Judgment Dated: 15-10-2026
WBCHCA0543832023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

CORAM: THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 26023 OF 2023

SHIBASIS KUNDU **...PETITIONER**

-VERSUS-

THE STATE OF WEST BENGAL & OTHERS **...RESPONDENTS**

Appearance:

For the Petitioner	: Mr. Partha Sarathi Bhattacharyya, Sr. Adv. Mr. Kazi Sajjad Alam, Adv. Mr. Mainul Thander, Adv.
For the State	: Mr. Ranjit Talukdar, Adv. Mr. R. Chatterjee, Adv.
For the SSC	: Mr. Sunit Kumar Roy, Adv. Ms. Susmita Mondal, Adv.
Reserved on	: August 07, 2026
Judgment on	: October 15, 2026

OM NARAYAN RAI, J.:-

1. The instant writ petition assails an order dated November 07, 2023 issued by the District Inspector of Schools (Secondary Education), Hooghly[1] whereby the D.I.(S.E.) has rejected the petitioner's prayer for compassionate appointment under the died-in-harness category *inter alia* on the ground that the family of the petitioner cannot be considered to be in *"financial hardship"* in terms of the Explanation to Para-1 of Schedule-V of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009[2] which has been published by the School Education Department, Government of West Bengal vide Notification No. 697-ES/S/IS-18/08 dated July 09, 2009.

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[1] **Hereafter "the D.I.(S.E.)"**
[2] **Hereafter "the 2009 Rules"**

FACTUAL MATRIX:

2. Shorn of meticulous details, the facts relevant for adjudication of the present writ petition, as may be gathered from the material on record, are as follows:-

a. The father of the petitioner namely late Sanjit Kumar Kundu was an approved Assistant Teacher of Tirol High School at Hooghly in the language group. He died while in service on May 17, 2018.

b. Thereafter, the petitioner made an application to the D.I.(S.E.), through the Headmaster of Tirol High School, on July 22, 2018 requesting for appointment on compassionate grounds. On August 02, 2018, the managing committee of the Tirol High School also adopted a resolution in favour of the petitioner and forwarded it to the competent authority.

c. On August 22, 2018 the petitioner's mother and younger brother (being the other legal heirs of Late Sanjit Kumar Kundu apart from the petitioner) declared to the D.I. (S.E.) that they had no objection to compassionate appointment being granted to the petitioner.

d. The D.I. (S.E.), however, rejected the petitioner's request for compassionate appointment by a letter/Memo No. 2135/1(1)/SE dated December 31, 2019 addressed to the Secretary, Tirol High School with a terse observation that the petitioner's request *"cannot be considered in terms of Govt. Order No. 697-ES/S"* dated July 09, 2009.

e. Assailing the said order, the petitioner approached this Court by filing a writ petition being WPA 4283 of 2020. The said writ petition was disposed of by a Co-ordinate Bench of this Court by an order dated July 27, 2023 whereby the decision taken by the D.I.(S.E.) as communicated through the letter dated December 31, 2019 was set aside. By the said order the D.I.(S.E.) was directed to *"revisit the issues upon issuing at least seven days prior hearing notice to the petitioner"* and pass a reasoned order upon hearing the petitioner. While passing the said order this Court also made it clear that the said - *"order shall not create any equity or right in favour of the petitioner in the event, the petitioner is found to be ineligible to receive his claim strictly in accordance with law"*.

f. Pursuant to the order dated July 27, 2023, the petitioner and the others concerned were heard and the D.I.(S.E.) once again rejected the petitioner's request for compassionate appointment by an order dated November 07, 2023 *inter alia* on the ground that "*the monthly family income of the deceased teacher is more than the initial Gross Salary of Group 'D' staff"*. The D.I.(S.E.) has concluded that the family of the petitioner cannot be considered to be in

"financial hardship" in terms of the Explanation to Para-1 of Schedule-V of the 2009 Rules.

g. Feeling aggrieved by such order, the petitioner has approached this Court by way of the present writ petition.

