V. SIVAMURTHY

v.

STATE OF ANDHRA PRADESH AND ORS.

(Civil Appeal No. 4210 of 2003)

AUGUST 12, 2008

[R.V. RAVEENDRAN AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Appointment – Compassionate appointment – Principle relating to – Summarized and re-iterated.

Appointment – Compassionate appointment – For dependant family members of Government servants retiring on medical invalidation – High Court held the compassionate appointment scheme as unconstitutional, being violative of Article 16 of the Constitution – On appeal, held: Compassionate appointment is not restricted to only one contingency of death in harness – For the very reasons for which compassionate appointment to a dependant of a government servant who dies in harness is held to be valid and permissible, compassionate appointments to dependant of a medically invalidated government servant has to be held to be valid and permissible – Compassionate appointiment scheme in question therefore held valid and permissible, more so when stringent safeguards were built into the scheme to prevent its misuse – Constitution of India, 1950 – Art. 16.

Appointment – Compassionate appointment – For dependant family members of Government servants retiring on medical invalidation – Benefit of the compassionate appointment scheme restricted to cases where Government servants retired on medical invalidation, at least five years before attaining age of superannuation – Period of five years of such 'left over service' reckoned from date of issue of the order of

retirement on medical invalidation – Scheme challenged as arbitrary and unreasonable on ground that even when a government servant filed application for retirement on medical invalidation when 'left over period' was more than five years, if there was delay in processing of the application, the 'left over period' may get reduced to less than five years thereby making his dependant ineligible for benefit of compassionate appointment – Consequent plea that period of five years of 'left over service' be reckoned from date of application for retirement on medical invalidation – Held: Compassionate appointment can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme – The fact that on account of certain delays in processing the application, a government servant may lose benefit of the scheme, is no ground to relax the terms of the scheme – A policy is not open to interference merely because the Court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible – Administrative Law – Policy decision – Judicial review – Scope of.

Constitution of India, 1950 – Art. 226 – Writ petitions – Order passed by High Court – Challenge to, on ground that it was decided on a non-issue – On facts, held, not sustainable, since the issue considered and decided by High Court was not wholly unconnected to the subject matter of the writ petitions.

By GO dated 30-7-1980, the State Government formulated a scheme for providing compassionate appointment to dependents (spouse/son/daughter) of Government servants retiring on medical invalidation. By GO dated 4-7-1985, benefit of the scheme was restricted to cases where the Government servants retired on medical invalidation, at least five years before attaining the age of superannuation. To prevent misuse of the scheme, the State Government issued GO dated 9-6-1998, prescribing

suitable safeguards and procedures by constituting Medical Boards, District/State Level Committees to examine and recommend the applications for compassionate appointment on ground of medical invalidation.

Clarification was subsequently issued by Government Memo (GM) dated 25-6-1999, that the period of five years of "left over service" was to be reckoned from the date of issue of orders of retirement on medical invalidation. The clarification led to considerable grievance amongst the government servants who contended that even when a government servant made an application for medical invalidation when the 'left over period' was more than five years, if there was delay on the part of Medical Board and/or the District Level or State Level Committee in processing and making the recommendations, the 'left over period' may get reduced to less than five years thereby making his dependant ineligible for the benefit of compassionate appointment; that when a government servant gave application when the 'left over period of service' was more than five years, he should not be penalized by denial of compassionate appointment to a family member, for reasons of delay on the part of the Medical Board, or District/State Level Committee or the Government, which are beyond his control and therefore the five year period prior to superannuation should be calculated with reference to the date of application for retirement on medical invalidation. The matter came up before the Administrative Tribunal which upheld the contention raised by the government servants and rejected the clarification in GM dated 25-6-1999. Aggrieved, the State Government field several writ petitions. Though the only issue in the writ petitions was whether the 'five years left over service' should be reckoned from the date of application by the government servant or from the date of sanction of retirement by the State Government, the High Court went on to consider the vires of the scheme for compassionate ap-

A pointment on medical invalidation and thereafter held that there could be no appointment on compassionate grounds in cases other than death of a government servant in harness, and any scheme for compassionate appointment on medical invalidation of a government ser-
B vant, was unconstitutional, being violative of Article 16 of the Constitution.

