

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.9564/2021 (S- RES)

BETWEEN

1. SRI HRUTHIK N.,

2. SMT.D.N.RAJAMMA

... PETITIONERS

(BY SRI ASHWINI O., ADVOCATE (VIDEO
CONFERENCING))

AND

1. THE DEPUTY DIRECTOR OF PUBLIC
INSTRUCTIONS (ADMINISTRATION)
MYSURU DISTRICT,
MYSURU – 570 005.

2. THE BLOCK EDUCATIONAL OFFICER
OF PUBLIC INSTRUCTIONS
SOUTH ZONE, LAKSHMIPURAM
MYSURU DISTRICT,
MYSURU – 570 004.
3. THE STATE OF KARNATAKA
DEPARTMENT OF PRIMARY AND
SECONDARY EDUCATION,
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
VIDHANA SOUDHA,
BENGLAURU – 560 001.
4. THE STATE OF KARNATAKA
DEPARTMENT OF PERSONNEL
AND ADMINISTRATIVE REFORMS,
REPRESENTED BY ITS
PRINCIPAL SECRETARY
VIDHANA SCUDHA,
BENGALURU – 560 001.

... RESPONDENTS

(BY SMT.M.C.NAGASHREE, AGA FOR RESPONDENTS
(VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ENDORSEMENT DATED 23.12.2020 ANNEXURE-A ISSUED TO THE PETITIONERS BY R1; DIRECT THE RESPONDENTS TO APPOINT THE PETITIONER NO.1 TO ANY APPROPRIATE POST IN THE RESPONDENT INSTITUTE OR ANY OF THEIR AFFILIATED INSTITUTIONS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.06.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

Petitioners in this writ petition call in question the endorsement dated 23-12-2020, bearing No.G1/164168/Anukampa/144/2017-18, declining to grant an appointment on compassionate grounds to the 1st petitioner and have sought for consequential direction by issuance of a writ in the nature of *mandamus* directing the respondents to consider the case of the 1st petitioner for an appointment on compassionate grounds *qua* his qualification.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The father of the 1st petitioner and husband of the 2nd petitioner - Sri K. Ningaraju was working as Head Master in the Institute of Education High School,

Kuvempu Nagar at Mysore and on 11-09-2015, he died in harness. On the death of the sole bread winner of the family, the petitioners sought an appointment on compassionate grounds to the 1st petitioner. This having not been considered favourably, the petitioners approached this Court in Writ Petition Nos.39921 and 42771 of 2018. This Court by its order dated 12-12-2018, quashed the endorsement therein, which denied an appointment to the 1st petitioner and directed consideration of representations made on 28-10-2016 and 20-08-2018 and pass appropriate orders in accordance with law within a period of 8 weeks.

3. It is pursuant to the direction issued by this Court, the respondents again turned down the claim of the petitioners for an appointment on compassionate grounds to the 1st petitioner by the impugned endorsement dated 23.12.2020 on the ground that the Karnataka Educational Institutions (Recruitment and

terms and conditions of service of employees in Private Aided Primary and Secondary Educational Institutions) (Amendment) Rules, 2017 (hereinafter referred to as 'the Rules' for short) have come into force with effect from 26-09-2017, in terms of which number of posts of Second Division Assistants to be appointed has been modified and for minimum three sections of VIII, IX and X standards irrespective of total number of sections in a school, it was restricted to one Second Division Assistant. Contending that the Rules have come into force and the claim of the petitioners cannot be considered in the light of the Rules which declare only one post of Second Division Assistant available for three sections, the case of the 1st petitioner cannot be considered for appointment on compassionate grounds. It is this endorsement that is called in question in the subject writ petition.

4. Heard Smt. Ashwini Obulesh, learned counsel for petitioners and Smt. M.C. Nagashree, learned Additional Government Advocate for the respondents.

5. Learned counsel appearing for petitioners would submit that the appointment on compassionate grounds was denied on the basis of a Rule that came about on 26-09-2017 which was long after the death of the bread winner of the family and the application being given by the petitioners for appointment on compassionate grounds.

