



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.9094 of 2013 with connected matters.

Reserved on: 3<sup>rd</sup> September, 2015.

Pronounced on: October 6, 2015.

1. CWP No.9094 of 2013

Surinder Kumar .....Petitioner.

versus

State of H.P. and others. ....Respondents.

2. CWP No.6547 of 2010

Parkash Chand .....Petitioner.

versus

State of H.P. and another. ....Respondents.

3. LPA No.495 of 2011

H.P. State Electricity Board Ltd. and another .....Appellants.

versus

Shyama Devi .....Respondent.

4. LPA No.507 of 2011

H.P. State Electricity Board Ltd. and another .....Appellants.

versus

Sunil Kumar .....Respondent.

5. CWP No.1638 of 2011

Gagan Kumar .....Petitioner.

versus

State of H.P. and others. ....Respondents.

6. CWP No.4475 of 2011

Sunil Kumar .....Petitioner.

versus

State of H.P. and others. ....Respondents.

7. CWP No.6990 of 2011

Sharda and others .....Petitioners.

versus

State of H.P. and others. ....Respondents.

8. CWP No.7536 of 2011

Sandeep Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

9. CWP No.9113 of 2011

Vinay Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

10. CWP No.10185 of 2011

Satish Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

11. LPA No.528 of 2012

H.P. State Electricity Board Ltd.

versus

Sandeep Chauhan

.....Appellant.

.....Respondent.

12. LPA No.529 of 2012

H.P. State Electricity Board Ltd.

versus

Padam Singh

.....Appellant.

.....Respondent.

13. LPA No.551 of 2012

H.P. State Electricity Board Ltd.

versus

Ashok Kumar

.....Appellant.

.....Respondent.

14. LPA No.552 of 2012

H.P. State Electricity Board Ltd.

versus

Mungla

.....Appellant.

.....Respondent.

15. LPA No.553 of 2012

H.P. State Electricity Board Ltd.

versus

Manoj Sharma

.....Appellant.

.....Respondent.

**16. LPA No.554 of 2012****H.P. State Electricity Board Ltd.****versus****Neeraj Justa .****.....Appellant.****.....Respondent.****17. LPA No.555 of 2012****H.P. State Electricity Board Ltd.****versus****Ramesh Kumar****.....Appellant.****.....Respondent.****18. LPA No.577 of 2012****H.P. State Electricity Board Ltd.****versus****Jagdish Kumar****.....Appellant.****.....Respondent.****19. CWP No.1106 of 2012****Pankaj Kumar****versus****State of H.P. and another.****.....Petitioner.****.....Respondents.****20. CWP No.2035 of 2012****Bimla Devi and another****versus****State of H.P. and others.****.....Petitioners.****.....Respondents.****21. CWP No.3486 of 2012****Nirmala Devi****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****22. CWP No.4697 of 2012****Joginder Singh****versus****State of H.P. and another.****.....Petitioner.****.....Respondents.****23. CWP No.5115 of 2012****Vikram Chand****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.**

**24. CWP No.5446 of 2012**

**Bhima Devi** .....Petitioner.  
**versus**  
**H.P. State Forest Development Corporation Ltd. and anr.** .....Respondents.

**25. CWP No.5753 of 2012**

**Pawneshwar Sharma** .....Petitioner.  
**versus**  
**State of H.P. and others.** .....Respondents.

**26. CWP No.6286 of 2012**

**Vipan Pal** .....Petitioner.  
**versus**  
**Director, Block Elementary Education and anr.** .....Respondents.

**27. CWP No.7967 of 2012**

**Ravi Kant** .....Petitioner.  
**versus**  
**H.P. Electricity Board Ltd.** .....Respondent.

**28. CWP No.8325 of 2012**

**Ajay Kumar** .....Petitioner.  
**versus**  
**State of H.P. and others.** .....Respondents.

**29. CWP No.8342 of 2012**

**Damodar Ram** .....Petitioner.  
**versus**  
**State of H.P. and others.** .....Respondents.

**30. CWP No.8599 of 2012**

**Shiv Sharma** .....Petitioner.  
**versus**  
**State of H.P. and others.** .....Respondents.

31. CWP No.8650 of 2012

Vijay Kumar

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

32. CWP No.8652 of 2012

Rakeshwari Devi

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

33. CWP No.9172 of 2012

Joginder Singh

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

34. CWP No.9300 of 2012

Suresh Kumar

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

35. CWP No.9954 of 2012

Bhupal Singh

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

36. CWP No.10024 of 2012

Nagesh Kumar Garg

.....Petitioner.

versus

Principal Secretary (Ayurveda) and others.

.....Respondents.

37. CWP No.10111 of 2012

Chetan Sharma

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

38. CWP No.10336 of 2012

Charanjeet Singh

.....Petitioner.

versus

State of H.P. and others.

.....Respondents.

**39. CWP No.10511 of 2012****Tilak Raj****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****40. CWP No.10512 of 2012****Jagdish Chand****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****41. CWP No.10524 of 2012****Manjeet Kumar****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****42. CWP No.10756 of 2012****Sanjay Kumar****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****43. CWP No.11 of 2013****Ashok Kumar****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****44. CWP No.142 of 2013****Munish Kumar****.....Petitioner.****versus****State of H.P. and another****.....Respondents.****45. CWP No.695 of 2013****Vidya Laxmi****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.****46. CWP No.1204 of 2013****Bodh Raj****.....Petitioner.****versus****State of H.P. and others.****.....Respondents.**

**47. CWP No.1240 of 2013****Sandeep Kumar****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****48. CWP No.1274 of 2013****Munish Kumar****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****49. CWP No.5550 of 2013****Shivank Sharma****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****50. CWP No.6505 of 2013****Yogesh Kumar****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****51. CWP No.7010 of 2013****Ramesh Kumar****versus****H.P. State Electricity Board Ltd. and another****.....Petitioner.****.....Respondents.****52. CWP No.7109 of 2013****Rajeshwari Devi****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****53. CWP No.8674 of 2013****Hukam Chand****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.**

54. CWP No.8968 of 2013

Ankush

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

55. CWP No.9006 of 2013

Anil Kumar

versus

State of H.P. and another.

.....Petitioner.

.....Respondents.

56. CWP No.9115 of 2013

Anil Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

57. CWP No.10011 of 2013

Sheetal Vakil

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

58. LPA No.62 of 2014

State of H.P. & Anr.

versus

Vinod Kumar

.....Appellants.

.....Respondent.

59. CWP No.169 of 2014

Rajesh Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

60. CWP No.170 of 2014

Ashish Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

61. LPA No.189 of 2014

State of H.P. and others

versus

Pardeep Kumar

.....Appellants .

.....Respondent.



62. CWP No.215 of 2014

Deepak Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

63. CWP No.228 of 2014

Sukh Dev

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

64. CWP No.453 of 2014

Ghanshyam

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

65. CWP No.797 of 2014

Pawan Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

66. CWP No.803 of 2014

Lekh Raj

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

67. CWP No.1138 of 2014

Jagar Singh

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

68. CWP No.1204 of 2014

Vikas

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

69. CWP No.1512 of 2014

Lalita Devi

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

70. CWP No.1787 of 2014

Vijay Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

71. CWP No.1788 of 2014

Bhag Chand

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

72. CWP No.2202 of 2014

Kamlesh Kumar

versus

H.P. State Electricity Board Ltd. and others

.....Petitioner.

.....Respondents.

73. CWP No.2619 of 2014

Sandeep Kumar Sharma

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

74. CWP No.2758 of 2014

Devinder Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

75. CWP No.3112 of 2014

Anjali

versus

State of H.P. and another.

.....Petitioner.

.....Respondents.

76. CWP No.3117 of 2014

Suraj Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

77. CWP No.3143 of 2014

Khem Raj .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

78. CWP No.3252 of 2014

Surinder Kumar .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

79. CWP No.3568 of 2014

Chaman Singh .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

80. CWP No.3821 of 2014

Manoj Kumar .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

81. CWP No.3842 of 2014

Kamla Devi .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

82. CWP No.3893 of 2014

Ajit Pal .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

83. CWP No.7074 of 2014

Vishal Walia .....Petitioner.  
versus  
State of H.P. and others. ....Respondents.

**84. CWP No.7397 of 2014**

Sanjay Kumar

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

**85. CWP No.7805 of 2014**

Pawan Kumar

versus

Himachal Pradesh Road Transport Corporation

.....Petitioner.

.....Respondent.

**86. CWP No.8059 of 2014**

Mohan Lal

versus

H.P. State Electricity Board Limited

.....Petitioner.

.....Respondent.

**87. CWP No.8212 of 2014**

Babli Devi

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

**88. CWP No.8214 of 2014**

Vishal Verma

versus

HPSEB and others.

.....Petitioner.

.....Respondents.

**89. CWP No.8216 of 2014**

Sanjay Negi

versus

HPSEBL and others.

.....Petitioner.

.....Respondents.

**90. CWP No.8308 of 2014**

Raman Sindhu

versus

State of H.P. and others.

.....Petitioner.

.....Respondents.

**91. CWP No.8309 of 2014**

Jagdish Kumar

versus

HRTC and another.

.....Petitioner.

.....Respondents.

**92. CWP No.8362 of 2014****Pushap Raj****versus****HPSEBL and another.****.....Petitioner.****.....Respondents.****93. CWP No.8396 of 2014****Hari Ram****versus****State of H.P. and others.****.....Petitioner.****.....Respondents.****94. CWP No.8503 of 2014****Ritunjai Kaushik****versus****Himachal Pradesh Krishi Vishvavidyalaya****.....Petitioner.****.....Respondent****95. CWP No.8549 of 2014****Juini Devi and another****versus****H.P. State Forest Corporation Ltd. and another****.....Petitioners.****.....Respondents****96. CWP No.8895 of 2014****Surender****versus****HRTC and another****.....Petitioner.****.....Respondents****97. CWP No.9010 of 2014****Ripna Devi****versus****State of H.P. and others****.....Petitioner.****.....Respondents****98. CWP No.9132 of 2014****Akshay Kumar****versus****State of H.P. and others****.....Petitioner.****.....Respondents**

99. CWP No.9140 of 2014		
Ichha Ram		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
100. CWP No.9371 of 2014		
Rama Nand		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
101. CWP No.9378 of 2014		
Hirda Ram		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents
102. CWP No.9516 of 2014		
Shashi Kumar		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
103. CWP No.75 of 2015		
Sanjeev Kumar		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
104. CWP No.77 of 2015		
Godawari Devi and another		.....Petitioners.
	versus	
HRTC and another		.....Respondents
105. CWP No.99 of 2015		
Nitin Sharma		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents
106. CWP No.373 of 2015		
Pamil Kumar		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents

107. CWP No.372 of 2015

Bhim Singh

versus

State of H.P. and another

.....Petitioner.

.....Respondents

108. CWP No.533 of 2015

Kewal Kumar

versus

State of H.P. and others

.....Petitioner.

.....Respondents

109. CWP No.1676 of 2015

Abhinandan Sharma

versus

State of H.P. and others

.....Petitioner.

.....Respondents

110. CWP No.1846 of 2015

Balbir Sharma

versus

State of H.P. and others

.....Petitioner.

.....Respondents

111. CWP No.2169 of 2015

Satish Kumar

versus

State of H.P. and anr.

.....Petitioner.

.....Respondents

112. CWP No.2236 of 2015

Vinod

versus

State of H.P. and others

.....Petitioner.

.....Respondents

113. CWP No.2323 of 2015

Amit Kumar

versus

HPSEBL and others

.....Petitioner.

.....Respondents

114. CWP No.2397 of 2015

Sapna Devi

versus

State of H.P. and others

.....Petitioner.

.....Respondents

115. CWP No.1351 of 2015

Arshad Ali .....Petitioner.  
versus  
State of H.P. and others .....Respondents

116. CWP No.2684 of 2015

Anup Kumar .....Petitioner.  
versus  
State of H.P. and others .....Respondents

117. CWP No.3044 of 2015

Vishal Pundir .....Petitioner.  
versus  
State of H.P. and another .....Respondents

118. CWP No.3394 of 2015

Hardeep Dhiman .....Petitioner.  
versus  
State of H.P. and others .....Respondents

119. CWP No.3395 of 2015

Baljinder Singh .....Petitioner.  
versus  
State of H.P. and others .....Respondents

120. CWP No.3400 of 2015

Banti Ram .....Petitioner.  
versus  
State of H.P. and others .....Respondents

121. CWP No.3401 of 2015

Suresh Kumar .....Petitioner.  
versus  
State of H.P. and others .....Respondents



122. CWP No.3402 of 2015		
Naresh Kumar		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
123. CWP No.3546 of 2015		
Yogesh Verma		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents
124. CWP No.3556 of 2015		
Rajesh Kumar		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
125. CWP No.3561 of 2015		
Tanuj Kumar		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
126. CWP No.3583 of 2015		
Dilabar Singh		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents
127. CWP No.3585 of 2015		
Munish Dhadwal		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents
128. CWP No.3652 of 2015		
Shashi Kumar		.....Petitioner.
	versus	
State of H.P. and another		.....Respondents
129. CWP No.3667 of 2015		
Radhika Sharma		.....Petitioner.
	versus	
State of H.P. and others		.....Respondents

130. CWP No.3670 of 2015

Sanjeev Singh .....Petitioner.  
versus  
State of H.P. and others .....Respondents

131. CWP No.3762 of 2015

Narender Kumar .....Petitioner.  
versus  
State of H.P. and others .....Respondents

132. CWP No.3763 of 2015

Sanjay Kumar .....Petitioner.  
versus  
State of H.P. and others .....Respondents

133. CWP No.3774 of 2015

Akshay Kumar .....Petitioner.  
versus  
HPSEBL and others .....Respondents

134. CWP No.3822 of 2015

Prerna .....Petitioner.  
versus  
State of H.P. and another .....Respondents

---

**Coram**

The Hon’ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.

The Hon’ble Mr.Justice P.S. Rana, Judge.

Whether approved for reporting? Yes.

**Presence for the parties:**

Mr.Bimal Gupta, Ashwani Pathak, Mr.Sanjeev Bhushan, Ms.Jyotsna Rewal Dua, Ms.Ranjana Parmar, Mr.Satyen Vaidya, Senior Advocates, with Mr.Satish Sharma, Ms.Komal Chaudhary, Ms.Abhilasha Kaundal, Ms.Sahalini Thakur, Advocates, M/s Dushyant Dadwal, G.R. Palsara, Trilok Jamwal, Archana Dutt, M.L. Sharma, M.C. Verma, Neel Kamal Sood, Naresh Verma, Lalit K. Sharma, Nitin Thakur, Jeevesh Sharma, P.P. Chauhan, Surender Sharma, Rahul Mahajan, B.N. Bhardwaj, Digvijay Singh, Rakesh Kumar Dogra, V.B. Verma, Jivender Katoch, Anu Azta, Parmod Negi, Arvind Sharma, Y.S. Thakur, Avneesh Bhardwaj, Salochana Kaundal, Jagdish Thakur, Vijay Bhatia, Sanjay Jaswal, Vikas Rajput, Lokender Pal Thakur, V.S. Rathore, Ranjan Sharma, Ashok Thakur, Naresh Kaul, Adarsh Kumar Vashisht, Raj Pal Thakur, Ramesh Sharma, R.L. Chaudhary, Sandeep Kumar Chauhan, Arush Matlotia, V.D. Khidta, Varun Chandel, Vikrant Chandel, Naveen Kumar Bhardwaj, Shyam Singh, Daleep Singh Kaith, Sharmila Patial, Tarun Kumar Sharma, Javed Khan, S.C. Sharma, Devinder Chauhan Jaita, Sandeep Kumar Pandey, B.B. Vaid, Balwant Singh Thakur, B.N. Sharma, Anjali Soni Verma, Ashwani Gupta, L.N. Sharma, Gaurav Sharma, Diwan Singh Negi, Rajinder Singh Thakur, P.D. Nanda, Rupesh Sharma, Dalip Kumar Sharma, Surender Saklani, Raman Jamalta, Bhuvnesh Sharma, Ashok Kumar Tyagi, Pawan Gautam, Shashi Kiran and Kamlesh Shandil, Advocates, for the respective parties.