In appeals to this Court, the questions which arose for consideration were (i) whether compassionate appointment of sons/daughters/spouse of government ser-
C vants who retired on medical invalidation was unconstitutional and invalid; (ii) whether the High Court erred in considering and deciding an issue which was not the subject matter of the writ petitions and (iii) whether the clarificatory order dated 25-6-1999 stating that the left over
D period of five years should be reckoned from the date of issue of order of retirement on medical invalidation, was unreasonable and arbitrary.

Allowing the appeals, and also setting aside the or-
E ders of the Tribunal though on different grounds, the Court

HELD:1.1. Article 16 of the Constitution bars discrimination in employment on the ground only of descent. If the service rules or any scheme of government provides
F that whenever a government servant retires from service, one of his dependants should be given employment in his place, or provides that children of government servants will have preference in employment, that would squarely fly in the face of prohibition on the ground of
G descent. Employment should not be hereditary or by succession. But where the policy provides for compassionate appointment in the case of an employee who dies in harness or an employee who is medically invalidated, such a provision is based on a classification which is not only on the ground of descent. The classification is based
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on another condition in addition to descent : that is death of the employee in harness, or medical invalidation of the employee while in service. [Para 7] [1216-D,E,F & G] A

1.2. The principles relating to compassionate appointments may be summarized thus : (a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies. (b) Two well recognized contingencies which are carved out as exceptions to the general rule are: (i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service. (ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner. Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation); (c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies; (d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the cri- B C D E F G H

A sis cannot be permitted to be converted into a boon by seeking employment in Class I or II posts. [Para 9] [1221-C to H; 1222 - A.B.C & D]

1.3. The exceptions to the general rule (that employment should be by open invitation and on merit) by way
B of compassionate appointment is not restricted to only one contingency of death in harness. There can be exceptions in other extreme cases of sudden deprivation of means of livelihood. The assumption by the High Court, that compassionate appointments can be only in death-
C in-harness cases and not in retirement on medical invalidation cases, is not sound. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court observed that death stands on a "higher footing" when com-
D pared to sickness, but what it lost sight of, was the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is
E terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences on his family may be much more serious than the consequences of an employee dying in harness. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage
F of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable addi-
G tional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact far more than the
H consequences of death in harness. Though generally

death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc. [Paras 12, 13] [1225- D & E; 1226-A,B,D,E,F,G,H; 1227-A] A

1.4. Another observation made by the High Court in support of its conclusion was that "while considering the cases of sick employees, the Court cannot lose sight of cases of sick unemployed." What the High Court apparently meant was that if an exception is made for compassionate appointments in the case of an employee medically invalidated, it may account to hostile discrimination, as compassionate appointment is not extended in the case of others who are equally sick but are not employees of the government. But the same logic is applicable to death in harness cases also. It can equally be said that "while considering the cases of death of employees in service, the court cannot lose sight of cases of death of other unemployed poor". Members of the family of a deceased are thrown into penury and hardship not only where the deceased is a government servant, but also where they belong to weaker or poorer sections of the society. In fact in the case of death of government servants, there is at least family pension and terminal benefits. But in the case of death of anyone belonging to poor and weaker sections, there is nothing at all to support their families. The issue as to whether compassionate appointments be therefore stopped even in death in harness case also is complex. Comparison with non-employed is neither logical nor sound. [Para 14] [1227-B,C,D & E] B C D E F

1.5. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to G H

A the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. Though too many exceptions may dilute the efficacy of Article 16 B and make it unworkable, the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to C a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible. [Para 15] [1227-F,G,H; 1228-A & B]

D 1.6. There are of course safeguards to be taken to ensure the scheme is not misused. One is to ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for purposes of compassionate appointment. A government servant should totally cease E to be employable and become a burden on his family, to warrant compassionate appointment to a member of his family. Another is barring compassionate appointments to dependants of an employee who seeks voluntary retirement on medical grounds on the verge of superannuaF tion. In the present case stringent safeguards were in fact built into the scheme on both counts by GMs dated 4.7.1985 and 9.6.1998. [Para 16] [1228-C,D,G & H]

Auditor General of India v. G. Ananta Rajeswara Rao (1994) 1 SCC 192 – distinguished.

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Yogender Pal Singh v. Union of India (1987) 1 SCC 631; *Umesh Kumar Nagpal v. State of Haryana* (1994) 4 SCC 138 and *Haryana State Electricity Board v. Hakim Singh* (1997) 8 SCC 85 – relied on.

