**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 17th OF AUGUST, 2022

WRIT PETITION NO. 17995 OF 2022

Between:-

ANIL S/O LATE SHRI LAKHAN SINGH, AGE 22 YEARS, OCCUPATION STUDY, R/O SHRINAGAR COLONY, IN FRONT OF SHEETLA GARDEN, MORAR, GWALIOR (MADHYA PRADESH)

…....PETITIONER

(BY SHRI V.S. CHAUHAN - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, PUBLIC WORKS DEPARTMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **EXECUTIVE ENGINEER, DIVISION NO. 1, PADAV, GWALIOR (MADHYA PRADESH)**

3. **ASSISTANT ENGINEER, SUB-DIVISION NO. 2, THATHIPUR, GWALIOR (MADHYA PRADESH)**

…....RESPONDENTS

(SHRI DEEPAK KHOT – GOVERNMENT ADVOCATE FOR

STATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following relief:-

> याचिकाकर्ता प्रार्थना करता है कि याचिकाकर्ता द्वारा प्रस्तुत रिट याचिका स्वीकार की जाकर प्रतियाचिकाकर्ता को निर्देशित किया जावे कि वह याचिकाकर्ता को उसकी योग्यता के अनुसार अनुकम्पा नियुक्ति प्रदान करने की कृपा करे।
>
> अन्य न्यायोचित सहायता जो माननीय न्यायालय उचित समझे याचिकाकर्ता को दिलाई जावे।

2. It is submitted by the counsel for the petitioner that father of the petitioner was working as a daily wager and he died in the year 2011. Since the father of the petitioner has worked for more than 20 years, therefore, he had automatically acquired the status of permanent employee. The petitioner applied for appointment on compassionate ground on 30.09.2021, however, the application was rejected by order dated 01.11.2021. The petitioner has once again made an application, but the same has not been decided so far and, accordingly, the present petition has been filed seeking the above-mentioned relief. It is further submitted that financial condition of the family of the petitioner is bad and the same can be one of the criteria for grant of appointment on compassionate ground. To buttress his contention, counsel for the petitioner has relied upon the judgments passed by the Supreme Court in the case of **National Hydroelectric Power Corporation and another v. Nanak Chand and another** reported in **(2004) 12 SCC 487** and **State**

of Haryana and others v. Rani Devi and another reported in **(1996) 5 SCC 308.**

3. Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that the appointment on compassionate ground can be granted only on the basis of the scheme which was prevailing at the time of death of deceased employee. No document has been placed on record to show the scheme which was in vogue at the time of death of the father of the petitioner. Furthermore, it is well established principle of law that the appointment on compassionate ground is a speedy remedy and if the family of the deceased employee could survive for a considerable long time, then that itself is sufficient to reject the claim. To buttress his contention, counsel for the State has relied upon the judgments passed by the Supreme Court in the case of **Steel Authority of India Ltd. Vs. Gouri Devi** reported in **AIR 2022 SC 783** and **Central Coalfields Limited through its Chairman and Managing Director and Ors. Vs. Parden Oraon** reported in **AIR 2021 SC 1876**. It is further submitted that as per the scheme, which is inforce from the year 2014, the application for appointment on compassionate ground should be made within a period of seven years from the date of death of deceased employee and if the aspirant is minor on the date of death, then he can make an application within a period of one year from the date of attaining the majority. As per the birth certificate, the petitioner was 11 years of age on the date of death of his father and, thus, it is clear that he had attained the age of majority in the year 2018, whereas the application was filed for the first time on 30.09.2021.

4. Heard the learned counsel for the parties.

5. According to the petitioner himself, the claim for appointment on compassionate ground was rejected by order dated 01.11.2021 (Annexure P-3). For the reasons best known to the petitioner, the petitioner has not sought the quashment of the said order. So long as the order dated 01.11.2021 (Annexure P-3) remains intact, no relief can be granted to the petitioner. Furthermore, it is well established principle of law that the remedy of compassionate appointment is a speedy remedy which has been provided for the dependents of the deceased employee to tide over the circumstances occurred due to untimely death of their breadwinner. The appointment on compassionate ground is not an alternative mode of regular appointment. Furthermore, father of the petitioner had worked as a daily wager. Counsel for the petitioner could not point out any provision of law which was in vogue on the date of death of father to show that even the dependents of daily wager were entitled for appointment on compassionate ground. The Supreme Court in the case of **Indian Bank v. Promila,** reported in **(2020) 2 SCC 729** has held as under :

> **18.** The question of applicability of any subsequent Scheme really does not apply in view of the judgment of this Court in *Canara Bank*. Thus, it would not be appropriate to examine the case of the respondents in the context of subsequent Schemes, but only in the context of the Scheme of 4-4-1979, the terms of which continued to be applicable even as per the new Scheme of 5-11-1985 i.e. the Scheme applicable to the respondents. There is no provision in this Scheme for any ex gratia payment. The option of compassionate appointment was available only if the full amount of gratuity was not taken, something which was done. Thus, having taken the full amount of gratuity, the option of compassionate appointment really was not available to the respondents.

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 Kaur* (2007) 9 SCC 571 ***[a two member Bench]***	The Scheme of the year 1996, which 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.	The 1996 Scheme was subsequently 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	Rejecting the claim of the wife 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.

