

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

MAT 176 of 2024
CAN 2 of 2024

Airports Authority of India & Ors.
vs.
Provash Besai & Another

For the appellants	: Mr. Pratik Dhar, Sr. Adv. Mr. Anup Kanti Poddar, Adv., Ms. Khusboo Ruia, Adv., Ms. Gargi Mukhopadhyay, Adv., Mr. Ayan Poddar, Adv. Mr. Soham Dutta, Adv.
For the respondent No.1	: Mr. Sanjoy Bose, Adv., Mr. Priyankar Basu Mallick, Adv. Mr. Sayandeep Chanda, Adv.
Hearing concluded on	: 7 th February, 2025
Judgment on	: 14 th February, 2025

Soumen Sen, J.:-

1. The appeal is arising out of an order dated 12th December, 2023 passed by the learned Single Judge in a writ petition filed by the private respondent seeking compassionate appointment.

2. The learned Single Judge allowed the writ petition by directing the respondents/ appellants to appoint the writ petitioner on compassionate ground notionally with effect from 2007 with a further direction that the writ petitioner shall be entitled to the salary and the

other benefits only from the date of appointment as per the existing rules as on date and for the purpose of length of service it shall be notionally counted from 1st January, 2008.

3. This order is under challenged.

4. The principal ground of challenge is the assumed inordinate delay of almost 16 years from the death of the writ petitioner and after 4 years 6 months from the discontinuance of the scheme of compassionate appointment in Airport Authority of India (in short 'AAI'). It is submitted that no opportunity was given to the appellants to file an affidavit disclosing all relevant facts.

5. Briefly stated, the father of respondent No 1 namely Kartick Besai was an employee of the appellant No 1 and was working as a Safaiwala (Sweeper) being a group D staff. Kartick Besai died on 22nd July 2006. At the time of his death the job tenure of Kartick Besai under the appellant No. 1 was subsisting. At the time of his death he was survived by his wife namely Sudha Besai and his son being the respondent No. 1 herein as his dependent.

6. Thereafter the mother of the respondent No 1 namely Sudha Besai on 19th March, 2007 wrote to the appellant, inter alia, requesting to appoint the respondent No 1 on compassionate ground upon sudden demise of her husband.

7. On 11th April, 2007 in response to the letter vide no. **AAC/PERS/103/REC/1723** dated 30th March, 2007 issued by the appellants the respondent No 1 submitted his required proforma duly

filled regarding employment of dependents of employee of AAI who died while in service.

8. AAI, however, claimed to have rejected the said application on 3rd July, 2008. However, no such decision appears to have been communicated to the widow.

9. In view of the pendency of the application for compassionate appointment for several years the writ petitioners on 4th March, 2014 applied under the Right to Information Act before the CPIO, Corporate Headquarters, Airports Authority of India, *inter alia*, seeking answers to the following queries:-

a. Names of the employees who had died prior to their retirement during the period 2000-2010 while on duty and off duty;

b. Names of the above deceased employees who applied for compassionate appointment and also names of deceased employees whose dependants have not applied for compassionate appointment;

c. Names of the deceased employees dependents to whom compassionate appointment has been given and the criteria adopted.

10. In response to the aforesaid application the Authorities by its letter No. **AA/HRM/RTI/2005/1520** dated 9th May 2014 duly

replied to each of the queries of the mother of the respondent No. 1 by providing the list of compassionate appointments made from 2000.

The said list, inter alia, disclosed the names of the dependents of the employees who died after the death of the father of the respondent No.1 and were given appointment by the appellants on compassionate ground.

11. In or about 20th July, 2015 several representations were filed for consideration of their case for compassionate appointment. Since all decisions regarding compassionate appointment are taken by Corporate Head Quarter (CHQ), the said representations were forwarded to the said authority vide a letter dated 20th July, 2015.

12. The writ petitioner alleged that since 20th July, 2015 till March, 2022 the AAI did not take any steps for providing appointment to the writ petitioner no.1 on compassionate ground.

13. The writ application was filed seeking inter alia, a direction upon AAI to give appointment to the writ petitioner under die-in-harness category.