Mr. Shrawan Dogra, Advocate General with Mr. V.S. Chauhan and Mr. Romesh Verma, Additional Advocate Generals, for the State.

Mr.Ashok Sharma, Assistant Solicitor General of India, with Mr.Nipun Sharma, Advocate, for the Union of India.

**Mansoor Ahmad Mir, C.J.**

Batch of Letters Patent Appeals and Writ Petitions emanates from a policy, dated 18<sup>th</sup> January, 1990, framed by the State Government, for providing employment assistance on compassionate grounds to the dependant of a government servant, who dies in harness, leaving behind his family in immediate need of assistance, (hereinafter referred to as the Policy). Thus, all the appeals and the writ petitions were clubbed together and are being disposed of by this common judgment.

2. Before we deal with the Policy and the applicability thereof viz. a viz. to the facts of the each case, we deem it proper to find the origin and rationale behind granting compassionate appointment.

3. It is well settled principle of service jurisprudence that every appointment against a public post must be made strictly in consonance with the mandatory provisions of Articles 14 and 16 of the Constitution of India and as per the Rules occupying the field. Any selection/appointment made de hors the Rules, is illegal. However, an exception has been

carved out for providing employment on compassionate ground. The aim and object of granting appointment on compassionate ground is to provide help to the family/dependants of an employee, who dies in harness, in tiding over the crisis which they suddenly met on the death of the bread-earner of the family. The other object of promulgating such a scheme is to save the dependants of the deceased-employee from social evils and to come to their rescue in the hour of need, particularly, to those families who, on the death of their breadwinner, fall on the earth and lose everything.

4. The Central Government and the State Governments, have made Rules/Regulations/Policies/Schemes for making appointment on compassionate ground.

The Corporations and the Semi Government Departments, including Banks etc., have either adopted those Schemes or have framed their own Schemes.

5. The State of Himachal Pradesh, being a model employer, is no exception and has framed a Policy for providing employment assistance on compassionate ground

for the sons/daughters/near relations of those government employees, who died in harness and left their families in immediate need of assistance, which was notified on 18<sup>th</sup> January, 1990. It may be placed on record that the said Policy was amended by the respondents-State from time to time.

6. Before the said Policy is scrutinized and examined meticulously, we deem it proper to refer to the decisions of the Apex Court in regard to the aim and object of providing employment assistance on compassionate grounds.

7. The Apex Court in **Balbir Kaur and another vs. Steel Authority of India Ltd. and others**, reported in **(2000) 6 Supreme Court Cases 493**, has discussed the aim and object of granting employment on compassionate ground, while referring to the law expounded on the subject till the year 2000. In the said decision, the Apex Court observed that the socialistic pattern of society, as envisaged in the Constitution, has to be attributed its full meaning and the law courts cannot gaze as a mute spectator where relief is denied to the family, who is suffering due to the death of bread-earner. It is

apt to reproduce paragraphs 8 and 9 of the said decision, hereunder:

"8 The employer being Steel Authority of India, admittedly an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer - It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life - the answer cannot however but be in the negative - what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied, as "it is likely to open a Pandora's Box" - This is the resultant effect of our entry into the new millennium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the bread-earner. It is in this context this Court's observations in Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka (1990) 2 SCC 396 : (AIR 1990 SC 883 : 1990 Lab IC 625) seem to be rather apposite. This Court upon consideration of Randhir Singh v. Union of India (Daily Rated Casual Labour Employed under P and T Dept. through Bhartiya Dak Tar Mazdoor Manch v. Union of India) (1988) 1 SCC 122 : (AIR 1987 SC 2342 : 1988 Lab IC 37) as also Surinder Singh v. Engineer-in-chief (1986) 1 SCC 639 : (AIR 1986 SC 584 : 1986 Lab IC

551) and *D. S. Nakara v. Union of India* (1983) 1 SCC 305 : (AIR 1983 SC 130 : 1983 Lab IC 1) observed in paragraphs 14 and 15 as below :

"14. We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic while dreaming of elevating the lot of the common man of this country once stated :

"Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organized on a planned basis for the raising of mankind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible; forcibly if necessary, and there seems to be little doubt that coercion will often be necessary."

These were his prophetic words about three decades back. More than a quarter of century has run out since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote :

"The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing."

Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional ethos. It has still



remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami :

'It is imperative that all this various yogas should be carried out in practice. Mere theories about them will not do any good. First we have to hear about them; then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of an intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion never changes. Religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming, not hearing or acknowledging. It is the whole soul's becoming changed into what it believes. That is religion.'"

9. As a matter of fact the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach everyone and the ideals of the Constitution framers would be achieved since the people would be nearer the goal set by the Constitution - an ideal situation but a far cry presently."

8. The Apex Court in case titled as **National Institute of Technology & Ors. vs. Niraj Kumar Singh**, reported in **2007**

**AIR SCW 1169**, while dilating upon the aim and object of granting appointment on compassionate ground, has held that no appointment can be made on compassionate ground in the absence of Scheme and the Scheme must be corresponding to the scheme of equality, as enshrined in the Constitution. It was further held that all appointments against public posts must be made while keeping in view the mandate of Articles 14 and 16 of the Constitution of India. It is apt to reproduce paragraphs 14 to 16 of the said decision hereunder:

*"14. Appointment on compassionate ground would be illegal in absence of any scheme providing therefor. Such scheme must be commensurate with the constitutional scheme of equality.*

*15. This Court in Punjab Water Supply & Sewerage Board v. Ranjodh Singh & Ors. 2006 (13) Scale 426, has observed:*

*"The statutory bodies are bound to apply the rules of recruitment laid down under statutory rules. They being 'States' within the meaning of Article 12 of the Constitution Of India, 1950 are bound to implement the constitutional scheme of equality. Neither the statutory bodies can refuse to fulfil such constitutional duty, nor the State can issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Articles 14 and 16 of the Constitution Of India, 1950"*

*16. All public appointments must be in consonance with Article 16 of the Constitution Of India, 1950. Exceptions*

carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

9. The Apex Court in another decision in **Union of India & Anr. vs. B. Kishore, 2011 AIR SCW 2293**, while dealing with the case of appointment on compassionate ground, has observed that the aim and object of providing compassionate appointment to the dependants of a deceased-employee is to provide immediate succour to the family, who, on the sudden death of the employee, may find itself in a state of destitution and if that object is taken out of the scheme, in that case, it would turn out to be a reservation in favour of the dependants of an employee who died in harness, which would not be in consonance with the mandate of Articles 14 and 16 of the Constitution of India. It is apt to reproduce paragraphs 5 and 6 of the said decision hereunder:

"5. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court's observation, indigence of the dependents of the deceased employee is the first pre-condition to bring the case under the scheme of "compassionate appointment". The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

6. In *State Bank of India v. Raj Kumar*, 2010 11 SCC 661, elucidating the nature of the scheme of compassionate appointments this Court observed:

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die

*in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."*

10. After going through the pronouncements of the Apex Court, one comes to inescapable conclusion as to what is the purpose behind making appointment on compassionate ground and what factors are to be kept in mind by the concerned Authorities while making such appointments, of course, in consonance with the Scheme/Policy/Rules/ Regulations occupying the field.

11. The genesis of the controversy, in hand, is the Policy, dated 18<sup>th</sup> January, 1990, framed by the Government of Himachal Pradesh for making appointments on compassionate ground, which is reproduced hereinbelow:

**“Subject:- Appointment of sons/daughters/near relations of a government servant who died in harness, leaving his family in immediate need of assistance.**

The undersigned is directed to say that the question of revising the policy for providing employment assistance to dependents of Govt. servants, who died while in Govt. service, leaving their families in indigent circumstances was under consideration of the Govt. for some time past. After thorough consideration and in supersession of all previous orders in this respect, it has now been decided to adopt the following new policy for grant of employment on compassionate grounds to the dependents of deceased Govt. servants in future:-

**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.

**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 brighter and unmarried sister) of:-

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

(b) a Daily wage employee who dies while in service after having rendered at least 5 years service with not less than 240 days on daily wage basis in a year( to be computed as an average of the number of days served in the preceding years) leaving his family in immediate need of assistance. In such cases compassionate employment would be on daily wages only,

(c) a Govt. servant who has been missing for more than two years and the family needs the immediate assistance.

(d) a Govt. servant (Class-III and IV only) who retires on medical grounds under rule 38 of the C.C.S. (Pension) Rules, 1972.

Provided the employee so retiring has not crossed the age of 53 years and 55 years in case of Class-III and IV respectively.

(e) a Govt. servant who dies during the period of extension in service but not re-employment, leaving his family in immediate need of assistance.

**3) Authority competent to make appointment on Compassionate Grounds.**

(a) The compassionate appointment is to be provided basically in the department to which the deceased Govt. servant belonged, subject to fulfillment of minimum educational and technical qualifications prescribed for the post. In exceptional cases where the post does not at all exist in the Deptt. concerned, the said Department may recommend appointment in another department.

(b) Head of the Department to which the late employee belonged shall be competent to make compassionate appointment subject to fulfillment of all essential conditions and his satisfaction as to the indigent circumstances of the family of the deceased/retired Govt. servant.

**4) Post to which such appointment can be made:-** The appointment on compassionate grounds can be made only to the lowest rung of class-IV and Class-III posts carrying the pay scale of Rs.300-430 (now revised to Rs.750-1350) and 400-600 or 400-660 ( now revised to Rs.950-1800 respectively). Class-III jobs would include all equivalent jobs including technical posts and teachers (class-III) in the scale of Rs.950-1800 only.

**5. Eligibility:-**

(a) appointment on compassionate grounds can be made only against direct recruitment quota posts and candidate should possess the minimum educational and technical qualifications prescribed for the post as prescribed in recruitment Rules.

(b) if any training requirement is a pre-requisite for the post the incumbent seeking compassionate appointment against the post should possess such training and also possess physical standard wherever required for particular posts. Selection of incumbents

on such compassionate basis for training is not permissible.

(c) In all cases where one or more members of the family are already in Government service or in employment of Autonomous bodies/Boards/Corporations etc., of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases however, where the widow of the deceased Government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers.

(d) In the case of deceased Government servant who had taken loans/advances from the Government, the employment assistance to his widow or son of unmarried daughter will be provided only after obtaining an undertaking from him/her on non-judicial paper of the value of Rs.3/- to refund the entire amount of loan together with interest which the deceased Government servant had taken in the prescribed application form.

**6) whether advance increment(s) can be given:-**

No advance increment will be given to the dependents of the deceased Government servants on their compassionate appointment under any circumstances.

**7) Extent of relaxation and power to make relaxation:-**

While providing employment on compassionate grounds the following relaxation can be made by the Administrative Department\_

(a) Recruitment procedure, i.e. without the agency of Public service Commission or Employment Exchange.

(b) If there is ban on filling up the posts, the ban shall be deemed to have been relaxed for the purpose of making compassionate appointments.

(c) The educational qualification for class-IV posts will be relaxable in genuine cases with the prior



approval of the Cabinet. However, in case of a widow of Govt. servant to the appointed as Class-IV employee, the educational qualification can be relaxed by the concerned Administrative Department.

(d) Age relaxation shall not be given by any authority. Genuine cases will be placed before the Cabinet for allowing age relaxation by the Deptt. concerned.

**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 attained 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.

**9) Widow appointed on compassionate grounds getting remarried:-** A widow appointed on compassionate grounds will be allowed to continue in service even after re-marriage.

**10) Selective approach:-**

(a) Except as provided in para 7(c) above, the appointments on compassionate grounds should be made in such a way that persons appointed to the posts do have the essential educational and technical qualifications and experience requirements maintenance of efficiency of administration.

(b) It is not essential that a son or a daughter or a widow of a deceased Class-IV employee should be considered for employment against Class-IV post only but can be appointed against the lowest rung of Class-III post as indicated in para 4 above for which he is educationally qualified, provided a vacancy in Class-III is available.

(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:-

<b>Length of service</b>	<b>Rate of gratuity</b>
--------------------------	-------------------------

a) Less than one year	2 times of emoluments.
-----------------------	------------------------

b) One year or more but less than 5 years	6 times of emoluments.
---	------------------------

c) 5 years or more but less than 20 years	12 times of emoluments
---	------------------------

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.
---------------------	--

- (iv) Employees Group Insurance Scheme:- Financial assistance to the family of the deceased Government servant as under:-

- (i) Class-IV employees- Rs.10,000/-
- (ii) Class-III employees- Rs.20,000/-
- (iii) Class-II employees- Rs.40,000/-
- (iv) Class-I employees - Rs.80,000/-

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

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

(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.

**11) Request for change in posts:-** When a person has accepted a compassionate appointment to a particular post the set circumstances which led to his/her initial appointment should be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his carrier like his colleagues for future advancement. The request for change in posts should not be allowed. However, the incumbents would be allowed to apply for jobs under Govt./Corporation/Govt. of India, if they have better prospects there like other Govt. servants.

**12) General:-** The proforma as in Annexure (Part I and II) may be used by the candidate and the Department respectively for processing the cases of compassionate appointments."

Emphasis applied.

12. Clause-1 of the said Policy provides that compassionate appointment should be given only in deserving cases where the family of the deceased-employee is left in indigent circumstances. Clause-2 of the Policy lays down the scope of the Policy and provides that – i) employment assistance would be provided to the dependants in those cases where a government servant dies in harness, ii) where a daily wage employee who dies while in service after having rendered at least 5 years service with not

less than 240 days on daily wage basis in a year, iii) where an employee is missing for more than two years, and iv) where an employee (class-III and class-IV only), who retires on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972, provided that such an employee has not crossed the age of 53 years and 55 years in the case of Class-III and Class-IV, respectively. Clause-3 of the Policy provides as to who would be the competent Authority to make appointment on compassionate ground.

13. Clause-4 of the Policy provides that compassionate appointment would be made only to the lowest rung of Class-IV and Class-III posts. It was also provided under this Clause that Class-III jobs would include all equivalent jobs including technical posts and teachers (Class-III). Clause-5 of the Policy deals with the eligibility.

