

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 06th OF OCTOBER, 2023

WRIT PETITION No.6563 of 2015

BETWEEN:-

**PARMANAND SHARMA S/O LATE SHRI
CHHIDAMI LAL SHARMA, AGED ABOUT 25
YEARS, R/O BEHIND COMMUNITY HALL IN THE
HOUSE OF SHRI M.P. GUPTA, KATRA,
ADHARTAL, DISTRICT JABALPUR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI ATUL KUMAR SHUKLA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE SECRETARY, GENERAL
ADMINISTRATION DEPARTMENT,
VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**
- 2. SUPERINTENDANT OF POLICE, JABALPUR
(MADHYA PRADESH)**
- 3. DIRECTOR GENERAL OF POLICE, BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR - GOVERNMENT ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

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

- 7.1 To summon the entire material records

pertaining to the instant case of the petitioner from the respondents for its kind perusal.

7.2 To set aside the Impugned order dated 12/8/2014 (Annexure P-1) passed in Case no. Kramank-Police Adhikshak/Jabalpur/ Sthapana/ 1211/2014 passed by the Respondent No.2 and to direct the respondents to give appointment to the petitioner from the date of his application with all consequential benefits resulting therefrom.

7.3 Cost of the petition be awarded to the petitioner.

7.4 Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted to the petitioner along with the cost of petition, to meet the ends of justice.

2. It is submitted by counsel for petitioner that his father Shri Chhidami Lal Sharma died in harness on 08/06/1996. Accordingly, he moved an application on 28/01/2014 for grant of appointment on compassionate ground.

3. Respondents by order dated 12/08/2014 have rejected the claim of petitioner on the ground that as per policy for appointment on compassionate ground dated 18/08/2008, claim can be considered within a period of 7 years and in case if aspirant attains majority after period of 7 years from the date of death of deceased employee, then he shall not be entitled for appointment on compassionate ground and further it has been provided that the claim can be considered only if vacant post is available within a period of 7 years from the date of death of employee. Since 7 years have already elapsed from the date of death of father of petitioner, therefore he is not entitled for appointment on compassionate ground.

4. It is submitted by counsel for petitioner that mother of petitioner is second wife of late employee Chhidami Lal Sharma. Mother of

petitioner filed a Civil Suit in the year 1999 for declaration that she is the legally wedded wife of Chhidami Lal Sharma. Civil Suit was dismissed by judgment and decree dated 11/08/2000, Civil Appeal was dismissed by judgment and decree dated 04/01/2001 and Second Appeal No.338/2001 was dismissed by judgment and decree dated 06/09/2005. Mother of petitioner was also tried for murder of Chhidami Lal Sharma and subsequently she was acquitted. It is submitted that Late Shri Chhidami Lal Sharma was blessed with one daughter namely, namely Arti Sharma from his first wife whereas he was blessed with three children namely Parmanand Sharma - petitioner, Somnath Sharma and Ravishankar Sharma from his second wife Smt. Pushpa. All four legal representatives of late Shri Chhidami Lal Sharma filed an application for grant of succession certificate which was allowed by order dated 16/07/2010. Thereafter, Smt. Arti Sharma filed a suit for declaration that first wife of late Shri Chhidami Lal Sharma has died a civil death which was decreed by judgment and decree dated 19/12/2013 and only thereafter petitioner moved an application for grant of appointment on compassionate ground. It is submitted that rejection of claim of petitioner for appointment on compassionate ground is bad in law.

5. *Per contra*, petition is vehemently opposed by counsel for the State and it is submitted that claim of petitioner has been rightly rejected.

6. Heard learned counsel for the parties.

7. Undisputedly, late Shri Chhidami Lal Sharma died in the year 1996 and the application for appointment on compassionate ground was filed on 28/01/2014, i.e. after 18 years of death of father of petitioner. Mother of petitioner had filed a suit for declaration that she is the legally wedded wife of late Shri Chhidami Lal Sharma but the said suit was

dismissed and even second appeal was dismissed by order dated 06/09/2005. Thus, it is clear that mother of petitioner was not the legally wedded wife of late Shri Chhidami Lal Sharma.