h. During pendency of the writ petition, the petitioner's mother also expired on December 26, 2023. The petitioner has, therefore, filed a supplementary affidavit, thereby bringing on record the said aspect. The petitioner has asserted that as a result of his mother's death, the family pension that was being paid to her has been stopped and as the petitioner does not have sufficient source of income at present, he is entitled to be considered for compassioned appointment.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. A brief summary of the submissions made on behalf of the petitioner, is as follows:-

a. Even while exercising jurisdiction under Article 226 of the Constitution of India, it is the duty of the Court to enter into the merits of the case and find out whether the relevant Rules and procedure have been followed or not. Consequently, by entering into the merits of the present case, this Court cannot be construed as sitting in appeal over the decision of the D.I. (S.E.). A coordinate Bench judgment in the case of ***Dr. Gayatri Sen Majumder vs. Vice-Chancellor of the University of Calcutta & Others***[3] was relied on for such purpose.

b. Schemes for compassionate appointment are framed for the purpose of providing solace to the family which has lost its bread winner. An application for a compassionate appointment cannot be rejected simply because the family received statutory terminal benefits such as Provident Fund, Gratuity, or Family Pension. The judgment of the Hon'ble Supreme Court in the case of ***Balbir Kaur & Another vs. Steel Authority of India Limited & Others***[4] was relied on to buttress such contention.

c. The order passed by the D.I.(S.E.) is palpably erroneous inasmuch as the D.I.(S.E.) has taken into consideration the family pension being received by the petitioner's mother at the material point of time for the purpose of calculating the income of the petitioner's family. Such a practice is impermissible as held

[3] **1991 (1) CLJ 461**
[4] **AIR 2000 SUPREME COURT 1596**

by the Hon'ble Supreme Court in the case of ***Govind Prakash Verma vs. Life Insurance Corporation of India & Others***[5]**.**

d. The rejection of the petitioner's request for appointment on compassionate grounds is substantially founded on the family pension received by his mother. Upon her death the petitioner's plight has got all the more aggravated and as such he has become eligible for being reconsidered for grant of compassionate appointment.

e. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Kanaya Ram & Others vs. Rajendra Kumar & Others***[6] to assert that courts must take cognizance of subsequent events to promote the ends of justice and mould the relief accordingly.

f. ***Canara Bank vs. Ajithkumar G.K.***[7] **–** being a fairly recent authority of the Hon'ble Supreme Court was cited to demonstrate that while the petitioner being a seeker of compassionate appointment may not have any right to employment but he certainly has a right to be considered for compassionate appointment. The said judgment was also pressed to emphasise that grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance.

g. In any case, the death of the petitioner's mother during pendency of the writ petition has led to the natural death of the order impugned as well.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. A brief summary of the submissions made on behalf of the respondents, is as follows:-

a. This Court exercising judicial review under Article 226 of the Constitution of India is only required to examine the decision-making process and not the decision itself.

b. Since the D.I.(S.E.) has heard the petitioner and the others concerned and has passed a well-reasoned order in accordance with the 2009 Rules, there is no scope for interference with the same.

c. Compassionate appointment is granted only to address the immediate penury of the family which has lost its sole earning member. Subsequent death of the petitioner's mother who was a family pensioner cannot be a ground for offering appointment to the petitioner on compassionate grounds.

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[5] (2005) 10 SCC 289
[6] AIR 1985 SUPREME COURT 371
[7] (2025) 11 SCC 178

ANALYSIS & DECISION:

5. Heard the learned Advocates appearing for the respective parties and considered the material on record.

6. It is now well settled that appointment on compassionate grounds is a narrowly confined exception to the normal mode of recruitment or public employment. It is, therefore, not a vested right but a concession driven by a purely humanitarian objective, aimed at providing immediate relief to the family of the deceased employee which is facing extreme financial distress due to the sudden departure of the sole bread-earner.

