

The State Of West Bengal vs Debabrata Tiwari on 3 March, 2023

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Bench: B.V. Nagarathna, Krishna Murari

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8842-8855 OF 2022

THE STATE OF WEST BENGAL

...APPELLANT(S)

VERSUS

DEBABRATA TIWARI & ORS. ETC. ETC.

...RESPONDENT(S)

JUDGMENT

NAGARATHNA, J.

The present appeals have been filed assailing the judgment and common order of the High Court of Calcutta, dated 30th September, 2019, in a batch of appeals being MAT 859 of 2018 with CAN 6137 of 2018 and connected matters. By the impugned judgment and common order, the Division Bench of the High Court set aside the order of the learned Single Judge of the High Court dated 05th July, 2018, passed in W.P. No. 2739 (W) of 2016 and connected matters and directed the Director of Local Bodies, Burdwan Municipality and the concerned authority in Ranaghat and Habra Municipalities to consider the application made by the Respondents-Writ Petitioners seeking appointment on compassionate grounds. The Division Bench of the Date: 2023.03.03 17:18:57 IST Reason:

High Court also identified the scheme in light of which the said applications would have to be considered and decided.

2. The present appeals concern claims of the Respondents-Writ Petitioners, who are heirs of employees of Burdwan, Ranaghat and Habra Municipalities, who died in harness for compassionate appointment to posts in the concerned municipalities. All these appeals concern common questions as to the entitlement of such persons to be considered for compassionate appointment and whether any scheme of the State Government supports their claim for compassionate appointment. Further, since the case of all the Respondents is the same, the facts concerning the Burdwan Municipality alone may be succinctly stated as under:

2.1. The case of the Respondents-Writ Petitioners concerning Burdwan Municipality is that based on the applications received from the heirs of the deceased employees working under different categories, the Burdwan Municipality directed an enquiry by a three-member committee comprising of the Chairman of Burdwan Municipality (Respondent No. 6 herein); the Executive Officer of the Burdwan Municipality (Respondent No. 7 herein) and the Deputy Director of Local Bodies, Burdwan Division, to determine whether the respondents were entitled to the appointment on compassionate grounds. 2.2. That on the basis of the report submitted by the enquiry committee and after following the criteria set in the West Bengal Municipal, Employees' (Recruitment) Rules, 2005, the Board of Councillors of Burdwan Municipality in its meeting held on 30 th May 2013, approved a list of 62 eligible candidates for the purpose of recruitment in Group 'C' and 'D' posts in the said Municipality. The names of the respondents figured in the said list. 2.3. That the Chairman of the Burdwan Municipality vide Memo dated 12th June, 2013, forwarded a list approved by a resolution passed in the meeting of the Board of Councillors on 30th May, 2013, along with an inspection/enquiry report and other testimonials to the Director of Local Bodies, Government of West Bengal (Respondent No. 4), for approval of appointment on compassionate grounds. The names of the Writ Petitioners appeared in the list of eligible candidates under Group 'C' under the exempted category, 'dependents of persons who died in harness'.

2.4. That on 7th June 2014, the Chairman, Burdwan Municipality, Respondent No. 5, forwarded the proposed list of eligible candidates for appointment on compassionate grounds under a Memo bearing number 512/XII-6, to the Director of Local Bodies, Government of West Bengal, (appellant herein), and requested the Director of Local Bodies to look into the matter sympathetically.

2.5. That since the Director of Local Bodies or the Government of West Bengal did not take steps pursuant to the receipt of the list of candidates, Debabrata Tiwari (Respondent No. 1) filed a Writ Petition bearing No. 3243 (W) of 2015 before the High Court of Calcutta seeking appointment on compassionate grounds under the relevant exempted category. The Secretary of the Burdwan Municipality submitted before the High Court that Respondent No. 1 was eligible for being considered for appointment on compassionate grounds, under the exempted category of dependents of persons who died in harness and that the Burdwan Municipality had already sent the necessary papers in this regard to the Office of the Directorate of Local Bodies, Government of West Bengal.