14. The learned Single Judge without calling for an affidavit proceeded on the basis of a chart and calculation filed by AAI and the oral submissions made by AAI opposing the prayer for compassionate appointment and allowed the writ petition.

15. The learned Single Judge was of the view that the writ petitioner was awarded 10 marks against the terminal benefits as opposed to his actual entitlement of 25 marks. A meagre sum of

Rs.3,72,120/- was paid as terminal benefits to the family of the deceased i.e. below 5 lakhs. Admittedly the appellants have considered the writ petitioner without a house. Taking into consideration the other marks which are not disputed by the writ petitioner or the appellants a total of 60 marks ought to have been awarded to the writ petitioners. Persons with 60 marks and above have been recommended for compassionate employment. The writ petitioner No.1 was wrongly and illegally denied compassionate employment.

16. The learned Single Judge also found that withholding of the sum of Rs.3,51,000/- towards gratuity was illegal and arbitrary and it is in violation of the provisions of the Payment of Gratuity Act, 1972. The learned Single Judge was of the view that not only have the terminal benefits been unreasonably and illegally withheld but the writ petitioner has been illegally deprived of compassionate appointment by the appellants. The appellants have inhumanly treated the family of the deceased as it would be evident from not only depriving it full terminal benefits but also by denying a lawful entitlement to compassionate employment.

17. In these circumstances the writ petition was allowed.

18. Mr. Pratik Dhar, learned Senior Counsel appearing on behalf of the appellants submits that since no affidavit in opposition was filed the matter could not be explained properly. The writ petitioner no. 1 was not found suitable for giving compassionate appointment as he failed to secure minimum qualifying marks i.e. 60 marks out of total 100 marks. The writ petitioner was all throughout aware of the facts

for non-selection since 2008. There is no practice in place for issuance of separate letter to the unsuccessful candidates regarding their non-selection. The unsuccessful candidates are generally informed verbally when they enquire about the same. The respondent no.1 has admittedly on 4th March, 2014 applied under the RTI after expiry of 7 years from the date of application for compassionate appointment in which the writ petitioners sought for some information with regard to the persons appointed under died in harness category and the names of deceased employee's dependants who have not applied for compassionate appointment. The writ petitioner wanted to know the particulars of appointments made on compassionate ground during the relevant period i.e. 2000 to 2010. He however, did not seek any information about result or fate of his application for appointment on compassionate ground made in the year 2007 as he was aware of the fact of his non selection in the year 2008 itself. Even after furnishing of information under the RTI Act, 2005 on 4th March, 2014 the writ petitioner waited till July, 2022 for filing the writ petition. In between, on 10th January, 2018, a decision was taken for discontinuance of the scheme for compassionate appointment in AAI. It is thus contended that the writ petition was filed not only after 16 years but also a lapse of 4 years 6 months from the date of discontinuance of the scheme for compassionate appointment. The writ petitioners having not challenged the decision and/or alleged inaction on the part of the appellants even prior to decision being taken for discontinuance of the compassionate

appointment scheme cannot be allowed to seek an appointment on compassionate ground at this stage.

19. Mr. Dhar has also explained the letter dated 25th July, 2015 forwarding the request to the Executive Director (HR) AAI of 18 persons for appointment on compassionate ground. It is submitted that the said letter is not a decision to consider the cases of 18 dependants of the deceased employees for compassionate appointment. It is merely forwarding the appeal made by the said persons for reconsideration of the case under compassionate appointment scheme. Mr. Dhar submits that it is well settled that compassionate appointment is not a matter of right and a long inexplicable delay in approaching the court for seeking relief of compassionate appointment would be a relevant consideration in deciding the writ petition for compassionate appointment. It is submitted that the High Court in exercise of its discretion cannot assist an indolent and lethargic litigant. The delay is a factor required to be taken into consideration as there has been an inordinate delay on the part of the petitioners and such delay is not satisfactorily explained. It has been well settled by several decisions that the High Court may decline to intervene to grant relief in such situations as held in ***State of West Bengal v. Debabrata Tiwari & Ors.***¹ The learned Senior Counsel has placed reliance on paragraph 35 to emphasise that when there is a prolonged delay the sense of immediacy is diluted and lost. Moreover the financial circumstances of the family of the deceased may have changed for the better since the

¹ 2023 SCC Online SC 219

time of the death of the employee. Since the compassionate appointment is not a vested right and the same is related to the financial condition and hardship faced as a consequence of death of a breadwinner a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the employee.