14. Clause-7 deals with the power of relaxation and provides that relaxation can be granted in regard to recruitment procedure, in case there is ban on filling up the posts the ban shall be deemed to have been relaxed, relaxation in educational qualification would be provided

only in respect of Class-IV posts and, that too, in genuine cases, with the prior approval of the Cabinet. However, in the cases of widows who are seeking appointment against Class-IV post, relaxation in educational qualification can be granted by the concerned Administrative Department. In respect of relaxation in age, such cases are required to be placed before the Cabinet.

15. Clause-8 of the Policy postulates that requests for grant of employment assistance must be received in the Department concerned within three years of the death of the Government servant. However, in case, at the time of death of the government servant, the sons/daughters of such an employee have not attained the age of majority, the time limit for receiving the request for employment assistance has been prescribed as attainment of 21 years by the eldest son/un-married daughter.

16. Clause 10 of the Policy postulates that the benefits received by the family of the deceased-employee on account of family pension, death gratuity and ex-gratia grant have to be kept in mind while considering the cases under

the Policy. Clause 11 states that once a person accepts compassionate appointment to a particular post, he/she cannot seek change of post and such requests would not be allowed.

17. The Policy, for the first time, was amended vide Office Memorandum, dated 26<sup>th</sup> February, 1990, which provided that incumbents, who were offered appointment on compassionate grounds, either on the death of their parents/brothers/sisters or on the retirement of their parents on medical grounds, as the case may be, would be entitled to senior scale on qualifying the type test. It is apt to reproduce the relevant portion of the Office Memorandum, dated 26<sup>th</sup> February, 1990, as under:

*".....it has been decided by the Government that the incumbents appointed as clerks on compassionate grounds either due to death of their parents/brothers/sisters etc. in service or due to retirement of their parents on medical grounds will not be allowed the senior scale till they qualify the type test. The decision may be brought to the notice of all concerned."*

18. Thereafter, an amendment was brought into the Policy vide Office Memorandum, dated 28<sup>th</sup> June, 1991, whereby it was provided that where the employee who

sought retirement on medical grounds, at the age of 53 years in the case of a Class-III employee and 55 years in the case of a Class-IV employee, the case of wife or husband, as the case may be, would be considered, at the first instance, for grant of compassionate appointment.

19. On 3<sup>rd</sup> October, 1992, again the said Policy was amended, whereby it was provided that the incumbents, who were appointed on compassionate grounds, were to qualify the typing test within one year of their appointment and the incumbents not qualifying the typing test within one year, would not be entitled for annual increment and the annual increment would be granted in such cases from the date the incumbents qualify the typing test.

20. On 1<sup>st</sup> June, 1992, the Policy was again amended only in regard to compassionate appointment on medical grounds, which is not necessary for present discussion.

21. Thereafter, on 18<sup>th</sup> May, 1995, Clause 2(b) of the said Policy was amended, whereby it was provided that the employment assistance on compassionate ground would be provided to the dependant of a deceased daily waged

worker on daily wage basis only, irrespective of the fact whether the deceased daily waged worker had put in five years service with 240 days, on daily wage basis, in a calendar year or not. It is apt to reproduce relevant portion of the said Office Memorandum, dated 18<sup>th</sup> May, 1995, hereunder:

*..... It has now been decided by the Government that the employment assistance to the dependent of a deceased daily waged worker shall be provided irrespective of the fact whether the deceased daily waged worker had put in 5 years service with 240 days on daily wages basis in a year.*

*Accordingly, para 2(b) of this Department O.M. of even number dated 18.1.1990 may be deemed to have been amended as under:-*

*"2(b). A daily waged employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily wages only."*

22. Vide Office Memorandum, dated 12<sup>th</sup> December, 1997, another amendment was carried out and clause-5(c) of the policy was amended to the following effect:

*"..... After due consideration of the matter it has now been decided by the Government that the employment assistance to the dependent of the deceased Government servant shall also be provided irrespective of the fact*



whether one or more members of the deceased family is/are in Defence Services.

Accordingly para 5(c) of this Department office Memorandum of even number dated 18.1.1990 may deem to have been amended to the above extent."

23. Thereafter, the Policy was again amended vide Office Memorandum, dated 8<sup>th</sup> May, 2001, to the following effect:

"..... After careful consideration it has been decided that a person appointed on compassionate grounds should give an undertaking in writing that he/she will maintain properly the other family members who were dependent on the deceased Government servant and in case it is proved subsequently (at any time) that the family members are being neglected or are not being looked after properly by him/her, his/her services may be terminated forthwith. It should be incorporated as one of the additional conditions in the offer of appointment applicable only in the case of compassionate appointee.

Further, it has been decided that such compassionate appointments can be terminated on the grounds stated in the offer of appointment after providing an opportunity to the person appointed on compassionate grounds by way of issuing a show cause notice asking him/her to explain why his/her services should not be terminated for non-compliance of the condition(s) in the offer of appointment and it will not be necessary to follow the procedure prescribed in the Disciplinary Rules/Temporary Service Rules for this purpose.

In order to check its misuse, it has also been decided that his power of termination of services for non-compliance of the condition(s) in the offer of compassionate appointment should vests only with the concerned Administrative Secretary of the Department not only in respect of persons working in the department but also in respect of Attached/subordinate Offices under that Department."

24. The Policy was also amended on 20<sup>th</sup> May, 2000 to the following effect:

*".... That as per provision of para-3 of the instructions ibid, the Head of Deptt. are competent to make appointment on compassionate grounds where the person seeking employment fulfils the criteria of educational as well as age and also his case covers under the instructions issued by the Govt. on the above subject. However, where relaxation on accounts of age/education qualification is necessitated, keeping in view the genuineness of the cases, such cases should be sent to the Admn. Deptt. alongwith specific recommendations and record of the case. As such, it is requested that in future such cases be decided finally at your level (except where relaxation on account of age/education qualification is needed) so that un-necessary delay to finalize these cases could be avoided."*

25. Again, pursuant to the Office Memorandum dated 25<sup>th</sup> May, 2001, the Policy was amended and it was provided that all cases pertaining to compassionate appointment be sent by the concerned Heads of Department to the Finance Department of the Government for examination.

26. Vide Office Memorandum dated 21<sup>st</sup> June, 2002, once more, the Policy was amended and it was provided that the Administrative Departments would be the competent Authority to take a decision on the requests for compassionate appointments, subject to fulfillment of

essential conditions, including satisfaction in regard to indigent circumstances of the family of the deceased/retired employee. The relevant portion of the said Office Memorandum is reproduced below:

*"....it has been decided by the Government that henceforth the Administrative Departments shall be the competent authority to take a decision on the requests for compassionate appointments subject to fulfillment of all essential conditions of the policy and their satisfaction as to the indigent circumstances of the family of the deceased/refired Government servant."*

27. On 24<sup>th</sup> August, 2002 and 2<sup>nd</sup> September, 2002, clarifications in regard to 'indigent circumstances' were issued defining the word "indigent", as referred to in the Policy. Relevant portion of the letter dated 24<sup>th</sup> August, 2002 is reproduced below:

*".....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 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."

It may be placed on record that it appears that these clarificatory letters, dated 24<sup>th</sup> August 2002 and 2<sup>nd</sup>

September, 2002, were issued without amending the Policy and without any approval from the competent Authority.

28 Vide Office Memorandum, dated 23<sup>rd</sup> November, 2004, yet again the Policy was amended and it was provided that the Administrative Departments would send the requests for compassionate appointments to the Finance Department of the Government, who, in turn, would submit the same to the Hon'ble Chief Minister through Chief Secretary. It is apt to reproduce the relevant portion of the said Office Memorandum, hereunder:

*"..... After due consideration it has now been decided by the Government that henceforth all the Administrative Departments will send case-files in this regard to the Finance department which will submit the same to the Hon'ble Chief Minister through Chief Secretary for approval."*

29. Again, amendment in the said Policy was made on 16<sup>th</sup> August, 2005, whereby Clause 2(b) of the said Policy was amended and it was laid down that in case a work charge Beldar, working on daily wage basis with 7 years continuous service, dies in harness, one of his dependants be appointed on compassionate ground, on daily wage basis

and the Deputy Commissioners, Superintending Engineers of Public Works Department, Irrigation & Public Health Department, HPSEB, Conservators of Forest, Chief Medical Officers, Deputy Director of Horticulture/Agriculture Department and other equivalent Regional/District Level Officers, as the case may be, would be competent to make such an appointment.

*".....With a view to further liberalize the policy, it has been decided by the Government that if a Work Charged Beldar on daily wages with 7 years continuous service dies in harness one of his dependents be appointed on daily wages. In such cases appointments will be done by Deputy Commissioner, Superintending Engineers of Public Works Department, Irrigation & Public Health Department, H.P.S.E.B., Conservators of Forest, Chief Medical Officers, Deputy Director of Horticulture/Agriculture Department and other equivalent Regional/District Level Officers as the case may be.*

Accordingly, para 2(b) of this Department O.M. of even number dated 18.01.1990 may be deemed to have been amended as under:-

*"2(b)(i) A daily waged employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily wages only."*

2b(ii) A work Charge/Beldar on daily wages with 7 years continuous service who dies in harness, one dependent may be appointed on daily wages. Appointment will be done by Deputy Commissioner, Superintending Engineers of Public Works Department, Irrigation & Public Health Department, H.P.S.E.B., Conservators of Forest, Chief Medical Officers, Deputy Director of Horticulture/Agriculture Department and other equivalent Regional/District Level Officers as the case may be."

30. The policy was amended vide Office Memorandum, dated 4<sup>th</sup> April, 2008, and it was provided that only indigent circumstances of the family were required to be looked into and no indigent certificate of any kind was required. It is apt to reproduce the relevant portion of the said Office Memorandum hereunder:

".....It has been brought to the notice of the Government that some departments are not implementing these provisions and therefore, the Government has decided to reiterate the following points:

1. That employment should be given on merit i.e. after examining the indigent status of the family properly.
2. The applications received for such employment may have some deficiencies/objections. All such deficiencies/ objections should be raised only once

*and the practice of returning the applications several times is not correct. This causes unnecessary harassment to the families and therefore it should be avoided; and*

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."*

31. Subsequently, Office Memorandum was issued on 10<sup>th</sup> November, 2008, whereby 5% vacancies, falling under the direct recruitment quota in Class-III and Class-IV posts, were reserved for appointments to be made on compassionate grounds. It is apt to reproduce the relevant portion of the said amendment hereunder:

".....The matter for providing employment on compassionate grounds expeditiously in deserving cases was under consideration of the Government for some time past. After due consideration it has been decided by the Government that in order to provide compassionate employment to the deserving and eligible persons 5% of vacancies falling under direct recruitment quota in Class-III & IV post should be reserved for this category. The Appointing Authority may therefore, hold up to 5% of vacancies in the



aforesaid categories to be filled by direct recruitment, so as to fill such vacancies by appointment on compassionate grounds."

32. Vide Office Memorandum, dated 21<sup>st</sup> January, 2009, issued by the Secretary (Personnel) to the Government Himachal Pradesh, it was provided that the cases for appointment on compassionate ground on daily wage basis be also sent to the Finance Department for obtaining approval. It is apt to reproduce relevant portion of the said Office Memorandum hereunder:

*".....After due consideration and in continuation of the above said Office Memoranda, it has now been decided by the Government that henceforth the compassionate cases of employment of daily-wagers shall also be sent by the Departments to the Administrative Departments who will send the same to the Finance Department for obtaining the approval of the competent authority so as to expedite the matter and maintain uniformity in approach."*

33. A letter, dated 15<sup>th</sup> July, 2010, was issued by the Principal Secretary (Finance) to the Government of Himachal Pradesh, to all the Administrative Secretaries whereby it was conveyed that for the present, only those cases be sent to

the Finance Department for appointment on compassionate ground in which the applicant is a widow or where both parents of the applicant are not alive. The relevant extract of the said letter is reproduced hereunder:

*"....as per present policy of the Government this Department is considering those cases where the applicant is a widow or cases of those applications whose both parents are not alive."*

34. In the sequel, vide letter dated 25<sup>th</sup> September, 2010, again an amendment was brought into the said Policy wherein it was provided that apart from widows, the cases of the applicants whose parents were not alive, would be considered on priority basis for appointment on compassionate grounds. The relevant portion of the said letter is extracted hereinbelow:

*"....Now, it has been decided by the Government that apart from the widow applicants the cases of applicants whose both parents are not alive shall be given priority for considering the matter of providing employment on compassionate grounds subject to fulfillment of other relevant criteria prescribed by the Govt. from time to time. You are requested to please bring these instructions to the notice of all concerned for strict adherence."*

35. Thereupon, Clause 2(f) was added in the Policy vide Office Memorandum, dated 4<sup>th</sup> September, 2012, whereby it was provided that the dependant of a contractual employee, who died in harness, would be entitled for appointment on compassionate ground on daily wage basis. It is apt to reproduce relevant portion of the said notification hereunder:

*“.....It has further been decided by the State Govt. that the employment on compassionate grounds shall also be extended to the dependents of Contract employees who die while in service. Accordingly, the following sub clause (f) below para 2 is inserted in the above mentioned policy dated 18.01.1990:-*

*(f) A contractual employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily waged basis.”*

36. Letter dated 21<sup>st</sup> December, 2012, issued by the Finance Department of the Government to the Administrative Secretaries, mandates that all cases wherein appointment on compassionate ground has been sought, be examined in light of the benefits received by the family of the deceased-

employee on account of family pension, ex-gratia grant, death gratuity, employees group insurance scheme, leave encashment, deposit link insurance and the amount under the contributory pension scheme.

37. Thereafter, in terms of the Office Memorandum, dated 10<sup>th</sup> September, 2013, following amendment was effected in Clause 2(d) and Clause 10 (b), which are reproduced below:

*".....After careful consideration, the Para(s): 2(d) & 10(b) of the Department of Personnel's Office Memorandum No.Per.(AP-II)-F-(4)-4/89 dated 18.01.1990 are substituted as under:*

*"2(d): A Government servant (Class-III and Class-IV) who retires on medical grounds under Rule-38 of the C.C.S. (Pension) Rules, 1972*

*Provided that the employee so retiring has not crossed the age of 45 years in case of Class-III and IV respectively."*

*"10(b): The dependents of deceased Class-IV employees would be given compassionate employment against Class-IV posts only."*

38. However, vide office Memorandum, dated 17<sup>th</sup> December, 2013, the amendment effected in Clause 10(b), vide office Memorandum dated 10<sup>th</sup> September, 2013, supra,

was withdrawn with effect from the date of its commencement i.e. 10<sup>th</sup> September, 2013. It is apt to reproduce the relevant extract of the said office memorandum hereunder:

*"....Para-10(b) of the Department of Personnel's Office Memorandum No.Per.(AP-II)-F-(4)-4/89 dated 18.01.1990 was amended vide this Department's Office Memorandum of even number dated 10.09.2013 by substituting the same with the following provision:-*

*"10(b): The dependents of deceased Class-IV employees would be given compassionate employment against Class-IV posts only."*

*After careful consideration, it has now decided to withdraw the said amendment from the date of its commencement i.e. w.e.f. 10.09.2013."*

39. Other amendments were also brought into the said policy, however, those amendments have no bearing on the cases in hand and therefore, are not being referred to, for the sake of brevity.

