welfare measures which, on the date of its formulation, were available to families of deceased employees. Paragraph 10(c) of the Policy, which has a bearing in this case, is in the following terms:

- A “(c) The provision of employment assistance was introduced in 1958 and since then a number of welfare measures have been introduced by the Govt. which made significant difference in the financial position of the families of the Govt. servants dying in harness. The benefit received by the family on account of these measures may be kept in view while considering cases of employment assistance on compassionate grounds. Such measures, in brief, which are at present available to the families of the deceased employees are as under:
- (i) Ad-hoc ex-gratia grant @ 10 times the emoluments which the Government servant was receiving before death, subject to a minimum of Rs. 10,000/- and maximum of Rs. 30,000/-.
- (ii) Grant of improved family pension.
- (iii) Grant of death Gratuity as under:-
- | D | Length of service | Rate of gratuity |
|---|---|--|
| | a) Less than one year | 2 times of emoluments. |
| | b) One year or more | 6 times of emoluments. |
| E | c) 5 years or more but less than 5 years | 12 times of emoluments |
| F | d) 20 years or more | Half of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times emoluments provided that the amount of Death Gratuity shall in no case, exceed one lakh rupees. |
| G | (iv) Employees Group Insurance Scheme:- Financial assistance to the family of the deceased Government servant as under: | |
| H | (i) Class-IV employees- | Rs. 10,000/- |
| | (ii) Class-III employees- | Rs. 20,000/- |

(iii) Class-II employees- Rs. 40,000/- A
(iv) Class-I employees- Rs. 80,000/-

(v) In addition nearly 2/3rd of the amount contributed by the Government servant to the fund is also payable alongwith the above amounts. B

(vi) Encashment of the leave at the credit of the deceased Govt. servant subject to the maximum of 240 days. C

(vii) Entitlement of additional amount equal to the average balance in the GPF of the deceased Govt. servant during the three years immediately preceding the death of the subscriber subject to certain condition under the Deposit Linked Insurance Scheme.”

12. The Policy has undergone amendment from time to time.

On 24 August 2002, a clarification was issued in regard to the expression “indigent circumstances” used in the Policy. The clarification provided thus:

“.....in this connection, references have been received from certain departments enquiring as to what constitutes “Indigent circumstances” and also requesting that some uniform guidelines on the subject may be issued.

The matter has been considered carefully and it is noticed that specific guidelines with respect to what would amount to “indigent circumstances” will not be possible or practicable. “Indigent circumstances” of a family are to be seen with specific reference to the assets i.e. immoveable and moveable property left behind by the deceased income from various sources i.e. assets, house(s), pension, savings resulting to income employment status and number of employees within the extended family etc. as also liabilities i.e. number of dependents specially unmarried daughters aged parents etc. left behind by the deceased, some consideration towards the particular standard of life that the family of the deceased might be used to during the life time of the government employee etc. These are vital parameters that have to be kept in mind before any decision is arrived at regarding admissibility of employment to the ward/dependent of the deceased employee. As the above would show the question of “indigent

E

F

G

H

- A circumstances”, therefore has to be decided in each individual case after obtaining detailed information about all the relevant aspects mentioned, so that employment on compassionate grounds is not given as matter of routine. While every effort should be made to provide suitable employment in all deserving cases. It should always be kept in mind that employment on compassionate ground can not be claimed as a matter of right. Also the competent authority should take full precautions to exclude the element of “pick and choose” while considering such cases.”
- B 13. Subsequently, an office memorandum dated 4 April 2008 clarified that while considering whether the family of a deceased employee is in indigent circumstances, no certificate of any kind is required. The clarification, *inter alia*, provided that:
- “3. No indigent certificate of any kind is required as per instructions. Only indigent circumstances of the family are required to be looked into. This purpose can be achieved by examining the income of the family. There is no such certificate prescribed by the Government nor should indigent certificate be demanded from the affected families.”
- C 14. Another aspect of the Policy which requires mention is the fixation of income slabs. On 1 November 2008, as noticed by the High
- D Court, the Secretary, Public Works Department, addressed a communication to the Engineer-in-Chief advertizing to a letter dated 29 September 2008 of the Finance Department, bearing No. PBW-A-B(2)-34/2006. The income criteria which was prescribed by the Finance Department was in the following terms:
- E F “The Income Criteria fixed by the Finance Department takes into consideration maximum family income ceiling fixed by the finance Deptt. for a family for 4 members as Rs. 1.00 lac and for smaller families, the internal criteria is Rs. 25,000/- per person, per annum. Thus, if there is only one dependent, the overall income limit to be considered is Rs. 25,000/- per annum. In case, there are two dependents of the deceased, the income of the applicant should not exceed Rs. 50,000/- per annum. In case of three dependents, the overall income should not exceed Rs. 75,000/- per annum.
- G
- H