6. On the other hand, the learned Additional Government Advocate though has not filed statement of objections, submits that her submissions be treated as the objections of Government and would submit that there is no right to the applicants to seek an appointment on compassionate grounds as it can be only in terms of the policy or the Rules as the case would be. Since there was no vacancy existing in the

post of Second Division Assistant in any of the Aided Institutions, the appointment of the 1st petitioner was declined to be considered for the present. It is also submitted that the date of death of the father of the petitioner was on 11.09.2015, 6 years have passed by with the family sustaining without the income of its breadwinner and no appointment on compassionate grounds can be granted at this juncture.

7. I have given my anxious consideration to the rival submissions made by the learned counsel appearing for the parties and have perused the material on record.

8. Consideration of applications for appointment on compassionate grounds in the State is regulated under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 (hereinafter referred to as 'the Rules' for short). Rules 4 and 6

which are germane for consideration of the *lis* are extracted hereunder for the purpose of quick reference:

“4. Conditions of appointment:-

Appointment on compassionate grounds under these Rules shall be subject to the following conditions, namely:-

(1) *The family of the deceased Government Servant should be in a financial crisis or destitution.*

Explanation.- *(a) Family of a deceased Government Servant shall be considered to be in financial crisis or destitution if the recurring monthly income of the family from all sources is less than the total emoluments including Dearness Allowance, House Rent Allowance and City Compensatory Allowance admissible at Bangalore on the average of the minimum and the maximum of the scale of pay of the post of the First Division Assistant, as on the date of making application for compassionate appointment. For calculating such monthly income, the income from family pension, lumpsum pensionary benefits and interest earned thereon shall be excluded.*

(b) Recurring monthly income from all sources other than family pension, lumpsum pensionary benefits and the interest earned thereon, of the family for the purpose of this rule shall be computed by the Head of the Office or the Head of the Department or the appointing authority;

(i) on the basis of the last annual property return filed by the deceased Government Servant and if, for any reason, it is not available, on the basis of a certificate of income issued by a Revenue Officer not below the rank of Tahsildar; and

(ii) in case any member of the family of the deceased Government Servant is employed in any State or Central Government Service or a public or private sector undertaking or a private establishment, on the basis of a certificate issued by his employer and in case such member is self employed on the basis of certificate issued by a revenue officer not below the rank of Tahsildar.

(2) Person seeking appointment shall be within the age limit specified for the post in the relevant rules of recruitment specially made in respect of any service or post read with sub rule (3) of rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977 and where it is not so specified such person shall be within the age limits specified in the Karnataka Civil Services (General Recruitment) Rules, 1977.

(3) Person seeking appointment should possess the minimum qualification specified for the post in the relevant rules of recruitment specially made in respect of any service or post.

Provided that nothing in this sub rule and sub rule (5) of rule 5 of the Karnataka Civil Services (General Recruitment) Rules, 1977 in so far as it relates to educational qualification, shall apply to appointment under these rules to any Group 'D' Post.

(4) Appointment shall be confined to any post in Group "C" or Group "D"

depending upon the qualification specified for the post but excluding the posts carrying the pay scales higher than the scale of pay of the post of Assistant in the Karnataka Government Secretariat as may be revised from time to time and any other post in either of the groups as may be specified by the Government from time to time”.

(5) Appointment shall be made only against a direct recruitment vacancy.

(6) Appointment shall be made in the department in which the deceased Government Servant was working;

Provided that if no vacancy is available in that department subject to any general order that may be issued by the Government appointment maybe made in any other department of the Government where the vacancy is available.

6.Appointment by the Competent Authority:-

(1) On receipt of the application under rule 5, the Head of the Department, if satisfied that the applicant fulfills all the conditions specified under these rules, shall appoint, where he is the appointing authority, and if not direct the appropriate appointing authority to issue the order of appointment.

(2) The appointment under sub-rule (1) shall be made as far as possible within a period of three months from the date of receipt of the application under rule 5.

(3) Consultation with the Finance Department shall not be necessary for appointment under these rules.