40. As far as fixing of income slab is concerned, no material has been placed on record to suggest that the income slab was prescribed by amending the Policy and the decision to that effect was taken by the appropriate

Authority. A specific query was put to the learned Advocate General to show from the records whether the decision for fixing the maximum income ceiling, by taking into account the income received from family pension and other terminal benefits, was taken by amending the Policy and whether such amendment has been approved by the Cabinet.

41. To this, the learned Advocate General submitted that Clause 10(c) of the Policy itself provides that amounts received by the family of the deceased employee on account of ex-gratia, improved family pension and death gratuity, are to be taken into consideration, while granting appointment on compassionate ground. In order to show that the decision for fixing the maximum income ceiling was taken by amending the policy, he has placed reliance upon a letter dated 1<sup>st</sup> November, 2008, which was written by the Secretary (PW) to the Engineer-in-Chief, HP PWD, in which it was mentioned that the income ceiling fixed by the Finance Department, for a family of four members, was Rs.1.00 lac. It is apt to reproduce the said letter hereunder:

"From

The Secretary(PW) to the  
Govt. of Himachal Pradesh

To

The Engineer-in-Chief,  
HP PWD, Nirman Bhawan,  
Shimla-2.

Dated Shimla-2, the 1.11.2008

Subject: Regarding Employment assistance on  
compassionate grounds.  
Sir,

On the above cited subject, I am directed to say that Finance Deptt. has issued some instructions/conditions regarding compassionate employment which already stands conveyed to your office vide this deptt letter No.PBW-A-B(2)-34/2006 dated 29<sup>th</sup> September 2008. One of the conditions is that before offer of appointment, department is to ensure that Income based indigency criteria is met with. However, the Income based criteria fixed by the Finance Department is reproduced as under:-

"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. 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."

You are therefore, requested that while sending the cases of employment assistance on compassionate grounds to this department, these may be examined on the basis of above criteria fixed by the Finance Department and such cases which do not fulfill the above criteria, need not be sent to the Govt. and be decided at your own level.

Yours Faithfully

Sd/-

Under Secretary (PW) to the  
Govt. of Himachal Pradesh"

It is mentioned in the said letter that the maximum family income ceiling fixed by the finance Deptt. for a family of 4 members was Rs.1.00 lac. Thereafter, as has come on the record, the maximum income ceiling was increased to Rs.1.50 lacs.

42. However, it is not clear from a perusal of the above letter - whether the maximum income ceiling, by taking into account the amount received by the family



towards family pension and other terminal benefits, was fixed on the basis of the amendment effected by the competent Authority i.e. the State Cabinet. If the answer to this question is in the affirmative, then it is again a mystery that why the follow-up orders were not issued by the concerned Department of the Government bringing the said amendment into broad day light. The learned Advocate General was also not in a position to place on record any material which would be suggestive of the fact that the said ceiling was fixed by amending the Policy.

43. It is also pertinent to note that the Finance Department of the Government of Himachal Pradesh issued a letter, dated 18<sup>th</sup> July, 2014, to all the Administrative Secretaries that an appeal be filed in cases where the Courts have passed direction for giving compassionate appointment to a claimant without counting family pension as income.

44. Thus, from the above discussion of the Policy, as amended from time to time, and from the facts of the cases, which would be enumerated subsequently, the following

questions emerge for determination, in order to narrow down and settle the controversy:

- (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?
- (ii) Which date would be relevant viz. a viz. 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?
- (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?

- (iv) Whether the applicant can claim appointment on compassionate ground against a higher cadre, once he had been appointed in the lower cadre?
- (v) In case a person is appointed on contract basis, whether he is within his rights to seek appointment on regular basis?
- (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?
- (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?

45. After going through the Policy, dated 18<sup>th</sup> January, 1990, as amended from time to time, and the facts, as are emerging, our point-wise findings, on the above points, are as under.

**Point No.(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?**

46. Clause 10(c) of the Policy mandates that while making appointment on compassionate ground, the competent Authority has to keep in mind the benefits received by the family on account of ad hoc ex-gratia grant, improved family pension and death gratuity. Therefore, we may place on record at the outset that no maximum income ceiling has been prescribed in the Policy. Only what has been prescribed is that the competent Authority has to keep in mind the benefits received by the family after the death of the employee, as detailed above.

47. The aim and object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis which the family has met on the death of its breadwinner. Though, appointment on compassionate ground is inimical to the right of equality guaranteed under the Constitution, however, at the same time, we cannot be oblivious to the fact that the concept of granting appointment on compassionate ground

is an exception to the general rule, which concept has been evolved in the interest of justice, by way of Policy framed in this regard by the employer. The object sought to be achieved by making such an exception is to provide immediate assistance to the destitute family, which comes to the level of zero after the death of its bread-earner. Thus, we are of the considered view that the amount of family pension and other retiral benefits cannot be equated with the employment assistance on compassionate ground.

48. While reaching at this conclusion, we are supported by the decision of the Apex Court in **Govind Prakash Verma vs. Life Insurance Corporation of India and others, (2005) 10 Supreme Court Cases 289**, wherein it was held that scheme for providing employment assistance on compassionate ground was over and above the service benefits received by the family of an employee after his death. It is apt to reproduce the relevant portion of paragraph 6 of the said decision hereunder:

*“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. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.....”.*

49. The Apex Court in **A.P.S.R.T.C., Musheerabad & Ors. vs. Sarvarunnisa Begum, 2008 AIR SCW 1946**, while discussing the aim and object of granting compassionate appointment, has held that the widow, who was paid additional monetary benefits for not claiming appointment, was not entitled to compassionate appointment. It is apt to reproduce paragraphs 3 and 4 of the said decision hereunder:

*“3. This Court time and again has held that the compassionate appointment would be given to the dependent of the deceased who died in harness to get*

over the difficulties on the death of the bread-earner. In *Umesh Kumar Nagpal vs. State of Haryana and Others*, (1994) 4 SCC 138, this Court has held as under:

"The whole object of granting compassionate employment is 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 post 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.

Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

4. In the present case, the additional monetary benefit has been given to the widow apart from the benefits available to the widow after the death of her husband to get over the financial constraints on account of sudden death of her husband and, thus, as a matter of right, she was not entitled to claim the compassionate appointment and that too when it had not been brought to the notice of the Court that any vacancy was available where the respondent could have been accommodated by giving her a compassionate appointment. That apart, the Division Bench of the High Court has committed an error in modifying the direction of the Single Judge by directing the Corporation to appoint the respondent when no appeal was preferred by the respondent challenging order of the Single Judge."

50. Coming to the Policy in hand, there is nothing on the record to show that the writ respondents have ever made a provision for additional monetary benefit, as a substitute to the employment assistance on compassionate ground, except the terminal benefits to which the family of the deceased-employee is otherwise entitled to.

51. The Apex Court in its latest decision in **Canara Bank & Anr. vs. M. Mahesh Kumar, 2015 AIR SCW 3212**, while



relying upon its earlier decision in *Balbir Kaur and another vs. Steel Authority of India Ltd. and others*, (supra), has restated the similar position, and held that grant of family pension or payment of terminal benefits, cannot be treated as substitute for providing employment assistance on compassionate ground. It is apt to reproduce paragraphs 15 and 16 of the said decision hereunder:

*"15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.*

*16. In **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.**, 2000 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India,*

contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13. .But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

Emphasis applied.

52. The Clauses contained in the Policy in hand are similar to the Scheme, which was the subject matter before the Apex Court in **Canara Bank's case (supra)**. Therefore, the mandate of the said judgment of the Apex Court is squarely applicable to the cases in hand.

53. From the facts of the cases in hand, another moot question, which arises for consideration, is - Whether instructions contained in letters/communications, made by one Department of the Government to another, can be said to be amendment in the Policy? The answer is in the negative for the following reasons.

54. In order to show that the maximum income ceiling was prescribed by the competent Authority, the respondents have relied upon the letter, dated 1<sup>st</sup> November, 2008, written by the Secretary (PW) to the Government of H.P., to the Engineer-in-Chief, HP PWD, referred to above, wherein it was mentioned that the income ceiling fixed by the Finance Department, for a family of four members, was Rs.1.00 lac. A perusal of this letter shows that it has been mentioned therein that *"the Income Criteria fixed by the Finance Department*

*takes into consideration maximum family income ceiling fixed by the finance Deptt. for a family of 4 members as Rs.1.00 lac."* It is nowhere mentioned in the said letter that the income ceiling was fixed by the competent Authority by making amendment in the Policy. Moreover, the said amendment, if any, has not been placed on record and has not seen the light of the day. Therefore, the letters/communications issued by a Department to another Department cannot be said to be amendment in the Policy unless the said amendment has got the approval of the competent Authority i.e. the Cabinet.

55. Having regard to the above discussion, we are of the considered view that the action of the respondents of denying employment assistance to the dependant of a deceased employee by taking into account the family pension and other terminal benefits is not tenable in the eyes of law. Point No.(i) is answered accordingly.

**Point No.(ii) - Which date would be relevant viz. a viz. 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?

Point No.(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?

56. These points, being overlapping, are taken up together and are being determined as follows.

57. To answer these points, we may refer to Clause-8 of the Policy, which provides that at the time of death of the employee, in case, the dependant of the employee is minor, the writ respondents would keep the offer of appointment under eclipse i.e. open till the eldest son/un-married daughter attains the age of 21 years. Thus, from a perusal of the above Clause and the Policy in its entirety, we are of the considered view that in order to achieve the avowed purpose of the

Policy, the cause of action can be said to have arisen on the date when the claim is presented by the applicant by filing the application claiming appointment on compassionate ground, and that, the claim for appointment on compassionate ground, presented under a particular scheme, cannot be considered under a scheme which was amended after the date of making the claim.

58. While reaching at the above conclusion, we are supported by the decision of the Apex Court in **State Bank of India and others vs. Jaspal Kaur, 2007 AIR SCW 1044**, wherein the Apex Court has held that appointment on compassionate ground has to be made strictly in accordance with the Policy/Scheme which was applicable at the time of making the application. It is apt to reproduce paragraph 30 of the said decision hereunder:

*30. Finally, in the fact situation of this case, Sri. Sukhbir Inder Singh (late), Record Assistant (Cash & Accounts) on 01.08.1999, in the Dhab Wasti Ram, Amritsar branch, passed away. The respondent, widow of Sri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 05.02.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in*

favour of the respondent applying the scheme formulated on 04.08.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of deceased is Rs.5855/- only, which is less than 40% of the salary last drawn by Late Shri. Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water."

59. The Apex Court in **Maharani Devi & Anr. vs. Union of India & Ors., 2009 AIR SCW 5775**, while considering the question as to what would be the relevant date – whether date of death of the employee or the date when the application was presented or the date of consideration, remanded the matter to the High Court to decide the said issue. It is apt to reproduce paragraphs 12, 13, 14 and 15 of the said decision hereunder:

"12. The learned Counsel for the appellants relied on the judgment of this Court reported in *Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.* which is a Constitution Bench decision. This was a case wherein the validity of the same Notification issued by the Railways under Article 309 amending Rule 2544 of Indian Railway Establishment Board with retrospective effect was under

consideration. By that amendment the pension conditions of the employees who had already retired on the date of Notification was adversely affected. The Court held that in the circumstances, the rules could not have been amended retrospectively affecting the rights of the employees. The Court, however, held that on the date when the said retrospective amendments were introduced, Article 19(1)(f) and Article 31(1) were available in the Constitution of India. The Court held that, therefore, the right of property of the petitioner was breached by the impugned retrospective circulars. Further in cutting down the pension by bringing in the amendments to the provisions retrospectively would be invalid, breaching Articles 14 and 16. Relying heavily on this judgment the learned Counsel suggests that at least in the aforementioned case, the amendments were retrospective while in the present case they were not retrospective and, therefore, the amended Circular dated 13.12.1995 would not be applicable. The further argument is that under any circumstance the right for being considered for compassionate appointment had accrued on the date of death of the employee that being the only relevant date. According to the learned Counsel the date on which the representation was made was irrelevant.

13. As against this the learned senior counsel Shri Harish Chandra urged that the most relevant date would only be when the representation was made because the Railway Board had to consider as to whether the appellants were indigent on the date when the application was made.



14. On this crucial question, however, the High Court has not expressed any opinion. It has merely approved of the judgment of the Tribunal. Learned senior counsel in support of his argument relied on the judgment in *State Bank of India and Ors. v. Jaspal Kaur*, reported in 2007 (9) SCC 571. However, we do not find any similarity in the situation appearing in this case and the one decided by this Court. The reported decision only considered the question as to which scheme pertaining to compassionate appointment should be preferred - whether it should be the scheme prevailing at the time when the application for compassionate appointment was filed or the one which was available on the date of decision of the Court.

15. Such question is not for our consideration in the present matter. That decision is, therefore, of no use for learned Counsel for the respondents. However, in our view the question posed by us as to what would be the relevant date for consideration, whether it would be the date of death of employee or whether it would be the date of making the representation? That has not been considered by the High Court. We, therefore, remand this matter to the High Court with a request to the High Court to decide the same. We request the High Court to dispose of the matter within six months of the writ reaching the High Court as the matter pertains to the rights of a poor widow. The appeal is allowed in the terms stated by us with no orders as to the costs."

60. The Apex Court in **Bhawani Prasad Sonkar vs. Union of India & Ors.**, 2011 AIR SCW 2039, while dealing with

the case of compassionate appointment, has held that a scheme or policy promulgated by the employer is binding on the employer and the employee. It is apt to reproduce paragraph 15 of the said decision hereunder:

*"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the factors to be taken into consideration while examining the*

*claim for appointment on compassionate ground, we may refer to a few decisions."*

61. The Apex Court in **MGB Gramin Bank vs. Chakrawarti Singh, 2013 AIR SCW 4801**, held that in case a scheme does not create any legal right, a candidate cannot claim that his case be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. It is apt to reproduce paragraphs 12 and 13 of the said decision hereunder:

*"12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar, (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:*

*"14. Date of effect of the scheme and disposal of pending applications: The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."*

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the

appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr.*, this Court held that in such a situation, the case under the new Scheme has to be considered."

62. The Apex Court in its latest decision in **Canara Bank & Anr. vs. M. Mahesh Kumar, 2015 AIR SCW 3212, (supra)**, held that when the dependant of the deceased-employee applied in time, under a particular Scheme, his case cannot be considered under the Scheme, which was introduced subsequently. It was also held that the subsequently introduced Scheme, being administrative or executive order, cannot have a retrospective effect. It is apt to reproduce paragraphs 9, 11, 13, 14 and 17 of the said decision hereunder:

"9. Before adverting to the arguments of the learned counsel for the parties, it is necessary to examine the scope of the

Scheme dated 8.05.1993 vide Circular No.154/1993 for "compassionate appointment". The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee's service record is unblemished. Mere eligibility will not vest a right for claiming employment. As per para 3.1, application for employment should be sought within 2 1/2 years from the date of death of the employees. In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.

.....

11. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case to contend that the respondent's case cannot be considered on the basis of 'Dying in Harness Scheme 1993' when the new Scheme of

2005 providing for ex-gratia payment had been put in place. In Jaspal Kaur's case, Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis- a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

.....

13. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on

30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

14. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant- bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

.....