The overall income limit is Rs. 1.00 lac per annum, even if family size is more than four. Gratuity, leave encashment, commutation amount are excluded for purpose of calculating family income but monthly pension/family pension, Dearness Relief, Interim Relief is included for calculation of yearly family income.”

15. The High Court has adverted to the fact that the income limit of Rs.1,00,000/- was subsequently revised to Rs.1,50,000/-. We have been informed during the course of the hearing by Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the State, that this revision took place on 20 April 2011.

16. The High Court while dealing with the first issue which it framed for decision, held that the State is not entitled to take into account family pension and other terminal benefits in determining whether compassionate appointment should be granted to the defendant of a deceased employee.

17. In coming to this conclusion, the High Court has relied upon a decision of this Court in Govind Prakash Verma Vs. Life Insurance Corporation of India¹ and on two subsequent decisions in APSRTC, Musheerabad Vs. Sarvarunnisa Begum² and in Canara Bank Vs. M. Mahesh Kumar³. Having held that the State is not entitled to consider the family pension and other terminal benefits received by the defendants of the deceased employee, the High Court has held that the income slab which was prescribed by the Finance Department did not constitute an amendment of the Policy and that, consequently, it must be disregarded in deciding upon cases of compassionate appointment.

18. Assailing the view which has been taken by the High Court, Mr. P.S. Patwalia, learned senior counsel urged that the terms of the Policy dated 18 January 1990 envisage the grant of employment assistance to defendants of government servants, where an employee of the State has died while in service, leaving the family in indigent circumstances. The submission is that the genesis of compassionate appointment is that assistance should be rendered to the family of an employee who dies in harness in a case where the family is in immediate need of subsistence and is otherwise left in indigent circumstances.

¹(2005) 10 SCC 289

²AIR 2008 SCW 198

³(2015) 7 SCC 412

A

B

C

D

E

F

G

H

- A Learned senior counsel submitted that a consistent line of authority of this Court establishes the principle that there is no right to compassionate appointment, but only an entitlement to be considered in accordance with the prevailing scheme or the rules framed by the employer, where such a scheme exists. In the present case, it was urged that the Policy, as subsequently amended, categorically requires that whether the family is in indigent circumstances has to be determined by taking into account the assets left behind by the deceased, the income from various sources including pension and the nature of the liabilities including the number of dependants. Hence, when terms of the Policy require that pensionary benefits should be accounted for, it was urged that the High Court was not justified in issuing a direction to ignore the Policy. At the same time, it has been submitted that the State does not take into account gratuity, leave encashment and commutation. However, monthly pension, family pension, dearness relief and interim relief are taken into consideration. The rationale for excluding one time payments is that, in the considered view of the State, these do not enure to the benefit of the family over a period of time. Be that as it may, it has also been urged that the decision of the Finance Department to prescribe an income ceiling or slab cannot be faulted. Learned senior counsel submitted that the prescription of an income slab subserves a fair assessment of individual applications. It reduces the element of discretion and obviates a case by case analysis of what should or should not be an income criterion for deciding the indigent circumstances of a family. Finally, it was urged, on the facts of the present case, that the application which was submitted by the respondent in 2007 was dealt with by requiring the inclusion of the pension which the family was receiving in the statement of income. Upon the letter dated 15 January 2008 of the Additional Secretary, the Writ Petition was filed on 11 May 2015, well over seven years thereafter and nearly ten years after the death of the deceased employee. Hence, it was submitted that the ultimate direction issued by the High Court for consideration of the application is manifestly misconceived. The purpose of compassionate appointment is to enable the family of a deceased employee to tide over an immediate crisis caused by the death of the employee. Hence, delay of this nature, in any event, should result in the rejection of the application as well as the Writ Petition.