20. Mr. Dhar referred to the decision of the Hon'ble Supreme Court in ***State of Himachal Pradesh & Ors. v. Shashi Kumar***;² to show that delay of more than 7 years in approaching the court was held against the writ petitioner as the sense of immediacy is evidently lost by delay. The Division Bench decision of the Madras High Court in ***B. Radhika v. Executive Director, Airports Authority of India & Anr.***³ has been relied upon to show that even if it is assumed for the sake of argument that the name of the petitioner was included for consideration under die in harness category, in view of the change of policy, the writ petitioners cannot claim as a matter of right, his appointment under the said category. Mr. Dhar has submitted that when the respondent had knowledge of the said rejection, he had kept silent and did not take any action in respect thereof. This inordinate delay and laches on the part of the writ petitioners would be a relevant factor in deciding his claim for compassionate appointment as held in ***State of J&K & Ors. v. Sajad Ahmed Mir***⁴. The decision in ***Mumtaz***

² 2019 (3) SCC 653

³ 2019 SCC Online Mad 5436

⁴ 2006(5) SCC 766

Yunus Mulani (Smt.) v. State of Maharashtra & Ors.,⁵ paragraph 17, has been relied to show that a delay of 12 years in approaching the court was considered to be fatal. With regard to the withholding of gratuity amount Mr. Dhar has referred to the decision of the Hon'ble Supreme Court in ***Steel Authority of India Limited v. Raghbendra Singh & Ors.***⁶ to show that "if an employee occupied a quarter beyond the specified period the penal rent would be adjusted against dues payable including gratuity".

21. Per contra, Mr. Sanjoy Bose, the learned Counsel for the writ petitioner has submitted that once the learned Single Judge has arrived at a finding that the application has been arbitrarily rejected although the writ petitioner had the requisite qualification and is entitled to the qualifying marks the writ court as a court of equity can direct compassionate appointment if other conditions are satisfied. It is submitted that AAI has failed to demonstrate that the writ petitioner is not entitled to the minimum qualifying marks i.e. 60. AAI had arbitrarily awarded only 45 marks out of 100 in assessing the financial condition of the family for compassionate employment. The AAI has considered the writ petitioner without a house. If all those factors are taken into consideration then the decision of the AAI to deny compassionate appointment is ex facie illegal. It is now an admitted position that by reason of wrong and erroneous calculation the writ petitioner was deprived. He was made ineligible by reason of erroneous

⁵ 2008(11) SCC 384

⁶ 2021(18) SCC 272

calculation of the qualifying marks. The writ petitioner No.1 could not have challenged the findings as admittedly it was never communicated to the writ petitioners. The writ petitioner No.1 was never informed that he was ineligible as he did not obtain the minimum qualification marks. However, when the writ petitioners applied for consideration it was incumbent upon the authorities concerned to look into the entire matter and to find out whether the writ petitioners fulfilled all the criteria. AAI was moreover satisfied with the reasons disclosed by the writ petitioner for consideration of his case and only thereafter forwarded the said request to the Head Quarter for consideration. The decision for discontinuance of the scheme of compassionate appointment was taken only on 10th January, 2018. The writ petitioner No.1 being eligible prior in point of time could not have been denied the benefit of appointment due to the wrong or erroneous assessment by AAI. The writ petitioner No.1 always thought that his case would be considered favourably. The writ petitioner no.1 has become a victim of delay on the part of AAI for which he cannot be made to suffer. In this regard Mr. Bose has relied upon the decision of the Apex Court in ***Malay Nanda Sethy v. State of Orissa & Ors.***⁷ It is undisputed that at the time of death of his father a scheme for compassionate appointment was in force and it was discontinued on and from 10th January, 2018 as claimed. It is thus submitted that discontinuation of the scheme is not a material consideration in considering the case of the writ petitioner No.1 for appointment. The learned Counsel has

⁷ 2022 SCC Online 684

submitted that the learned Single Judge was justified in allowing the writ petition.