17. Considering the scope of the Scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and

*as per the Scheme (1993) then in existence. We do not find any reason warranting interference."*

63. Applying the ratio to the cases in hand and keeping in view the provisions of the Policy in question, we hold that the date of death of the employee is not to be taken into consideration while seeing the applicability of the Policy. Similarly, the date on which the application comes up for consideration before the competent Authority is also of no importance, since, because of the lackadaisical approach of the Departments, such cases may have been kept pending for a pretty long time and during that period, the policy may have been amended. Thus, the applicants, in such circumstances, cannot be made to suffer for the inaction on the part of the Authorities.

64. Accordingly, we hold that the case of the applicant would be governed by the provisions of the Policy which was in place at the time when the application, for the first time, was made by the applicant to the Department, and in the case of a minor, the right to apply would commence from the date he/she attained majority, as given in the



Scheme and his/her application would be considered as per the Policy/Scheme which was in vogue at the time of presenting the application. In the matters where the Court or the Tribunal has directed the Authorities to consider the case of the applicant afresh, the claim of the applicant has to be determined as per the policy applicable at the time of presenting the application for the first time before the Department concerned. Points No.(ii) and (iii) are answered accordingly.

**Points No.(iv): Whether the applicant can claim appointment on compassionate ground against a higher cadre, once he had been appointed in the lower cadre?**

**Point No.(v): In case a person is appointed on contract basis, whether he is within his rights to seek appointment on regular basis?**

**Point No.(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?**

65. These points are interconnected and, therefore, the same are being settled together.

66. As has been discussed above, the idea behind providing employment assistance on compassionate ground is to tide over the immediate hardship which is faced by a family on account of the death of the bread earner. However, endless compassion cannot be shown to such a family. We may also place on record that right to claim appointment on compassionate ground cannot be used as a method to seek employment. It is just an exception and discretion of the competent Authority. The applicant cannot claim that he is entitled to appointment on compassionate ground as a matter of right.

67. The Apex Court in **I.G. (Karmik) & Ors. vs. Prahlad Mani Tripathi, 2007 AIR SCW 3305**, has laid down the same principles. It is apt to reproduce paragraph 13 of the said decision hereunder:

*“13. Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the*

*Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power."*

68. The Apex Court in **State Bank of India & Anr. vs. Somvir Singh, 2007 AIR SCW 1571**, has held that dependants of employees who died in harness do not have any special or additional claim to public services other than one conferred, if any, by the employer. It was also held that the claim for compassionate appointment has to be considered only in accordance with the scheme framed by the employer in this regard. It is apt to reproduce paragraphs 7 and 10 of the said decision hereunder:

*"7. Article 16(1) of the Constitution of India, 1950 guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent. It is so well settled and needs no restatement at our ends that appointment on*

compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

.....

10. There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

69. The Apex Court in **Umesh Kumar Nagpal vs. State of Haryana and others, (1994) 4 Supreme Court Cases 138**, has held that if the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. It is further held that the post offered is not to cater to the status of such dependant, but to enable the family to tide over the financial calamity being faced by the family on the death of bread earner. It was also held that compassionate appointment, in posts above Class-III and Class-IV, is legally impermissible. It is apt to reproduce paragraphs 3 and 5 of the said decision hereunder:

*"3. Unmindful of this legal position, some governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.*

*.....  
5. It is obvious from the above observations that the High court endorses the policy of the State government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is*

*unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."*

70. The Apex Court in a case of compassionate appointment in **Union of India and others vs. K.P. Tiwari, (2003)**

**9 Supreme Court Cases 129**, has held in paragraph 4 as under:

*"4. It is unnecessary in this case to examine either question of law or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood. "*

71. The Apex Court in **Steel Authority of India vs.**

**Madhusudan Das & Ors., 2009 AIR SCW 390**, has held that provision for compassionate appointment has been carved out to provide minimum relief to the grief stricken family and that such appointment cannot be claimed as a matter of right. It is apt to reproduce paragraph 14 of the said decision hereunder:

"14. Appellant being a State within the meaning of Article 12 of the Constitution of India, while making recruitments, it is bound to follow the rules framed by it. Appointment of a dependant of a deceased employee on compassionate ground is a matter involving policy decision. It may be a part of the service rules. In this case it would be a part of the settlement having the force of law. A Memorandum of Settlement entered into by and between the Management and the employees having regard to the provisions contained in Section 12(3) of the Industrial Disputes Act is binding both on the employer and the employee. In the event, any party thereto commits a breach of any of the provisions thereof, ordinarily, an industrial dispute is to be raised. We would, however, assume that a writ petition therefor was maintainable. It is in that sense of the term, the learned Single Judge opined that the question as to whether there has been a breach of the Memorandum of Settlement on the part of the employer or not involves a disputed question of fact. The Division Bench of the High Court, however, proceeded on the premise that the employer was bound to provide appointment on compassionate appointment in all cases involving death of an employee. The Division Bench, in our opinion, was not correct in its view. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter

of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See *General Manager, State Bank of India & Ors. vs. Anju Jain*, 2008 8 SCC 475)"

72. The Apex Court in **Director General of Posts and others vs. K. Chandrashekar Rao, (2013) 3 Supreme Court Cases 310**, has laid down the same principle. It is apt to reproduce paragraphs 22 and 26 of the said decision hereunder:

"22. From the above Scheme and Office Memorandum, it is clear that where on the one hand, the State had formulated a welfare scheme for compassionate appointments, there on the other, because of limitations of its financial resources it decided to take economic measures by reducing the extent of appointment by direct recruitment from the financial year 2001-2002. Both these matters falling in the domain of the



Government and being matters of policy, the Court is hardly called upon to comment upon either of them. These are the acts which fall in the domain of the State and do not call for any judicial interference. All that we propose to hold is that State has to abide by the Scheme it has floated for compassionate appointment. 23. The 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. That is the reason why the Government specifically states in its Scheme that efforts should be made to appoint the members of a distressed family to the post provided he/she satisfies the other parameters stated in the Scheme.

..... 26. Despite the fact that the judgment of the Central Administrative Tribunal (for short "the Tribunal") has been upheld by the High Court, we are unable to contribute and sustain the view taken by the Tribunal that the Memorandum dated 16th May, 2001 frustrated the very object of the Scheme for Compassionate Appointment and on that ground alone, it was liable to be declared invalid. As already noticed, both the matters are policy matters of the State and for valid and proper reasons, without infringing the spirit of Article 14 and 16 of the Constitution. The State can frame its policy, where it is for economic reasons, least such decision would be open to judicial review to that extent. In the present case, there is some ambiguity created by issuance of office memorandums dated 16th May, 2001 and 14th June, 2006 and the enforcement of the former vide office memorandum dated 4th July, 2002 in relation to the implementation of Compassionate Appointment Scheme of 1998. Thus, it is not only desirable but necessary that the competent authority should issue comprehensive guidelines squarely covering the issue,

*but they cannot tamper with the existing rights of the appointees."*

73. Clause-11 of the Policy, reproduced supra, mandates that when a person has accepted the offer of appointment on compassionate ground to a particular post, the request for change in post shall not be allowed. Similarly, Clause 2(b) also provides that if a daily wage employee or a work charge Beldar, on daily wages with 7 years continuous service, dies while in service, one of the dependants of such employee will be "appointed on daily wages only". Further Clause 2(f) was added later on vide Office Memorandum dated 4<sup>th</sup> September, 2012 (reproduced above), which entitled the dependant of a contractual employee dying in harness to claim compassionate employment on "daily waged basis".

74. The policy also postulates in Clause-4 that appointment on compassionate ground would only be made to "the lowest rung of Class-IV and Class-III posts". It was also provided that Class-III jobs would include all equivalent jobs including technical posts and teachers (class-III).

75. In view of the decisions referred to above, what flows is that the compassionate employment cannot be claimed as a matter of right, rather this provision has been carved out, against the general rule of equality, in order to ameliorate the hardship of a family. Moreover, the Policy itself explicitly provides that once a person accepted appointment on a particular post, he would not be allowed to seek change in post.

76. The discretion to offer appointment on compassionate ground is vested with the respondents/Authorities and it is for the said Authorities to see whether a person is to be appointed against a Class-IV or Class-III post or on daily wage basis and that discretion cannot be questioned on the ground of discrimination, and that too, when a person has accepted the offer of appointment and joined without any demur and enjoyed the benefits. However, there is also no quarrel about the proposition that the Authority, who is vested with the discretion of making appointment on compassionate ground, is expected to exercise the discretion vested in it judiciously

and without being influenced, strictly in accordance with the provisions envisaged in the Policy, so that the avowed object sought to be achieved by the State, by framing such a policy, is achieved.

77. The sum and substance of the above discussion is that the incumbents, who have been appointed on a particular post and have joined to the said post without expressing any reluctance or protest, such incumbents are precluded from claiming that they should either be appointed to a higher post or should have been given appointment on regular basis, instead of employment on contract basis, or have been discriminated viz. a viz. similarly placed persons.

78. It was also brought to our notice that the Government of Himachal Pradesh had taken a decision in the year 2003 making provision for appointment on contract basis. This fact has been sought to be substantiated by a copy of letter, dated 12<sup>th</sup> December, 2003, issued by the Chief Secretary, to the Government of Himachal Pradesh, to all the Secretaries, the Heads of Department, all the Divisional

Commissioners and all the Deputy Commissioners, which is reproduced below:

" No. PER(AP)C-B(19)2 98-Part-II  
Government of Himachal Pradesh  
Department of Personnel (AP-III)

Dated Shimla-171002 the 12<sup>th</sup> December, 2003

From

The Chief Secretary to the  
Government of Himachal Pradesh

1. All the Secretaries to the Govt. of Himachal Pradesh.
2. All Heads of Department in Himachal Pradesh
3. All Divisional Commissioners in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.

Subject:- Prescribing of Provision for appointment on contract basis.

Sir,

I am directed to say that it has been decided by the Government that the mode of recruitment by way of "contract recruitment" may also be prescribed in addition to other mode of recruitment in all the Recruitment and Promotion Rules.

It is, therefore, requested that all existing Recruitment & Promotion Rules where the mode of direct recruitment of the post has been prescribed the same may be amended. As such provision of Col.No.10 of the Recruitment and Promotion Rules be prescribed in the following manner:-

"Col.No.10: By direct recruitment or on Contract basis."

Since the matter has already been approved by the Council of Ministers it is therefore, requested to amend the Recruitment & Promotion Rules accordingly without referring the matter to the Cabinet.

Yours faithfully

Sd/-

Under Secretary (Pers.) to the  
Govt. of Himachal Pradesh."

79. Thus, it is clear from the perusal of the above letter that the Government has taken a policy decision to make appointments on contract basis to different cadres, including Class-III and Class-IV cadres against which the compassionate employment is provided. As discussed hereinabove, the compassionate employment is an exception and the person is given appointment without undergoing any selection process. The persons, who are directly appointed have to undergo the selection process as prescribed in the Recruitment Rules and only thereafter, are appointed, and that too, on contract basis. Thus, it would be inappropriate to entitle a person for appointment on regular basis who is given employment out of compassion and without undergoing the rigors of the selection process, and the another person, who has put himself to the test and got

selected, is offered appointment on contract basis. If that is permitted, then the persons appointed on compassionate ground would steal a march over and above the persons who are appointed through a selection process, which would be against the concept of service jurisprudence and also not in consonance with the mandate of Articles 14 and 16 of the Constitution of India.

80. Thus also, the appointments on compassionate ground made on contract basis are legally correct and need no interference.

81. Points No.(iv), (v) and (vi) are answered accordingly.

**Point No.(vii): Whether a person can claim compassionate appointment after a considerable delay?**

82. To answer the above point, we may first refer to the decisions of the Apex Court on the issue. The Apex Court, in case titled as **Local Administration Department & Anr. vs. M. Selvanayagam @ Kumaravelu, 2011 AIR SCW 2198**, in which case, the wife of the deceased-employee had not made

application immediately after the death of the employee and the son of the employee had applied after 7-1/2 years of the death of his father for appointment on compassionate ground, in such circumstances, held that once the family had been able to tide over the blow of the death of the bread winner for such a considerable long period, therefore, granting of belated appointment cannot be said to subserve the basic object and purpose of the scheme. The Apex Court has also observed that, no doubt, it is not possible to lay down a rigid time limit within which appointment on compassionate ground must be made, but emphasis must be that such an appointment must have some bearing on the object of the scheme. It is apt to reproduce paragraphs 7 to 9 of the said decision hereunder:

*“7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart*



from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment

may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments.

83. The Apex Court in **Umesh Kumar Nagpal's case** (**supra**) has held that keeping in view the aim and object of

compassionate employment, the same cannot be granted after a lapse of a reasonable period, which must be specified in the rules. It was also held that employment on compassionate ground is not a vested right which can be exercised at any time. It is apt to reproduce paragraph 6 of the said decision as under:

*“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”*

84. Now, let us have a glance of the relevant provision of the Policy pertaining to the period within which application has to be made by the dependant after the death of an employee. Clause-8 of the Policy prescribes that application for grant of employment on compassionate ground be made to the Department concerned within three years of the death

of the government servant. Clause-8 of the Policy further postulates that in case the dependant of an employee is minor at the time of death of the employee, then, in that eventuality, the time limit for receiving application in the department concerned would be the attaining of age of 21 years by the eldest son/un-married daughter.

85. While reading Clause 8 of the Policy, two factors arise – a) where the employment on compassionate ground has been sought by the widow or the son/un-married daughter, who were major, at the time of death of the employee-concerned; and b) where the dependants were minor and widow of the deceased employee was not inclined to take employment on compassionate ground.

86. In the first factor, the policy itself is amply clear that the claim for employment assistance must be made within three years of the death of the government employee. In the given circumstances, the appointment is to be sought within three years of the death of the government-employee and not thereafter.

87. As far as the other factor is concerned, the above judgments are distinguishable since as per the mandate of the Policy, if a dependant is minor at the time of the death of the employee, he can apply for compassionate appointment till the attainment of 21 years by the eldest son/unmarried daughter. Thus, the case of such applicant cannot be dismissed on the ground that the dependant has applied after a considerable lapse of time. However, it is mandatory for the Authorities to consider such cases as per the provisions of the Scheme/Policy occupying the field at the relevant point of time when the application was made for claiming such employment.

88. We can also not be oblivious to yet another situation where the claim for compassionate employment has been preferred within the time stipulated in the Policy, but the matter remained pending with the respondent-Authorities for a considerable long period, in such a situation, we are clear in our mind that once the delay is not attributable to the claimant, his application cannot be rejected on the ground of delay.

89. Then, another question would arise as to which Policy would govern the appointment of such an applicant – whether the policy which was in place at the time of the death of the employee or the policy when such an applicant preferred his claim.

90. In that case, we have already held above that the Policy which was prevailing and was in force at the time when the application was presented by the applicant after attaining the age of majority would be relevant and applicable to such an applicant and the policy which was governing the field at the time of the death of the employee would be of no consequence. To dilate further, the said applicants would become eligible, as per the Policy and the Rules occupying the field, at the time of attaining the age of majority. Clause-8 of the Policy, in hand, provides mechanism, which is *pari materia* to Clause 3.2 of the Scheme discussed by the Apex Court in the case of **Canara Bank v. M. Mahesh Kumar (supra)** and the discussion made by the Apex Court in paragraph 15 of the said decision,

reproduced above, is the complete answer to the question in hand.