(4) Appointment once made under these rules shall be final and no fresh appointment to a different post or higher post under these rules shall be permissible.

(5) The appointment under these rules shall not be made in the case of the dependent of a deceased person who at the

time of death was on re-employment or was employed as Local Candidates, Stipendary Graduate or Daily Wage Worker or employed in any work charged establishment or on casual appointment.”

(Emphasis applied)

In terms of the afore-extracted Rules appointment shall be confined to any post in Group-C or Group-D depending on the qualification specified for the post and appointment once made under these Rules shall be final.

9. The 1st petitioner gave his application seeking appointment on compassionate grounds on 11.09.2015, which came to be rejected on 11.06.2018 after about two years and nine months. The rejection was on the ground that the application given on 11.09.2015 did not contain material particulars or required information and later the application given by the 1st petitioner was beyond the period of one year of date of death. This was

in complete ignorance of representation given by the petitioners on 28.10.2016, which was in furtherance of the application given on 11.09.2015 and the case of the petitioners was turned down by the respondents on the reason that the application was given after one year of the date of death.

10. This was called in question before this Court in W.P.No.39921/2018 & W.P.No.42771/2018. This Court by its order dated 12.12.2018 quashed the memorandum that declined consideration of appointment to the 1st petitioner holding thus:

5. The petitioners have produced copies of numerous official records that constitute the correspondence between the official respondents, the first respondent-management and the petitioners inter se. At one time, the claim for compassionate appointment is declined on the ground that there is no post in which second petitioner can be accommodated, available. Thereafter,

another endorsement has been issued on 07.05.2018 at Annexure - P wherein, it is specifically stated by the BEO that Mr.K.Lingaraju, the Head Master died on 11.09.2015 and that the application for compassionate appointment was made on 28.10.2015. Therefore, the impugned endorsement dated 11.06.2018 for the reasons stated therein, cannot be sustained. The matter requires reconsideration at the hands of the respondent- DDPI.

In view of the above discussion, these Writ Petitions are allowed in part; a Writ of Certiorari issues, quashing the impugned order dated 11.06.2018 issued by respondent No.3 at Annexure - Q; a Writ of Mandamus issues to the respondent Nos.3 and 4 to consider or cause to be considered, the representations of the petitioner dated 28.10.2016 at Annexure - A in the light of Form II containing all the necessary particulars furnished by the fourth respondent - BEO at Annexure - C, within a period of eight weeks.

It is needless to mention that the result of the consideration of petitioners claim for compassionate appointment shall be made known to them, without brooking any delay. It is open to the respondents to seek any information or documents required for due consideration of the petitioners claim for compassionate appointment.”

In terms of the afore-extracted order, the claim of the petitioners was directed to be reconsidered within eight weeks. This was not complied within eight weeks which constrained the petitioners to invoke the contempt jurisdiction of this Court in C.C.C.No.122/2020, during the pendency of which an endorsement dated 23.12.2020 was issued and noticing the fact of such issuance, the contempt proceedings were dropped. It is the challenge to this endorsement that brings in the subject writ petition.

11. The sole ground on which the claim of petitioners is now turned down is that Rules 2017 have reduced the strength of Second Division Assistants in the State to be one Second Division Assistant for three sections irrespective of number of sections in an institution. The amended Rules have come into force only on 26.09.2017. The date of death of the bread winner of the family was on 11.09.2015 and immediately thereafter representation/application was made by the petitioners on 28.10.2015. Therefore, the Rules that were prevailing at the time when the application was made were required to be considered. The view of mine, in this regard, is fortified by the judgment of the Apex Court in the case of **CANARA BANK AND ANOTHER v. M.MAHESH KUMAR**¹ wherein the Apex Court has held as under:

“12. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex gratia payment or the

¹ (2015) 7 SCC 412

Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent.