8. The claim for appointment on compassionate ground has been rejected on the ground that as per the policy dated 18/08/2008 claim can be considered only within a period of 7 years and since period of 7 years has elapsed, therefore petitioner cannot be granted appointment on compassionate ground.

9. The next question for consideration is as to whether the policy which was in force on the date of consideration of application for compassionate appointment is relevant or the policy which was in force on the date of death of employee is relevant.

10. The Supreme Court in the case of **Indian Bank v. Promila**, reported in **(2020) 2 SCC 729** has held that the policy for appointment on compassionate ground, which was in force on the date of death of the employee, is the relevant policy and has further 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.”

11. 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:

<i>Citation</i>	<i>Scheme in force on the date of death of the Government servant</i>	<i>Modified Scheme which came into force after death</i>	<i>Decision of this Court</i>
<i>State Bank of India v. Jaspal Kaur</i> (2007) 9 SCC 571 [<i>a two member Bench</i>]	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	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

		<p>reduced to less than 60% of the salary drawn by the employee at the time of death.</p> <p>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.</p>	<p>decided on the basis of a Scheme which came into force in the year 2005.</p>
<p><i>State Bank of India v. Raj Kumar</i> (2010) 11 SCC 661 [<i>a two member Bench</i>]</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>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.</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><i>MGB Gramin</i></p>	<p>The employee</p>	<p>However, a new</p>	<p>This Court took</p>

<p><i>Bank v. Chakrawarti Singh</i> (2014) 13 SCC 583 [a two member Bench]</p>	<p>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.</p>	<p>Scheme dated 12.06.2006 came into force on 6.10.2006, providing only for ex gratia payment instead of compassionate appointment.</p>	<p>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.</p>
<p><i>Canara Bank v. M. Mahesh Kumar</i> (2015) 7 SCC 412 [a two member Bench]</p>	<p>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.”</p>	<p>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</p>	<p>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</p>

		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 of the High Court.	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.
<i>Indian Bank v. Promila</i> (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	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	In the light of the decision in <i>Canara Bank v. M. Mahesh Kumar</i> , 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

	<p>appointment, only for those who do not opt for payment of gratuity for the full term of service of employee who died in harness.</p>	<p>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.</p>	<p>appointment even under the old Scheme.</p>
<p><i>N.C. Santosh v. State of Karnataka</i> (2020) 7 SCC 617 (a three Member Bench)</p>	<p>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.</p>	<p>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</p>	<p>After taking note of a reference made in <i>State Bank of India v. Sheo Shankar Tewari</i> to a larger bench, a three member Bench of this Court held in <i>N.C. Santosh</i> 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</p>

		led to the challenge before this Court.	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.
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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 Shrivastava*. 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 Shrivastava* (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 Shrivastava*; 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.”

12. The Supreme Court in the case of **State of Madhya Pradesh Vs. Ashish 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 proposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the 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 Shrivastava, (2020) 10 SCC 496. It is required to be noted that in the case of Amit Shrivastava (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.”

13. Therefore, it is clear that policy for compassionate appointment which was in force on the date of death of employee is relevant.

14. Father of petitioner had died in the year 1996, therefore policy for appointment on compassionate ground which was issued on 10/06/1994 was in force.

15. Clause (1) and (5) of policy dated 10/06/1994 reads as under:-

"(एक) यदि किसी शासकीय सेवक की असामयिक मृत्यु हो जाती है तो उसकी विधवा अथवा उसकी वैध सन्तान (जिसमें सौतेला पुत्र/पुत्री भी शामिल है) को नौकरी दी जायेगी। अन्य किसी सदस्य या रिस्तेदार को नौकरी नहीं दी जायेगी।

* * *

(पांच) यदि किसी शासकीय सेवक की मृत्यु के समय उसके परिवार का सदस्य अवयस्क हो तो ऐसे अवयस्क सदस्य को अनुकम्पा नियुक्ति की पात्रता उसके वयस्क होने पर होगी और उसके आवेदन करने पर अनुकम्पा नियुक्ति दी जा सकेगी।"

16. From plain reading of clause (1), it is clear that appointment on compassionate ground could have been granted to legitimate child of deceased employee only and not to other member of family or relatives.