22. On consideration of submissions made on behalf of the parties and the facts summarized it is clear that the father of the writ petitioner no. 1 was a group-D staff and he was working as Safaiwala (sweeper). The economic, social and academic background of the deceased person and his family members need to be appreciated. The wife of the deceased and the writ petitioner no. 1 are not aware or well versed with the legal niceties and nuances and may not have the wherewithal to pursue a luxurious litigation. The petitioners are like a man in the street alienated against the law being confounded and baffled with its complexities with no comprehension about it or the legal system by which he is governed. The writ petitioner No.1 was barely 20 years old when his father died. He studied up to Class VIII. The widow was illiterate. The father of the writ petitioner no.1 admittedly was the only breadwinner. They were struggling for survival. A death in the family comes as a rude shock and the entitlement to the service and other benefits are required to be ensured by the employer in order to enable the family to tide over the financial difficulties likely to be faced by reason of such untimely death. It includes consideration of a request for compassionate appointment and to consider such prayer in accordance with the existing scheme. They would always be dependent upon the employer for guidance and would expect the employer to behave responsibly. AAI is an authority under Article 12 of the Constitution of India and is obliged and expected to behave like a model

employer. AAI is expected to act in a bona fide and reasonable manner. AAI does not dispute that the wife of the writ petitioner had filed an application for compassionate appointment on 19th March, 2007. Although AAI claimed to have rejected the said application on 3rd July, 2008 however no such decision appears to have been communicated to the widow. In fact, the subsequent correspondence between the parties would not show that any final decision was taken on the said application. It was only before the learned Single Judge on the basis of a chart it was contended that in terms of the then existing scheme 60% weightage was required whereas the petitioner got 45 marks out of 100 and in justification of awarding 45 marks, reliance was placed on the petitioner's own declaration regarding the house details. If AAI has applied a wrong yardstick for the purpose of assessing the suitability of the writ petitioner no. 1 for the said post and thereby made him ineligible during the period when the scheme was in force it cannot be heard to contend that the claim is bound to fail due to delay and laches or subsequent discontinuance of such scheme. It cannot deny its responsibility in not considering application for compassionate appointment provided all other criteria are fulfilled. Once a dependent fulfils the criterion the employer is duty bound to give employment. It is also the duty of a model employer to inform the family of the deceased of any beneficial scheme in existence and assist the family to withstand the shock instead of allowing it to drown. One has to appreciate that the deceased was a safaiwala (sweeper).

23. The writ petitioner was not awarded marks according to the criterion. The order of rejection was never communicated. A calculation was produced by AAI before the learned Single Judge to show the ineligibility of the writ petitioner was found to be incorrect due to application of wrong yardstick and denying of marks to which the writ petitioner was entitled under the scheme. The writ petitioner was considered “with house” and was awarded 10 marks although admittedly he should have been considered under the category “without house” as the annual family income was less than Rs.5 lakhs. The learned Single Judge has outrightly and correctly rejected the said contention as admittedly the writ petitioner no.1 was considered under the category “without house” and thereby was entitled to 25 marks. The learned single judge was absolutely correct in arriving at a finding that the actual entitlement of the writ petitioner would be 25 marks. Moreover, only Rs.3,79,120/- was paid as terminal benefits to the family of the deceased i.e., below Rs.5 lakhs. Moreover, the list annexed to the report filed before the learned Single Judge and also produced before us would show that the person with 60 marks and above have been recommended for compassionate appointment. All those persons were similarly placed as that of the present writ petitioner. They were all considered under the scheme prevailing at the relevant point of time. The social and economic background of the writ petitioner is very much relevant in this country to assess whether the delay would defeat a right. We cannot expect the wife and the son of Safaiwala to behave like an educated literate person conscious of its rights and