7. ***Canara Bank*** (supra), cited by the petitioner, is a definitive treatise on compassionate appointment jurisprudence. Paragraph 26 of the said judgment encapsulates the principles laid down by the Hon'ble Supreme Court on the subject over the decades. The same are extracted hereinbelow:-

> "**26.** Decisions of this Court on the contours of appointment on compassionate ground are legion and it would be apt for us to consider certain well settled principles, which have crystallised through precedents into a rule of law. They are (not in sequential but contextual order):
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> **26.1.** Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the rule of equality in the matter of public employment [see SBI v. Anju Jain [SBI v. Anju Jain, (2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724]].
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> **26.2.** Compassionate appointment cannot be made in the absence of rules or instructions [see Haryana SEB v. Krishna Devi [Haryana SEB v. Krishna Devi, (2002) 10 SCC 246 : 2003 SCC (L&S) 248]].
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> **26.3.** Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [see V. Sivamurthy v. State of A.P. [V. Sivamurthy v. State of A.P., (2008) 13 SCC 730 : (2009) 1 SCC (L&S) 335]].
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> **26.4.** The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased or an incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [see Sushma Gosain v. Union of India [Sushma Gosain v. Union of India, (1989) 4 SCC 468 : 1989 SCC (L&S) 662]].
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> **26.5.** Since rules relating to compassionate appointment permit a side-door entry, the same have to be given strict interpretation [see Uttaranchal Jal Sansthan v. Laxmi Devi [Uttaranchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205 : (2009) 2 SCC (L&S) 304]].
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> **26.6.** Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [see SAIL v. Madhusudan Das [SAIL v. Madhusudan Das, (2008) 15 SCC 560: (2009) 2 SCC (L&S) 378]].
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> **26.7.** None can claim compassionate appointment by way of inheritance [see State of Chhattisgarh v. Dhirjo Kumar Sengar [State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281]].

26.8. Appointment based solely on descent is inimical to our constitutional scheme, and being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve [see Bhawani Prasad Sonkar v. Union of India [Bhawani Prasad Sonkar v. Union of India, (2011) 4 SCC 209 : (2011) 1 SCC (L&S) 667]].

26.9. None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the employee concerned (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [see Union of India v. Amrita Sinha [Union of India v. Amrita Sinha, (2021) 20 SCC 695]].

26.10. An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [see Eastern Coalfields Ltd. v. Anil Badyakar [Eastern Coalfields Ltd. v. Anil Badyakar, (2009) 13 SCC 112 : (2010) 1 SCC (L&S) 220]].

26.11. The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV is legally impermissible [see Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]].

26.12. Indigence of the dependants of the deceased employee is the first precondition to bring the case under the scheme of compassionate appointment. If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependants of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution [see Union of India v. B. Kishore [Union of India v. B. Kishore, (2011) 13 SCC 131 : (2012) 2 SCC (L&S) 84]].

26.13. The idea of compassionate appointment is not to provide for endless compassion [see I.G. (Karmik) v. Prahalad Mani Tripathi [I.G. (Karmik) v. Prahalad Mani Tripathi, (2007) 6 SCC 162 : (2007) 2 SCC (L&S) 417]].

26.14. Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; the dependant must fulfil the eligibility criteria for such appointment [see State of Gujarat v. Arvindkumar T. Tiwari [State of Gujarat v. Arvindkumar T. Tiwari, (2012) 9 SCC 545 : (2012) 2 SCC (L&S) 795]].

26.15. There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions [see Sanjay Kumar v. State of Bihar [Sanjay Kumar v. State of Bihar, (2000) 7 SCC 192 : 2000 SCC (L&S) 895]].

26.16. Grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance. Also, it is only in rare cases and that too if provided by the scheme for compassionate appointment and not otherwise, that a dependant who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority [see *M. Mahesh Kumar* [*Canara Bank* v. *M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539]].

26.17. An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial

resources available to the dependant of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [see *National Institute of Technology* v. *Niraj Kumar Singh* [*National Institute of Technology* v. *Niraj Kumar Singh*, (2007) 2 SCC 481 : (2007) 1 SCC (L&S) 668]].

26.18. Dependants if gainfully employed cannot be considered [see *Haryana Public Service Commission* v. *Harinder Singh* [*Haryana Public Service Commission* v. *Harinder Singh*, (1998) 5 SCC 452 : 1998 SCC (L&S) 1371]].

26.19. The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of "not very well-to-do" [see *SBI* v. *Kunti Tiwary* [*SBI* v. *Kunti Tiwary*, (2004) 7 SCC 271 : 2004 SCC (L&S) 943]].

