

N. C. SANTHOSH

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v.

STATE OF KARNATAKA & ORS.

(Civil Appeal Nos. 9280-9281 of 2014)

MARCH 04, 2020

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[R. BANUMATHI, A. S. BOPANNA
AND HRISHIKESH ROY, JJ.]

Service Law:

Appointment – Compassionate appointment – Cancelled on finding that the appointments were made de-hors the provisions of Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 as amended w.e.f. 01.04.1999 – Application by the appointees challenging the cancellation – Tribunal found that the applicants were ineligible under the Rules – Order of the Tribunal was confirmed by High Court – Appeal to Supreme Court – Held: Norms prevailing on the date of consideration of the application should be the basis for consideration of claim of compassionate appointment – Compassionate appointment is a concession and not a right – Criteria laid down in the Rules must be satisfied – The application of the appellants should have been rejected at the threshold as being not in conformity with proviso to Rule 5 – Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 – r. 5 proviso.

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Dismissing the appeals, the Court

HELD: 1. While Rule 5 of Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 as it originally stood, enabled a minor dependant to apply within one year after attaining majority, the Rule making authority with the amendment effected from 01.04.1999 stipulated an outer limit of one year from the date of death of the government servant for making application for compassionate appointment. The validity of the amended Rules is not challenged. Following the amendment, the norms clearly suggest that the earlier provision which enabled a minor dependant to apply on attaining majority (may be years after the death of the government servant), has

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A been done away with. The object of the amended provision is to ensure that no application is filed beyond one year of the death of the government employee. The consequence of prohibiting application by a minor beyond one year from the date of death of the parent can only mean that the appellants were undeserving beneficiaries of compassionate appointment as they attained majority well beyond one year of the death of their respective parents. [Para 10][1185-C-E]

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D 2. In the present cases, when the government employee died, the appellants were minor and they had turned 18, well beyond one year of death of the parent. The dependants attained majority after a gap of 2-6 years from the respective date of death of their parents and then they applied for appointment. By the time, the dependent children turned 18, the amended provisions became operational w.e.f. 01.04.1999. As such their belated application for compassionate appointment should have been rejected at the threshold as being not in conformity with proviso to Rule 5. [Para 11][1185-F-G]

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F 3. The cases of the appellants are not covered by the transitory provision of Rule 9(3) introduced by the notification dated 28.5.2002. Rule 9(3) suggests that it is a transitory provision granting extension of time for applying for compassionate appointment. But the transitory provision excludes application filed in contravention of Rule 5, as amended in 1999. In other words, applications filed by minor dependants who had not attained majority within one year from the date of death of the government servants will be in contravention of Rule 5. [Para 13][1186-C-D]

G 4. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. [Para 14][1186-E-F]

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5. It can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee. The norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee. The appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. [Paras 18, 20 and 21][1187-F; 1188-B-E]

Commissioner of Public Instructions and Others v. K.R. Vishwanath (2005) 7 SCC 206 : [2005] 2 Suppl. SCR 1042 ; *Steel Authority of India Limited v. Madhusudan Das & Ors.* (2008) 15 SCC 560 : [2008] 14 SCR 824 ; *SBI v. Raj Kumar* (2010) 11 SCC 661 ; *MCB Gramin Bank v. Chakrawarti Singh* (2014) 13 SCC 583 : [2013] 10 SCR 1 ; *State of Himachal Pradesh & Anr. v. Shashi Kumar* (2019) 3 SCC 653 : [2019] 2 SCR 432 – relied on.

Canara Bank & Anr. v. M. Mahesh Kumar (2015) 7 SCC 412 : [2015] 9 SCR 724 ; *State Bank of India & Ors. v. Sheo Shankar Tewari* (2019) 5 SCC 600 : [2019] 3 SCR 718 – referred to.

Case Law Reference

[2005] 2 Suppl. SCR 1042	relied on	Para 12	G
[2008] 14 SCR 824	relied on	Para 14	
(2010) 11 SCC 661	relied on	Para 15	
[2013] 10 SCR 1	relied on	Para 15	
[2015] 9 SCR 724	referred to	Para 16	
[2019] 3 SCR 718	referred to	Para 17	H
[2019] 2 SCR 432	relied on	Para 19	

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9280-9281 of 2014.

 From the Judgment and Order dated 22.05.2012 and 09.11.2012 of the Division Bench of High Court of Karnataka at Bangalore in Writ Petition No. 43199/2011 (S-KAT) and in Review Petition No. 750 of 2012 respectively.