19. On the other hand, it has been submitted on behalf of the respondent that the issue of delay ought not to come in the way of the

H

application for compassionate appointment being considered, having regard to the fact that Paragraph 8 of the Policy contemplates that where none of the children of the deceased employee had attained the age of majority, the time limit for the submission of an application is extended till the attainment of the age of twenty one years by the eldest child. Though the respondent was not a minor on the date of the death of the deceased employee, it was urged, by analogy of reasoning, that delay, by itself, ought not to result in the rejection of the application, particularly since the upper age of recruitment in the State has been extended to forty five years. On the aspect of the inclusion of family pension, reliance was placed on the decision of the High Court, which in turn is based on certain judgments of this Court. Finally, on the income slab, it has been submitted that apart from the considerations which have weighed with the High Court, it was not open to the Finance Department to amend the Policy. Moreover, there is no basis for the income limit of Rs.1,00,000/-, which was prescribed by the Finance Department on 29 September 2008 as enhanced to Rs.1,50,000/-. It was urged that as a result of the prescription of an unduly low income limit, the benefit of compassionate appointment will be denied to families which are indigent and are in need of employment.

20. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependents of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependant

A

B

C

D

E

F

G

H

- A member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

21. The policy in the present case which was formulated on 18

- B January 1990 categorically speaks of providing employment assistance to dependents of government servants who have died while in service, "leaving their families in indigent circumstances". The Policy, in other words, is designed to meet the needs of those families where the death of a government servant has left them in indigent circumstances, requiring immediate means of subsistence. The policy recognizes in Paragraph C 10 that the benefits which are received by a family on account of welfare measures are required to be considered. Among them, the policy stipulates that family pension and death gratuity are required to be taken into account in assessing the financial circumstances of the family. The Policy does not preclude the dependents of a deceased employee from D being considered for compassionate appointment merely because they are in receipt of family pension. What the Policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence. The receipt of family pension is, therefore, one of the considerations which is to be taken into account. E Paragraph 10(c) of the Policy sets out the measures provided by the State which have a bearing on the financial need of the family.

22. In view of the clear terms of the Policy, we are of the view that the High Court was in error in issuing a mandamus to the Government to disregard its Policy. Such direction could not have been issued by the

- F High Court. The High Court has drawn sustenance in issuing mandamus in the above terms from a decision of this Court in Govind Prakash Verma (*supra*). That was a case of compassionate appointment where in the course of the proceedings before the High Court, a learned Single Judge had directed the Life Insurance Corporation, which was G the employer of the deceased employee, to make an enquiry and submit a report on whether the members of the family engaged in gainful employment were also supporting the family of the deceased employee. This Court, in an appeal against the judgment of the High Court rejecting the petition for compassionate appointment, observed that the officer

who had enquired into the matter in pursuance of the order of the learned Single Judge completely omitted to furnish any report on the points which were required by the High Court to be investigated. The High Court rejected the petition on the ground that the family was in receipt of family pension and other amounts towards terminal benefits. Reversing the view of the High Court, a two-Judge Bench of this Court held thus:

“6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules...”

23. The decision in Govind Prakash Verma (supra) has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal Vs. State of Haryana⁴. The principles which have been laid down in Umesh Kumar Nagpal (supra) have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

“2. ...As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for

⁴(1994) 4 SCC 138

A

B

C

D

E

F

G

H

- A 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 in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”
- F 24. Specifically in the context of considering the financial circumstances of the family of the deceased employee, several judgments of this Court have elaborated on the principles to be followed.
- G 25. The decision in General Manager (D&PB) Vs. Kunti Tiwary⁵ involved an interpretation of an office memorandum dated 7 August 1996 circulated to all banks in the light of the decision in Umesh Kumar Nagpal (supra). The Indian Banks Association adopted the directions of this Court in the Scheme which was proposed for the appointment of heirs of deceased employees. The Scheme contemplated that in order
- H ⁵(2004) 7 SCC 271

to determine the financial condition of the family, the following amounts A would have to be taken into account:

- “7...(a) Family pension.
- (b) Gratuity amount received.
- (c) Employee’s/employer’s contribution to provident fund.
- (d) Any compensation paid by the Bank or its Welfare Fund. B
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) Income of family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.”

26. Eventually, this recommendation was accepted in the Scheme. C
In the light of these recommendations and the Scheme, this Court observed that where the family of a deceased employee was not left without means of livelihood, the claim for compassionate appointment could not be sustained. It may be noted that in that case it was on a review of the overall financial position of the family, including amounts D received towards terminal benefits that the decision was taken.