2.6. The said Writ Petition was disposed of by an order dated 17 th March, 2015, with a direction to the Director of Local Bodies, Government of West Bengal to take a decision on the recommendation of the Chairman of the Municipality within a period of ten weeks from the date of communication of the said Order and to communicate such decision to the Chairman of the Municipality within a week thereafter. 2.7. In continuation of the direction of the High Court in W.P. No. 3243 (W) of 2015, the

Director of Local Bodies, Government of West Bengal, on 16th October, 2015 passed an Order wherein it was stated that the Director of Local Bodies had no authority to consider the appointments under compassionate grounds in Urban Local Bodies, unless the policy in the matter was laid down by the State Government. It was therefore observed by the Director of Local Bodies that as soon as the State Government extends such policy for consideration of appointment of the employees of the Urban Local Bodies, under compassionate grounds, in the die-in-harness category, the prayer of Respondent No. 1 would be considered.

2.8. Being aggrieved by the order passed by the Director of Local Bodies, Government of West Bengal on 16th October, 2015, Respondent No. 1 preferred a Writ Petition bearing No. 2733 (W) of 2016 before the High Court of Calcutta.

A batch of Writ Petitions where the cause of action was the same as that in W.P. No. 2733 (W) of 2016 was heard and disposed of together by the learned Single Judge of the High Court of Calcutta by way of a Common Judgment and Order dated 5th July, 2018. The said common order was passed in Writ Petition No. 2739 (W) of 2016. The learned Single Judge dismissed the Writ Petitions by relying on the judgment passed in Gobinda Hazra vs. State of West Bengal, W.P. No. 13147 (W) of 2017, wherein the issue, as to, whether, there subsists any scheme for compassionate appointment in respect of municipal employees was considered and the issue was answered in the negative. The High Court thus held that no relief could be granted to the Writ Petitioners (Respondents herein), in the absence of a sanctioned scheme for compassionate appointment in respect of municipal employees. 2.9. Aggrieved by the Order passed by the Single Judge dated 5th July, 2018, the Respondents- Writ Petitioners preferred a batch of appeals before the Division Bench of the High Court. The said appeals were heard and allowed by a common impugned judgement dated 30th September, 2019, passed in MAT 859 of 2018 with CAN 6137 of 2018 in the case of Debabrata Tiwari vs. The State of West Bengal. By way of the impugned judgment, the Director of Local Bodies, Burdwan Municipality and the concerned authority in Ranaghat and Habra Municipalities were directed to consider the application made by the Writ Petitioners seeking appointment on compassionate grounds. The Division Bench of the High Court also identified the scheme in light of which the said applications would have to be considered and decided. Hence the present appeals by the State of West Bengal. 2.10. The pertinent findings of the Division Bench of the High Court of Calcutta, in the common impugned judgment dated 30th September, 2019, have been culled out hereinunder:

i. The Division Bench of the High Court rejected the argument canvassed on behalf of the Government that there was an undue delay between the time of making the application and the time when the Respondents-Writ Petitioners approached the Court. That the Writ Petitioners had not delayed filing applications seeking appointments on compassionate grounds and the concerned authorities had undertaken an enquiry by constituting a committee but had ultimately taken years to consider their applications and to recommend their respective names. The Director of Local Bodies kept the matter pending without according any approval of the recommendations, as a result, a Writ Petition was filed which was disposed of with a

specific direction to the Director of Local Bodies to consider the applications within a time frame. That in pursuance of the High Court direction, the Director of Local Bodies disposed of the matter in respect of Burdwan Municipality only on 16th October, 2015. Hence, a time of about ten years had been spent only for processing the applications and such a delay could not be attributed to the Respondents-Writ Petitioners. ii. That an employee of a municipality cannot be treated as an employee of the State Government and therefore the scheme available to a State Government employee cannot be extended to a dependent of an employee of the municipality who died in harness. Thus, the respondents were not entitled to claim the benefit of compassionate appointment in terms of the schemes formulated vide Circular No. 97-Emp.; 142-Emp.; 30-Emp.; and 251-Emp., which were specifically applicable to State Government employees.