91. The point stands answered accordingly.

**Point No.(viii): Whether requisite qualification or age can be relaxed?**

92. For making appointment against public posts, possessing minimum educational qualification is one of the essential conditions and that condition cannot be relaxed. However, Clause 7 of the Policy, dated 18<sup>th</sup> January, 1990, deals with the "Extent of relaxation and power to make relaxation". Sub Clause (c) of Clause 7 deals with granting relaxation in educational qualification to those aspirants who are seeking appointment against a Class-IV post. It is provided in the said Sub Clause that in genuine cases, the condition of possessing minimum educational qualification can be relaxed with the prior approval of the Cabinet. A distinction has also been carved out in the cases where the widows of the deceased employee are seeking appointment against Class-IV posts and in those cases, the relaxation in

educational qualification can be provided by the concerned Administrative Department.

93. Similarly, Sub Clause (d) of Clause 7 provides that age relaxation would not be allowed. However, the genuine cases would be placed before the Cabinet for allowing age relaxation.

94. Thus, it is amply clear from the reading of Clause 7(c) and (d) of the Policy that relaxation in educational qualification or age can be granted, subject to approval by the Authority, as prescribed therein, only when the appointment is to be made against Class-IV post.

95. The said Clause 7 of the Policy was amended vide office order, dated 25<sup>th</sup> April, 1991, and it was provided that in those cases where appointment on compassionate ground was claimed against a Class-IV post, by seeking relaxation in respect of educational qualification or age, the concerned Administrative Department would have the power to grant such relaxation. In the matters, other than those, the power of relaxation was vested with the Chief Minister.



96. Fixing the eligibility criteria for a particular post falls under the domain of the legislature/executive and power to relax the same also lies with the said Authority. Our this view is fortified by the decision of the Apex Court in **State of Gujarat & Ors. vs. Arvindkumar T. Tiwari and Anr., 2012 AIR SCW 5131**. It is apt to reproduce paragraphs 8 and 9 of the said decision hereunder:

*"8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, 1998 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:*

*"The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."*

9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind

the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: *State of J & K v. Shiv Ram Sharma & Ors.*, 1999 AIR(SC) 2012 and *Praveen Singh v. State of Punjab & Ors.*, 2000 8 SCC 436)"

97. A reference may also be made to the latest decision of the Apex Court in **State of Gujarat and another vs. Chitraben**, 2015 AIR SCW 4305, wherein also the applicant was seeking appointment on compassionate grounds but was not fulfilling the minimum educational qualification, as prescribed under the Rules governing the field. It was held by the Apex Court that the case of the applicant was rightly

rejected for compassionate appointment since the applicant was not fulfilling the minimum requisite educational qualification as stipulated in the Rules governing the field. It is apt to reproduce paragraphs 8 and 9 of the said decision hereunder:

*"8. It is not a matter of dispute, that the Government of Gujarat, in its General Administration Department, issued a notification dated 16-3-2005 laying down eligibility conditions for appointment in different Class-IV posts. Insofar as the eligibility for direct recruitment is concerned, the same is stipulated in Rule 3 of the afore-stated rules, which is being extracted hereunder:*

*"3. To be eligible for appointment by direct selection to the post mentioned in Rule 2, a candidate shall:-*

- (i) not be less than 18 years and not more than 25 years of age;*
- (ii) have passed Secondary School Certificate Examination.*
- (iii) Possesses skills relevant to the job as may be prescribed by Government from time to time."*

*(Emphasis is ours)*

A perusal of Rule 3(ii) indicates, that to be eligible for appointment by direct recruitment against a Class-IV posts, the concerned candidate should possess the "secondary school certificate". It is therefore apparent, that eligibility for appointment on compassionate grounds, under resolution dated 10-3-2000, after 16-3-

2005 (when the aforesaid notification in respect of recruitment to class IV posts was issued), requires to possess the qualification stipulated therein, i.e., "secondary school certificate" qualification.

9. *It is not a matter of dispute, that the respondent has possessed only the qualification of IV standard, and does not possess the qualification of "secondary school certificate" examination, as has been postulated in Rule 3(ii) of the notification dated 16-3-2005. It is therefore imperative for us to conclude, that the respondent was not qualified for appointment against a class-IV posts, when her husband died in harness on 13-6-2006. When the respondent applied for appointment on compassionate grounds on 17-7-2006, it was necessary for her, to fulfil the qualification stipulated in the notification dated 16-3-2005. Since, admittedly the respondent did not fulfil the aforesaid qualification, she was not eligible to claim appointment on compassionate grounds, under the resolution dated 10-3-2000."*

98. Thus, it is clear from the perusal of the above decision that no relaxation can be granted in educational qualification. However, the said decision is distinguishable since the legislature, while making the Policy in hand, in its wisdom, has provided that relaxation in educational

qualification and age can be granted in respect of cases where appointment is sought against a Class-IV post, as has been discussed supra. Thus, it cannot be a ground to refuse compassionate appointment against a Class-IV post and the point stands answered accordingly.

**Point No.(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?**

99. In order to answer this point, we may have a glance of the Policy, Clause 5(c) whereof provides that in all cases where one or more members of the family of the deceased-employee were already in Government service or employment of Autonomous bodies/Boards/Corporations etc., of the State/Central Government, employment assistance would not "under any circumstances" be provided to the second or third member of the family. However, in case where the widow of the deceased Government servant made a representation that her employed sons/daughters were not supporting her, in that case request of the widow

could be considered and the final decision was to be taken by the Council of Ministers.

101. Viewed thus, it is manifestly clear that in case any member of the deceased-employee is in gainful employment i.e. either in the government service or serving in autonomous bodies/Boards/ Corporations etc., of the State/Central Government, no employment assistance on compassionate ground, under any circumstance, shall be provided to second or third member of that family. However, only the claim for such employment assistance can be considered qua the widow of the deceased-employee, as discussed hereinabove.

101. In regard to gainful employment, we may refer to the decision of the Apex Court in **Govind Prakash Verma's case (supra)**, wherein, the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter. The Apex Court held that in such circumstances, the elder brother of the applicant cannot be said to be in gainful employment. It is apt to

reproduce the relevant portion of paragraph 6, of the said decision hereunder:

“.....So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal

*benefits received by the widow and the family pension could not be taken into account."*

102. Adverting to the Policy in hand, there is no provision in the policy according to which any other dependant, except widow, can make a claim for compassionate appointment, in case one of the dependants of the deceased-employee is in Government or Semi Government service, as discussed above. However, there may be probability that at the time of death of the employee concerned, the widow may have crossed the maximum age limit fixed by the Government for seeking employment or the widow is not possessing the minimum qualification or for any other reason, the widow is not intending to seek employment and makes a representation, carving out sufficient reasons, for grant of employment to the other member of the family, the Authority concerned, in order to achieve the mandate of the Policy being a social legislation, may consider such cases sympathetically, after proper inquiry, and, of course, after adverting to the provisions as contained in the Policy and also keeping in view the dictum of the Apex Court, *supra*.



103. Having said so, the point is answered accordingly.

104. We also deem it proper to place on record here that the Central Government as well as the State Governments have made their Rules/Regulations/Schemes for providing employment assistance on compassionate ground and even the Semi Government Departments/Boards/Corporations etc. have also adopted those Schemes or have made their own Schemes. Each case has to be considered as per the Policy of an Organization, applicable at the relevant point of time.

105. Cases in hand are to be dealt with as per the Scheme which is holding the field as on today and any judgment, which is outcome of a Policy not *pari materia* with the above Policy of the State, cannot be made a ground for granting or declining the relief. Thus, the judgments based on the Schemes, which are not applicable to the State, are distinguishable.

106. It is apt to record herein that the Apex Court in **Canara Bank vs. M. Mahesh Kumar (supra)** has discussed all the judgments, read with the Policy/Scheme governing the

field, while arriving at the conclusions. In the instant case, the Policy contains Clauses stipulating the terms and conditions for making appointment on compassionate ground. Therefore, the cases, in hand, are to be tested as per the mandate of the judgment in **Canara Bank vs. M. Mahesh Kumar (supra)**, read with the Policy/Scheme, referred to above.

107. Now, let us examine the instant cases on the basis of the principles, as discussed hereinabove.

**CWPs No.1638 of 2011, 4475 of 2011, 8325, 9300, 10111 of 2012, 695, 5550, 7010, 7109, 8674, 10011 of 2013, 453, 1204, 1787, 1788, 2202, 2619, 8059, 8214, 8216, 8308, 8309, 8362, 8503, 9010, 9132, 9371, 9516 of 2014, 77, 99, 372, 373, 533, 1351, 1676, 1846, 2169, 2323, 2684, 3394, 3395, 3400, 3401, 3556, 3561, 3583, 3667, 3670, 3762, 3763, 3774 and 3822 of 2015.**

108. In all these writ petitions, the petitioners have laid a challenge to the action of the respondents, whereby the claims of the writ petitioners for appointment on compassionate ground has been rejected on the ground that the family(ies) of the deceased-employee(s) do not fall within the indegency criteria laid down by the Finance Department of the Government and that the income of the family exceeds more than the limit prescribed in the Policy.

109. Facts of CWP No.1638 of 2011 are being enumerated taking the same as lead case in this group. Father of the

petitioner, who was working as Chief Pharmacist with the respondent-Department, died on 9.5.2008, while in service. The petitioner being 10+2 and having one year computer diploma applied for the post of Clerk, and the respondents duly recommended his case. However, vide letter dated 21.7.2010 (Annexure P-2), the petitioner was informed that his case was considered and rejected as the income of the family of the petitioner exceeds more than Rs.1,00,000. Thus, the writ petition for quashing Annexure P-2. The respondents filed the reply to the writ petition stating therein that the respondents have rightly rejected the claim of the petitioner, as the income of the family of petitioner, as per the certificate issued in this regard, was more than the cap fixed by the Government. Therefore, it was pleaded that the case of the petitioner did not fall within the scope of the policy.

110. During the course of hearing, the learned counsel for the petitioners argued that the respondents have wrongly taken into account the amount of family pension and other retiral benefits received by the family of the deceased-employee or the employee who sought retirement on medical grounds. The said action of the respondents is against the law laid down by the Apex Court on the issue and therefore, prayed that the impugned

orders, whereby the applications of the petitioners have been rejected, be quashed.

111. On the other hand, the learned Advocate General submitted that the appointment on compassionate ground cannot be claimed as a matter of right and the Policy empowers the respondents to examine the indigent circumstances of the family of the deceased-employee, by taking into account the amount received as family pension and other retiral benefits, as prescribed in the Policy. It was further submitted that the respondents have amended the Policy, dated 18<sup>th</sup> January, 1990, and have laid down a definite criteria, including maximum income ceiling, for assessing the eligibility of a family for providing employment assistance on compassionate ground. Thus, it was submitted that the respondents were well within their right to reject the claims projected by the petitioners on the ground that the family of the deceased-employee exceeded the limit prescribed in the Policy.

112. In view of our findings on point No.(i) recorded hereinabove, the arguments advanced by the learned Advocate General are devoid of any force and the same are repelled accordingly. The impugned orders, in these cases, are quashed and the respondents are directed to do the needful and pass

appropriate orders afresh expeditiously, while keeping in view the findings made hereinabove.

**CWP No.9172 of 2012**

113. The father of the petitioner, who was working as Class-IV employee, was suffering from mental ailment, respondent department got him examined from medical board which opined that he was suffering from schizophrenia. The medical board issued certificate Annexure P-6 and opined that the father of the petitioner was not fit for present job. Thereafter vide Annexure P-7, office order dated 13.12.2004, the father of the petitioner allowed premature retirement w.e.f. 3.12.2004, the day when the medical board had issued the certificate. Along with the writ petition, the petitioner has annexed Annexure P-8, whereby it has been sought to be demonstrated that the father of the petitioner was granted pension w.e.f. 26.5.2004, before crossing the age of 55 years.

114. The petitioner applied for the post of Clerk or Physical Education Teacher, which was rejected vide order dated 13.5.2005 on the ground that the father of the petitioner had sought retirement on medical grounds after the expiry of prescribed age limit, was assailed by way of writ petition, which was disposed of on 9.3.2011 by quashing the order impugned in the said writ petition,

and the respondents were directed to consider the case of the petitioner.

115. Vide order dated 5.5.2012 (Annexure P-14), the case of the petitioner was rejected on the ground of family income and that the father of the petitioner had crossed the age of 55 years at the time of retirement.

116. In view of our findings on point No.(i), coupled with findings on other points, as discussed hereinabove, the impugned order is set aside and the respondents are directed to examine the case of the petitioner in light of the findings supra and also after adverting to the relevant provisions of the Policy.

**CWP No.3252 of 2014**

117. Father of the petitioner expired on 25.1.1994 while in service as LHC. After attaining the age of majority, he applied for compassionate appointment to the post of Cook in the year 2002, which request remained pending with the respondents till 2013 constraining the petitioner to file writ petition, which was disposed of on 27.11.2013. However, vide order dated 4.2.2014 (P-4), the respondents rejected the case of the petitioner on income criteria and on delay also.

118. In view of findings on points No.(i) and (vii), the impugned order is set aside and the respondents are directed to

reconsider the case of the petitioner in terms of our findings recorded on point Nos.(i) to (ix) and also after referring to the Policy.

**CWPs No.9094 of 2013, 9113, 10185 of 2011, 2035, 4697, 6286, 8599 of 2012, 1204, 1240 and 6505 of 2013:**

119. These cases are clubbed together for the reason that the facts and circumstances of the cases are similar and the policy applicable is also the same.

120. CWP No.9094 of 2013 is taken as lead case in this group of cases and the facts of the said case are thus. Father of the petitioner, who was serving as Patwari right from the year 1973 with the respondent-Department, died in harness on 26<sup>th</sup> June, 2003. The petitioner applied for appointment on compassionate ground in the month of December, 2003 and documents were required by the respondents from the petitioner, which were submitted by him in September, 2004. In the years 2005 and 2008, the respondents again raised queries and demanded more documents from the petitioner, which, as per the petitioner, were supplied by him to the respondents. In May 2009, the petitioner again received a letter from the respondents wherein also the petitioner was required to complete certain formalities, which were completed by the petitioner.

121. In May 2011, the petitioner received a letter, dated 3<sup>rd</sup> May, 2011, (Annexure P-8), whereby it was conveyed that the respondents were considering the cases of only those employees in which either the widow of the deceased employee was seeking employment or the applicant was an orphan. Thus, the petitioner has filed the writ petition for quashing Annexure P-8.

122. Respondents have filed the reply, in which it has been pleaded that the Policy, dated 18<sup>th</sup> January, 1990, was amended by the Government, vide amendment dated 25<sup>th</sup> September, 2010, to the following effect:

*".....Now, it has been decided by the Government that apart from the widow applicants the cases of applicants whose both parents are not alive shall be given priority for considering the matter of providing employment on compassionate grounds subject to fulfillment of other relevant criteria prescribed by the Govt. from time to time. You are requested to please bring these instructions to the notice of all concerned for strict adherence."*

Thus, it was pleaded that the case of the petitioner, being the son of the deceased employee, did not fall within scope of the Policy and was rightly rejected by the respondents.