27. The decision of this Court in Punjab National Bank Vs. Ashwani Kumar Taneja⁶ followed the same principle. While reiterating the view which was taken in Kunti Tiwary (supra), this Court held that the Scheme specified the amounts which were required to be taken into consideration. E

28. The decision in State Bank of India Vs. Somvir Singh⁷ has noticed the scheme for appointment of dependants of deceased employees on compassionate grounds framed by the State Bank of India. The Court expressly held that the authorities were not in error in taking account of the terminal benefits, investments and the monthly family F income including the family pension paid by the Bank. The view of this Court finds expression in the following extract:

“12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of the employee who died in harness are not in penury and without any means of livelihood. The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into

⁶(2004) 7 SCC 265

⁷(2007) 4 SCC 778

- A *consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.”*
- B

(emphasis supplied)

- C 29. In the view of this Court, the only issue to be considered was whether the claim for compassionate appointment had been considered in accordance with the Scheme. The income of the family from all sources was required to be taken into consideration according to the Scheme. This having been ignored by the High Court, the appeal filed by the Bank was allowed.

- D 30. The judgment of a Bench of two-Judges in Mumtaz Yunus Mulani Vs. State of Maharashtra⁸ has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the Scheme. The decision in Govind Prakash Verma (supra) has been duly considered, E but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.

- F 31. In Union of India Vs. Shashank Goswami⁹, this Court considered a circular issued by the Office of the Comptroller and Auditor General of India in terms of which the total income of the family from all sources, including terminal benefits received, was required to be taken into account. Income limits were specified in the circular for Group ‘B’, Group ‘C’ and Group ‘D’ posts. Taking note of the fact that a family pension has been authorized to the widow of the deceased employee, this Court held that the case of the defendant did not fall within the income limits meant for Group ‘C’ posts.
- G

- H 32. The same principle has been reiterated in another decision of a Bench of two-Judges of this Court in State Bank of India Vs. Surya Narain Tripathi¹⁰. While advertizing to a submission of learned counsel

⁸ (2008) 11 SCC 384

⁹ (2012) 11 SCC 307

¹⁰ (2014) 15 SCC 739

based on the decision in Govind Prakash Verma (supra), this Court noted A thus:

“8. He relied upon the judgment of this Court in *Govind Prakash Verma v. LIC* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] where a view has been taken that the compassionate appointment cannot be refused on the ground that another member of the family had received appropriate employment and the service benefits were adequate. We may humbly state that this view runs counter to the view which was taken earlier in *Umesh Kumar Nagpal* [*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] which was not cited before the Court in *Govind Prakash* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590]. The subsequent two judgments which were referred above also take the same view as in *Umesh Kumar Nagpal* [*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537]. Mr Vikas Singh has drawn our attention to the judgment in *SBI v. Somvir Singh* [*SBI v. Somvir Singh*, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] where the 1998 Scheme has been considered.

9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the breadearner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent.”

33. Now, it is in this background that it would be necessary to advert to the decision in Canara Bank (supra). A Scheme for compassionate appointment of 8 May 1993 was prevalent in Canara Bank when the employee died on duty in October 1998. Faced with the

H

- A rejection of an application for compassionate appointment, the High Court was moved in a Writ Petition in which a learned Single Judge issued a direction for reconsideration of the claim for appointment. During the pendency of the appeal before the Division Bench, the Scheme for compassionate appointment was replaced by a new Scheme providing for *ex gratia* in lieu of appointment. The main issue which fell for consideration before this Court was whether the subsequent Scheme which was formulated in 2005 providing for *ex gratia* payment would govern or whether the application would have to be disposed of on the basis of the earlier Scheme of 1993. It may be noted that the application for compassionate appointment in that case had been rejected on the ground that the family of the respondent was not in indigent circumstances, as required by the Scheme for compassionate appointment of 1993.

34. Dealing with the applicability of the subsequent Scheme, a Bench of two-Judges of this Court held, following the earlier decision in State Bank of India Vs. Jaspal Kaur¹¹, that the cause of action to be considered for compassionate appointment arose when the earlier Scheme was in force. Hence, the claim could not be decided on the basis of the subsequent Scheme which provided only for the payment of *ex gratia*. Moreover, as a matter of fact, the subsequent scheme was superseded in 2014 by reviving the Scheme for the provision of compassionate appointment.