iii. As to the issue of whether there was any scheme for grant of compassionate appointments in respect of employees of Municipalities, the Division Bench differed from the findings of the Single Judge. On a conjoint reading of Circular Nos. 301-Emp., 302-Emp. and 303 Emp., it was observed that it was clear that the aforesaid Circulars were specific schemes for compassionate appointments in respect of municipalities. That the said schemes were in respect of all establishments covered under the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Bengal Act XIV of 1999) (hereinafter referred to as the ‘Act of 1999’ for the sake of brevity). That the said circulars which were extended to the employees of all establishments including local authorities like municipalities, were neither withdrawn nor substituted by the subsequent notifications and circulars.

iv. That although Circular No. 142-Emp. clarified that 97-Emp. was applicable only in respect of State Government employees and directed the municipalities to formulate their own schemes for compassionate appointment, no such scheme had been formulated by the concerned municipalities. That it was evident from Circular No. 142-Emp. that it does not withdraw the scheme for compassionate appointment available under Circular Nos. 301-Emp., 302-Emp. and 303-Emp. and in the absence of any subsequent scheme or specific withdrawal of the existing scheme, the scheme remains in subsistence and will be the scheme under which the applications for compassionate appointments made by the respondents are to be considered.

v. In the absence of a substituted scheme, and given that Circular No. 301-Emp., 302-Emp. and 303 Emp. were not specifically withdrawn, they would continue to remain applicable. Therefore, compassionate appointment in respect of municipalities would be governed by the scheme under Circular Nos. 301-Emp., 302-Emp. and 303-Emp.

In light of the aforesaid observations, the Division Bench of the High Court set aside the Order passed by the Single Judge and directed the Director of Local Bodies, Burdwan Division, Government of West Bengal to reconsider the Memo dated 12th June, 2013 whereby the Chairman, Burdwan Municipality, had sought for the approval of recommended names for being appointed under compassionate grounds. Further, the Director of Local Bodies was directed to examine whether proper inspection of the documents had been carried out while recommending such names and whether the parameters mentioned under the scheme contained in Circular Nos. 301-Emp., 302-Emp. and 303-Emp. had been properly adhered to by the officials of Burdwan Municipality while making the recommendation.

Aggrieved by the said directions of the High Court and the findings as to the eligibility of the Respondents-Writ Petitioners to seek appointment on compassionate grounds, the present appeals have been filed by the State of West Bengal.

3. We have heard Sri Rakesh Dwivedi, learned Senior Counsel and learned counsel, Ms. Madhumita Bhattacharjee appearing on behalf of the Appellant-State of West Bengal and learned counsel Sri Indradeep Pal for the Respondent-Writ Petitioners, and perused the material on record.

Submissions:

4. Learned Senior Counsel for the Appellant-State of West Bengal at the outset submitted that the findings of the Division Bench of the High Court of Calcutta were based on an incorrect appreciation of law and facts and therefore the same are liable to be set aside. 4.1. It was further submitted that directing at such a belated stage, that the Respondents-Writ Petitioners ought to be appointed on compassionate grounds would have no redeeming purpose. That the rationale behind a policy of compassionate appointment is to provide immediate succor to the dependent(s) of a government employee dying in harness. This object would require that immediate steps be taken to enable the dependent(s) to recover from the sudden financial crisis as a result of death or disablement of a breadwinner of a family. If the said purpose is not going to be accomplished, the Court may not direct the same granting compassionate appointment. That in the instant cases, the applications made by the Respondents-Writ Petitioners for compassionate appointment relates to the year 2005-2006. That a direction to act on the same now, i.e., 17-18 years after the applications seeking compassionate appointment were made, would not further the object of a scheme of compassionate appointment. 4.2. Reliance was placed on the decision of this Court in State of Himachal Pradesh vs. Shashi Kumar, (2019) 3 SCC 653 (“Shashi Kumar”) to contend that where there is a significant gap between making the application for compassionate appointment and filing a Writ Petition to challenge inaction on the part of the Government, a direction to consider the application for compassionate appointment may not be issued.

4.3. It was next contended that Circular No. 142-Emp. clarified that 97-Emp. was applicable only in respect of State Government employees and directed the municipalities to formulate their own schemes for compassionate appointment. This would mean that as a matter of policy of the State

Government, it was declared that it is not viable to give compassionate appointment to heirs of employees of establishments of public undertakings, statutory bodies, government companies and local authorities. That by virtue of the clarification under Circular No. 142-Emp., the position would be that no scheme exists for compassionate appointment in Municipalities. It is for such establishments to formulate policies of their own in consultation with the respective administrative department. That, in the absence of a sanctioned scheme for compassionate appointment in respect of municipal employees, no relief could have been granted by the High Court. 4.4. It was urged that compassionate appointment could not be claimed as a matter of right and a claim for the same must be entertained having regard to the compelling financial circumstances (if any) of the deceased's dependent(s). Therefore, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail.