 With

 Civil Appeal No. 1996 of 2020 and Civil Appeal No. 1997 of 2020.

C Ms. Kiran Suri, Sr. Adv., Shanthkumar V. Mahale, Pradeep Sawkar, Syed Faizan Ali, Amith J., Rajesh Mahale, S. J. Amith, Purushottam Sharma Tripathi, Ms. Aishwarya Kumar, Mukesh Singh, V. N. Raghupathy, Shubhranshu Padhi, Ashish Yadav, Rakshit Jain, Advs. for the appearing parties.

 The Judgment of the Court was delivered by

D **HRISHIKESH ROY, J.**

 1. Leave granted in SLP(C) No. 34878/2013 and SLP(C) No. 24169/2015.

E 2. The appellants here were the beneficiary of compassionate appointments. But on the discovery that their appointments were made de hors the provisions of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 as amended w.e.f. 1.04.1999, (hereinafter referred to as the “Rules”), those appointments came to be cancelled. The amendment to the proviso to Rule 5 stipulated that in case of a minor dependant of the deceased government employee, he/ F she must apply within one year from the date of death of the government servant and he must have attained the age of eighteen years on the day of making the application. Before amendment, the minor dependant was entitled to apply till one year of attaining majority.

G 3. When their service was terminated the aggrieved appointees approached the Karnataka Administrative Tribunal at Bangalore (hereinafter referred to as the “Tribunal”). But the Tribunal found that appellants were ineligible for appointment under the Rules and accordingly dismissed the related applications. The resultant writ petitions were dismissed by the High Court of Karnataka at Bangalore, leading to the present appeals.

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4. We have heard Ms. Kiran Suri, learned Senior Counsel appearing for the appellant in the Appeal arising from the SLP (C) No.34878 of 2013, Mr. Shanthkumar V. Mahale, learned counsel appearing in C.A. Nos.9280-9281 of 2014 and in the appeal arising out of the SLP (C) No.24169 of 2015. The State of Karnataka is represented by Mr. V.N. Raghupathy and Mr S Padhi, the Learned Counsel in the respective appeals.

5. Assailing the adverse decision of the Tribunal as affirmed by the High Court, the appellants contend that they have been legitimately appointed on compassionate basis and have rendered service without any blemish and therefore, the authority should not be permitted to apply the amended provisions and cancel the appointment on the ground that the appointees were ineligible to apply for compassionate appointment. Ms. Kiran Suri, the learned senior counsel argues that Rule 5 is only procedural and is not mandatory and therefore, compassionate appointment of the dependant children who attained majority beyond one year of death of the government employee, should not be construed to be invalid. According to the appellants, their cases have to be considered under the unamended Rules which permits a minor dependant to apply for compassionate appointment within one year of attaining majority. Describing Rule 9 as a transitional provision whereunder the period for making application has been changed through various amendments, the counsel for the appellants argue that retrospective application of the amended provisions should not lead to cancellation of appointment. Moreover, since compassionate appointment was offered without any misrepresentation by the beneficiary, the appellants should not be rendered jobless now on the ground of non-eligibility of the appointees.

6. The respondents, on the other hand, argue that the norms applicable at the stage of consideration is relevant and here as the appellants had not attained majority within one year from the death of the government employee, they were ineligible to seek compassionate appointment under the amended provisions of the compassionate Rules. The Government counsel contend that since compassionate appointment is an exception to the general Rule governing appointment in the service of the State, the same has to be in conformity with the prescribed Rules and those ineligible under the Rules cannot ask for continuation of the illegal appointment. The respondents also argue that the government has the power to rectify the mistake and to recall the illegal appointment

A orders as the appellants were appointed erroneously, despite there ineligibility.

