IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 29th OF AUGUST, 2023

WRIT PETITION No. 18857 of 2023

BETWEEN:-

RADHA KUWAR SINGH W/O LATE SHRI ANAND BAHADUR SINGH, AGED ABOUT 42 YEARS, VILLAGE DIYAGADHAI POST SARAI TAHSIL SARAI DISTRICT SINGRAULI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GANGA RAM SAKET - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT MINISTRY VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **SECRETARY PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT GOVT. OF MADHYA PRADESH MINISTRY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
3. **COLLECTOR DISTRICT SINGRAULI (MADHYA PRADESH)**
4. **DISTRICT EDUCATION OFFICER DISTRICT SINGRAULI (MADHYA PRADESH)**
5. **CHIEF EXECUTIVE OFFICER JILA PANCHAYAT SIDHI DISTRICT SIDHI (MADHYA PRADESH)**
6. **PRINCIPAL GOVERNMENT HIGHER SECONDARY SCHOOL SARAI DISTRICT**

SINGRAULI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

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

ORDER

1. When the case was called, counsel for the petitioner submitted that since he has not prepared the case, therefore, the matter should be adjourned. When this Court refused to adjourn the matter and requested the counsel to argue the matter then again he insisted that once he has not prepared the case, therefore, this Court must adjourn the matter. Counsel was not ready to open his file also. It was not known as to whether the counsel was having the file of this case or not. Accordingly, this Court provided the file of the Court to Shri G.R.Saket but he also did not open the same and stated that he is an Advocate and it is his duty to prepare the case efficiently because he is earning his livelihood for looking after his family including wife and children and once he has not prepared the case then the Court must not hear the matter. The counsel was reminded of duties of an Advocate but again and again he submitted that he is an Advocate and, therefore, he should not be heard unless and until the case is prepared by him. Thus, it is clear that the solitary intention of counsel for the petitioner was to get the matter adjourned.
2. Asking for unnecessary adjournments is neither in the interest of litigant nor in the interest of Institution. This Court in the case of **Nandu @ Gandharva Singh Vs. Ratiram Yadav and others, by**

order dated 9.1.2019 passed in M.P.No.1887/2017 has held as under :-

> "For the lapses on the part of the counsel for respondent no.1 or respondent no.1 himself, this Court cannot keep the matter pending unnecessarily and specifically when the counsel for respondent no.1 is not ready to take the responsibility of delay in decision of the petition, then the counsel for respondent no.1 has no authority either legally or morally to make prayer for adjournment.
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> The Supreme Court in the case of **N.G. Dastane Vs. Shrikant S. Shinde reported in (2001) 6 SCC 135** has held as under :
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>> "17. In Black's Law Dictionary "misconduct" is defined as:
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>> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."
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>> 18. The expression "professional misconduct" was attempted to be defined by Darling, J., in A Solicitor, ex p, Law Society, in re in the following terms:
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>> "If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."
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>> 19. In R.D. Saxena v. Balram Prasad Sharma this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in George Frier Grahame v. Attorney-General and then observed thus: (SCC p. 275, para 19)

"19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression 'misconduct, professional or otherwise'. The word 'misconduct' is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

20. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.

21. In State of U.P. v. Shambhu Nath Singh this Court has deprecated the practice of courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the courts thus:

"We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

22. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

23. In *Bar Council of Maharashtra v. M.V. Dabholkar* a four-Judge Bench of this Court had held that the requirement of "reason to believe" cannot be

converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.
24. In our opinion, the State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. In our considered view the appellantcomplainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. We, therefore, set aside the order of the State Bar Council as well as that of the Bar Council of India and we hold that the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council."

The Supreme Court in the case of **Noor Mohammed v. Jethanand, reported in (2013) 5 SCC 202** has held as under :

"15. We may note with profit that the Court in Kailash case had further opined that the procedure is directory but emphasis was laid on the concept of desirability and for the aforesaid purpose, reference was made to Topline Shoes Ltd. v. Corporation Bank. Analysing the purpose behind it, the three- Judge-Bench, referring to Topline Shoes Ltd., observed thus: (Kailash case, SCC p. 497, para 36)
"36. The Court further held that the provision is more by way of procedure to achieve the object of speedy disposal of such disputes. The strong terms in which the provision is couched are an expression of 'desirability' but do not create any kind of substantive right in favour of the complainant by reason of delay so as to debar the respondent from placing his version in defence in any circumstances whatsoever."
16. In *Shiv Cotex v. Tirgun Auto Plast (P) Ltd*. this Court was dealing with a judgment passed by the High Court in a second appeal wherein the High Court had not formulated any substantial question of

law and further allowed the second appeal preferred by the plaintiff solely on the ground that the stakes were high and the plaintiff should have been non-suited on the basis of no evidence. This Court took note of the fact that after issues were framed and the matter was fixed for production of the evidence of the plaintiff on three occasions, the plaintiff chose not to adduce the evidence. The question posed by the Court was to the following effect: (SCC p. 682, para 14)

"14. … Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?"