26.20. Financial condition of the family of the deceased employee, allegedly in distress or penury, has to be evaluated or else the object of the scheme would stand defeated inasmuch as in such an eventuality, any and every dependant of an employee dying-in-harness would claim employment as if public employment is heritable [see *Union of India* v. *Shashank Goswami* [*Union of India* v. *Shashank Goswami*, (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , *Union Bank of India* v. *M.T. Latheesh* [*Union Bank of India* v. *M.T. Latheesh*, (2006) 7 SCC 350 : 2006 SCC (L&S) 1646] , *National Hydroelectric Power Corpn.* v. *Nanak Chand* [*National Hydroelectric Power Corpn.* v. *Nanak Chand*, (2004) 12 SCC 487 : 2005 SCC (L&S) 357] and *Punjab National Bank* v. *Ashwini Kumar Taneja* [*Punjab National Bank* v. *Ashwini Kumar Taneja*, (2004) 7 SCC 265 : 2004 SCC (L&S) 938]].

26.21. The terminal benefits, investments, monthly family income including the family pension and income of family from other sources viz. agricultural land were rightly taken into consideration by the authority to decide whether the family is living in penury [see *Somvir Singh* [*SBI* v. *Somvir Singh*, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92]].

26.22. The benefits received by the widow of deceased employee under the Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appointment. The Family Benefit Scheme cannot be equated with benefits of compassionate appointment [see *Balbir Kaur* v. *SAIL* [*Balbir Kaur* v. *SAIL*, (2000) 6 SCC 493 : 2000 SCC (L&S) 767]].

26.23. The fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making [see *State of H.P.* v. *Shashi Kumar* [*State of H.P.* v. *Shashi Kumar*, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542]].

26.24. Courts cannot confer benediction impelled by sympathetic consideration [see *LIC* v. *Asha Ramchhandra Ambekar* [*LIC* v. *Asha Ramchhandra Ambekar*, (1994) 2 SCC 718 : 1994 SCC (L&S) 737]].

26.25. Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/instructions [see SBI v. Jaspal Kaur [SBI v. Jaspal Kaur, (2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578]].

26.26. An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see Kendriya Vidyalaya Sangathan v. Dharmendra Sharma [Kendriya Vidyalaya Sangathan v. Dharmendra Sharma, (2007) 8 SCC 148 : (2007) 2 SCC (L&S) 804]]."

(Emphasis supplied)

8. Schedule V to the 2009 Rules intituled - *"PROCEDURE, MANNER OF APPLICATION AND PREPARATION OF PANEL FOR APPOINTMENT ON COMPASSIONATE GROUND"* contains the scheme for compassionate appointment. The same has been framed in terms of Rules 20 and 21 of the 2009 Rules. Paragraph 1 of the said Schedule V is relevant for the present purpose. The same is reproduced hereinbelow:-

> *"1. When a Teacher or non-teaching staff dies in harness before the date of his superannuation, i.e., the age of 60 years, leaving a family which is, in the opinion of the District Inspector of Schools (Secondary Education), in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the-*
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> *(i) Spouse;*
>
> *(ii) Son;*
>
> *(iii) Daughter*
>
> *of the deceased Teacher or non-teaching staffs family who is possessing required educational qualifications as laid down in Schedule I for the posts of Clerk or Group D staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff on compassionate ground:*
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> *Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.*
>
> *Explanation. - The expression "financial hardship", in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of Group 'D' staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been, alive, whichever is earlier, at the material point of time, shall be taken into account:*
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> *Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time."*

9. Applying the said provision, the D.I.(S.E.) has held as follows:-

> *i) As per Pension Payment Order being memo no. SEC/HGL/19/F/0706 dated 21st May, 2019 and other document as submitted by the competent authority regarding the financial status of the deceased family it appears that the monthly pension in favour of the family of the petitioner is Rs. 36794/- (BP Rs. 17545/- + D.A Rs 17545/- + I.R Rs. 1404/- +M.A Rs. 300/-), The 40% of the family pension amounting to Rs. 14718/-. After deducting 40% of the family pension as per rules it amounts to Rs. 22076/-. Monthly income of the family from other sources as submitted by the competent authority is Rs. 4500/-. The total monthly income of the family after deduction as per rules at the material point of time amounts to Rs. 26576/-(Twenty six thousand five hundred seventy six only).*
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> *ii) The initial Gross salary per month of Group 'D' staff at the material point of time is Rs.15150/- (B.P Rs. 6600/-+D.A Rs.6600/+IR Rs.660/+HRA: Rs.990/-+ IMA Rs.300/-).*
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> *iii) The instant matter was considered in the light of the Rules which were in existence as on the date of the death of the deceased father of the petitioner te. on 17:05 2018. The*