13. *The appellant Bank has placed reliance upon the judgment of this Court in Jaspal Kaur case [(2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] to contend that the respondent's case cannot be considered on the basis of "Dying in Harness Scheme 1993" when the new 2005 Scheme providing for ex gratia payment had been put in place.*

14. *In Jaspal Kaur case [(2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] , Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash and Accounts) passed away on 1-8-1999. The widow of the employee applied for compassionate appointment in State Bank of India on 5-2-2000. On 7-1-2002, the competent authority of the Bank rejected the application of Jaspal Kaur in view of the Scheme vis-à-vis the financial position of the family. Against that decision of the competent authority, the*

respondent filed writ petition before the Punjab and Haryana High Court which had directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4-8-2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a scheme that was put in place much after the dispute.

15. By perusal of the judgment in Jaspal Kaur case [(2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] , it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

16. The same principle was reiterated by this Court in Bhawani Prasad Sonkar v. Union of India [(2011) 4 SCC 209 : (2011) 1 SCC (L&S) 667] ,

wherein it was held as under: (SCC pp. 213-15, paras 15, 17 & 20)

*“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. **That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an***

exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

17. In *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537], while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2)

'2. ... 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.'

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment *dehors* the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of

course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

(emphasis supplied)

17. *Applying these principles to the case in hand, as discussed earlier, the respondent's father died on 10-10-1998 while he was serving as a clerk in the appellant Bank and the respondent applied timely for compassionate appointment as per the scheme “Dying in Harness Scheme” dated 8-5-1993 which was in force at that time. The appellant Bank rejected the respondent's claim on 30-6-1999 recording that there are no indigent circumstances for providing*

employment to the respondent. Again on 7-11-2001, the appellant Bank sought for particulars in connection with the issue of the respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when Circular No. 154 of 1993 dated 8-5-1993 was in force. Thus, as per the judgment referred in Jaspal Kaur case [(2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] , the claim cannot be decided as per 2005 Scheme providing for ex gratia payment. The Circular dated 14-2-2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per Circular of 1993.”

(Emphasis supplied)

Long before the Apex Court rendered the aforementioned judgment, a Co-ordinate Bench of this Court in the case of **LALITHA LAXMANA KUNDARGI v. MANAGING DIRECTOR, KARNATAKA HANDLOOM**

DEVELOPMENT CORPORATION LIMITED² had held that the Scheme or the Rules on the date of death or applications will have to be considered for appointment on compassionate grounds, the relevant paragraphs read as follows:

“6. When the application was received on 11.8.1995, it ought to have been considered within a reasonable time. It is now well settled that the appointment on compassionate grounds is offered to help the family of the deceased at the time of financial crisis caused on account of the death of breadwinner. In such circumstances, the employer cannot delay the consideration of the application and then contend that the applicant is not entitled for the appointment, on the ground that long after the application, different norms have been prescribed for appointment on compassionate grounds. Instead of considering the application of the petitioner, under office Order dated 12.5.1988, by giving necessary relaxation

²**ILR 1999 KAR 3902**

under Clause 7, the Corporation has chose to postpone consideration on the ground that the Government had issued a Circular dated 8.11.1995, imposing ban on fresh appointment and therefore her application was not considered. Firstly, that is not a ground for not considering applications for compassionate appointment as they do not fall under regular appointments. Secondly, the ban came into force only 8.11.1995, whereas the petitioner made her application on 11.8.1995, long before the ban came into force. Petitioner is not responsible for the delay in considering her application. Hence petitioner cannot be denied the benefit of the scheme dated 12.5.1988, nor can her claim be rejected by applying the scheme dated 3.4.1997 which came into effect nearly 20 months after the application for appointment.

7. *It is next contended that Clause (9) of the office Order dated 3.4.1997 provided that all the applications for appointment on compassionate grounds including those pending on the date of commencement of the*

said scheme (3.4.1997) shall be disposed of in accordance with the said scheme dated 3.4.1997 within a period of three months, that as the petitioner's application was pending on 3.4.1997 when the new scheme came into force, the Corporation was bound to consider the application only on the basis of the new scheme dated 3.4.1997; that the new scheme did not contain any provision for relaxation of either the age limit or the educational qualification; and that therefore petitioner's application was rightly rejected.