7. The essential details of the appellants can be seen in the following chart:-

B	Case	C.A. Nos. 9280-9281/2014 (N.C. Santhosh)	CA @ SLP(C) No. 34878/2013 (Sayeda F. Banao)	CA @ SLP(C) No. 24169/2015 (Sri Santosh)
	Deceased Govt. servant	N.H. Chandra Gowda	Shakila Jabeena Ara Begum	M. Indranna Reddy
	Dependant/Appointee	N.C. Santhosh	Sayeda Farheen Banao	Sri Santosh
C	Date of Birth	25.6.1982	12.5.1982	24.3.1983
	Parents Death	25.1.1998	24.5.1994	11.11.1998
	Minor's Majority	25.6.2000	12.5.2000	24.3.2001
D	Application for compassionate appointment.	First, mother applied on 28.2.1998. Then after attaining majority appellant applied on 29.06.2000.	First father applied but was rejected on 12.6.1997. Then after attaining majority appellant applied on 25.09.2000.	1.7.2001
	Appointment	25.8.2000	20.9.2001	14.12.2004
E	Removal	4.11.2003	I. 15.6.2005 but reinstated on 4.01.2006 on Tribunal's order. II. Removed again on 28.12.2006 and relieved on 2.1.2007 on disciplinary ground	18.2.2007
F	Karnataka Administrative Tribunal	2.7.2008	21.4.2009 – Disciplinary action not warranted but termination upheld for unmerited appointment.	15.6.2011
	Bangalore High Court	22.5.2012 (W.P.) and 9.11.2012 (Review)	14.8.2013	2.12.2011

G 8.1 Some additional aspect needs to be noticed to complete the factual details pertaining to the appeal arising out of the SLP(C) No. 34878/2013 filed by Sayeda F. Banao. In this case, on the death of the appellant's mother on 24.5.1994, first, a request was made by the appellant's father to provide him appointment on compassionate ground which however, was rejected by the authorities on 12.6.1997. Thereafter,

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the appellant after attaining majority on 12.5.2000 made an application for compassionate appointment on 25.9.2000 and was appointed as a Second Division Assistant on 20.9.2001. She was served with a show cause notice dated 2.6.2005 on the ground that she had not attained the age of 18 years within one year from the date of death of the government servant and accordingly, her service was terminated vide Order dated 15.6.2005.

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8.2 Challenging the order of termination, the appellant filed application before the Tribunal. The Tribunal vide order dated 20.10.2005 set aside the termination order holding that the service of the appellant was terminated without holding proper enquiry under Rule 11 of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and directed her reinstatement, reserving liberty to the State in accordance with law.

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8.3 Pursuant to the order of the Tribunal, the appellant was reinstated in service on 04.01.2006. Thereafter, an enquiry was initiated against her under Rule 11 of the said Rules alleging misconduct and misrepresentation of her age at the time of submission of her application seeking appointment on compassionate ground. The appellant was then removed from the service by order dated 28.12.2006 and when her appeal was rejected by the Appellate Authority on 30.08.2007, she again approached the Tribunal. In her OA No.4901/2007, the Tribunal vide its order dated 21.04.2009 found that there was no misconduct on the part of the appellant. Nevertheless the Tribunal affirmed the cancellation of the appointment with the finding that the appointment was made de hors the amended Rule 5 of the KCS (Appointment on Compassionate Grounds) Rules and thus, the cancellation of appointment was found to be justified by the Tribunal. The appellant's review petition was also dismissed by order dated 03.12.2009. The resultant writ petition filed by the appellant challenging cancellation of her appointment and the order of the Tribunal were dismissed, by the High Court under the impugned judgment dated 14.08.2013.

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8.4 Though, certain additional factual details are seen in the appeal relating to Sayeda Farheen Banao, but core issue is no different from the other cases. The question here too is whether her appointment on compassionate ground, was in violation of the Karnataka Civil Services (Appointment on Compassionate Ground) Rules, 1998.

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- A 9. The action taken by the respondents in cancellation of appointment is under the provisions of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 and therefore relevant Rules are extracted hereinbelow:-

Unamended Rule 5

- B *“Every dependant of a deceased Government servant, seeking appointment under these rules shall make an application within one year from the date of death of the Government servant, in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased Government Servant was working.*
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Provided that in the case of a minor, application shall be made within a period of one year after attaining majority.”

Following amendment w.e.f. 1.04.1999 the proviso to Rule 5 reads:-

- D *“.....*
- Provided that in the case of a minor, he must make an application within one year from the date of death of the Government servant and he must have attained the age of eighteen years on the date of making the application.*
- E *Provided further that nothing in the first proviso shall apply to an application made by the dependant of a deceased Government Servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998.”*
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Following the 28.05.2002 amendment, Rule 9(3) reads as under:-

- G *“.....*
- 9(3) : All applications for appointment on compassionate grounds made between the 13th day of September 1996 and the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) 3rd Amendment Rules, 2002 by the dependents of Government servants who died on or after 20th October 1989 (other than the application made by such dependents after the first day of April, 1999*
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and till the date of such commencement in contravention of the first proviso to Rule 5 which are :

(i) Rejected on the ground that they were not made within the period specified in Rule 5, or

(ii) Pending on such date of commencement, shall be deemed to have been made within the period specified under Rule 5 and shall be reconsidered or as the case may be considered for appointment subject to other provisions of these Rules."