35. Hence, the issue which has been dealt with in Canara Bank (supra) is whether the application for grant of compassionate appointment could have been rejected on the basis of a scheme which had come into force after the date of submission of the application. That, as this Court observed, was the main question which fell for consideration. The Bench of two-Judges, however, also noted that it was urged on behalf of the appellant – Bank that the family of the respondent was in receipt of family pension. This, the Court held, was of no consequence in considering the application for compassionate appointment.

36. Learned senior counsel appearing on behalf of the appellants has sought to distinguish the above observations, in the judgment in Canara Bank (supra), by submitting that it is not the case of the State of Himachal Pradesh that mere receipt of family pension would disable an applicant from submitting an application for compassionate appointment or preclude consideration of the claim. On the contrary, the submission which is

H ¹¹(2007) 9 SCC 571

urged is that the Scheme requires consideration of all relevant sources of income and hence, receipt of family pension would be one of the criteria which would be taken into consideration in determining as to whether the family of the deceased employee is in indigent circumstances.

37. We find merit in this submission, for the simple reason, that it is in accord with the express terms of the Scheme of 18 January 1990, as modified by the State. The Scheme contemplates that payments which have been received on account of welfare measures provided by the State including family pension are to be taken into account. Plainly, the terms of the Scheme must be implemented.

38. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma (supra) in issuing a direction to the State to act in a manner contrary to the express terms of the Scheme which require that the family pension received by the dependants of the deceased employee be taken into account.

39. That leads the Court to the next aspect of the matter relating to the fixation of an income slab. In our view, the fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. The High Court was of the view that it was not open to the Finance Department to amend the Scheme. The circulars which are issued by the Finance Department cannot be construed to be an amendment of the policy. They are really clarificatory of the intent and purpose of the Scheme. The circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the Scheme. In fact, as we have noted earlier, in the decision of this court in Shashank Goswami(supra), the Court was specifically dealing with a circular of the Comptroller and Auditor General of India which had imposed income limits respectively for Group 'B', 'C' and 'D' posts for the purpose of guiding the decision in the case of compassionate appointment. The fixation of income limits was not construed to be and is not an arbitrary exercise of power. However, what we find from the record of this case is that the income limit was fixed (as the High Court observed) on 29 September 2008 by the letter

A

B

C

D

E

F

G

H

- A of the Finance Department. The income limit of Rs.1,00,000/- for a family of four persons has since been revised to Rs.1,50,000/- on 20 April 2011. Mr. P.S. Patwalia has, on instructions, stated before this Court that this ceiling has been reiterated on 27 July 2017. What should be the appropriate income criterion is undoubtedly a matter of policy for the State Government to determine. However, we would impress upon the State Government the need to periodically revise the income limits preferably at intervals of three years. Inflation and the increase in the cost of living have an important bearing on financial exigencies faced by families of serving as well as deceased employees. In fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals, as we have indicated above. We clarify that it would be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised.

40. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the defendant in seeking compassionate appointment.

41. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the defendant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a defendant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect

of delay has been dealt with in other decisions of this Court, including A
State of J&K Vs. Sajad Ahmed Mir¹² and Local Administration
Department Vs. M. Selvanayagam¹³.

42. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent B is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.

43. In the circumstances, we allow the appeal in the following terms:

(i) The Writ Petition (CWP No.3652 of 2015) filed by the respondent before the High Court shall stand dismissed and the direction of the High Court for reconsideration of the application for compassionate appointment shall stand set aside; C

(ii) The direction issued by the High Court to the appellants to desist from taking into account the family pension and other terminal benefits is unsustainable in law and is accordingly set aside; D

(iii) While we confirm the decision of the State Government to fix income limits in order to satisfy the terms of eligibility for compassionate appointment, we expect that the State Government shall, in compliance with the Policy, revisit the income limits at intervals of three years or earlier and consider whether a revision is warranted having regard to the cost of living, inflation and other relevant facts and circumstances. E

44. The appeal is disposed of in the above terms. No costs.

Ankit Gyan

Appeal disposed of.

¹²(2006) 5 SCC 766, para 11

¹³(2011) 13 SCC 42, para 11, 12 and 13