H *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh*

(1961) 2 SCR 931; *Director of Education (Secondary) v. Pushpendra Kumar* (1998) 5 SCC 192; *State of Haryana v. Ankur Gupta* (2003) 7 SCC 704; *Food Corporation of India v. Ram Kesh Yadav* (2007) 9 SCC 531; *W.B. State Electricity Board vs. Samir K. Sarkar* (1999) 7 SCC 672 and *Food Corporation of India vs. Ram Kesh Yadav* (2007) 9 SCC 531 – referred to.

2. It is true that the State Government had challenged the orders of the Tribunal only with reference to the interpretation of a provision of an existing scheme, as to the date of commencement of the five year left over period prior to superannuation. But if during hearing, the question about the validity of the scheme was raised and therefore the matter was placed before a Full Bench of the High Court having regard to the importance of the issue, the appellants cannot have any grievance so long as they were heard. In the present case, the issue considered was not wholly unconnected to the subject matter of the writ petitions and consequently the contention that the decision of the High Court should be interfered, on the ground that it was a decision on a non-issue, is liable to be rejected. [Para 18] [1229-E,F,H; 1230-A]

M.Purandara v. Mahadesh S. [2005 (6) SCC 791] and *Som Mittal v. State of Karnataka* [2008 (2) SCALE 717] – referred to.

3. The terms of the scheme in question are clear. The benefit of compassionate appointment is available to a son/daughter/spouse of a government servant who retires from service on medical invalidation five years before attaining the age of superannuation. Under the scheme therefore, the five year cut off period commences from the date of retirement from service on medical invalidation and not from the date of application by the government servant for retirement on medical invalidation. This was also clarified in the G.M dated 25.6.1999 which

A forms part of the scheme. The issue is not what is most advantageous to the government servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the Government servant should be adopted. The B question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference C merely because the court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with D the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a government servant may lose the benefit of the scheme, is no ground to relax the terms of the scheme. If in a particular case, the E processing of an application is deliberately delayed to deny the benefit to the government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to process the application (through medical Board, local/State level F Committee and the government) is reasonable, the government servant cannot contend that relief should be extended, even if the left over period is less than five years. These are matters of policy and courts will not interfere with the terms of a policy, unless it is opposed to any con- G stitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness. [Para 20] [1230-F,G,H; 1231-A,B,C,D,E,F,H; 1232-A]

4. The validity of the compassionate appointment scheme (contained in the GO dated 30.7.1980, 4.7.1985 H and 9.6.1998 as clarified by Memo dated 25.6.1999) pro-

viding that the period of five years of 'left over service' should be reckoned from the date of issue of the order of retirement on medical invalidation and not from the date of application for retirement on medical invalidation is upheld. As the scheme was withdrawn by GM dated 27.4.2002 to give effect to the impugned decision of the High Court, the State Government is at liberty to revive the scheme with or without modifications. [Paras 21, 22] [1232-B,C & D]

Case Law Reference

(1961) 2 SCR 931	**referred to**	**Para 8.1**
(1987) 1 SCC 631	**relied on**	**Para 8.2**
(1994) 4 SCC 138	**relied on**	**Para 8.3**
(1997) 8 SCC 85	**relied on**	**Para 8.4**
(1998) 5 SCC 192	**referred to**	**Para 8.5**
(2003) 7 SCC 704	**referred to**	**Para 8.6**
(2007) 9 SCC 531	**referred to**	**Para 8.7**
(1994) 1 SCC 192	**distinguished**	**Para 10**
(1999) 7 SCC 672	**referred to**	**Para 12**
(2007) 9 SCC 531	**referred to**	**Para 12**
[2005 (6) SCC 791]	**referred to**	**Para 17**
[2008 (2) SCALE 717]	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4210 of 2003

From the final Judgment and Order dated 12.10.2001 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.P. Nos. 12253, 12897 and 12862 of 2001

WITH

C.A. Nos. 4208-4209, 4213 and 4226 of 2003

Dr. K.P. Kylasanatha Pillay, Ch. Leela Sarveswar, Pandey,

A C.S.N. Mohan Rao, Santhanam Krishna, D. Mahesh Babu, Pavan Kumar, G. Ramakrishna Prasad, Suyodhan Byrapaneni and Siddharth Patnaik for the Appellants.

