

MALAYA NANDA SETHY

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v.

STATE OF ORISSA AND OTHERS

(Civil Appeal No. 4103 of 2022)

MAY 20, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law: Compassionate Appointment – Claim of – Rules applicable, rules prevailing on the death of the Government servant, who died in harness or the subsequent scheme prevalent at the time of consideration of the application – On facts, appellant applied for appointment as a Junior Clerk on compassionate ground under the 1990 Rules – However, application kept pending for consideration – Meanwhile, 1990 Rules replaced by 2020 Rules – Thereafter, the application was considered under the 2020 Rules – Writ petition by the appellant challenging the same– Dismissed by the High Court – On appeal, held: Appellant fulfilled all the conditions for appointment on compassionate grounds under the 1990 Rules – There was no fault and/or delay and/or negligence on the part of the appellant at all – Delay was on the part of department/authorities throughout on one ground or the other – Appellant is deprived of seeking compassionate appointment which he was otherwise entitled to under the 1990 Rules, thus, cannot be denied appointment under the 1990 Rules – Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 – Odisha Civil Services (Rehabilitation Assistance) Rules, 2020.

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Compassionate Appointment – Object and Purpose of – Held: Basis or policy of compassionate appointment is immediacy in rendering of financial assistance to the family of the deceased employee consequent upon his untimely death while in service – Thus, the authorities must consider and decide such applications for compassionate appointment on grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications – Application are to be considered well in time and not in a tardy way – Consideration must be fair, reasonable and based on relevant

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A *consideration – It cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case.*

Allowing the appeal, the Court

B **HELD: 1.1 In the peculiar facts and circumstances of the case, the appellant would be entitled for appointment on compassionate ground as per the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990, which were applicable at the time when the deceased employee died and the appellant made an application for appointment on the death of his father, i.e., in the year 2010. [Para 5][714-C-D]**

C **1.2 It is not in dispute that the deceased employee died on 2.1.2010 while in service. Immediately, in July 2010, the appellant applied for appointment on compassionate ground as a Junior Clerk under the 1990 Rules. As per Rule 2(b) of the 1990 Rules, “Family Members” shall mean and include the members in order of preference, which include, (i) wife/husband (ii) sons.....**
D **Therefore, when the mother was unable to undertake a government job due to her medical condition, the appellant, being the son was entitled to apply for appointment on the death of his father. That the application of the appellant, though was forwarded in the year 2011, was kept pending consideration initially for a period of five years. The same was attended to after a period of five years by the Additional Secretary. A fresh report regarding the financial condition of the family of the deceased government servant was called for. Also the Medical Board examined the mother of the appellant and furnished a report stating that she**
E **was unfit for a government job. Though the appellant fulfilled all the eligibility criteria and/or conditions for appointment on compassionate grounds, he was not appointed as a Junior Clerk as per 1990 Rules. However, in the meantime, 1990 Rules came to be replaced and the 2020 Rules came into force. [Para 6][714-E, F-H; 715-A, B, C-D]**

G **1.3 There was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there**

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was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, the appellant would not be denied appointment under the 1990 Rules. The judgment and order passed by the High Court is quashed and set aside. The respondents are directed to consider the case of the appellant for compassionate appointment under the 1990 Rules as per his original application made in 2010 and if he is otherwise found eligible to appoint him as Junior Clerk. [Paras 7 and 8][715-D-H; 716-A-C]

2.1 The object and purpose of appointment on compassionate grounds, i.e., 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 and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications. [Para 9][716-D-E]

2.2 If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies

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- A or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. There are cases of nearly two decades, wherein the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. Therefore, it is directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. [Para 9][717-A-C]

- D *N. C. Santosh v. State of Karnataka* (2020) 7 SCC 617 : [2020] 3 SCR 1177; *Indian Bank and others v. Promila and Another* (2020) 2 SCC 729 : [2020] 1 SCR 408; *State of Madhya Pradesh v. Amit Shrivastava* (2020) 10 SCC 496; *State of Madhya Pradesh v. Ashish Awasthi* Civil Appeal No. 6903/2021 decided on 18.11.2021; *The Chief General Manager, Telecommunication, BSNL v. Vidya Prasad* Civil Appeal No. 6019/2021 decided on 28.09.2021; *The Secretary to Govt. Department of Education (Primary) and Others v. Bheemesh alias Bheemappa* 2021 SCC OnLine SC 1264 – referred to.

Case Law Reference

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| F | [2020] 3 SCR 1177 | referred to | Para 2.2 |
| | [2020] 1 SCR 408 | referred to | Para 3.1 |
| | (2020) 10 SCC 496 | referred to | Para 3.1 |

- G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4103 of 2022.