communicating with the authorities in the language in which the authority would have expected an educated person to converse and communicate. There is no doubt that a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the employee. The courts in such cases proceed on the basis that succour to the family which is needed upon the death of the sole bread earner is defeated by delay. Since compassionate appointment is an exception to the general rule the courts have interpreted such provisions against such appointment wherever the court finds that there has been an inexplicable and inordinate delay thereby the immediacy of need for an employment is presumed to have been lost and the family is presumed to be otherwise able to sustain and survive. However, when a petitioner approaches the authorities in time and the matter is kept pending for years by the employer the constitutional court may apply its extraordinary power under writ jurisdiction in appropriate cases to grant appropriate relief to do complete and substantive justice after being satisfied that the writ petitioner was qualified for compassionate appointment but was denied such appointment arbitrarily, unfairly and unreasonably. A person may survive after the death of the bread earner on borrowings or benediction of well-wishers. However, begging or borrowing or living with someone's mercy is not a dignified living. Article 21 of the Constitution of India postulates a person should have a decent and dignified living. Compassionate appointment although is not a vested right, it is a right nonetheless. The authority is obliged to consider such

application with utmost promptitude. The sense of immediacy and urgency cannot be shown as a defence when the fault lies with the employer. The bureaucratic process of pushing files from table to table or keeping the application in the file to gather dust as an excuse for delay is clearly unacceptable. The duty to communicate and disclose the reason for denying such benefit is immediate and cannot be unduly postponed and deferred.

24. Mr. Dhar, Senior Advocate has strongly relied upon ***Debabrata Tiwari*** (*supra*) paragraph 35 to demonstrate 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.

The effect of delay is stated as under:

“35. 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.

25. We have read the judgment carefully and we are of the opinion that the said judgment is distinguishable on facts. As would appear from **Debabrata Tiwari** (supra) the heirs of the employees of the Burdwan, Ranaghat and Habra Municipalities have applied for compassionate appointment to the post in the concerned municipality under die in harness category. In fact, it appears that the Chairman of the Burdwan Municipality after causing an inspection forwarded an approved list to the Director of Local Bodies, Government of West Bengal for approval of appointment on compassionate ground. The Director of Local Bodies, Government of West Bengal, did not take any step whereby a writ petition was filed. The writ petition was disposed of by directing the Local Bodies to take a decision on the recommendation of the Chairman of the Municipality within a period of ten weeks. In continuation of the direction of the Hon'ble Supreme Court the Government of West Bengal passed an order on 16th October, 2015

wherein it was stated that the Director of Local Bodies had no authority to appoint on compassionate ground in urban local bodies unless the policy in the matter was laid down by the State Government. It was, therefore, observed by the Director of Local Bodies that as soon as the State Government extends such policy for appointment of the employees of the urban local bodies under compassionate ground in died in harness category, the prayer of the writ petitioner cannot be considered.

26. The learned Single Judge dismissed the writ petition on the ground that in the absence of a statutory scheme for compassionate appointment with respect to employment, no leave may be granted to the writ petitioner. In appeals preferred by the writ petitioner, the Hon'ble Division Bench of the Hon'ble High Court directed the Director of Local Body, Burdwan Municipality and the concerned authorities of the Raiganj and Habra Municipalities to consider the application made by the writ petitioner seeking appointment on compassionate ground. It appears that the Hon'ble Division Bench observed that the employee of the Municipality cannot be treated as an employee of State Government and, therefore, the scheme available to the State Government employee cannot be extended to the dependant of an employee of the Municipality who die-in-harness and on the basis of the aforesaid reason it was held that they are not entitled to the benefit of compassionate appointment in terms of the scheme formulated vide Circular No. 97-Emp; 142-Emp, 130-Emp and 51-Emp which were applicable to the State Government employees. As to the issue whether there was any scheme for grant of

compassionate appointments in respect of the employees of Municipality, the Hon'ble Division Bench by referring to the Circulars observed that the said circulars were specific schemes for compassionate appointments in respect of municipalities. The said schemes were in respect of all establishments covered under the West Bengal Regulation of Recruitment in the State Government Establishments and Establishment of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999 and since the said circulars were extended to the employees of all establishments including the local authorities like municipalities, were neither withdrawn nor substituted by the subsequent notifications and circulars.

