

The Secretary To Govt. Department Of ... vs Bheemesh Alias Bheemappa on 16 December, 2021

Author: V. Ramasubramanian

Bench: V. Ramasubramanian, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7752 of 2021
(Arising out of Special Leave Petition (C) No.1564 of 2021)

THE SECRETARY TO GOVT. DEPARTMENT
OF EDUCATION (PRIMARY) & ORS.

... Appellants

Versus

BHEEMESH ALIAS BHEEMAPPA

... Respondent

JUDGMENT

V. Ramasubramanian, J.

1. Leave granted.

2. Aggrieved by the order passed by Karnataka State Administrative Tribunal which was also confirmed by the High Court, directing them to consider the case of the respondent for appointment on compassionate grounds, the State has come up with the above appeal.

3. We have heard Sh. V. N. Raghupathy, learned counsel appearing for the appellants and Sh. Jayanth Muthraj, learned senior counsel appearing for the respondent.

4. Admittedly, the respondent's sister who was employed as Assistant Teacher in a Government School, died in harness on 8.12.2010, leaving behind her surviving, her mother, two brothers and two sisters. Claiming that the deceased was unmarried and that the mother, two brothers and two sisters were entirely dependent on her income, the respondent sought appointment on compassionate grounds. The claim was rejected by the competent authority by an Order dated 17/21.11.2012, on the ground that the amendment made to the Karnataka Civil Services

(Appointment on Compassionate Grounds) (7 th amendment) Rules, 2012 on 20.06.2012, extending the benefit of compassionate appointment to the unmarried dependant brother of an unmarried female employee, will not be applicable to the case of the respondent.

5. Aggrieved by the said order of rejection, the respondent moved the Karnataka State Administrative Tribunal by way of an application in Application No.9099 of 2014. The said application was allowed by the Tribunal by an Order dated 10.11.2017, on the ground that the amendment made to the Rules on 20.06.2012 would apply retrospectively covering the case of the respondent, though his sister died in harness on 8.12.2010.

6. Challenging the Order of the Karnataka Administrative Tribunal, the State filed a writ petition before the High Court of Karnataka, Dharwad Bench. The writ petition was dismissed by the High Court by an Order dated 20.11.2019, on the basis of the decision of another Division Bench of the Court, which held that the amendment to the Rules was retrospective in nature. It is against the said Order that the State has come up with above appeal.

7. As held by this Court repeatedly, every appointment to a post or service must be made strictly by adhering to the mandate of Articles 14 and 16 of the Constitution. Appointment on compassionate grounds, is an exception to the regular mode of recruitment, as it is intended to provide succor to the family of the deceased Government servant, which is thrown out of gear both financially and otherwise, due to the sudden death of the Government servant in harness.

8. Admittedly, the appointment on compassionate grounds in the State of Karnataka is governed by a set of Rules known as Karnataka Civil Services (Appointment on Compassionate grounds) Rules, 1996, issued in exercise of the powers conferred by Section 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978. The Rules as they stood, on the date on which the sister of the respondent died in harness, did not include an unmarried brother, within the definition of the expression “dependant of a deceased Government servant” under Rule 2(1)(a) of the said Rules vis-à-vis a deceased female unmarried Government servant. But it was only by way of an amendment proposed under a draft Notification dated 20.06.2012 which was given effect under the final Notification bearing No. DPAR 55 SCA 2012, Bangalore dated 11.07.2012 that an unmarried brother of a deceased female unmarried Government servant was included within the definition. There is no dispute about the fact that the sister of the respondent died as an unmarried female Government servant, but on 8.12.2010, before the amendment was made to the Rules.

9. To hold that the amendment will have retrospective application, the High Court as well as the Tribunal relied upon a Judgment of the Division Bench of the High Court of Karnataka in State of Karnataka vs. Akkamahadevamma and others, decided on 18.11.2010 in Writ Petition Nos.20914 of 2010 etc. But it should be pointed out at the outset that the Judgment of the High Court in Akkamahadevamma arose out of an amendment to the Karnataka Civil Services (General Recruitment) (57th Amendment) Rules, 2000. By the Amendment made on 30.03.2010 to the said Rules, grandson, unmarried granddaughter, daughter in law, widowed daughter and widowed granddaughter were included within the definition of the expression “members of the family” under Explanation 2 of Rule 9. But the amendment so made on 30.03.2010 expanding the definition of

the expression “members of the family” was triggered by an Order of the Tribunal which held the unamended rule to be unconstitutional. It is in that context that the amendment made on 30.03.2010 to the Rules issued on 23.11.2000 was held by the High Court to be retrospective in nature. It must also be remembered that the expanded definition was with respect to project displaced persons. The right conferred upon a project displaced person stands on a different footing from the entitlement of a person to seek appointment on compassionate grounds. In any case an amendment brought forth, on the basis of a Judgment of a Court or Tribunal, holding the exclusion of certain categories of persons to be violative of Articles 14 and 16 of the Constitution, may receive an interpretation such as the one proposed by the High Court in Akkamahadevamma. But the same may not be applicable to amendments of the nature that we are concerned with in this case.