With the aforesaid submissions, it was prayed on behalf of the appellant-State of West Bengal that the present appeals be allowed and the impugned judgment of the Division Bench of the High Court be set aside.

5. Per contra, learned counsel for the Respondents-Writ Petitioners, submitted that the impugned judgment was passed based on an unimpeachable appreciation of the facts of the case and the law in this regard, and therefore the same does not call for interference by this Court.

5.1. It was further submitted that any scheme for compassionate appointment has to be applied across the establishments including the municipalities. Thus, the petitioner State could not contend that the employees of the municipality would not be eligible for compassionate appointment in the absence of any separate compassionate appointment scheme for municipal employees.

5.2. That Notification No. 301-Emp. declared the following category of persons as 'exempted category' extending, inter-alia, the benefit of compassionate appointment to the said 'exempted category':

- a) Dependents of employees dying in harness.
- b) Dependents of employees retiring incapacitated.
- c) Persons belonging to families belonging to land losers.
- d) Ex-census employees.
- e) Persons holding discharge certificates.

Further, by Notification No. 302-Emp., the State Government reserved 30% of vacancies to be filled by the 'exempted category'. Subsequently, a Circular bearing No. 97-Emp. dated 6th June, 2005 was issued by the Petitioner State in the exercise of the powers conferred under Section 3(c) of the 1999 Act, inter-alia, laying down the procedure to be followed in dealing with the issue of appointment on compassionate grounds to the 'exempted category'. However, by way of Notification bearing No.

142-Emp. dated 1st November, 2007 it was clarified that Notification No. 97-Emp. was only restricted to State Government employees, and in so far as other establishments are concerned, they would have to formulate their own policies having regard to the principles applicable to the State Government Employees.

That in the absence of a policy formulated specially for municipal employees, compassionate appointment could have been granted on the strength of Circular Nos. 301-Emp., 302-Emp. and 303-Emp. 5.3. It was averred that since delay in acting upon the application of the Respondent-Writ Petitioners was attributable only to the appellant's authorities, therefore, the Respondents ought not to be prejudiced on account of such delay. That the Respondents-Writ Petitioners diligently pursued the matter with the authorities, as also before the High Court of Calcutta.

With the aforesaid submissions it was prayed on behalf of the Respondents-Writ Petitioners that the present appeals be dismissed as being devoid of merit and the impugned judgment be affirmed. Points for Consideration:

6. The following points would arise for consideration:

i. Whether the Division Bench of the High Court of Calcutta erred in allowing the appeals filed by the Respondents-Writ Petitioners and directing that their claims for compassionate appointment be considered by the Appellant?

ii. What order?

6.1. These appeals primarily concern the question whether there exists any scheme in the State of West Bengal, governing compassionate appointment governing municipal employees dying in harness. In the event that the aforesaid question is answered in the affirmative, it would be necessary to determine whether a direction issued several years after applications for compassionate appointment are filled, to consider and decide such applications, is in consonance with the object of a policy/scheme for compassionate appointment.

Policy of Compassionate Appointment: The Rationale:

7. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State

Policy.

7.1. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

i. In Sushma Gosain vs. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

ii. In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That 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, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That 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, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

iii. In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, ("Hakim Singh") this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

iv. This Court in State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. vi. In State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

vii. In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

“41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.” 7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular

procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis. ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source. 7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

7.4. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds.

The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in *Hakim Singh* would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

8. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. vs. Prosper Armstrong*, (1874) 3 PC 221 as under:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.” Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. vs. M. R. Meher*, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant

of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

In State of M.P. vs. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third- party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.” While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide Jagdish Lal vs. State of Haryana, (1997) 6 SCC 538; NDMC vs. Pan Singh, (2007) 9 SCC 278.

9. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005- 2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in State of Uttarakhand vs. Shiv Charan Singh Bhandari, (2013) 12 SCC 179, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.” (emphasis by us)

10. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17 th March,

2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action.

11. It may be apposite at this juncture to refer to the following observations of this Court in *Malaya Nanda Sethy vs. State of Orissa*, AIR 2022 SC 2836, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:

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

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

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

of the appellant-applicant therein for compassionate appointment was directed by this Court to be considered by the competent authority. This Court noted that in the said case, there was no lapse on the part of the appellant-applicant therein in diligently pursuing the matter. The delay in considering the application of the appellant therein was held to be solely attributable to the authorities of the State, and no part of it was occasioned by the appellant-applicant. Further, in the said case, the appellant-applicant was prejudiced not only because of the prolonged delay in considering his application but also by the fact that in the interim, the policy of the State governing compassionate appointment had changed to his detriment. Therefore, the facts of the said case were distinct from the facts involved herein. In the present case, the conduct of the Respondents-Writ Petitioners cannot be said to be blameless in that they did not pursue their matter with sufficient diligence. However, the observations made in the said case as to the manner in which applications for compassionate appointment are to be considered and disposed of are relevant to the present case.

As noted in the said case, the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed before the Courts.

12. In the present case, the applications for compassionate appointment were made by the Respondents-Writ Petitioners in the year 2005-2006. Admittedly, the first concrete step taken by the Chairman of the Burdwan Municipality was in the year 2013, when the said authority forwarded a list of candidates to be approved by the Director of Local Bodies, Burdwan Municipality. The Respondents-Writ Petitioners knocked on the doors of the High Court of Calcutta only in the year 2015, i.e., after a lapse of nearly ten years from the date of making the application for compassionate appointment. The Respondents-Writ Petitioners were not prudent enough to approach the Courts sooner, claiming that no concrete step had been taken by the Appellant-State in furtherance of the application by seeking a Writ in the nature of Mandamus.

13. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the Appellant-State as well as the Respondents-Writ Petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained.

14. However, we must sound a strong word of reproach directed at the authorities of the Appellant-State, about the manner in which the applications for compassionate appointment of hundreds of dependents have been dealt with. Much uncertainty looms around the scope, extent and

beneficiaries of the various schemes formulated by the State for governing compassionate appointment and therefore, the concerned authorities are unable/unwilling to positively decide claims for compassionate appointment. This may have ultimately resulted in prejudice to the families of many government employees dying in harness. Delay on the part of the authorities of the State to decide claims for compassionate appointment would no doubt frustrate the very object of a scheme of compassionate appointment. Government officials are to act with a sense of utmost proactiveness and immediacy while deciding claims of compassionate appointment so as to ensure that the wholesome object of such a scheme is fulfilled.

15. The question as to whether a direction issued several years after an application for compassionate appointment, to consider and decide such application, is in consonance with the object of a policy/scheme for compassionate appointment, has been answered in the negative. However, we shall also examine whether these appeals must succeed on a second count, i.e., whether there exists any scheme in the State of West Bengal, governing compassionate appointment vis-à-vis municipal employees dying in harness.

16. In order to determine the question as to whether there exists any scheme in the State of West Bengal, governing compassionate appointment vis-à-vis municipal employees dying in harness, it would be useful to refer to the content of the relevant State Government Notifications issued in this regard. The relevant Circulars are: 301-Emp., 302-Emp. and 303-Emp. all dated 21st August, 2002; 97-Emp. dated 6th June, 2005 and 142-Emp. dated 1st November, 2007.

The relevant portions of each of such Circulars are extracted hereinunder for easy reference:

No. 301-EMP/LM-10/2000-21st August, 2002:

“In exercise of the powers conferred by sub-section (a) of section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Bengal Act XIV of 1999), the Governor is pleased to declare the following categories of persons as exempted categories for the purpose of the aforesaid Act:-

1. Dependents of employees dying in harness: A solely dependent wife/son/daughter/near relation of an employee who dies in harness leaving his family in immediate need of assistance.