From the Judgment and Order dated 26.10.2021 of the High Court of Judicature at Orissa in Writ Petition (C) No. 28023 of 2021.

- H Bharat Sangal, Sr. Adv., Nagarkatti Kartik Uday, Ms. Babita Kushwaha, Advs. for the Appellant.

Shubhranshu Padhi, Ashish Yadav, Rakshit Jain, Vishal Banshal, A
Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment B
and order dated 26.10.2021 passed by the High Court of Orissa at Cuttack
in Writ Petition (Civil) No. 28023/2021, by which the High Court has
dismissed the said writ petition preferred by the appellant herein and has
refused to direct the State authorities to appoint the appellant herein –
original writ petitioner on compassionate ground, the original writ petitioner C
has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as
under:

That the father of the appellant herein – original writ petitioner
was working as an Assistant Sub-Inspector in the Excise Department. D
He passed away on 02.01.2010 while in service. On the death of his
father, the appellant applied for his appointment as a Junior Clerk on
compassionate ground under the Orissa Civil Service (Rehabilitation
Assistance) Rules, 1990 (hereinafter referred to as the “1990 Rules”) in
July, 2010. It was the case on behalf of the appellant that his mother was
unable to undertake a government job due to her medical condition. The E
said application was sent to the office of the Excise Commissioner, Orissa,
Cuttack vide letter dated 3.8.2011. That thereafter the said application
was forwarded to the Additional Secretary to the Government, Excise
Department on 21.09.2011. The said application was not attended to by
the Excise Department for a considerable period of five years. After a F
period of five years, the Additional Secretary vide letter/communication
dated 9.9.2016 asked the Collector, Ganjam to furnish a fresh report
regarding the financial condition of the family of the deceased government
servant. Simultaneously, a report was also called for from CDMO, Ganjam
to place the matter of the mother of the appellant before the Medical
Board for proper examination to ascertain whether her inability to perform G
the government job continues. The CDMO, Ganjam constituted a Medical
Board and examined the mother of the appellant and furnished a report
to the Additional Secretary on 01.11.2016 stating that she was unfit for
government job. The CDMO, Ganjam furnished another report dated
06.02.2017 to the same effect. It appears that thereafter a report from H

A Tehsildar, Bellaguntha, which is the native place of the appellant, was also called for to ascertain financial condition and the Tehsildar submitted its report vide letter dated 28.10.2017 stating that the family income of the appellant from all sources does not exceed ceiling of Rs.72,000/- per annum.

B 2.1 Despite the above, the application of the appellant herein for appointment on compassionate ground was kept pending under consideration. However, before any further order appointing the appellant on compassionate ground under the 1990 Rules came to be passed, the 1990 Rules came to be replaced by the new Rules, namely, Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 (hereinafter referred to as the “2020 Rules”), issued vide notification dated 17.02.2020. Under the 2020 Rules, one family member of the deceased government servant would be appointed on compassionate grounds to ‘Group D’ base level post. Therefore, the application of the appellant was being sent to the Collector for taking necessary action under the 2020 Rules by the office of the Excise Commissioner, Odisha, vide communication dated 26.04.2021.

E 2.2 Feeling aggrieved and dissatisfied with the communication dated 26.04.2021, by which the case of the appellant herein was directed to be considered under the 2020 Rules, the appellant preferred the writ petition before the High Court. Before the High Court, it was the specific case on behalf of the appellant – original writ petitioner that the policy prevalent at the time when the application for compassionate ground was made, shall be applicable and not the subsequent scheme prevalent at the time of deciding the application. A number of decisions of this Court were relied upon. However, by the impugned judgment and order and relying upon and/or considering the decision of this Court in the case of *N.C. Santosh v. State of Karnataka (2020) 7 SCC 617*, the High Court has dismissed the said writ petition by observing that the claim should be considered as per the amended Rules that were prevalent at the time of consideration of the application and not the Rules that were prevalent on the death of the government servant.

G 2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition and holding that the case of the appellant shall be governed by the 2020 Rules (subsequent scheme), the original writ petitioner has preferred the present appeal.

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3. Learned counsel appearing on behalf of the respective parties have relied upon number of decisions of this Court taking contrary view on the applicability of the scheme and/or the relevant rules, namely, whether the policy prevalent at the time of the death of the deceased employee or the policy prevalent at the time of consideration of the application.