10. Incidentally we must point out that the High Court may not be correct in holding in Akkamahadevamma that the insertion of additional words in an existing provision would make those additions part of the original provision with effect from the date on which the original provision came into force. The rules of interpretation relating to ‘substitution’ are not to be applied to the case of ‘insertion of additional words’.

11. Be that as it may, Sh. Jayanth Muthraj, learned senior counsel appearing for the respondent pleaded that there are two lines of Judgments of this Court, one taking the view that the Rules/Scheme in force on the date of death of the Government servant would govern the field and the other holding that the Rules/scheme in force on the date of consideration of the claim would govern the field. Unable to reconcile this conflict, a two Member Bench of this Court, by its Order dated 08.02.2019 in State Bank of India vs. Sheo Shankar Tewari¹, has referred the matter for consideration by a larger Bench. Sh. Jayanth Muthraj, learned senior counsel therefore made a request that the present appeal may either be placed along with the reference or await a decision on the above reference.

12. But we do not consider it necessary to do so. It is no doubt true that there are, as contended by the learned senior Counsel for the respondent, two lines of decisions rendered by Benches of equal strength. But the apparent conflict between those two lines of decisions, was on account of the difference between an amendment by which an 1 (2019) 5 SCC 600 existing benefit was withdrawn or diluted and an amendment by which the existing benefit was enhanced. The interpretation adopted by this Court varied depending upon the nature of the amendment. This can be seen by presenting the decisions referred to by the learned senior counsel for the respondent in a tabular column as follows:

Citation	Scheme in force	Modified Decision of this Court	on the date of Scheme which Court death of the came into force	Government after death servant State Bank The
Scheme of the The 1996 Scheme Rejecting the of India vs. year 1996, which was subsequently claim of the wife Jaspal Kaur made the financial modified by policy of the deceased (2007) 9 SCC condition of the issued in 2005, employee, this 571 family as the main which laid down Court held that [a two criterion, was in few parameters the application of member force, on the date of for determining the dependant Bench] death of the penury. One of made in the year employee in the year the				

parameters 2000, after the 1999. was to see if the death of the income of the employee in the family had been year 1999, cannot reduced to less be decided on the than 60% of the basis of a Scheme salary drawn by which came into the employee at force in the year the time of death. 2005.

Therefore, the

wife of the
deceased

<p>State Bank of India Vs. Raj Kumar (2010) 11 SCC 661 [a two member Bench]</p>	<p>The employee died on 1.10.2004 and the applications for compassionate appointment were made on 6.06.2005 and 14.06.2005. On the date of death and on the date of the applications, a Scheme known as compassionate appointment Scheme was in force.</p>	<p>employee claimed the consideration of the application on the basis of parameters laid down in the policy of the year 2005. But with effect from 04.08.2005 a new Scheme for payment of ex-gratia lump-sum was introduced in the place of the old Scheme. The new Scheme contained a provision to the effect that all applications pending under the old Scheme will be dealt with only in accordance with the new Scheme.</p>	<p>This Court held that the application could be considered only under the new Scheme, as it contained a specific provision relating to pending applications.</p>
<p>MGB Gramin Bank vs. Chakrawarti Singh (2014) 13 SCC [a two member</p>	<p>The employee died on 19.04.2006 and the application for appointment made on 12.05.2006. A scheme for appointment on compassionate grounds was in force</p>	<p>However, a new Scheme dated 12.06.2006 came into force on 6.10.2006, providing only for ex gratia payment instead of compassionate</p>	<p>This Court took the view that the new Scheme alone would apply as it contained a specific provision which mandated all pending applications to be</p>

Bench]

on that date.

appointment.

considered under
the new Scheme.

Canara
Bank vs. M.
Mahesh
Kumar
(2015) 7 SCC

The employee died
on 10.10.1998 and
the application for
appointment on
compassionate

grounds, was made

under the Scheme of

the year 1993. It was

rejected on

30.06.1999. The
1993 Scheme was
known as "Dying in
Harness Scheme."

The 1993 Scheme
was substituted
by a Scheme for
payment of ex
gratia in the year

2005. But by the

time the 2005

Scheme was

issued, the

claimant had
already
approached the
High Court of
Kerala by way of
writ petition and
succeeded before
the learned Single
Judge vide a
Judgment dated
30.05.2003. The
Judgment was
upheld by the
Division Bench in
the year 2006 and
the matter landed
up before this
Court thereafter.
In other words,
the Scheme of the
year 2005 came
into force: (i) after
the rejection of
the application for
compassionate
appointment
under the old
scheme; and (ii)

This Court
dismissed the
appeals filed by
the Bank on
account of two

important

distinguishing

features, namely,

(i) that the

application for
appointment on
compassionate
grounds was
rejected in the
year 1999 and the
rejection order
was set aside by
the High Court in
the year 2003
much before the
compassionate
appointment
Scheme was
substituted by an
ex gratia Scheme
in year 2005; and
(ii) that in the
year 2014, the
original scheme
for appointment
on compassionate
grounds stood
revived, when the
civil appeals were
decided.