A near relation of the deceased employee may be considered for employment on compassionate ground only when the son/daughter/wife of the deceased employee cannot be considered for employment owing to minor age or other disabilities. In such a case the employment of a near relation of the deceased employee may be considered only for providing assistance immediately needed by the family, left behind by the deceased.

xxx This supersedes all earlier circulars and executive orders issued from time-to-time by the Government of West Bengal in the Labour Department relating to employment of persons belong to the Exempted Categories.” No. 302-EMP/1M-10/2000 - 21st August, 2002:

“In exercise of the powers conferred by sub-section (b) of section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Bengal Act XIV of 1999), the Governor is pleased to order that of the local vacancies arising in a year under any appointing authority, other than the vacancies which are required to be filled up either on the recommendations of-

- (a) the Public Service Commission, West Bengal, or
- (b) the West Bengal College Service Commission, or
- (c) the West Bengal School Service Commission, or
- (d) the Municipal Service Commission, or
- (e) the Co-operative Service Commission Or by promotion, or by absorption of persons declared surplus by the State Government or by absorption of such categories of casual workers and other workers as the State Government may by notification specify from time to time, 30% shall be treated as reserved to be filled up by persons falling within the exempted categories notified under sub-section (a) of section 3 of the aforesaid Act.” No. 303-EMP/1M-10/2000 - 21st August, 2002:

“In exercise of the powers conferred by sub-section (c) of section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Bengal Act XIV of 1999), the Governor is pleased to prescribe the following procedure for filling up the vacancies reserved for the Exempted Categories as specified under sub-section (a) of section 3 of the aforesaid Act:--

A. GENERAL PROCEDURE TO BE FOLLOWED IN RESPECT OF DIFFERENT EXEMPTED CATEGORIES:

1. Dependents of persons who died in harness: None except wife/son/daughter/near relation of the deceased employee and solely dependent on the earnings of the deceased employee, shall be eligible for consideration for such employment. The benefit will be admissible if the family, left behind by the deceased employee, is in immediate need of assistance and such employment on compassionate ground is absolutely essential to support the family of the deceased. A person belonging to a

completely separate family shall not be treated as solely dependent on the deceased employee for the purpose of such employment on compassionate ground.

The wife/son/daughter/near relation of an employee who died-in-harness, may apply to the appointing authority through the Head of the Office of the employee in a prescribed form as per Part I & II of Annexure "A" along with a copy of death certificate praying for employment to support the family of the deceased employee. On receipt of such application the appointing authority shall form an enquiring committee of senior officials not less than three in number. The committee so formed shall make an enquiry about the genuineness of the prayer as well as the financial condition of the family of the deceased employee and submit a report as per Annexure "A" to the appointing authority. The appointing authority will forward the case together with his views, recorded in Annexure "A", to the Administrative Department concerned for consideration. If it is decided by the administrative department to be a fit case for offering employment on compassionate ground a suitable vacancy may be identified under the appointing authority concerned for providing employment subject to the condition that the candidate satisfies the qualification and other requirements prescribed for recruitment to the post. If a suitable vacancy is not available under the appointing authority concerned the administrative department may identify suitable vacancy under some other appointing authority under its administrative control for providing employment. The administrative department will forward the case with suitable direction, to the appointing authority, in whose establishment the vacancy has been identified. In the event of non-availability of the berth for accommodating such a case the administrative department concerned will have to move other departments for suitable berth. When a suitable vacancy is available in some other department to accommodate the case, the Administrative Department will forward the case along with the relevant papers to that department for further action. The Department having vacancy in the Exempted Category of posts will provide employment to the wife/son/daughter/near relation of the employee who died in harness subject to observance of relevant conditions and formalities." 97-Emp. - 6th June, 2005:

"In exercise of the powers conferred by clause (c) of section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999, the Governor has been pleased to lay down the following principles and procedures to be followed in dealing with the issue of appointment on compassionate ground to the dependants of employees who die in harness, or who retire prematurely on being declared permanently incapacitated.

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2. One of the dependants of an employee who dies in harness or who retires prematurely on being declared permanently incapacitated may be offered appointment on compassionate ground subject to the fulfilment of the following conditions:

(i) The employee has died, or retired on being permanently incapacitated before completing 20 years of services of before attaining the age of 50 years, whichever is earlier.

(ii) The family of the deceased of the retired employee, as the case may be, is in need of immediate assistance and appointment of dependant of the employee is absolutely essential for survival of the family.