27. Although Circular No. 142-Emp. clarified that 97-Emp. was applicable only in respect of State Government employees and directed the municipalities to formulate their own schemes for compassionate appointment, no such scheme had been formulated by the concerned municipalities. That it was evident from Circular No. 142-Emp. that it does not withdraw the scheme for compassionate appointment available under Circular Nos. 301-Emp., 302-Emp. and 303-Emp. and in the absence of any subsequent scheme or specific withdrawal of the existing scheme, the scheme remains in subsistence and will be the scheme under which the applications for compassionate appointments made by the respondents are to be considered.

28. In the absence of a substituted scheme, and given that Circular No. 301-Emp., 302-Emp. and 303 Emp. were not specifically

withdrawn, they would continue to remain applicable. Therefore, compassionate appointment in respect of municipalities would be governed by the scheme under Circular Nos. 301-Emp., 302-Emp. and 303-Emp.

29. In paragraph 28 of the said judgment, points for consideration was formulated thus:

i. Whether the Division Bench of the High Court of Calcutta erred in allowing the appeals filed by the Respondents-writ Petitioners and directing that their claims for compassionate appointment be considered by the Appellant?

ii. What order?

30. It was observed that those appeals primarily concern the question whether there exists any scheme in the State of West Bengal, governing compassionate appointment governing municipal employees dying in harness. In paragraph 32 of the said judgment on consideration of various decisions, the following principles were laid down.

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.”

31. It was observed that the financial condition of the family of the deceased at the time of death of the deceased would be the primary condition that should guide the authority’s decision in the matter.

32. On the facts it was held that sense of immediacy is diluted and lost in the present case. The Hon’ble Supreme Court used a strong word of reproach in keeping the application pending in paragraph 47 it is stated:-

“47. However, we must sound a strong word of reproach directed at the authorities of the Appellant-State, about the

manner in which the applications for compassionate appointment of hundreds of dependents have been dealt with. Much uncertainty looms around the scope, extent and beneficiaries of the various schemes formulated by the State for governing compassionate appointment and therefore, the concerned authorities are unable/unwilling to positively decide claims for compassionate appointment. This may have ultimately resulted in prejudice to the families of many government employees dying in harness. Delay on the part of the authorities of the State to decide claims for compassionate appointment would no doubt frustrate the very object of a scheme of compassionate appointment. Government officials are to act with a sense of utmost proactiveness and immediacy while deciding claims of compassionate appointment so as to ensure that the wholesome object of such a scheme is fulfilled.”

33. With regard to applicability of the relevant circulars it was observed that the circulars no. 301-Emp, 302-Emp and 303-Emp were not understood or read to be a scheme governing all employees of other establishments governed by the Act 1991 and the existence of the policy issued by the State Government is a sine qua non for making appointment on compassionate appointment. Thereafter it was observed in paragraph 57 that the appointments must follow the stipulations made in the policy. It is therefore a no-brainer that in the absence of a policy governing compassionate appointment to posts under a local authority, no appointment could be made to such an authority on compassionate grounds.

34. The aforesaid judgment is distinguishable on the facts. In the instant case the application was filed when the scheme was in existence. The authorities never communicated its reason for rejection. On the contrary until the writ petition was filed in its communication AAI has never contended that the writ petitioner No.1 is ineligible. It was only before the learned single judge and now before this Bench a faint attempt was made to show that the writ petitioner No.1 was ineligible. AAI had applied wrong criterion to hold the writ petitioner No.1 ineligible. It is trite law that a judgment is not to be read like a statute nor as Euclid's theorem. The judgments are to be read, understood and applied contextually.