123. The writ petitions are allowed and the orders impugned are set aside in view of our findings recorded on points



No.(ii) and (iii), supra. The respondents are directed to consider the cases of the petitioners afresh in view of our findings on points No.(i) to (ix) and also after adverting to the Policy.

**CWP Nos.8342 of 2012, 9115 of 2013, 3568, 3893, 7397, 8895, 9378 of 2014, 2397, 3044, 3546, 3585 and 3652 of 2015:**

124. In these writ petitions, the petitioners have applied to the respondents for their appointment on compassionate ground, but, as pleaded, the respondents have not taken any decision so far.

125. Facts of CWP No.8342 of 2012, titled Damodar Ram vs. State of H.P. and others, are being referred to in this group of cases. Father of the petitioner, who was serving as Beldar, with the respondents, died in harness on 18<sup>th</sup> March, 2008, whereafter, the petitioner approached the respondents for providing appointment on compassionate grounds and as admitted by the respondents in the reply, the case of the petitioner is still pending consideration with the respondents.

126. Thus, in all these cases, the respondents are directed to consider the cases of the petitioners as per our findings on points No.(i) to (ix) and the Policy in question, expeditiously.

**CWP Nos.1106, 7967 of 2012, 9006 of 2013, 169, 170, 215, 228 and 1512 of 2014:**

127. In this group of cases, the petitioners, after the death of their bread winner, applied for appointment on compassionate ground and the petitioners were appointed on contract basis against different posts, i.e. Clerk, Beldar, Chowkidar etc. Now, by the medium of these petitions, the petitioners are seeking direction to the respondents-Authorities to give appointment to the petitioners on regular basis against the post they have already joined.

128. Taking CWP No.1106 of 2012 as lead case in this group, the facts of this case are being referred to. Father of the petitioner, who was working as a teacher with the respondents, died in harness on 31<sup>st</sup> May, 1995. On attaining the age of majority in the year 2005, the petitioner applied for being appointed on compassionate ground and came to be appointed as Clerk on 10<sup>th</sup> October, 2007, on contract basis. Thus, the petitioner has filed the writ petition praying for a direction to the respondents to give him appointment on regular basis, instead of contract basis, from the date he joined as such on contract basis, with all consequential benefits incidental thereof.

129. Respondents have filed the reply and contested the writ petition on the ground that the petitioner was appointed as Clerk on contract basis and all terms and conditions, as postulated in the appointment letter, were accepted by the petitioner without any protest and acted upon the offer of appointment and joined his duties as Clerk on contract basis. Therefore, the petitioner is precluded from seeking regular appointment.

130. These writ petitions are dismissed in view the findings recorded on points No.(iv), (v) and (vi) supra.

**CWP Nos.5115, 8650, 8652, 9954, 10336, 10511, 10512, 10524, 10756 of 2012, 11, 8968 of 2013, 797, 803, 3117 and 3143 of 2014:**

131. In this group of cases, the petitioners applied for appointment on compassionate ground and they were offered appointment on contract basis against Class-IV posts on daily wage basis. Now, by the medium of these petitions, the petitioners are seeking direction to the respondents-Authorities to give appointment to the petitioners either against Class-III posts or to a different post than the one offered to them and they joined.

132. CWP No.5115 of 2012 is taken up as lead case and the facts of the said case are thus. Father of the petitioner, who was serving as Plumber, in the respondent-Department, died in harness on 1<sup>st</sup> September, 2007. Thereafter, the petitioner applied for being

appointed on compassionate ground as per the Policy of the State Government, which culminated into offer of appointment to the petitioner as daily wage Beldar and he joined as such. Thus, the petitioner has filed the instant writ petition for direction to the respondents to appoint him as Plumber instead of daily-wage Beldar. It is the case of the petitioner that the respondents has appointed the similarly situated persons against Class-III posts, but the petitioner has been discriminated.

133. The respondents have filed the reply wherein it has been pleaded that the petitioner, at the first instance, after the death of his father, applied for appointment on compassionate ground for the post of Beldar and was accordingly appointed as such on 21<sup>st</sup> March, 2008. The petitioner joined as such without any protest. It was also pleaded that the instances pointed out by the petitioner viz. a viz. discrimination were entirely different since the claimants in such cases were eligible for the post against which they were appointed. It was also pleaded that since the petitioner initially applied for the post of Beldar and did not possess minimum educational qualification for being appointed as Plumber, his case was rightly rejected for being appointed as Plumber.

134. These writ petitions are dismissed in view the findings recorded by us on points No.(iv), (v) and (vi) supra.

**CWP Nos.6547 of 2010, 7536 of 2011, 2758 of 2014 and 3402 of 2015:**

135. The Claim of the petitioners, in this group of cases, has been rejected or has been sought to be resisted by filing replies by the respondents, on the ground that the petitioners are not entitled for compassionate appointment since one of the member of the family of the deceased employee was in government/semi government service.

136. Facts, as pleaded in CWP No.6547 of 2010, taken as lead case for this group, are that the father of the petitioner, who was working as Peon with the respondent department, had expired on 4<sup>th</sup> January, 1997, while in service. The petitioner, on attaining the age of majority, applied for being appointed on compassionate ground, but the case of the petitioner was rejected by the respondents on 25<sup>th</sup> April, 2008, on the ground that the elder brother of the petitioner was in service.

137. The petitioner has pleaded that his elder brother was living separately, which fact has been sought to be substantiated by the petitioner from the copy of the Ration Card (Annexure P-8) and a copy of the certificate, dated 25.9.2006 (Annexure P-9) issued by the Pradhan of the Gram Panchayat concerned.

138. The respondents filed the reply in which it has been pleaded that the case of the petitioner was rightly rejected since

the Policy occupying the field provided that in case one or more members of the family of the deceased employee was in Government service or in employment of Autonomous bodies Boards/Corporations etc., of the State or Central Government, employment assistance, under any circumstances, would not be provided to the second or third member of the family.

139. In view of our findings on point No.(ix), the impugned orders are set aside and the writ petitions are disposed of by directing the respondents to consider the cases of the petitioners afresh in view of our findings recorded on points No.(i) to (ix) supra and also in accordance with the Policy.

**CWP Nos.1274 of 2013, 3842, 8396 and 8549 of 2014:**

140. In these cases, the petitioners sought appointment on compassionate ground against Class-IV posts on the death of their bread-earner, who died while in service. It is pleaded by the respondents that the case of the petitioner could not be considered since the petitioner did not possess the minimum educational qualification for being appointed against a Class IV post.

141. In this set of cases, the impugned orders are set aside and the writ petitions are disposed of with a direction to the

respondents to consider the case of the petitioners afresh in view of our findings recorded on point No.(viii) supra.

**CWP Nos.3821 of 2014 and 75 of 2015:**

142. In CWP No.3821 of 2014, it is averred that the mother of the petitioner, who was working as daily wage Beldar, had died in harness on 18<sup>th</sup> June, 2007, after putting in 11 years of service, whereafter the petitioner applied for compassionate appointment on 26<sup>th</sup> April, 2010. It was also pleaded that the respondents have returned the case of the petitioner to respondent No.4, vide letter dated 7<sup>th</sup> February, 2014, (Annexure P-1), on the ground that as per the employment policy, case be submitted to the department within three years from the date of death and since the petitioner's case was received after the lapse of the said period, therefore, the claim of the petitioner was returned back for re-examination. Thus, feeling aggrieved, the petitioner has filed the writ petition.

143. The respondents have filed the reply in which it has been admitted that the case of the petitioner was sent to respondent No.4 for reexamination, as pleaded by the petitioner, and after re-examination, it was found that the case of the petitioner was not time barred and, therefore, was sent to the Government for approval. As and when the approval of the

Government is received, the petitioner will be granted appointment assistance on compassionate ground.

144. Thus, in view of the reply filed by the respondents, nothing survives in the writ petition, except to observe that a final decision be taken in the matter expeditiously, preferably within three months from today.

**CWP No.75 of 2015:**

145. As averred, the father of the petitioner, who was working as Peon, died in harness on 18<sup>th</sup> March, 2009. The petitioner applied for appointment on compassionate ground and the application of the petitioner was forwarded by the Executive Engineer, IPH, Division Salooni, vide letter dated 4<sup>th</sup> May, 2010 (Annexure P-2). However, the respondents rejected the application of the petitioner in the month of September, 2014 vide Annexure P-5 on the ground that the case of the petitioner did not fall under para 8 of the Policy as the request of the petitioner was received for the first time in the office on 14<sup>th</sup> December, 2012 after attaining the age of 21 years by the petitioner.

146. No reply has been filed.

147. It is the case of the petitioner that after the death of his father, he applied for appointment and his case was recommended by the Executive Engineer, IPH, Salooni vide letter



dated 4<sup>th</sup> May, 2010, as is evident from Annexure P-2 placed on record by the petitioner.

148. Thus, the impugned order is set aside and the respondents are directed to consider the case of the petitioner afresh in view of our finding recorded on points No.(i) to (ix), supra, and the Policy/Scheme occupying the field.

**CWP No.2236 of 2015:**

149. In this writ petition, father of the petitioner, who was working as Part Time Water Carrier since 7<sup>th</sup> August, 1997, died in April 2007. The petitioner has filed the instant petition for direction to the respondents to grant him appointment on compassionate ground. It is pleaded that at the time of the death of his father, the petitioner was minor.

150. It appears that the petitioner has not applied on the prescribed proforma to the respondents for grant of compassionate appointment and has directly approached this Court for grant of appointment on compassionate grounds.

**CWP No.3112 of 2014:**

151. The petitioner has filed this writ petition with the prayer that the respondents be directed to appoint the petitioner in service on compassionate ground and also to direct the

respondents to release pension and ex-gratia benefits to the petitioner.

152. Respondent No.1 in its reply pleaded that as per the policy of the State Government, the petitioner has not applied to the concerned department for seeking employment on compassionate ground. So far as release of payment of ex-gratia, gratuity and pension is concerned, the same stand already released in favour of the petitioner vide Annexure R-I, Annexure R-II and Annexure R-III, respectively.

153. In the facts of these cases, (CWP No.2236 of 2015 and 3112 of 2014), the petitioners in these cases are at liberty to apply to the respondents for appointment on compassionate grounds and the respondents are directed to consider the said request of the petitioners in terms of the Policy and the observations made on points No.(i) to (ix), hereinabove, and pass appropriate orders expeditiously.

**CWP No.6990 of 2011**

154. It is a case where direction is sought to appoint guardian (petitioner No.6/brother of deceased employee), on compassionate ground or one post be reserved till the son/daughter of the deceased-employee attains majority.

**Facts:**

155. On 21.11.2009, when late Shri Duni Chand was going to his residence after performing his duties, he was found murdered. The said Duni Chand was initially engaged on daily wage basis in the year 1994 and was regularized w.e.f. 19.1.2007. His son and daughters were minor at the time of death of the employee and widow is stated to be not in a fit state of mind, which fact is supported by the medical certificate Annexure P-4. Therefore, the present petition has been filed through their guardian, petitioner No.6, younger brother of deceased employee.

156. In such circumstances the petitioners submitted a representation to respondent No.1 for providing employment to their guardian i.e. petitioner No.6 on compassionate ground. They have also prayed in the representation that case of the petitioners be kept pending till such time the son of the deceased attains majority. Thus, the petitioners prayed directions to the respondents to grant employment to petitioner No.6 or in the alternative keep pending the claim of the petitioners till the son of the deceased attains majority.

157. In the reply filed by the respondents, it has been stated that, as per the Policy, appointment on compassionate ground

cannot be granted to petitioner No.6, who is the brother of the deceased-employee. It has also been pleaded that petitioner No.1 submitted an application on 19<sup>th</sup> January, 2010 in the office of Assistant Engineer, HPPWD, Sub Division, Suni in which she stated that she was not willing to get employment and requested that employment assistance be provided to her son, who was minor at that time.

158. In such circumstances, the respondents are directed to examine the case of the petitioner in accordance with the Policy and the observations made by this Court, supra, and pass appropriate orders within six weeks from today.

**CWP No.7074 of 2014**

159. Father of the petitioner, who was CID Inspector, died in the year 1993, while in service. The petitioner, being Matriculate, applied for appointment as Clerk in Police Department and the Department informed the petitioner vide letters dated 23.5.1994 and 19.8.1994 that he could not be accommodated as other persons were in the waiting list.

160. As pleaded, in January, 1997, the petitioner was arrested in a criminal case, however, stood acquitted by the Sessions Court as also by the High Court on 29<sup>th</sup> July, 2010. During the pendency of such proceedings, the petitioner represented for

compassionate appointment, but his requests were rejected on the ground that a criminal case was pending against him.

161. After the dismissal of the criminal appeal by the High Court in the year 2010, in January, 2011, the petitioner again approached the respondent Department, but his case was rejected by the respondent-Department on 17<sup>th</sup> February, 2012 being time barred. When the petitioner again requested for re-examination of his case, similar view was conveyed to the petitioner vide letter dated 2<sup>nd</sup> July, 2012.

162. Thus, the petitioner has prayed for quashing of Annexure P-5 and P-6, whereby case of the petitioner was rejected being time barred.

163. In the facts of the case, the impugned orders are quashed and the respondents are directed to consider the case of the petitioner afresh, after adverting to findings recorded on point Nos.(i) to (ix) and also to the provisions of the Policy.

**CMP No.4435 of 2014 in CWP No.1138 of 2014**

164. This application has been moved for recalling the order, dated 24<sup>th</sup> March, 2014, whereby the writ petition was dismissed in default. For the reasons stated in the application, the same is allowed and the writ petition is ordered to be restored to its original number. The application is disposed of.

**CWP No.1138 of 2014**

165. As pleaded, grandfather of the petitioner died in harness on 6.8.2008. It is further pleaded that the petitioner being the adopted son of deceased employee, applied for compassionate appointment, was rejected by the respondents on the ground that there is no provision for employment to a grandson of the deceased employee. Hence, the writ petition.

166. The respondents have filed the reply, in which they have stated that since the petitioner is the grandson of the deceased-employee, therefore, his case is not covered under the Policy, for grant of employment on compassionate ground.

167. In view of our findings on points No.(i) to (ix), there is no merit in the writ petition and the same is dismissed.

**CWP No.8212 of 2014**

168. Father of the petitioner, who was working as work charge Beldar, died in the year 1999. In 2001, the petitioner applied for employment as Clerk being unmarried daughter of the deceased-employee. On 6.1.2006, the petitioner was offered appointment as daily waged Beldar, when she was maid, which offer was declined by the petitioner, as has come up in the reply of the respondent, on the ground that since she was eligible for appointment as Clerk, therefore, her case be considered for

appointment against the post of Clerk. This is suggestive of the fact that the petitioner was not in indigent circumstances or was not facing any difficulty or was not in distress. In the interregnum, she got married. As per the Policy of the respondents, compassionate employment can be granted to an unmarried daughter of the deceased. Therefore, her case was rightly rejected by the respondents.