Anoop G. Chaudhary, June Chaudhary, Manoj Saxena, Rajneesh Kumar SIngh, Rahul Shukla, Prabhat Kumar Rai, T.V. B George and D. Bharathi Reddy for the Respondents.

The Judgment of the Court was delivered by

R. V. RAVEENDRAN, J. 1. These appeals by special leave challenge the judgment dated 12.10.2001 of a Full Bench C of Andhra Pradesh High Court holding that there can be no appointment on compassionate grounds in cases other than death of a government servant in harness, and that any scheme for compassionate appointment on medical invalidation of a government servant, is unconstitutional, being violative of Article D 16 of the Constitution of India.

2. By GO dated 30.7.1980, the government of Andhra Pradesh formulated a scheme for providing compassionate appointment to the dependents (spouse/son/daughter) of Government servants who retired on medical invalidation. By a further GO dated 4.7.1985, the benefit of the scheme was restricted to cases where the Government servants retired on medical invalidation, at least five years before attaining the age of superannuation. To prevent misuse of the scheme, the State Government issued GO dated 9.6.1998, prescribing suitable safeguards and procedures by constituting Medical Boards, District/State Level Committees to examine and recommend the applications for compassionate appointment on ground of medical invalidation. It provided that as and when a government G servant sought retirement on medical grounds, the concerned appointing authority should refer the case to the Medical Board; that on receiving the medical opinion, he should refer the matter to the District Level Committee (or the State Level Committee in respect of employees in the Secretariat); and that the

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said Committee would scrutinize the proposals for compassionate appointment in accordance with the guidelines and make its recommendations to the State Government which would take the final decision.

3. The following clarification was issued by Government Memo ('GM' for short) dated 25.6.1999, as to the date with reference to which the five year period prior to superannuation should be reckoned:

> "It is hereby clarified that the benefit of compassionate appointment will be applicable only to those government employees who retire on Medical Invalidation Five (5) years before they attain the age of superannuation. Therefore, the required period of five (5) years of left over service is to be reckoned from the date of issue of orders of retirement on medical invalidation. It is further clarified that in cases where the Government employees do not have five (5) years of service before the employees attain the age of superannuation at the time of considering such cases by the State Level Committee or District Level Committees, the respective Committees after scrutiny of Medical invalidation certificates in those cases may recommend only for retirement of such government employees on medical invalidation as per the certificate issued by the Medical Board."

The said clarification led to considerable grievance. The government servants felt that the clarification was not just. They contended that even when a government servant made an application for medical invalidation when the 'left over period' was more than five years, if there was delay on the part of Medical Board and/or the District Level or State Level Committee in processing and making the recommendations, the 'left over period' may get reduced to less than five years thereby making his dependant ineligible for the benefit of compassionate appointment. For example, if an application for medical invalida-

A tion was made six years prior to the due date of superannuation, but the process of verification by the Medical Board, the process of recommendation by the District/State Level Committee and the process of sanctioning of retirement, took more than one year, and as a consequence the sanction for retire-
B ment is given on a date when the 'left over period of service' is less than five years, for no fault of the government servant, the benefit of compassionate appointment to his dependant family member will be denied. Another example is where the application is made five and half years prior to the due date of super-
C annuation, and the decision of the Medical Board and the recommendations of the District/State Level Committee is given within three months leaving a clear left over period of five years and three months, but the state government takes four months and the actual sanction is given on a date which falls within five
D years before the due date of superannuation, the dependant of the government servant would be denied the benefit of compassionate appointment for no fault of the government servant or his dependant. They contended that when a government servant gave the application when the 'left over period of service'
E was more than five years, he should not be penalized by denial of compassionate appointment to a family member, for reasons of delay on the part of the Medical Board, or District/State Level Committee or the Government, which are beyond his control. They therefore contended that the five year period prior to
F superannuation should be calculated with reference to the date of application for medical invalidation.