Rules prevailing on 17.05.2018 was the West Bengal School Service Rules, 2009) published by School Education Department, WB vide Notification No Commission (Selection of persons for Appointment to the post of Non-Teaching staff 697-ES/S/IS-18/08 dated 09.07.2009, where in it is stated in Schedule V. Parak Explanation, "The expression 'financial hardship', in relation to income off deceased teacher or non-teaching staff consisting of up to five members in his family, shall means an amount of income less than the initial gross salary of Group 'D' staff of the State Government at the material point of time For computation of income of such family an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon attainment of sixty seven years of age of deceased teacher had he been alive whichever is earlier, at the material point of time shall be taken into account."

iv) Herein, from the P.P.O and other financial documents submitted by the competent authority shows that the monthly family income of the deceased teacher is more than the initial Gross Salary of Group 'D' staff. So, as per notification no. 697-ES/S, dated 09.07.2009 the family can't be considered as in 'financial hardship' and thus the prayer for compassionate appointment under Die-in-harness category rejected with above rationale.

Thus the matter is disposed of.

All concerned are being informed accordingly."

10. The order was passed upon hearing the petitioner. The aforequoted extract reveals that the D.I.(S.E.) has applied his mind to the matter and returned a finding in accordance with the scheme for compassionate appointment. The finding is neither perverse nor implausible. It has not been demonstrated before this Court that the finding is factually incorrect. It is well settled that judicial review under Article 226 of the Constitution of India is not akin to an appeal and that the Court does not exercise jurisdiction akin to that of an appellate court. In such context the following observations of the Hon'ble Supreme Court in ***West Bengal Central School Service Commission & Others vs. Abdul Halim & Others***[8] may be noticed:-

*"**32.** However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect."*

11. Examination of the impugned order from that angle does not reveal anything that could persuade this Court to interfere with the same by exercising its power of judicial review under Article 226 of the Constitution of India.

12. The assertion that the D.I.(S.E.) has undertaken an impermissible exercise of taking into account the family pension that was being received by the petitioner's

[8] **(2019) 18 SCC 39**

mother at the material point of time for the purpose of calculating the income of the petitioner's family cannot not be countenanced in the facts of the present case.

13. The "Explanation" to paragraph 1 of the Scheme quoted hereinabove clearly mandates that 40% of the Family Pension for the first seven years shall be taken into account. It is no longer *res integra* that in cases of compassionate appointment, the relevant scheme rules supreme and if the scheme provides for the family pension or any percentage thereof to be taken into account, the same must be followed. In such regard, the observations of the Hon'ble Supreme Court in the case of ***Union of India & Others vs. Amrita Sinha***[9] may be noted:-

> *"**9.** While assessing the rival submissions, it becomes necessary, at the outset, to consider the reasons which weighed with the Tribunal since it is the view of the Tribunal which has been held not to suffer from error by the High Court. Under the policy document, which embodies the Scheme for considering cases for compassionate appointment, points are awarded under diverse heads. The monthly pension which was payable to the respondent was required to be taken into account in the award of merit points. The Tribunal, however, came to the conclusion that pension is paid for past service rendered by the employee and, hence, denial of compassionate appointment on that basis was not justifiable. This reasoning of the Tribunal is fallacious. Undoubtedly, pension is not an act of bounty, but is towards the service which has been rendered by an employee. However, in evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service. Compassionate appointment is not a vested right. It is provided in order to enable a family to tide over a financial crisis caused by the death of its wage earner while in service. If the scheme requires that the family pension must be taken into account in evaluating the merits of an application, it has to be followed."*
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> (Emphasis supplied)