3.1 Learned counsel appearing on behalf of the appellant has heavily relied upon the decisions of this Court in the cases of *Indian Bank and others v. Promila and another* (2020) 2 SCC 729; *State of Madhya Pradesh v. Amit Shrivastava* (2020) 10 SCC 496; decision of this Court in the case of *State of Madhya Pradesh v. Ashish Awasthi* (Civil Appeal No. 6903/2021, decided on 18.11.2021); another decision of this Court in the case of *The Chief General Manager, Telecommunication, BSNL v. Vidya Prasad* (Civil Appeal No. 6019/2021, decided on 28.09.2021); and the latest decision of this Court in the case of *The Secretary to Govt. Department of Education (Primary) and others v. Bheemesh alias Bheemappa*, 2021 SCC OnLine SC 1264, in support of his submission that the relevant scheme and/or the rules prevalent at the time of death of the employee, who died in harness, and/or at the time of submitting the application is required to be considered and not the amended rules prevalent at the time of consideration of the application.

4. However, on the other hand, learned counsel appearing on behalf of the respondents – State has heavily relied upon a three Judge Bench decision of this Court in the case of *N.C. Santosh* (*supra*). It is submitted that in the case of *N.C. Santosh* (*supra*), a three Judge Bench of this Court, after taking into consideration the entire case law, has held that the claim should be considered as per the amended Rules that were prevalent at the time of consideration of the application and not the Rules that were prevalent at the time of death of the government servant.

4.1 Learned counsel appearing on behalf of the respondents has further submitted that even in the amended rules 2020, it is specifically provided that the amended 2020 Rules shall be applicable with respect to all pending applications. It is submitted that in that view of the matter, the claim of the appellant for appointment on compassionate grounds is required to be considered as per the amended 2020 Rules and not as per the earlier 1990 Rules.

A 4.2 Learned counsel appearing on behalf of the appellant has pointed out that in the case of *Bheemesh alia Bheemappa (supra)*, which is a recent decision, this Court had an occasion to consider the decision in the case of *N.C. Santosh (supra)*.

B 5. We have heard the learned counsel for the respective parties at length.

C We have noted that there is a conflict of view, as to whether the scheme/rules in force on the date of death of the government servant would apply or the scheme/rules in force on the date of consideration of the application on compassionate grounds would apply. There are divergent views and the conflict of opinion in different decisions of this Court. However, keeping the said question aside, for the reasons stated hereinbelow, we are of the opinion that in the peculiar facts and circumstances of the case, the appellant herein shall be entitled for appointment on compassionate ground as per the 1990 rules, which were applicable at the time when the deceased employee died and the appellant
D herein made an application for appointment on the death of his father, i.e., in the year 2010.

E 6. From the chronology of dates and events, mentioned hereinabove, it is not in dispute that the deceased employee died on 2.1.2010 while in service. Immediately, in July 2010, the appellant applied for appointment on compassionate ground as a Junior Clerk under the 1990 Rules. It was the specific case of the appellant that his mother was unable to take a government job due to her medical condition and therefore he, being a son applied for appointment on compassionate ground under the 1990 Rules. At this stage, it is required to be noted that under the
F 1990 Rules, there was no provision that when the wife of the deceased is alive, the son cannot make an application for appointment on compassionate grounds. As per Rule 2(b) of the 1990 Rules, “Family Members” shall mean and include the members in order of preference, which include, (i) wife/husband (ii) sons..... Therefore, when the mother was unable to undertake a government job due to her medical condition,
G the appellant, being the son was entitled to apply for appointment on the death of his father. That the application of the appellant, though was forwarded in the year 2011, was kept pending consideration initially for a period of five years. The same was attended to after a period of five years by the Additional Secretary. The Additional Secretary vide
H communication dated 9.9.2016 asked the Collector, Ganjam to furnish a

fresh report regarding the financial condition of the family of the deceased government servant. Simultaneously, a report was also called for from the CDMO, Ganjam to refer the mother of the appellant before the Medical Board for proper examination to ascertain whether her inability to perform a government job continues. The Medical Board examined the mother of the appellant and furnished a report on 01.11.2016 stating that she was unfit for a government job. The CDMO, Cuttack also furnished another report dated 6.2.2017 to the same effect. The matter does not end there. A report from Tehsildar, Bellaguntha which was the native place of the appellant was also called for to ascertain the financial condition of the family of the deceased. The Tehsildar, Bellaguntha submitted its report vide communication dated 28.10.2017 stating that the family income of the appellant from all sources does not exceed ceiling of Rs.72,000/- per annum. Despite the above and though the appellant fulfilled all the eligibility criteria and/or conditions for appointment on compassionate grounds, he was not appointed as a Junior Clerk as per 1990 Rules. However, in the meantime, 1990 Rules came to be replaced and the 2020 Rules came into force.

7. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of

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- A the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.

8. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The respondents are directed to consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July, 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk. The aforesaid exercise shall be completed within a period of four weeks from today. However, it is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., 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 and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

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If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.