35. The appellant wanted to justify deduction of a sum of Rs.5,51,480/- payable on account of gratuity to the GIS-EBF for 33 months on the ground that the writ petitioner occupied the staff quarter No.A-216 for four years. This is also not acceptable by reason of the fact that in fact in the office order dated 8th November, 2012 the authority accepted surrender of quarter without levy of any penal rent considering the helplessness of the family consequent upon the death of the employee. Moreover, if the writ petitioner was eligible for being considered for compassionate appointment at the time when he made the application his possession in the quarter could not have been held to be unauthorised. On that score also adjustment of Rs.5,51,480/- was completely unjustified. The writ petitioner has suffered double jeopardy. The son was not only denied employment but the family suffered financially as well. This has another facet. If AAI considers that

the writ petitioner was in staff quarter and should have come under the said category, admittedly on and from 8th November, 2012 they were “without house” in which case also the writ petitioners were entitled to 25 marks. AAI has failed to produce any record to show the period during which the application for compassionate appointment was considered. The final decision was never produced not even in this proceedings. It is merely a statement in the stay petition unsubstantiated by any record.

36. The reason for not considering the application of the petitioner for compassionate appointment appears to be a communication made on 27th May, 2022 in which in reply to the query raised by the writ petitioner on 29th April, 2022 regarding his application for compassionate appointment for the first time the writ petitioner was informed that vide CHRM Circular No.9/2018 issued vide letter No.60011/49/2017/HRPC/89 dated 22nd March, 2018 the compassionate appointment has been discontinued in AAI.

37. The reason for non-consideration of the application for the writ petitioner was not on any of the grounds which for the first time was disclosed before the learned Single Judge and reiterated in the stay petition by the appellant. It is trite law that the validity of an order has to be tested on the basis of the reasoning contained therein and that the authorities are not supposed to supplement the same by means of extraneous material or affidavit before the courts. The appellants were under a duty and obligation to speak and communicate its decision to the writ petitioner and have miserably failed to perform their duties. In

fact by the communication dated 20th July, 2015 the name of the writ petitioner was also forwarded to the appropriate authority. If AAI had already rejected the application for compassionate appointment on 3th July, 2008 which is claimed for the first time in the stay petitioner without any verifiable material then there was no necessity for the Joint General H.R to forward the representation of the writ petitioner no.1 to the Executive Director HR for considering his case for appointment on compassionate ground. The communication dated 27th May, 2022 was also silent about such alleged rejection. The inability to consider the case of the writ petitioner no.1 was due to withdrawal of the scheme on 22nd March, 2018 as disclosed in the said communication. The writ petitioner is in no comparison to the might and resources that the appellants possess and enjoy and in the constitutional scheme of things “might is right” is anathema to the basic concept of “Justice”, “Equality” and “Fairness” and an aberration to the administration of justice. It is the duty of the writ court to wipe off the tears of the weaker section of the society and ameliorate their financial and mental distress. We are unable to accept the conduct of the appellants in not considering the application of the writ petitioner in accordance with the then existing scheme.

38. The right to get employment arises when the scheme was in place until it was discontinued on 22nd March, 2018 as disclosed for the first time in the communication dated 27th May, 2022. The letters dated 9th May, 2014 and 20th July, 2015 are sufficient to induce a belief in the mind of the writ petitioner No.1 that his case is still under

consideration. In this context, it is apposite to refer to the few paragraphs from the decision of the Hon'ble Supreme Court in **Malay Nanda Sethy** (supra).

“14. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.”

16. 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.

17. 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.

18. 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 supplied)

The aforesaid observations have been referred to and followed in **Debabrata Tewari** (supra) in para 42.

39. In **Shashi Kumar** (supra) the Hon'ble Supreme Court declined to allow compassionate appointment as the respondent waited for a period in excess of 7 years after Additional Secretary had informed that the amount submitted by way of pension shall be included in the income statement of the family by reason whereof the writ petitioner would not come within the purview of income criteria under the scheme. In fact the scheme envisaged that the family pension received by the dependants of the deceased employee was taken into account which fact was ignored by the High Court. However, in paragraph 36 it is observed:

"36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a

reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J & K v. Sajad Ahmed Mir and Local Admn. Deptt. v. M. Selvanayagam.”