14. The case of ***Govind Prakash Verma*** (supra) cited by the petitioner cannot come to the aid of the petitioner in view of the subsequent pronouncement on the subject by the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh & Another vs. Shashi Kumar***[10] made after considering ***Govind Prakash Verma*** (supra). The following observations of the Hon'ble Supreme Court in ***State of Himachal Pradesh & Another*** (supra) are apposite to the context:-

> *"**20.** In view of the clear terms of the policy, we are of the view that the High Court was in error in issuing a mandamus to the Government to disregard its policy. Such direction could not have been issued by the High Court. The High Court has drawn sustenance in issuing a mandamus in the above terms from a decision of this Court in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] . That was a case of compassionate appointment where in the course of the proceedings before the High Court, a learned Single Judge had directed Life Insurance Corporation, which was the employer of the deceased employee, to make an enquiry and submit a report on*

[9] **(2021) 20 SCC 695**
[10] **(2019) 3 SCC 653**

whether the members of the family engaged in gainful employment were also supporting the family of the deceased employee. This Court, in an appeal against the judgment of the High Court rejecting the petition for compassionate appointment, observed that the officer who had enquired into the matter in pursuance of the order of the learned Single Judge completely omitted to furnish any report on the points which were required by the High Court to be investigated. The High Court rejected the petition on the ground that the family was in receipt of family pension and other amounts towards terminal benefits. Reversing the view of the High Court, a two-Judge Bench of this Court held thus : (Govind Prakash Verma case [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] , SCC p. 291, para 6)

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules."

***21.** The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract : (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , SCC pp. 139-40, para 2)*

"2. … As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz.

relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are 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 expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

22. *Specifically in the context of considering the financial circumstances of the family of the deceased employee, several judgments of this Court have elaborated on the principles to be followed.*

23. *The decision in SBI v. Kunti Tiwary [SBI v. Kunti Tiwary, (2004) 7 SCC 271 : 2004 SCC (L&S) 943] involved an interpretation of an Office Memorandum dated 7-8-1996 circulated to all banks in the light of the decision in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . The Indian Banks Association adopted the directions of this Court in the scheme which was proposed for the appointment of heirs of deceased employees. The scheme contemplated that in order to determine the financial condition of the family, the following amounts would have to be taken into account : (Kunti Tiwary case [SBI v. Kunti Tiwary, (2004) 7 SCC 271 : 2004 SCC (L&S) 943] , SCC p. 273, para 7)*

"7. … (a) Family pension.

(b) Gratuity amount received.

(c) Employee's/Employer's contribution to provident fund.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc."

Eventually, this recommendation was accepted in the scheme. In the light of these recommendations and the scheme, this Court observed that where the family of a deceased employee was not left without means of livelihood, the claim for compassionate appointment could not be sustained. It may be noted that in that case it was on a review of the overall financial position of the family, including amounts received towards terminal benefits that the decision was taken.

24. *The decision of this Court in Punjab National Bank v. Ashwini Kumar Taneja [Punjab National Bank v. Ashwini Kumar Taneja, (2004) 7 SCC 265 : 2004 SCC (L&S) 938] followed the same principle. While reiterating the view which was taken in Kunti Tiwary [SBI v. Kunti Tiwary, (2004) 7 SCC 271 : 2004 SCC (L&S) 943] , this Court held that the scheme specified the amounts which were required to be taken into consideration.*

25. *The decision in SBI v. Somvir Singh [SBI v. Somvir Singh, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] has noticed the scheme for appointment of dependants of deceased employees on compassionate grounds framed by State Bank of India. The Court expressly held that the authorities were not in error in taking account of the terminal benefits, investments and the monthly family income including the family pension paid by the Bank. The view of this Court finds expression in the following extract : (SCC p. 784, para 12)*

"12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of the employee who died in harness are not in penury and without any means of livelihood. The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the

appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land."

(emphasis supplied)

In the view of this Court, the only issue to be considered was whether the claim for compassionate appointment had been considered in accordance with the scheme. The income of the family from all sources was required to be taken into consideration according to the scheme. This having been ignored by the High Court, the appeal filed by the Bank was allowed.