For the purpose of appointment of compassionate ground in terms of this notification, a dependant shall mean spouse, a son or an unmarried daughter who was (sic) solely dependent on the earnings of the deceased or the retired employee.

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8. The Labour Department will forward the name of persons found eligible for appointment on compassionate ground to one or more of the following Departments, for appointing them against available vacancies.-

- 1) Health & Family Welfare Department
- 2) School Education Department.
- 3) Higher Education Department.
- 4) Mass Education & Extension Department.
- 5) Home (Police) Department.
- 6) Jails Department.” EMP-142 - 1st November, 2007:

“Consequent upon issue of this Department's Notification No. 97-Emp, dated 06.06.2005, a question arose as to if the provisions of the said notification would be applicable to the State Government employees only or to the employees attached to such other establishments, as are mentioned in the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Government Companies and Local Authorities Act, 1999, as well. To obviate the question, issue of a clarification in this regard has been under consideration of the Government for some time past and in terms of this Department Notification No. 69- Emp. dated 26-06-2007, it has been clarified that the term 'employee' will mean the State Government employee only for the purpose of this Department's Notification No. 97-Emp, dated 06- 06-2005.

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2. The Governor has, now, been pleased to order that the appropriate authorities of the establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities, within the purview of the Act ibid, will, having regard to the principles applicable to the State Government employees as enunciated in this Department Notification No. 97-

Emp, dated 06-06-2005, read with Corrigendum No. 151-Emp, dated 08-09-2005, Notification No. 133-

Emp, dated 01-10-2007 and any other order/Notification to be issued subsequently by the Government in this regard, the financial position and the nature of activities of the respective organizations, formulate policies of their own in consultation with the respective administrative departments so as to follow the same in course of dealing with the prayers for appointment or financial assistance on compassionate ground, received by them, from the dependents of the employees who die-in-harness or retire prematurely on being declared permanently incapacitated.

3. Before notifying the policy, the administrative Department shall obtain the concurrence of the Labour Department and the Financial Department.” (emphasis by us) 16.1. A scheme for compassionate appointment was introduced by Circular Nos. 301-Emp. to 303-Emp. dated 21st August 2002. Circular No. 301-Emp identifies the exempted categories for the purpose of the Act of 1999. Dependents of employees dying in harness is one of the categories so identified. Circular No. 302-Emp provides that 30% of the vacancies arising in a year under any appointing authority shall be reserved to be filled by persons belonging to the exempted categories. Circular No. 303-Emp prescribes a procedure for filling up of vacancies reserved for the exempted categories, i.e., the procedure to be followed by the appointing authority on receipt of an application to be appointed on compassionate grounds. The said Circular provides that the administrative department shall, on finding a candidate eligible for compassionate appointment, either appoint him/her under the appointing authority which forwarded the application, or, identify a suitable department where there is a vacancy to be filled by a person belonging to an exempted category. The Circular further provides that any Department which has vacancy in the Exempted Category of posts will provide employment to the wife/son/daughter/near relation of the employee who died in harness.

The next notification is 97-Emp. dated 6th June, 2005 which specifies the criteria for a person seeking an appointment on compassionate grounds in the ‘dependents of persons who died in harness’ category. Further, Circular No. 142-Emp. dated 1st November, 2007, seeks to answer the question, whether the provisions of 97-Emp. would be applicable to State Government employees only or it would apply to the employees attached to other establishments as mentioned in the Act of 1999 as well. It answers the question in the negative so far as employees of other establishments are concerned. It further provides that local authorities may formulate their own policies having regard to the principles applicable to the State Government Employees to govern compassionate appointment.

16.2. There is no controversy regarding the applicability of Circular No. 97-Emp. dated 6th June, 2005 to employees of local authorities such as municipalities because Circular No. 142-Emp. dated

1st November, 2007 provides in no unclear terms that 97-Emp. would not be applicable to employees of local authorities.