		after the order of rejection was set aside by the Single Judge of the High Court	
Indian Bank vs. Promila and Another (2020) 2 SCC 729 [a two member Bench]	The employee died on 15.01.2004 and the application for appointment was made by his minor son on 24.01.2004. On these dates, a circular bearing No.56/79 dated 4.04.1979 which contained a Scheme for appointment on compassionate grounds was in force. But the Scheme provided for appointment, only for those who do not opt for payment of gratuity for the full term of service of employee who died in harness.	A new Scheme was brought into force on 24.07.2004 after the death of the employee. Under this Scheme an ex gratia compensation was provided for, subject to certain conditions. After the coming into force of the new Scheme, the claimant was directed by the bank to submit a fresh application under the new Scheme. The claimant did not apply under the new Scheme, as he was interested only in compassionate appointment and not monetary benefit. But by virtue of an amendment to	In the light of the decision in Canara Bank vs. M. Mahesh Kumar, this Court held that the case of the claimant cannot be examined in the context of the subsequent Scheme and that since the family had taken full gratuity under the old scheme, they were not entitled to seek compassionate appointment even under the old Scheme.
N.C. Santosh vs. State of Karnataka	Under the existing Scheme referable to		After taking note of a reference
Karnataka and Others (2020) 7 SCC 617 (a three member Bench)	Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1999, a minor dependant of a	the proviso to Rule 5, a minor dependant should apply within one year from the date of death of the Government servant and must	made in State Bank of India vs. Sheo Shankar Tewari to a larger bench, a three member Bench of this Court held in N.C.

deceased

Government employee may apply within one year from the date of attaining majority.

have attained the

age of 18 years on the date of making the application. Applying the amended provisions, the appointment of persons already made on compassionate grounds, were cancelled by the appointing authority which led to the challenge before this Court.

Santosh that the norms prevailing on the date of consideration of the application should be the basis for consideration of the claim for compassionate appointment. The Bench further held that the dependant of a government employee, in the absence of any vested right accruing on the date of death of the government employee, can only demand consideration of his application and hence he is disentitled to seek the application of the norms

prevailing on the date of death of the government servant.

13. Apart from the aforesaid decisions, our attention was also drawn to the decision of the three member Bench in State of Madhya Pradesh vs. Amit Shrivastava². But that case arose out of a claim made by the dependant of a deceased Government servant, who was originally appointed on a work charged establishment and who later claimed to have become a permanent employee. The Court went into the distinction between an employee with a permanent status and an employee with a regular status. Despite the claim of the dependant that his father had become a permanent employee, this Court held in that case that as per the policy prevailing on the date of death, a work charged/contingency fund employee was not entitled to compassionate appointment.

While holding so, the Bench reiterated the opinion in *Indian Bank vs. Promila*.

14. The aforesaid decision in *Amit Shrivastava (supra)* was followed by a

2 (2020) 10 SCC 496 two member Bench of this Court in the yet to be reported decision in the *State of Madhya Pradesh vs. Ashish Awasthi* decided on 18.11.2021.

15. Let us now come to the reference pending before the larger Bench. In *State Bank of India vs. Sheo Shankar Tewari (supra)*, a two member Bench of this Court noted the apparent conflict between *State Bank of India vs. Raj Kumar* and *MGB Gramin Bank* on the one hand and *Canara Bank vs. M. Mahesh Kumar* on the other hand and referred the matter for the consideration of a larger Bench. The order of reference to a larger Bench was actually dated 8.02.2019.

16. It was only after the aforesaid reference to a larger Bench that this Court decided at least four cases, respectively in (i) *Indian Bank vs. Promila*; (ii) *N.C. Santhosh vs. State of Karnataka*; (iii) *State of Madhya Pradesh vs. Amit Shrivastava*; and (iv) *State of Madhya Pradesh vs. Ashish Awasthi*. Out of these four decisions, *N.C. Santosh (supra)* was by a three member Bench, which actually took note of the reference pending before the larger Bench.

17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and

(ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.

20. Coming to the case on hand, the employee died on 8.12.2010 and the amendment to the Rules was proposed by way of a draft notification on 20.06.2012. The final notification was issued on 11.07.2012. Merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent could not have sought the benefit of the amendment. The Judgment of the Division Bench of the Karnataka High Court in Akkamahadevamma on which the Tribunal as well as the High Court placed reliance, was not applicable to the case of compassionate appointments, as the amendment in Akkamahadevamma came as a result of the existing rule being declared to be ultra vires Articles 14 and 16 of the Constitution.

21. In view of the above, the appeal is allowed and the impugned order of the High Court as well as that of the Tribunal are set aside. The application of the respondent for compassionate appointment shall stand dismissed. There shall be no order as to costs.

.....J. (Hemant Gupta)J (V. Ramasubramanian)
DECEMBER 16, 2021 NEW DELHI.