10. While Rule 5 as it originally stood, enabled a minor dependant to apply within one year after attaining majority, the Rule making authority with the amendment effected from 01.04.1999 stipulated an outer limit of one year from the date of death of the government servant for making application for compassionate appointment. The validity of the amended Rules is not challenged in any of the present proceedings. Following the amendment the norms clearly suggest that the earlier provision which enabled a minor dependant to apply on attaining majority (may be years after the death of the government servant), has been done away with. The object of the amended provision is to ensure that no application is filed beyond one year of the death of the government employee. The consequence of prohibiting application by a minor beyond one year from the date of death of the parent can only mean that the appellants were undeserving beneficiaries of compassionate appointment as they attained majority well beyond one year of the death of their respective parents.

11. In all these cases, when the government employee died, the appellants were minor and they had turned 18, well beyond one year of death of the parent. As can be seen from the details in the chart, the dependants attained majority after a gap of 2-6 years from the respective date of death of their parents and then they applied for appointment. By the time, the dependent children turned 18, the amended provisions became operational w.e.f. 01.04.1999. As such their belated application for compassionate appointment should have been rejected at the threshold as being not in conformity with proviso to Rule 5. The appellants applied for compassionate appointment (after attainment of majority), well beyond the stipulated period of one year from the date of death of the parent, and therefore, those applications should not have been entertained being in contravention of Rules.

A 12. The provision of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 was considered in *Commissioner of Public Instructions and Others vs K.R. Vishwanath*¹. Speaking for the division bench, Dr. Justice Arijit Pasayat noted that the effect of the amended second proviso is that, unless the application is pending at the time of commencement of the Amendment Rules, the same can have no bearing on the claim for compassionate appointment. Thus, belated application filed by the dependant on attaining majority beyond one year from the date of death of the government employee would not be a valid application, consistent with the provisions of the Rules.

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C 13. Insofar as the appellant's claim to legitimacy of appointment on the basis of Rule 9(3) of the Rules, a reading of Rule 9(3) suggests that it is a transitory provision granting extension of time for applying for compassionate appointment. But the transitory provision excludes application filed in contravention of Rule 5, as amended in 1999. In other words, applications filed by minor dependants who had not attained majority within one year from the date of death of the government servants will be in contravention of Rule 5. Therefore, we are of the considered view that the cases of the appellants are not covered by the transitory provision of Rule 9(3) introduced by the notification dated 28.5.2002.

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E 14. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *Steel Authority of India Limited vs. Madhusudan Das & Ors.*² It was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant.

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G 15. This Court in *SBI vs. Raj Kumar*³ while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognized in this judgment. Similarly in *MCB Gramin Bank vs. Chakrawarti Singh*⁴ this Court reiterated that compassionate

¹ (2005) 7 SCC 206

² (2008) 15 SCC 560

³ (2010) 11 SCC 661

⁴ (2014) 13 SCC 583

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appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the Government employee.

16. However in *Canara Bank & Anr. vs. M. Mahesh Kumar*⁵ in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8.5.1993), *ex gratia* payment was proposed (under the circular dated 14.02.2005), the Court adopted a different approach. Noticing the extinguishment of the right to claim appointment, this Court held the “dying in harness scheme” which was prevalent on the death of the employee, be the basis for consideration.

17. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court’s view in *SBI vs. Raj Kumar* (supra) and *MCB Gramin Bank vs. Chakrawarti Singh* (supra) on one side and the contrary view in *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in *State Bank of India & Ors. vs. Sheo Shankar Tewari*⁶ the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

18. The above discussion suggest that the view taken in *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellants counsel on *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik vs. State of Karnataka & Ors.*⁷, it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

19. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar*⁸ the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment

⁵ (2015) 7 SCC 412

⁶ (2019) 5 SCC 600

⁷ MANU/KA/0203/1999 (Writ Petition No.37931 of 1998)

⁸ (2019) 3 SCC 653

A to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

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20. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of
C any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

D 21. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments, the appeals are found devoid of merit and the same
E are dismissed.

Kalpana K. Tripathy

Appeals dismissed.