Thereafter, the Court proceeded to answer thus: (Shiv Cotex case, SCC pp. 682-83, paras 15-16)

"15. It is sad, but true, that the litigants seek —and the courts grant—adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system."

After so stating, the Bench observed as follows: (Shiv Cotex case, SCC p. 683, para 17)

"17. … A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit— whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they do not, they do so at their own peril."

17. In *Ramon Services (P) Ltd. v. Subhash Kapoor*, after referring to a passage from *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*, the Court cautioned thus: (*Ramon Services case*, SCC p. 126, para 15)

"15. … Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability."

Be it noted, though the said passage was stated in the context of strike by the lawyers, yet it has its accent on non-appearance by a counsel in the court.

18. In this context, we may refer to the pronouncement in *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra*, wherein the Court observed that: (SCC p. 563, para 9)
"9. … An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."
19. In *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.),* a three-Judge Bench, while dealing with the role of an advocate in a criminal trial, has observed as follows: (SCC pp. 723-24, para 3)
"3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend the court from day to day. It is the duty of every advocate, who accepts the brief in a criminal case to attend the trial from day to day. We cannot overstress the duty of the advocate to attend to the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."
20. In *Mahabir Prasad Singh*, the Bench, laying emphasis on the obligation of a lawyer in his duty towards the Court and the duty of the Court to the Bar, has ruled as under: (SCC p. 44, paras 17-18)
"17. … 'A lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.'
18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the

Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

21. While recapitulating the duties of a lawyer towards the court and society, being a member of the legal profession, this Court in *O.P. Sharma v. High Court of P and H* has observed that: (SCC p. 92, para 17)

"17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law." The Bench emphasised on the role of eminent lawyers in the framing of the Constitution. The emphasis was also laid on the concept that lawyers are the officers of the court in the administration of justice.

22. In R.K. Garg v. State of H.P., Chandrachud, C.J., speaking for the Court pertaining to the relationship between the Bench and the Bar, opined thus: (SCC p. 170, para 9)

"9. … the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations

of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive."

23. We have referred to the aforesaid judgments solely for the purpose that this Court, in different contexts, had dealt with the malady of adjournment and expressed its agony and anguish. Whatever may be the nature of litigation, speedy and appropriate delineation is fundamental to judicial duty. Commenting on the delay in the justice delivery system, although in respect of the criminal trial, Krishna Iyer, J. had stated thus: (Babu Singh case, SCC p. 581, para 4)

"4. … Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial', whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

24. In criminal jurisprudence, speedy trial has become an indivisible component of Article 21 of the Constitution and it has been held by this Court that it is the constitutional obligation on the part of the State to provide the infrastructure for speedy trial [see *Hussainara Khatoon (3) v. State of Bihar and Hussainara Khatoon (4) v. State of Bihar*].

25. In *Diwan Naubat Rai v. State (Delhi Admn.),* it has been opined that the right to speedy trial encompasses all stages of trial, namely, investigation, enquiry, trial, appeal and revision.

26. In *Surinder Singh v. State of Punjab*, it has been reiterated that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. Thus, it has been put at the zenith and that makes the responsibility of everyone Everestine which has to be performed with Olympian calmness.

27. The anguish expressed in the past and the role ascribed to the Judges, the lawyers and the litigants is a matter of perpetual concern and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance. That is the command of the Majesty of Law and none should make any maladroit effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact is like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence and one can aphoristically say, borrowing a line from Southwell "creeping snails have the weakest force". Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis had put thus:

"I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure."

A few lines from the illustrious Justice Frankfurter is fruitful to recapitulate:

"I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the other, to be a lawyer in the true sense."

28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-

potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

29. In this context, it is apt to refer to a passage from *Ramdeo Chauhan v. State of Assam*: (SCC p. 739, para 22)

"22. … The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses, particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakens the faith of the common man in the justice dispensation system has to be discouraged."