26. *The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.*

27. *In Union of India v. Shashank Goswami [Union of India v. Shashank Goswami, (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , this Court considered a circular issued by the Office of the Comptroller and Auditor General of India in terms of which the total income of the family from all sources, including terminal benefits received, was required to be taken into account. Income limits were specified in the circular for Group 'B', Group 'C' and Group 'D' posts. Taking note of the fact that a family pension has been authorised to the widow of the deceased employee, this Court held that the case of the dependant did not fall within the income limits meant for Group 'C' posts.*

28. *The same principle has been reiterated in another decision of a Bench of two Judges of this Court in SBI v. Surya Narain Tripathi [SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] . While adverting to a submission of the learned counsel based on the decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] , this Court noted thus : (Surya Narain Tripathi case [SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] , SCC p. 741, paras 8-9)*

"8. He relied upon the judgment of this Court in Govind Prakash Verma v. LIC [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] where a view has been taken that the compassionate appointment cannot be refused on the ground that another member of the family had received appropriate employment and the service benefits were adequate. We may humbly state that this view runs counter to the view which was taken earlier in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] which was not cited before the Court in Govind Prakash [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] . The subsequent two judgments which were referred above also take the same view as in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . Mr Vikas Singh has drawn our attention to the judgment in SBI v. Somvir Singh [SBI v. Somvir Singh, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] where the 1998 Scheme has been considered.

9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the breadearner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the

death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent."

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33. *For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] in issuing a direction to the State to act in a manner contrary to the express terms of the scheme which require that the family pension received by the dependants of the deceased employee be taken into account."*

15. The petitioner's contention that the death of the petitioner's mother has led to the natural death of the order impugned cannot be countenanced. The petitioner's application for compassionate appointment was disposed of by an order dated November 07, 2023. The petitioner's mother expired on December 26, 2023. At the relevant point of time the petitioner's mother was alive. The said order cannot get invalidated by an event happening subsequent to the passing thereof.

16. The matter can be looked at from another angle as well. The 2009 Rules which encapsulate the scheme for compassionate appointment provide that a son of the deceased Teacher or non-teaching staff's family who possesses the required educational qualifications, is unemployed, is not below 18 years of age and not above 45 years of age may, ***within two years from the date of such death****, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff on compassionate ground.* The cut- off date for application is therefore two years. The petitioner's father died on May 17, 2018. The order impugned has been found to be in accordance with the scheme. If such an order passed five years after the death of the deceased stood justified in the facts of the present case there can be no reason for upsetting the same taking note of a subsequent event.

17. The scheme of compassionate appointment governing the present case does not make the penury caused by the death of a 'pensioner family member' a ground for consideration for such appointment. The salutary principle of law laid down in the case of ***Kanaya Ram & Others*** (supra) that subsequent events should be considered by Court, is not applicable to the facts of the present case which, being one of compassionate appointment, is governed by its own scheme.

18. The judgment in the case of ***Dr. Gayatri Sen Majumder*** (supra) does not help the petitioner since in the present case the Court has found the order impugned to be perfectly valid.

19. ***Balbir Kaur & Another*** (supra) was rendered in a different factual background. The said judgment was considered by the Hon'ble Supreme Court in the case of ***Central Bank of India vs. Nitin***[11],and it was observed thus in paragraph 17 thereof:-

> *"**17.** In Balbir Kaur (Supra), this Court held on facts that a family benefit scheme assuring monthly payment to the family of a deceased employee was not a substitute for compassionate appointment. The finding was rendered in the context of the applicable circular pertaining to appointment on compassionate grounds."*

(Emphasis supplied)

20. In the instant case, as already indicated hereinabove, the scheme provided in the 2009 Rules has been properly followed. This Court is conscious that death of the pensioner-mother of the petitioner may have led to a further dent in the financial condition of the petitioner's family but in cases like the one at hand the scheme has to be given primacy. The following resounding words of the Hon'ble Supreme Court in the case of ***Umesh Kumar Nagpal vs. State of Haryana***[12] must be kept in mind:-

> *"**2**.....It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute....."*

CONCLUSION:

21. For all the reasons aforesaid, this Court does not find any reason to interfere with the order impugned. WPA 26023 of 2023 stands dismissed. No costs.

22. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

[OM NARAYAN RAI, J.]

[11] **2022 SCC OnLine SC 1873**
[12] **(1994) 4 SCC 138**