8. In interpreting Clause 9 of the scheme, it is necessary to bear in mind, one of the fundamental legal principles; 'NULLUS COMMODOUM CAPERE POTEST DE INJURIA SVA PROPRIA' ('No man can take advantage of his own wrong'). The respondent, which owed a duty to consider the application dated 4.8.1995 of the petitioner, the widow of a deceased employee, for appointment on compassionate grounds under the scheme dated 12.5.1988, did not do so

for more than three years and then on 22.8.1998 rejected the application which ought to have been granted under the scheme dated 12.5.1988 on the untenable ground that by the time the application was considered, a new scheme dated 3.4.1997 with different terms had come into force and under the new scheme, the petitioner's application could not be granted. Respondent is a 'State' within the meaning of Article 12 of the Constitution of India and is required to act fairly and reasonably. It cannot deny appointment to the destitute widow of a deceased employee with a minor child, an appointment in the lowest cadre, on compassionate grounds under the beneficial scheme intended to render a helping hand to such a family member of the deceased employee, be deliberately postponing consideration of the application. The Supreme Court has repeatedly held that in claims for appointment on compassionate grounds, there should not be any delay in appointment, as the purpose of providing such appointment is

to mitigate the hardship due to death of the breadwinner of the family; and such appointment should be provided immediately to redeem the family in distress and it is improper to keep such application pending for years - vide Sushma Gosain v. Union of India [AIR 1989 SC 1976.] , Phoolwati v. Union of India [AIR 1991 SC 469.] and Umesh Kumar Nagpal v. State of Haryana [JT 1994 (3) SC 525.] .

9. Therefore, the proper and equitable way in which Rule 9 of the new scheme dated 3.4.1997 can be interpreted is thus; If the application filed by the dependent family member under the old scheme is pending on the date when the new scheme came into force, on account of any negligence or want of compliance by such applicant, it should be disposed of under the new scheme. If the application was kept pending by the Corporation for no fault of the applicant, but due to delay in consideration by the Corporation and if

the old scheme is more beneficial to the applicant, the applicant is entitled to require the employer to consider such application, in terms of the old scheme which was in force on the date of death and date of application.”

(Emphasis applied)

In the light of the law declared by the Apex Court and a Co- ordinate Bench of this Court, the application given by the petitioners on 11.09.2015 had to be considered *qua* the Rules obtaining at that point in time and not the one that was subsequently notified and now made use of to deny appointment to the 1st petitioner.

12. The Rules, in the case on hand, for consideration of appointment on compassionate grounds has not undergone a change. It is the Rules that restrict appointment of Second Division Assistants in Educational Institutions of Government that have undergone a change. It is on the strength of this, the

learned Additional Government Advocate would submit that the case of the petitioners cannot be considered as there are no vacancies.

13. Though the sub-rule cannot be applied to the case of the petitioners as is held in the afore-extracted judgment, the very submission of vacancies not being available in Educational Institutions is also belied by the information furnished to the petitioners under the Right to Information Act which clearly depicts that two posts of Second Division Assistants are now available in terms of the communication dated 28-12-2020. Therefore, on both the counts, one being the change in the Rules and non-existence of vacancies, on which the impugned endorsement is issued is untenable and is consequently rendered unsustainable. Compassionate Appointment Rules also depict grant of appointment to the applicant on compassionate grounds in Group-C or Group-D owing to the qualification possessed.

14. The submission of the learned Additional Government Advocate that 6 years have passed by after the death of the breadwinner of the family and the need for compassionate appointment now no longer exists on account of delay of 6 years is unacceptable. The delay is not attributable to the petitioners as the application for compassionate appointment was given within two months after the date of death of the father. After submission of the said representation certain documents were directed to be furnished by the petitioners, which took considerable time for the petitioners to apply and get the same. Even then, the petitioners were representing to the authorities for such consideration as observed by this Court in the earlier round of proceedings instituted by the petitioners (*supra*). Even otherwise, it is the form of the application that the respondents had found fault with and not the claim, be that as it may. It is on this erroneous action on the part of the State that the claim is dragged on for

this long. In view of the preceding analysis, the case of the 1st petitioner for appointment on compassionate grounds will have to be re-considered by the State without again driving the petitioners to the Court for redressal of their grievance.