30. In *Zahira Habibulla H. Sheikh v. State of Gujarat*, emphasising on the duty of the court to maintain public confidence in the administration of justice, this

Court has poignantly held as follows: (SCC p. 184, para 35)

"35. … Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it."

31. Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "élan vital" of our system.

32. Coming to the proceedings before the High Court from the date of presentation of the second appeal till the date of admission, the manner in which it has progressed is not only perplexing but also shocking. We are inclined to think that the Court should not have shown indulgence of such magnitude by adjourning the matter when the counsel for the appellant was not present. It is difficult to envision why the Court directed fresh notice to the appellant when there was nothing suggestive for passing of such an order. The matter should have been dealt with taking a recourse to the provisions in the Code of Civil Procedure. It is also astonishing that the lawyers sought adjournments in a routine manner and the court also acceded to such prayers. When the matter stood dismissed, though an application for restoration was filed, yet it was listed after a long lapse of time. Adding to the misery, the official concerned took his own time to put the file in order. From the Registrar

General's communication it is perceptible that some disciplinary action has been initiated against the erring official. That is another matter and we do not intend to say anything in that regard. But the fact that cannot be brushed aside is that there is enormous delay in dealing with the case. Had timely effort been made and due concern bestowed, it could have been avoided. There may be cases where delay may be unavoidable. We do not intend to give illustrations, for facts in the said cases shall speak for themselves.

33. In the case at hand, as we perceive, the learned counsel sought adjournment after adjournment in a non-chalant manner and the same were granted in a routine fashion. It is the duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments. Getting an adjournment is neither an art nor science. It has never been appreciated by the courts. All who are involved in the justice-dispensation system, which includes the Judges, the lawyers, the judicial officers who work in courts, the law officers of the State, the Registry and the litigants, have to show dedicated diligence so that a controversy is put to rest. Shifting the blame is not the cure. Acceptance of responsibility and dealing with it like a captain in the frontier is the necessity of the time. It is worthy to state that diligence brings satisfaction. There has to be strong resolve in the mind to carry out the responsibility with devotion. A time has come when all concerned are required to abandon idleness and arouse oneself and see to it that the syndrome of delay does not erode the concept of dispensation of expeditious justice which is the constitutional command. Sagacious acceptance of the deviation and necessitous steps taken for the redressal of the same would be a bright lamp which would gradually become a laser beam. This is the expectation of the collective, and the said expectation has to become a

> reality. Expectations are not to remain at the stage of hope. They have to be metamorphosed to actuality. Long back, Francis Bacon, in his aphoristic style, had said, "Hope is good breakfast, but it is bad supper."** We say no more on this score.
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> 34. Though we have dwelled upon the issue, yet we refrain from issuing any directions, for the High Court as a constitutional court has to carry the burden and live up to the requisite expectations of the litigants. It is also expected from the lawyers' community to see that delay is avoided. A concerted effort is bound to give results. Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more."

As already observed by the Supreme Court, that adjournments are growing like a cancer, which is eroding the system. A time has come, where the Bar has to raise its standard and must fulfill the expectations of the litigating parties, for early disposal of the cases. *Justice delayed justice denied*. The Bar must not try to create hurdles in the justice dispensation system, by unnecessarily seeking adjournments and above all, must not try to pinch the Court, by saying that since, the adjournment has been refused, therefore, under compulsion, they are arguing the matters. Once, the lawyer has accepted the brief, then it is his bounden duty towards the institution. They have a duty towards their client, they have a duty to prepare the case and present the case properly without suppressing any fact, so that they can effectively assist the Court. Seeking adjournments for no reason does amount to professional