It is trite that the effect of the clarification of any document is always retrospective and would relate back to the date of the notification in respect of which the clarification is issued, vide Ashok Lenka vs. Rishi Dikshit, AIR 2006 SC 2382. The clarificatory Circular, i.e., Circular No. 142-Emp. dated 1st November, 2007 has got no independent existence. It merely defines the scope of operation of Circular No. 97-Emp. dated 6th June, 2005. Therefore Circular No. 97- Emp. read with Circular No. 142-Emp. concern the procedure governing compassionate appointment, only qua State Government employees.

Further, applications for compassionate appointment are to be considered in light of the policy holding the field on the date on which the application is filed. In the present case, the applications were filed in the year 2006. Therefore, they would have to be decided in light of Circular No. 97-Emp. read with Circular No. 142-Emp. Given that the said Circular does not govern compassionate appointment to posts under local authorities, compassionate appointment cannot be granted to posts under local authorities.

16.3. It is the case of the Respondents-Writ Petitioners herein that though Circular No. 97-Emp. read with Circular No. 142-Emp is not applicable to local authorities, their applications for compassionate appointment ought to have been considered in light of 301-Emp., 302- Emp. and 303-Emp. which, according to the Respondents-Writ Petitioners is applicable to all departments and authorities covered under the Act of 1999. However, in our view, the said Circulars were not understood or read to be a scheme governing all employees of other establishments governed by the Act of 1999. We say so for the following reasons:

- i) Circular No. 303-Emp. provides that any Department which has vacancy in the Exempted Category of posts will provide employment to the wife/son/daughter/near relation of the employee who died in harness. Use of the word 'Department' would indicate that the said Circular would govern compassionate appointment to Departments of the State Government and not to local authorities.
- ii) The meaning of the word 'Department' would have to be gathered, having regard to the fact that the immediate notification subsequent to 301-Emp., 302-Emp. and 303-Emp., being 97-Emp.

dated 6th June, 2005 notifies the departments in whose vacancies the appointments would be granted. The Departments are of the State.

iii) If Circular Nos. 301-Emp, 302-Emp and 303-Emp. are to be read so as to cover all establishments of the Act of 1999, then 97-Emp. dated 6th June, 2005, should provide for appointment in the establishment covered by the Act of 1999 concerned. It does not do so. Therefore, Circular Nos. 301-Emp, 302-Emp and 303-Emp. cannot be held to be applicable to local authorities. 16.4. The existence of a policy issued by the State Government is a sine qua non for

making appointments on compassionate basis, vide Mumtaz Yunus Mulani (Smt.) vs. State of Maharashtra (supra); State Bank of India vs. Surya Narain Tripathi, 2014 (15) SCC 739. The appointments must follow the stipulations made in the policy. It is therefore a no-brainer that in the absence of a policy governing compassionate appointment to posts under a local authority, no appointment could be made to such an authority on compassionate grounds.

Having held that Circular Nos. 301-Emp, 302-Emp and 303-Emp. cannot be held to be applicable to local authorities, we are unable to affirm the findings of the Division Bench of the High Court to the effect that given that Circular No. 301-Emp., 302-Emp. and 303 Emp. were not specifically withdrawn, they would continue to remain applicable and therefore, compassionate appointment in respect of municipalities would be governed by the scheme under Circular Nos. 301-Emp., 302-Emp. and 303-Emp.

We are further of the view that the liberty granted to the local authorities in Circular No. 142-Emp. to formulate their own scheme for compassionate appointment, is an acknowledgement of the fact that there was no policy existing to govern compassionate appointment to posts under local authorities.

16.5. In fine, the present appeals succeed on two counts: first, there was no policy existing to govern compassionate appointment to posts under local authorities in the State of West Bengal and hence, in the absence of such a policy, compassionate appointment cannot be granted; second, assuming that there was such a policy, it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds be considered and decided several years after they were filed.

17. In light of the aforesaid discussion, the instant appeals succeed in the following terms:

i. The impugned judgment and common order of the High Court of Calcutta dated 30th September, 2019 is hereby set aside. The order of the learned Single Judge of the High Court of Calcutta dated 05th July, 2018, passed in W.P. No. 2739 (W) of 2016 and connected matters is restored.

ii. I.A. No. 1977 of 2022 for impleadment of the applicant, stands allowed.

Parties to bear their respective costs.

.....J. [KRISHNA MURARI]J. [B.V.
NAGARATHNA] NEW DELHI;

3rd March, 2023.