IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 29th OF OCTOBER, 2025

WRIT PETITION No. 13183 of 2020

SHIVENDRA SINGH TOMAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Prashant Singh Kaurav - learned counsel for petitioner.

Shri Yogesh Parashar - learned Government Advocate for respondents/State.

ORDER

This petition, under Article 226 of the Constitution of India, has been preferred by petitioner seeking following relief(s):

> " It is, therefore, most humbly prayed that Hon'ble Court may kindly allow the present petition and may kindly quash the Order Impugned Annexure P/1 and direct the respondents to grant compassionate appointment to the petitioner.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted.
Also the order impugned Annexure P/13 may kindly be quashed and Respondent Department to be directed to consider the candidature of petitioner in light of Compassionate appointment policy dated 31.8.2016 and 29.9.2014 vide Annexure P/9."

2. The present petition has been filed by the petitioner assailing the order dated 16.03.2020, whereby the claim for compassionate appointment has been denied by passing a non-speaking order relying upon the circular dated 29.09.2014. Learned counsel for the petitioner further submits that the father of the petitioner, late Shri Bhure Singh Tomar, died on 19.06.2003 and the case of the petitioner has been considered on the basis of the letter dated 31.08.2016 read with the policy dated 29.09.2014. It is further submitted that as per the judgment of the Hon'ble Supreme Court reported in **(2022) 2 SCC 157, State of M.P. v. Ashish Awasthi**, the Hon'ble Supreme Court has held that the policy prevailing at the time of death of the deceased employee alone is required to be considered and not any subsequent policy.

3. Learned counsel for the respondents/State supported the impugned order and opposed the prayer made by the learned counsel for petitioner. It is further submitted that since the father of petitioner died in the year 2003, at the relevant point of time, there was no policy granting compassionate appointment to the family members of an employee working under the Work-Charged and Contingency establishment. Hence, the application of the petitioner has been rightly rejected.

4. Heard the learned counsel for the parties and perused the record.

5. As per the impugned order dated 16.03.2020 (Annexure P/1), the case of the petitioner has been considered on the basis of the policy dated 29.09.2014, without considering the fact that the petitioner's father had expired in the year 2003. At the time of issuing the impugned order dated 02.02.2021 **(**Annexure P/13), no opportunity of being heard was provided to the petitioner.

6. The Supreme Court in the case of **Secretary to Govt. Deptt. Of Education (Primary) Vs. Bheemesh** reported in **2021 SCC Online 1264** has held as under :

> **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 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 on the date of death of the Government servant***	***Modified Scheme which came into force after death***	***Decision of this Court***
State Bank of India v. *Jaspal*	The Scheme of the year 1996, which	The 1996 Scheme was subsequently	Rejecting the claim of the wife

Kaur (2007) 9 SCC 571 ***[a two member Bench]***	made the financial condition of the family as the main criterion, was in force, on the date of death of the employee in the year 1999.	modified by policy issued in 2005, which laid down few parameters for determining penury. One of the parameters was to see if the income of the family had been reduced to less than 60% of the salary drawn by the employee at the time of death. Therefore, the wife of the deceased employee claimed the consideration of the application on the basis of parameters laid down in the policy of the year 2005.	of the deceased employee, this Court held that the application of the dependant made in the year 2000, after the death of the employee in the year 1999, cannot be decided on the basis of a Scheme which came into force in the year 2005.
State Bank of India v. *Raj Kumar* (2010) 11 SCC 661 ***[a two member Bench]***	The employee died on 1.10.2004 and the applications for compassionate appointment were made on	But with effect from 04.08.2005 a new Scheme for payment of exgratia lump-sum was introduced in the place of the	This Court held that the application could be considered only under the new Scheme, as it contained a

	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.	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.	specific provision relating to pending applications.
MGB Gramin Bank v. *Chakrawarti Singh* (2014) 13 SCC 583 ***[a two member Bench]***	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 on that date.	However, a new Scheme dated 12.06.2006 came into force on 6.10.2006, providing only for ex gratia payment instead of compassionate appointment.	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 considered under the new Scheme.
Canara Bank v. *M. Mahesh Kumar* (2015) 7 SCC 412 ***[a two member Bench]***	The employee died on 10.10.1998 and the application for appointment on compassionate grounds, was made under the Scheme of the	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	This Court dismissed the appeals filed by the Bank on account of two important distinguishing features, namely, ***(i)*** that the

	year 1993. It was rejected on 30.06.1999. The 1993 Scheme was known as "*Dying in Harness Scheme*."	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)*** after the order of rejection was set aside by the Single Judge	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.

		of the High Court	
Indian Bank v. *Promila* (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.	In the light of the decision in *Canara Bank* v. *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 v. *State of Karnataka* (2020) 7 SCC 617 **(a three Member Bench)**	Under the existing Scheme referable to Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1999, a minor dependant of a deceased Government employee may apply within one year from the date of attaining majority.	But by virtue of an amendment to the proviso to Rule 5, a minor dependant should apply within one year from the date of death of the Government servant and must 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.	After taking note of a reference made in *State Bank of India* v. *Sheo Shankar Tewari* to a larger bench, a three member Bench of this Court held in *N.C. 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 v. Amit Shrivas. 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 v. Promila.

14**.** The aforesaid decision in *Amit Shrivas* (supra) was followed by a two member Bench of this Court in the yet to be reported decision in the *State of Madhya Pradesh* v. *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* v. *Sheo Shankar Tewari* (supra), a two member Bench of this Court noted the apparent conflict between *State Bank of India* v. *Raj Kumar* and *MGB Gramin Bank* on the one hand and *Canara Bank* v. *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* v. *Promila*; ***(ii)*** *N.C. Santhosh* v. *State of Karnataka*; ***(iii)*** *State of Madhya Pradesh* v. *Amit Shrivas*; and ***(iv)*** *State of Madhya Pradesh* v. *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.

7. Thus, it is clear that the policy which was in force on the date of death of employee would be applicable.

8. Considering the aforesaid, this petition is disposed of with a direction to the petitioner to submit a detailed and fresh representation regarding compassionate appointment and ex-gratia payment, based on the policy prevalent at the time of death of the deceased employee, who passed away in the year 2003, within a period of three weeks from today before the Competent Authority. In turn, the respondent/Competent Authority shall consider and decide the petitioner's representation by passing a speaking and reasoned order within a period of three months from the date of receipt of the certified copy of

this order. Consequently, impugned orders dated 16.3.2020 (Annexure P/1) and 2.2.2021 (Annexure P/13) are hereby set aside.

9. The competent authority is directed to provide the personal opportunity of being heard to the petitioner before deciding the representation of petitioner.

10. With the aforesaid, present petition stands *disposed of*.

11. Needless to mention that this Court has not expressed any opinion on the merits of the case.

(ANAND SINGH BAHRAWAT)
JUDGE

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