4. Many of the government servants and/or their children/ spouses who were denied the benefit of the scheme, on the
G ground that by the date of retirement on medical invalidation, 'the left over period of service' was less than five years, approached the AP Administrative Tribunal. The Tribunal in several cases including the cases of respondents, took the view that the five year period should be calculated with reference to
H the date of application by the government servant for retirement

on medical invalidation and rejected the clarification in the GM dated 25.6.1999. These orders were challenged by the State Government in several writ petitions before the High Court on the ground that its policy decision contained in GM dated 25.6.1999 was not open to interference. The said writ petitions were disposed of by a Full Bench by the impugned order dated 12.10.2001. Though the only issue in the writ petitions was whether the 'five years left over service' should be reckoned from the date of application by the government servant or from the date of sanction of retirement by the state government, the Full Bench neither addressed nor answered that question. On the other hand, it took up for consideration the following question: "whether compassionate appointments on the ground of medical invalidation, were permissible having regard to Article 16 of the Constitution of India?" The Full Bench observed in the course of its judgment that though the question of vires of the scheme was not raised in the writ petitions, it had heard the parties at length on the said question. But the fact was that neither the State Government nor the employees were interested in raising such a question. Nor did they want a decision on such a question. Nevertheless, the Full Bench went into the constitution validity of the policy and held that the policy offering appointment to a dependant on compassionate grounds on medical invalidation of the government servant, did not satisfy the requirements of Article 16. The said judgment is challenged by the government servants or the applicants for compassionate appointment, in these appeals by special leave.

5. We may refer to a development in pursuance of the impugned judgment of the High Court. In view of the declaration by the Full Bench that the scheme for compassionate appointment on medical invalidation was invalid and unconstitutional, the State Government by GM dated 27.4.2002 dispensed with the scheme of compassionate appointments on medical invalidation. By a further GM dated 17.7.2002, the State Government directed that appointments cannot be made even in cases pending as on 12.10.2001.

A 6. On the contentions raised the following questions arise for our consideration:

(i) Whether compassionate appointment of sons/ daughters/spouses of government servants who retire on medical invalidation is unconstitutional and invalid?

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(ii) Whether the High Court could have considered and decided an issue which was not the subject matter of the writ petitions, particularly when neither party had raised it or canvassed it?

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(iii) Whether the Government was justified in issuing clarificatory order dated 25.6.1999 that the left over period of five years should be reckoned from the date of issue of order of retirement on medical invalidation, is unreasonable and arbitrary?

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Re : Question No. (i):

7. Article 16 of the Constitution bars discrimination in employment on the ground only of descent. If the service rules or any scheme of government provides that whenever a government servant retires from service, one of his dependants should be given employment in his place, or provides that children of government servants will have preference in employment, that would squarely fly in the face of prohibition on the ground of descent. Employment should not be hereditary or by succession. But where the policy provides for compassionate appointment in the case of an employee who dies in harness or an employee who is medically invalidated, such a provision is based on a classification which is not *only* on the ground of descent. The classification is based on another condition in addition to descent : that is death of the employee in harness, or medical invalidation of the employee while in service.

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8. This Court had occasion to consider the difference between conferment of a preferential right to appointment to a family member of a government servant, merely on the ground that he

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happens to be a family member, and schemes relating to compassionate appointment of dependant family members of government servants who die while in service or who are incapacitated while in service.

8.1) In *Gazula Dasaratha Rama Rao vs. State of Andhra Pradesh* [1961 (2) SCR 931] dealing with section 6(1) of the Madras hereditary Village-Offices Act, 1895, this Court observed thus :

> "It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Articles 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Article 16 does..... There can be no doubt that Section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Article 16(2) of the Constitution."

8.2) In *Yogender Pal Singh vs. Union of India* [1987 (1) SCC 631], this Court held :

> "While it may be permissible to appoint a person who is the son of a police officer *who dies in service or who is incapacitated while rendering service in the Police Department*, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be children or wards or other

A relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has
B retired from the service..... .....Any preference shown in the matter of public employment *on the ground of descent only has to be declared as unconstitutional....*

[emphasis supplied]

C 8.3) In *Umesh Kumar Nagpal v. State of Haryana* [1994 (4) SCC 138] this Court held :

"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
D 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*
E *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
F 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.
G *The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis....* The posts in class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds."