17. As already held, suit filed by mother of petitioner for declaration that she is the legally wedded wife of late Shri Chhidami Lal Sharma has already been dismissed which has been affirmed up to the stage of second appeal.

18. Copy of order passed in the case of succession certificate has been filed by petitioner as Annexure-P/3. In paragraph 2 of the said order, undisputed facts are mentioned which reads as under:-

"2- प्रकरण में अविवादित तथ्य है कि मृतक छिदामी लाल शर्मा मध्यप्रदेश पुलिस विभाग में आरक्षक के पद पर पुलिस लाईन जबलपुर में कार्यरत थे, जिनकी मृत्यु दिनांक 8.6.96 को हो चुकी है मृतक छिदामी लाल शर्मा

का विवाह प्रारम्भ में श्रीमति शशिप्रभा शर्मा अनावेदिका क्रं.4 जो कि आवेदिका क्रं.1 आरती शर्मा की माँ है उससे हुआ था। शशिप्रभा शर्मा वर्तमान में लापता हैं जिसके लापता उपरांत स्व. छिदामीलाल द्वारा अपना दूसरा विवाह दिनांक 4.1.1990 को पुष्पा बाई शर्मा आवेदक क्रं.2 से 4 की माँ से किया था पुष्पा बाई शर्मा द्वारा स्व. छिदामी लाल शर्मा की वैध पत्नि होने के संबंध में व्यवहार वाद क्रं. 37अ/99 न्यायालय चौदहवां व्य.ना. वर्ग-2 जबलपुर की न्यायालय में प्रस्तुत किया गया था जो कि दिनांक 11.8.2000 को निरस्त किया गया जिसके संबंध में प्रस्तुत प्रथम अपील क्रमांक 72ए/2000 न्यायालय षष्ठम अपर जिला न्यायाधीश जबलपुर द्वारा दिनांक 4.1.2001 को एवं सेकेण्ड अपील माननीय मध्यप्रदेश उच्च न्यायालय जबलपुर द्वारा सेकेण्ड अपील क्रं. 338/2001 आदेश दिनांक 6.9.2005 द्वारा निरस्त किया गया तथा पुष्पा बाई शर्मा के विरुद्ध मृतक छिदामी लाल शर्मा की हत्या किये जाने के संबंध में धारा 302/201 भा.दं.सं. के तहत प्रकरण चला था जिसमें दिनांक 11.2.99 को न्यायालय द्वितीय अतिरिक्त सत्र न्यायाधीश जबलपुर द्वारा दोषमुक्त किया गया था।"

19. Thus, it was the case of mother of petitioner that since whereabouts of wife of late Shri Chhidami Lal Sharma was not known, therefore he had performed second marriage.

20. Now the only question for consideration is as to whether marriage of mother of petitioner with Shri Chhidami Lal Sharma can be said to be a valid marriage or not?

21. Subsequently, Arti Sharma had filed a suit for declaration that her mother Smt. Shashiprabha Sharma has died a civil death. Copy of judgment and decree dated 19/12/2013 passed by 3rd Civil Judge Class-2, Jabalpur in Civil Suit No.4-A/2012 has been filed as Annexure-P/5 and paragraph 3 of the said judgment and decree reads as under:-

"3. वाद पत्र संक्षेप में इस प्रकार है कि वादी कटरा, आधारताल, तहसील व जिला-जबलपुर की स्थायी