40. In **Mumtaz** (*supra*) the husband of the appellant died in 1996 and she made an application for compassionate appointment but in 1997 another person was appointed to fill up the vacancy. The respondent's institution was a charitable body run on Government aid and no other post was available. She challenged the decision after 12 years since the death of her husband. In the meantime the son and the daughter became major and her own age was 38 years. She was also receiving family pension. There was also indication that she was getting incomes from other properties. It was on such consideration the Special Leave Petition was dismissed.

41. In **Sajad Ahmed** (*supra*) both the respondents had knowledge of rejection of his application for compassionate appointment. However, he kept silent and did not take any action for almost 12 years from the death of his father. The Hon'ble Supreme Court was of the view that 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.

42. All the aforesaid decisions are distinguishable on facts and to be read and understood contextually.

43. The judiciary is respected not on account of its power to legalize injustice but because it is capable of doing justice and it is expected to do so. [See **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.**⁸ Even, otherwise constitutional courts are duty bound to dispense justice in deserving cases without being desultory with technical objections as technicalities are always to step down and substantive justice must prevail. The resistance to defeat a legal right of a litigant by inviting attention to the many lapses in the procedure adopted by the writ petitioner and lack of promptitude of the litigant, incidentally in this case widow and son of a sweeper, in espousing its cause and expecting the constitutional courts to give importance to such factors overlooking the many glaring faults and breaches of their statutory duties if accepted would give premium to an inexcusable conduct of the employer. It would in effect mean and signify to borrow the expressions from The Pleasures of Philosophy by Will Durant of the proclamation by Thrasymachus of Plato's Republic that "the "unjust" is lord over the truly simple, and 'just' and the 'just' is always loser by comparison". The purpose of the scheme was to rescue the family from mental, physical, emotional and financial distress and to improve the human living condition of the family and this gets defeated due to manifest "unjust" conduct of the AAI. Instead of emotional and financial support and hand holding AAI was in a denial mode.

⁸ (1987) 2 SCC 107

44. The scheme for compassionate appointment is a social beneficial scheme introduced and can be seen as a force of circumstances that tends to destroy equality that the force of legislation must always tend to maintain. It is a principle espoused by Rousseau and recognized in our constitution to advance social justice. As succinctly put by the Hon'ble Justice J.M. Shelat, former Judge, Supreme Court of India "To discriminate positively in favour of the weak may sometimes be promotion of genuine equality".

45. The writ petitioners approached the authorities in time. It was a manifest arbitrary act of the employer in denying employment. The writ petitioners have been denied a decent livelihood and a timely action would have put the family in a better position. The contention that the writ petitioner No.1 is presently working as a contractual employee in the airport under a contractor apart from being substantiated is no consolation and if such excuse is accepted it would only embolden an employer to act unfairly and arbitrarily and an irreparable injury and injustice would be caused to the writ petitioner no.1 whose legal right to employment is unquestionable. Justice will be buried and a loser at the end of the day. It is a clear violation of article 14 and 21 of the Constitution of India. All persons similarly placed have been given appointment under the same scheme. All equals are to be treated alike. The conduct of AAI shocks the conscience of the court more so as AAI is an instrumentality of the state.

46. One could not possibly expect the son of a sweeper, the writ petitioner no.1, to know the consequence of delay in approaching

the court for not being communicated of the decision of AAI for redressal of his grievance, lest it might be contended against the writ petitioner no.1 that immediacy is lost and the family is no more in need of any financial assistance and the employer notwithstanding its many faults would expect the court to turn a blind eye for all its inactions. The legal aphorism that ignorance of law is no excuse or a defence may not be applicable in all circumstances as we cannot lose sight of the economic and social strata of a litigant. The concept of delay and laches to deny the relief to a litigant has to be considered contextually after taking into consideration his social and economic background. The scheme was consciously framed to take care of their needs. They are the beneficiaries.

47. Under such circumstances we affirm the order under appeal. We direct the authorities to give appointment to the writ petitioner no.1 within four weeks in terms of the order of the learned Single Judge. We further direct payment of Rs.3,51,000/- illegally withheld along with simple interest at the rate of 10% per annum from January, 2008 till the date of payment. The payment shall be made within four weeks from date.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)