misconduct and the Bar Councils must also rise to the occasion either by issuing necessary instructions to the Advocates on its roll or by taking disciplinary action against the Advocate, if any complaint with regard to seeking unnecessary adjournments by the Advocate is made. The Advocates are not the mouth piece of their clients for the purposes of delaying the Court proceedings, nor they should avoid hearing but being the officers of the Court, they have sacrosanct duty towards the Court. Once, the case is listed in the Cause list, then any Advocate cannot refuse to argue the matter on the ground that older matters are also pending, therefore, the comparatively new matter should be adjourned, and should not be heard unless and until it becomes old. The lawyers must not forget, that by seeking unnecessary adjournments, they are frustrating the legitimate right of one of the litigating party and thus by adopting dilatory tactics, they are creating a situation, where the litigating party may lose its faith in the judiciary. It is the duty of the Courts to decide the matters as early as possible, and if the lawyers refuse to co-operate with the Courts, then a time has come, where the Court would be left with no other option but to decide the matters on its own, by going through the record, and this situation would never help the litigating party and the lawyers must understand that when they have been engaged by their clients with a hope and belief, that their Counsel would place their case before the Court, in a most effective manner, then after having accepted the brief, it is the duty of the lawyer to live upto the expectation of his client, so that the faith and belief of the client on his lawyer may continue. It is also high time, when the Bar must either accept its responsibility for unnecessarily seeking adjournments, or must teach their members, that having joined the noble profession, it is the duty of every lawyer to devote full time to prepare the cases. Under the hope and belief, that the lawyers would live upto the expectations of the litigants as well as of the Court, this Court, at this stage is not inclined to take any action in the matter.

3. Therefore, this Court was left with no other option but to decide the petition on the basis of averments and documents. However, with an intention to give another opportunity of making submissions before the Court, counsel for the petitioner was informed that he may argue the matter at any time before the Court working hours are over. Accordingly, counsel for the petitioner appeared at 4.30 PM and without arguing the matter handed over a copy of the policy dated 29.9.2014 dealing with the appointment on compassionate ground. He was not in a position to answer any of the queries made by the court.
4. Be that whatever it may be.
5. Under these circumstances, this Court was left with no other option but to decide the matter after going through the record.
6. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-
   i) It is, therefore, prayed that this Hon'ble court may kindly be pleased to issue a writ of Mandamus commanding the respondents to decide the representation dated 3.2.2021 vide annexure P/10 of the petitioner.
   ii) It is, therefore, prayed that this Hon'ble court may kindly be pleased to direct the respondents to consider the case of petitioner for compassionate appointment on the post of Laboratory Attendant in accordance with the circular of the Govt. within stipulated period, in the interest of justice.
   iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the

case including cost of the litigation may kindly be awarded in favour of the petitioner.

7. It is the case of the petitioner that her husband died in harness on 14.2.2018. The petitioner has passed class 12th examination in Science Faculty. The Principal, Govt. High School, Sarai, District Singrauli has also recommended the appointment of the petitioner on compassionate ground. The representation made by the petitioner in the form of reminder is still pending.
8. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that according to the petitioner the husband of the petitioner was working as Teacher on contractual basis. There was no policy for giving appointment to the dependents of the contractual employee although now the policy has been brought into existence. It is submitted that since the policy for appointment on compassionate ground which was in force on the date of death of the deceased employee is relevant, therefore, she is not entitled for appointment on compassionate ground.
9. Heard the learned counsel for the parties.
10. The policy which was in force on the date of death of employee is relevant. 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.

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:

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	The 1996 Scheme was subsequently modified by policy issued in 2005, which laid down few parameters for determining	Rejecting the claim of the wife of the deceased employee, this Court held that the application of the dependant made in the year

	of the employee in the year 1999.	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.	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 6.06.2005 and 14.06.2005. On the date of death and on the date of the applications, a Scheme known	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	This Court held that the application could be considered only under the new Scheme, as it contained a specific provision relating to pending applications.

	as compassionate appointment Scheme was in force.	the old Scheme will be dealt with only in accordance with the new Scheme.	
MGB Gramin Bank v. *Chakra warti 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 year 1993. It was rejected on 30.06.1999. The 1993 Scheme was known as "*Dying in Harness*	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	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

	Scheme."	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 of the High Court.	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.
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	A new Scheme was brought into force on 24.07.2004 after the death of the employee. Under this Scheme an ex	In the light of the decision in *Canara Bank* v. *M. Mahesh Kumar*, this Court held that the case of the claimant

	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.	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.	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	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	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

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

12. 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.

13. 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.
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> 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.”

14. It is not the case of the petitioner that on the date of death of her husband even the dependents of a contractual employee were entitled for appointment on compassionate ground. However, this petition is disposed of with a direction to the respondents to consider the application filed by the petitioner for her appointment on compassionate ground. It is directed that the consideration shall be strictly on the basis of policy which was in force on the date of death of her husband. If there was no policy giving appointment on compassionate ground to the dependents of late contractual employee then the petitioner shall not be entitled for her appointment. If the application has already been decided, then aforesaid direction would automatically lose its effect.
15. Let the exercise be completed within a period of one month from the date of production of certified copy of this order.
16. With aforesaid observation, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

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