169. Having said so, there is no merit in the writ petition and the same is dismissed.

**CWP No.142 of 2013**

170. As averred, the facts of the case are that the father of the petitioner, who was working as Field Assistant, died in harness on 16.6.2004. In the year 2003, the father of the petitioner had applied for retirement on medical grounds, which request remained pending with the department till his death. After the death of the employee, the petitioner filed application for compassionate appointment, which was rejected by the department on the ground that since the deceased-employee had crossed the age as prescribed under Rule 38 of the CCS (Pension) Rules, 1972, therefore, the petitioner cannot claim appointment on compassionate ground.

171. Feeling aggrieved, the petitioner had approached this Court by way of writ petition and in the reply to the said writ petition, the respondents admitted that the father of the petitioner was in service till his death. Therefore, the writ petition was disposed of with a direction to the respondents to reconsider the matter of the petitioner. However, the respondents again rejected the claim of the petitioner on the same ground.

172. Thus, the petitioner, by way of the instant petition, has sought writ of certiorari for quashing Annexure P-8, whereby the claim of the petitioner came to be rejected. The petitioner has also sought writ of mandamus commanding the respondents to appoint him on compassionate ground.

173. Respondents have resisted the writ petition by filing the reply.

174. Precisely, the ground pressed into service by the respondents while rejecting the claim of the petitioner is that the deceased had crossed the requisite age as per the Policy occupying the field.

175. Clause 2(d) of the policy stipulates that employment assistance shall be provided to those government servants (Class-III and Class-IV only), who retire on medical grounds, provided the



employees so retiring have not crossed the age of 53 years in the case of Class-III and 55 years in the case of Class-IV.

176. As per the discussion made hereinabove, appointment can be made only as per the Rules/Scheme/Policy occupying the field and no appointment can be made de hors the Scheme/Policy. It is clear from the reply filed by the respondents that the age of the father of the petitioner was "53 years 10 months and 14 days on the date of his pre-mature retirement on 8.4.2003", which is not in dispute.

177. Viewed thus, the respondents have rightly passed the rejection order. Accordingly, there is no merit in the writ petition and the same is dismissed.

**CWP No.10024 of 2012**

178. Father of the petitioner was working as Shastri teacher and died in harness on 9.9.1987. The petitioner who was having degree of Ayurvedaacharya applied for being appointed against the post of Aururvedic Chikitsa Adhikari on compassionate ground. However, the petitioner was offered appointment against the post of Clerk and he joined against the said post on 19.11.1990. Thereafter, on 23.8.1997 the petitioner was appointed as Ayurvedic Chikitsa Adhikari. The petitioner represented to the respondents for giving him employment as Chikitsa Adhikari from the date of his

passing the degree or from 9.9.1987 when his father died or from 19.11.1990 when he joined as Clerk, which representation of the petitioner was rejected by the respondents vide Annexure P-18. Therefore, by way of the present writ petition the petitioner has prayed that he be held entitled to be appointed as Ayurveda Chikitsa Adhikari from 9/1987 when his father died and that the pay of the petitioner be fixed as Ayurvedic Chikitsa Adhikari from 9/1987 to 30.8.1997 when he actually joined as such.

179. The petition, on the face of it, is not maintainable. The petitioner was offered appointment on compassionate ground against the post of Clerk in the year 1990 and he joined against the said post without any protest. Now, he cannot claim appointment as Ayurvedic Chikitsa Adhikari. Moreover, allowing the claim of the petitioner would affect the seniority of the persons who had already joined as Ayurvedic Chikitsa Adhikari prior to his appointment in the said cadre. The writ petition is also not maintainable in view of the findings recorded by us on points No.(iv), (v) and (vi), supra.

180. Accordingly, it is held that there is no merit in the writ petition and the same is dismissed.

**CWP No.5753 of 2012**

181. Father of the petitioner, who was serving as Head Constable, died on 25.6.2005, while in service. The petitioner applied for the post of Clerk on compassionate ground. It is further pleaded that respondent No.2 issued an advertisement for recruitment of Constables for which the petitioner applied. The petitioner appeared in the efficiency test, written examination and personality test and qualified the same and figured at Serial No.5 of the waiting list. Respondents did not consider his name for appointment as Constable against 5% quota prescribed in the Policy for compassionate employment. Accordingly, the petitioner filed a writ petition, which was disposed of by providing that in case the petitioner files fresh representation expressing willingness to serve anywhere in the State and vacancy being available against 5% quota, the name of the petitioner shall be considered for such appointment. Thereafter, the petitioner filed representation on 24.7.2011 (P-11), which was rejected on 20.3.2012 (P-12) on the ground that the department was considering the cases of widows, secondly on the ground of income criteria and thirdly the name of the petitioner figures at Serial No.46 of the priority list maintained for offering appointment on compassionate ground against the post of Clerk and he cannot be considered in preference to the persons above him.

182. Thus, it has been prayed that Annexure P-12 be quashed and the respondents be directed to appoint the petitioner against the post of Constable in pursuance to the test and interview held, in accordance with the policy of the State Government which provides that 5% posts, in direct recruitment, shall be reserved for those applicants who are seeking employment on compassionate ground.

183. In the reply filed by the respondents, they have pleaded that there was no post reserved for the wards of the deceased police personnel under 5% quota in the 6<sup>th</sup> Indian Reserve Battalion or the other battalion. It is further pleaded in the reply that the family of the deceased-employee was not found to be in indigent circumstances which required immediate employment assistance on compassionate ground. It was also pleaded that the petitioner had initially applied for being appointed on compassionate ground against the post of Clerk, therefore, he cannot claim that his case be also considered for appointment against the post of Constable.

184. In view of the reply filed by the respondents, it is clear that there was no post reserved under 5% quota for the dependant of the deceased-employee, who died in harness, against which the petitioner is seeking appointment. Therefore, the

respondents are directed to consider the case of the petitioner afresh for the post for which he initially applied in view of the Policy and findings recorded on points No.(i), (ii) and (iii).

**CWP No.5446 of 2012**

185. The petitioner, being widow, applied for compassionate appointment on the death of her husband, who was in service with the respondent Corporation as driver, when he died on 22.1.2006 in an accident, while performing duty. Vide letter dated 9.9.2009, it was intimated to the petitioner that her case cannot be considered in view of the decision of Board of Directors taken on 26.6.2008. It is averred that copy of the FIR (Annexure P-3) shows that there was no eye witness of the accident and the police had also not made any investigation with respect to the cause of the accident. Thus, cause of accident cannot be attributed to the husband of the petitioner and the action of the respondents in declining employment to the petitioner on this ground is wrong. Hence, the writ petition.

186. In the reply filed by the respondents it has been pleaded that since the accident in question had taken place due to the negligence on the part of the deceased-employee, therefore, as per the decision of the Board of Directors of the respondent-Corporation, the claim of the petitioner was rightly

rejected. The writ petition has also been resisted on other grounds, such as, the appointment on compassionate ground cannot be claimed as a matter of right and the appointment is to be given only in those cases where the family of the deceased was living in indigent circumstances.

187. There is nothing on the record, from a perusal of which it could be inferred that the respondents have ever inquired into the cause of accident and on the basis of such inquiry, have concluded that the accident, in question, had taken place due to the negligence on the part of the husband of the petitioner.

188. Thus, the writ petition is allowed, the impugned order is set aside and the respondents are directed to reconsider the case of the petitioner afresh in light of the Policy and the findings recorded on points No.(i) to (ix) hereinabove.

**CWP No.3486 of 2012**

189. Husband of the petitioner died on 7.7.2009 while working as water carrier-cum-cook with the respondent department on daily wage basis. The petitioner represented for employment assistance but no action was taken.

190. Facts of the case, in brief, are that the husband of the petitioner was initially engaged in the year 1985 as part time Water Carrier and was granted daily wage status in the year 2004. It is

averred that the husband of the petitioner was entitled for daily wage status after completion of 10 years service and thereafter, for work charge status. Therefore, it has been prayed that:

- a) The petitioner be granted appointment on compassionate ground;
- b) Respondents be directed to grant gratuity, pension and other retiral benefits.

191. Reply of the respondents is to the effect that as per the policy of the State Government dated 16.8.2005, compassionate appointment can be granted in case an employee had put in 7 years continuous service on daily wage basis and in the case of the husband of the petitioner, he has only put in 5 years as daily wage worker.

192. The Policy in question was amended vide Office Memorandum, dated 18<sup>th</sup> May, 1995, whereby Clause 2(b) of the said policy was amended entitling the family of a daily waged employee, who dies while in service, to seek employment on compassionate ground, irrespective of number of years of service rendered by a daily wage worker.

193. In the instant case, the husband of the petitioner was granted daily wage status in the year, 2004, thus, as per the Policy

of the respondents itself, the case of the petitioner for grant of compassionate appointment cannot be rejected on this score.

194. Having said so, the impugned order is set aside and the respondents are directed to reconsider the case of the petitioner afresh, of course, in accordance with the policy and the findings recorded hereinabove on points No.(i) to (ix). As far as the relief of granting other service benefits is concerned, the petitioner is at liberty to pursue that claim independently, if advised.

**CWP No.9140 of 2014**

195. Petitioner, being son of deceased employee, who was serving in the respondent Department as Forest Worker, applied for compassionate appointment as Chowkidar vide representation Annexure P-2, which representation is stated to be pending with the respondents. Thus, the petitioner prayed for directions to the respondents to offer him appointment against the post of Chowkidar.

196. The respondents in the reply have stated that vide letter No.FFE-A(E)2-85/2014, dated 26<sup>th</sup> February, 2015, sanction has been accorded for extending employment assistance on compassionate ground in favour of the petitioner against a Class-IV post on daily wage basis.



197. Therefore, in view of the reply filed by the respondents, nothing survives in the writ petition and the same is disposed of as such.

**CWP No.7805 of 2014:**

198. The father of the petitioner, while on duty and repairing HRTC bus, got seriously injured and suffered 100% disability and thus sought retirement on medical grounds and prayed that his son i.e. the petitioner be provided job, which request of retiring the father of the petitioner was accepted by the Corporation on 13<sup>th</sup> May, 2014. However, the request for providing employment to the petitioner was rejected vide letter dated 3<sup>rd</sup> May, 2014, (Annexure P-4). Thus, the petitioner has prayed that the letter, dated 3<sup>rd</sup> May, 2014, (Annexure P-4), whereby he has been denied employment on compassionate ground, be quashed.

199. No reply has been filed.

200. From the facts of the case, it is apparent that the father of the petitioner suffered 100% disability while discharging his duties. Therefore, it was incumbent upon the respondents not to reject the request of the petitioner for grant of appointment on compassionate ground in a cursory manner. Rather, the fact that the father of the petitioner suffered the injury while performing his duties ought to have been kept in mind by the respondents.

201. Accordingly, in the facts of the case, we deem it proper to quash Annexure P-4 and direct the respondents to consider the case of the petitioner sympathetically and take a decision afresh as early as possible, of course, in accordance with the Policy and as per the findings on points No.(i) to (ix) above. Ordered accordingly.

### **Letters Patent Appeals**

#### **LPA Nos.495 & 507 of 2011, 528, 529, 551, 552, 553, 554 555 & 577 of 2012**

202. Judgments rendered by the learned Single Judge are the subject matter of these appeals, whereby appellants were directed to offer appointment to the writ petitioner(s) on regular basis from due date with all consequential benefits. The appellants have challenged the impugned judgments mainly on the ground that the learned Single Judge has erred in directing the appellants to offer appointment to the writ petitioners on regular basis from due date with all consequential benefits since the writ petitioners were offered appointment on daily wage basis as per the Policy in vogue and the petitioners also joined against the said posts without any protest.

203. In view of our findings recorded on points No.(iv) to (vi) above, the appeals are allowed, the impugned judgments are set aside and the writ petitions are dismissed.

**LPA No.62 of 2014**

204. This appeal is preferred by the State of H.P. against the judgment dated 10<sup>th</sup> September, 2012, whereby the learned Single Judge allowed the writ petition and directed the appellants/writ respondents to consider the case of the petitioner afresh in accordance with the policy prevalent in the year 2007, when the writ petitioner applied for being appointed on compassionate grounds.

205. Facts of the case, in brief, are that father of the petitioner died in harness on 26.12.2003 while working as Drawing Master on regular basis. The writ petitioner filed application for granting compassionate appointment, which was not adhered to on the ground that the family of the petitioner was not in indigent circumstances as the mother of the petitioner was drawing family pension to the tune Rs.16,918/- per month. Another ground of rejection was that the existing policy provided for employment either to the widow of the deceased employee or to an orphan. The learned Single Judge, after dilating on the judgments passed by the Apex Court, held that the stand of the writ respondents was

not inconsonance with the policy prevalent in the year 2007, when the writ petitioner applied for appointment.

206. In view of our findings returned on points No.(ii) and (iii) above, the impugned judgment needs to be upheld to the extent that the case of the writ petitioner was to be considered by the writ respondents as per the Policy in vogue at the time of presenting the claim by the writ petitioner, for the first time.

207. Having said so, the Letters Patent Appeal is disposed of by directing the appellants/writ respondents to consider the case of the writ petitioner afresh, in view of our findings on point No.(i), read with the findings recorded on other points, and the Policy/Scheme occupying the field, expeditiously.

**LPA No.189 of 2014**

208. Judgment rendered in CWP No.1575 of 2012 dated 17.5.2014 has been assailed by the writ respondents, whereby the writ petition was disposed of in terms of the judgment passed in CWP No.1343 of 2012, dated 2.11.2012. The writ petitioner (respondent herein) was offered appointment on compassionate ground as daily wage Beldar vide letter dated 7<sup>th</sup> February, 2006, to which he joined without any protest. Thereafter, the writ petitioner filed the petition with the prayer that the writ

respondents (appellants herein) be directed to consider the case of the petitioner for being appointed against a Class-III post.

209. It is worthwhile to mention here that In CWP No.1343 of 2012, the petitioner was appointed as Beldar on daily wage basis, on compassionate ground. The petitioner, by the medium of the writ petition, sought direction to the respondents to give him appointment against the post of Clerk. The learned Single Judge allowed the said writ petition and directed the respondents to appoint the petitioner as Clerk on daily wage basis from the date of his initial appointment.

210. In view of our findings on the above points, the appeal is allowed and the judgment, impugned in the instant appeal, is set aside. Consequently, the writ petition is dismissed.

211. Before parting with, we may place on record that the aim and object of providing employment assistance on compassionate ground is to immediately enable the dependants of an employee to tide over the sudden financial constraints on the death of their bread-earner. Thus, the source of such employment is purely based on humanitarian grounds taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet.

212. Therefore, it is desirable that efforts are made by the respondents-State for providing employment assistance on compassionate ground promptly and without any loss of time, after the death of the employee, so that the family is provided immediate help and the purpose of carving out such an exception is achieved. To achieve the avowed purpose of framing the policy for grant of employment on compassionate ground, it is also desirable that the Authority, who is vested with the discretion of making appointment on compassionate ground, exercises the said discretion discreetly, without discrimination and without being influenced, strictly in accordance with the provisions envisaged in the Policy.

213. The writ petitions and the appeals are disposed of as indicated above, alongwith all pending CMPs, if any.

**(Mansoor Ahmad Mir)**  
**Chief Justice.**

**October 06 , 2015**  
**(Tilak)**

**(P.S. Rana)**  
**Judge**