		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.	
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 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.	But with effect from 04.08.2005 a new Scheme for payment of exgratia 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.	This Court held that the application could be considered only under the new Scheme, as it contained a specific provision relating to pending applications.
MGB Gramin Bank v. *Chakra warti Singh* (2014) 13 SCC 583 ***[a two***	The employee died on 19.04.2006 and the application for appointment	However, a new Scheme dated 12.06.2006 came into force on 6.10.2006,	This Court took the view that the new Scheme alone would apply as it

member Bench]	made on 12.05.2006. A scheme for appointment on compassionate grounds was in force on that date.	providing only for ex gratia payment instead of compassionate appointment.	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 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	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,

		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 of the High Court	the original scheme for appointment on compassionate grounds stood revived, when the civil appeals were decided.
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	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	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

	who do not opt for payment of gratuity for the full term of service of employee who died in harness.	Scheme. The claimant did not apply under the new Scheme, as he was interested only in compassionate appointment and not monetary benefit.	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	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

		this Court.	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. The Supreme Court in the case of **State of Madhya Pradesh Vs. Ashsish Awasthy** by **Judgment dated 18-11-2021** Passed in **C.A. No. 6903 of 2021** has held as under :

4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3- 12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the 4 deceased employee only is required to be considered and not the subsequent policy. 4.1 In the case of Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant

> scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of State of Madhya Pradesh and Ors. Vs. Amit Shrivas, (2020) 10 SCC 496. It is required to be noted that in the case of Amit Shrivas (supra) the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.

8. Furthermore, the petitioner had attained the majority in the year 2018, whereas according to the order dated 01.11.2021 (Annexure P-3), it is clear that the application for appointment on compassionate ground was made for the first time on 30.09.2021. It is well established principle of law that the delay defeats equity. Further more, the appointment on compassionate ground is for helping out the dependents of the deceased employee, so that they can face the financial crisis which may have occurred on account of loss of sole bread-winner. Appointment of compassionate ground is not an alternative mode of regular source of employment. If a family of a deceased employee can survive for a longer period, then it cannot be said that there was any immediate need for providing appointment on compassionate ground by by-passing the regular mode of appointment.

9. The Supreme Court in the case of **Steel Authority of India Ltd. Vs. Gouri Devi** by judgment dated **18.11.2021** passed in **Civil Appeal No.6910/2021** has held that delay in pursuing claim and approaching the court would militate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished. In the case of **State of J & K and others Vs. Sajad**

Ahmed Mir reported in **(2006) 5 SCC 766**, the Supreme Court has held that: -

> "11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the 5 Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.
> 12. In **State of Haryana and Ors. v. Rani Devi and Anr**., it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.
> 13. In **Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr**., it was indicated that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations

framed in respect thereof do not cover and contemplate such appointments.

14. In **Umesh Kumar Nagpal v. State of Haryana and Ors**., it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in 6 service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependent of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

15. In **Smt. Sushma Gosain and Ors. v. Union of India and Ors.** it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

16. Recently, in **Commissioner of Public Instructions and Ors. v. K.R. Vishwanath,** one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated.

17. In the case on hand, the father of the applicant 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 7 passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal."
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> (Underline Supplied)

10. It is submitted by the Counsel for the Petitioner, that since, the petitioner has made a representation against the rejection of his claim, therefore, the respondents can be directed to decide his representation. Considered the submissions made by the Counsel for the Petitioner.

11. The Supreme Court in the case of **U.P. Jal Nigam Vs. Jaswant Singh** reported in **(2006) 11 SCC 464** has held as under :

> **12.** The statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows:
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> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (*i*) acquiescence on the claimant's part; and
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> (*ii*) any change of position that has occurred on the defendant's part.
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> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or

> where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

12. The Supreme Court in the case of **Jagdish Lal Vs. State of Haryana** reported in **(1997) 6 SCC 538** has held as under :

> **18.** That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution.

13. The Supreme Court in the case of **NDMC Vs. Pan Singh** reported in **(2007) 9 SCC 278** has held as under :

> **17.** Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd.* v. *Union of India* and *M.R. Gupta* v. *Union of India*.)
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> **18.** In *Shiv Dass* v. *Union of India* this Court held: (SCC p. 277, paras 9-10)
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> > "*9*. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty* v. *State of Mysore*. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa* v. *Pyarimohan Samantaray* making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa* v. *Arun Kumar Patnaik*.)
> >
> > *10*. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would

depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

19. We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein.

14. The Supreme Court in the case of **State of Uttaranchal v. Shiv Charan Singh Bhandari** reported in **(2013) 12 SCC 179** has held as under :

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.

* * * *

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.

15. The Supreme Court in the case of **C. Jacob v. Director of Geology and Mining** reported in **(2008) 10 SCC 115 has** held as under :

"**10**. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on

that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

16. The Supreme Court in the case of **Union of India v. M.K. Sarkar** reported in **(2010) 2 SCC 59** has held as under :

"**15.** When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

17. The Supreme Court in the case of **State of T.N. v. Seshachalam** reported in **(2007) 10 SCC 137** has held as under :

"16. … filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

18. Since the petitioner has approached this Court after 12 years of death of his father and the mother of the petitioner never applied for

appointment on compassionate ground after the death of her husband and the appointment on compassionate ground is not an alternative mode of direct recruitment, but it is a speedy remedy to over come the consequences of untimely death of their breadwinner, coupled with the fact that the petitioner has not challenged the rejection of his claim for appointment on compassionate ground, this Court is of the considered opinion that no case is made out for entertaining this writ petition.

19. Accordingly, the petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

Abhi