15. This Court in umpteen number of cases, has come across the authorities not considering the applications given seeking appointment on compassionate grounds immediately notwithstanding the need for appointment lying in its immediacy. Keeping the application pending for years or months will defeat the very object of framing the Rule for grant of appointment on compassionate grounds. It is trite that a family which loses its breadwinner would be driven to impecuniosities or become condemned by penury. Therefore, the need for immediate consideration of such representations/applications for appointment on compassionate grounds is paramount.

16. The Rule that enables an applicant file an application for appointment is Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, which reads as follows:

“5. Application for appointment :

*Every dependent of a deceased Government Servant, **seeking appointment under these rules shall make an application within one year from the date of death of the Government servant,** in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased Government servant was working:*

¹[Provided that in the case of a minor he must have attained the age of eighteen years within one year from the date of the death of the Government servant and he must make an application within one year thereafter:]

²[Provided further that nothing in the first proviso shall apply to an application made by the dependent of a deceased

Government Servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998.] “

(Emphasis supplied)

It is the aforesaid Rule which enables consideration of appointment on compassionate grounds and mandates application to be made within one year from the date of death of the Government servant. Sub-Rule (1) and (2) of Rule 6 also mandates that in terms of the applications given the same shall be considered as far as possible within three months from the date of receipt of an application under Rule 5. Sub-Rule (1) and (2) of Rule 6 of the Rules, read as follows:

“6. Appointment by the Competent Authority :-

(1) On receipt of the application under Rule 5, the Head of the Department, if satisfied that the applicant fulfills all the

conditions specified under these rules, shall appoint, where he is the Appointing Authority, and if not direct the appropriate Appointing Authority to issue the order of appointment.

(2) The appointment under sub-rule (1) shall be made as far as possible within a period of three months from the date of receipt of the application under Rule 5.”

(Emphasis supplied)

The afore-extracted Rule mandates that an application made under Rule 5 shall be considered and appointment under Sub- Rule (1) shall be made as far as possible within three months. This has all along remained only on paper and is seldom implemented by the State, most conspicuously seldom in the cases that are brought before the Court. These very Rules bind the applicants to give an application seeking appointment on compassionate grounds within one year from the date of death. If Rule 5 is binding on an applicant, sub-Rule (2) of Rule 6 would become binding on the State as

well. The adage "***what sauce is good for the goose is good for the gander***" in the circumstances is apposite.

17. Therefore, if giving of an application within one year is held to be mandatory and binding on the applicant in terms of Rule 5, so would be sub-Rule (2) of Rule 6 upon the State and its instrumentalities. Though the Rule employs the words 'as far as possible' it is preceded by the word "shall". Looking at the mandatory duty cast upon the applicant to file an application within one year from the date of death of the bread winner, the same duty is required to be mandatorily followed by the State in terms of sub-rule (2) of Rule-6 in the wake of the object of framing the rule and the duty that enjoins such object. Therefore, the Rule that directs appointment shall be made as far as possible within a period of three months cannot but be held to be mandatory. Therefore, the authority empowered to consider applications for compassionate appointment

shall consider and dispose the same within the mandate of sub- Rule (2) of Rule 6 i.e., three months from the date of receipt of the application. Any unreasoned or unjustifiable delay on the part of the Authority competent to consider would make such Authority personally responsible to pay damages to such applicant by way of wages that the applicant would be entitled to, if an appointment had been considered and granted.

18. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned endorsement dated 23-12-2020 (Annexure-A) is quashed.
- (iii) *Mandamus* is issued to the respondents to reconsider the case of the 1st petitioner for appointment on compassionate grounds in terms of sub-rule (4) of Rule 4 of the Rules, bearing in mind the observations made in

the course of this order and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the 1st petitioner would be entitled to monthly salary in lowest post of Group- C till such consideration, to be paid by the authority competent to consider and pass orders as his personal responsibility.

bkp
CT:MJ

**Sd/-
JUDGE**