निवासी है। वादी की माँ श्रीमती शशिप्रभा शर्मा, स्व. छिदामीलाल शर्मा की विवाहित पत्नि है तथा वादी उनकी एकमात्र संतान है। वादी की माँ श्रीमती शशिप्रभा शर्मा वर्ष 1989-90 से लापता हो गई हैं तथा उसके उपरांत वादी के पिता तथा उनकी मृत्यु के बाद वादी ने श्रीमती शशिप्रभा शर्मा की काफी खोजबीन की, लेकिन उनका कोई पता नहीं चला तथा पता न चलने के बाद उनका मृत्यु प्रमाण पत्र प्राप्त करने का प्रयास किया गया, किन्तु शासकीय अभिलेखों में उनकी मृत्यु दर्ज न होने के कारण मृत्यु प्रमाण पत्र प्राप्त नहीं हो सका है। वादी के द्वारा अपने मृत पिता स्व. छिदामीलाल शर्मा की उनके पुलिस विभाग में जमा राशि को प्राप्त करने के लिये न्यायालय अष्टम व्यवहार न्यायाधीश वर्ग-एक, जबलपुर द्वारा सक्सेशन प्रकरण में आदेश दिनांक 16.07.2010 के परिपालन में अपनी माँ श्रीमती शशिप्रभा शर्मा की राशि प्राप्त करने के लिये आवेदन दिया, परंतु पुलिस विभाग द्वारा वादी को राशि देने से इंकार कर दिया गया एवं श्रीमती शशिप्रभा शर्मा के मृत्यु प्रमाण पत्र की मांग की गई। श्रीमती शशिप्रभा शर्मा को लापता हुये 07 वर्ष से अधिक समय हो चुका है। अतः श्रीमती शशिप्रभा शर्मा को लापता, सह मृत घोषित करने तथा नगर-निगम को मृत्यु प्रमाण पत्र जारी करने का आदेश दिये जाने के लिये दावा प्रस्तुत किया है।"

22. Thus, it is clear that first wife of late Shri Chhidami Lal Sharma went missing sometimes in the year 1989-90, whereas according to facts mentioned in the order dated 16/07/2010 passed by 8th Civil Judge Class-1, Jabalpur in succession case No.8/09, deceased employee late Shri Chhidami Lal Sharma contracted marriage on 04/01/1990 with Pushpa Bai Sharma. Therefore, if both the facts are taken as undisputed facts then it is clear that just within a period of one year from the date when first wife of late Shri Chhidami Lal Sharma went missing, he contracted second marriage.

23. Since whereabouts of first wife of late Shri Chhidami Lal Sharma were not known, therefore it is clear that only after 7 years of the date

when first wife of Chhidami Lal Sharma went missing, it can be presumed that she has died a civil death.

24. Since mother of petitioner got married to late Shri Chhidami Lal Sharma only within one year from the date when first wife of late Shri Chhidami Lal Sharma went missing, therefore it is clear that marriage of mother of petitioner with late Shri Chhidami Lal Sharma was a void marriage because on the date of her marriage, late Shri Chhidami Lal Sharma was having a living spouse.

25. Under these circumstances, this Court is left with no other option but to hold that petitioner was an illegitimate child of late Shri Chhidami Lal Sharma and in view of clause (1) of policy for appointment on compassionate ground dated 10/06/1994, he was even otherwise not entitled for appointment on compassionate ground.

26. Furthermore, father of petitioner died in the year 1996 and 27 long years have passed. Even application for appointment on compassionate ground was made in the year 2014 i.e. after 18 years of death of father of petitioner. Although petitioner was engaged in legal battle but it is well established principle of law that if dependents of deceased employee can survive for substantial long period, then they are not entitled for appointment on compassionate ground for a simple reason that appointment on compassionate ground is not an alternative mode of regular appointment but it is a concession to grieved family to tide over the crises on account of untimely death of bread winner.

27. The Supreme Court in the case of **The State of West Bengal Vs. Debabrata Tiwari and Ors. Etc.**, decided on **3rd March, 2023** in **Civil Appeal Nos.8842-8855 of 2022** has held as under:-

“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 Uttaranchal 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 17th 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. ”

28. Viewed from every angle, this Court is of the considered opinion that petitioner is not entitled for appointment on compassionate ground.

29. Accordingly, petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Shubhankar