H (emphasis supplied)

8.4) In *Haryana State Electricity Board v. Hakim Singh* [1997 (8) SCC 85] this Court reiterated the object of compassionate appointments, thus:

> "The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. *However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy.* The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. *This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.*"
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> *[emphasis supplied]*

8.5) In *Director of Education (Secondary) v. Pushpendra Kumar* [1998 (5) SCC 192], this Court considered the nature and object of compassionate appointments, in particular, in case of death in-harness cases :

> "The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. *Such a provision makes a departure from*

A *the general provisions providing for appointment on the post by following a particular procedure. 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.*"

B (emphasis supplied)

8.6) In *State of Haryana v. Ankur Gupta* [2003 (7) SCC 704], this Court observed :

C "As was observed in State of Haryana v. Rani Devi (1996) 5 SCC 308 it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be D upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it E is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.....The appointment on compassionate ground is not another F source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial G crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

8.7) In *Food Corporation of India v. Ram Kesh Yadav* H [2007 (9) SCC 531], this Court observed :

"There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed dehors the policy. In *LIC v. Asha Ramchhandra Ambekar* (1994) 2 SCC 718 this Court stressed the need to examine the terms of the rules/ scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment."

9. The principles relating to compassionate appointments may be summarized thus :

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to

members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.

10. The High Court referred to the various decisions dealing with compassionate appointments and culled out the principles relating to compassionate appointment. Then it referred to the decision of this Court in *Auditor General of India v. G.Ananta Rajeswara Rao* [1994 (1) SCC 192] and inferred therefrom a proposition that there can be no compassionate appointment in cases other than death in harness cases. On that basis, it proceeded to hold that appointments on compassionate grounds on medical invalidation were contrary to the principles underlying Article 16 and therefore, unconstitutional. Firstly, this Court in *Ananta Rajeswara Rao*, nowhere laid down a proposition that compassionate appointment can be only in cases of death in harness and not in cases of medical invalidation or other contingencies. Secondly, the High Court overlooked the fact that the principles underlying Article 16 were violated, not only in cases of compassionate appointments as a consequence of medical invalidation, but also in cases of compas-

sionate appointments as a consequence of death in harness. But both are saved as they are considered to be exceptions to the rule contained in Article 16, carved out to meet special contingences in the interests of justice.

11. In *Ananta Rajeswara Rao* (supra), this Court was considering the validity of a scheme which contemplated appointments on compassionate grounds being made not only in the case of sons and daughters, but also near relatives of a Government servant who died in harness. The scheme further provided that in deserving cases even where there is an earning member in the family, compassionate appointment to another member was permissible. Dealing with the memorandum containing the said scheme, this Court held :

> "A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow *but also to a near relative which was vague or undefined.* A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exceptions must be on constitutionally valid and permissible grounds. *Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning*

A *member in the family to supplement the loss of income* from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable."

[emphasis supplied]

B The observations in *Ananta Rajeswara Rao* (supra) that compassionate appointments should be confined to the son/ daughter or widow of the deceased government employee who dies in harness, was not made in contradistinction from the position relating to compassionate appointments in medical C invalidation cases. In fact, this Court had no occasion to consider the other several contingencies in which compassionate appointments could be made. In particular it did not at all consider whether compassionate appointment could be granted in cases of medical invalidation. Nor did it lay down that only in the D case of government employee dying in harness, compassionate appointment is available. The questions that was considered were : (i) where there is a scheme for compassionate appointment in the case of a government employee dying in harness, whether employment can be offered only to a son/daughE ter/widow or whether it can be offered to any other near relatives of the deceased; and (ii) whether compassionate appointment can be offered even if there is already another earning member in the family of the deceased. It is in that context this Court said that compassionate appointment should be confined F only to a son/daughter/ widow of the deceased government employee who dies in harness and whose family did not have another earning member. When this Court said that compassionate appointment should be restricted only to the son/daughter/wife of a government servant dying in harness, what was G excluded was compassionate appointments of near relatives of the deceased dying in harness as also compassionate appointments to anyone where the family of the employee dying-in-harness had already another earning member. This Court neither considered nor excluded compassionate appointment H on medical invalidation or other grounds, *vis a vis* compassion-

ate appointment in the case of employees dying in harness. A

12. In fact several decisions of this Court make it clear that compassionate appointment is not restricted to death in harness cases only. As noticed above, in *Umesh Kumar Nagpal* (supra) this Court observed that the general rule that appointments in public service should be strictly on the basis of open invitation of applications and merit, is subject to "*some exceptions carved out in the interest of justice and to meet certain contingencies.*" To the same effect are the observations of this Court in *Hakim Singh* (supra) where this Court again said that the rule of appointments to public service is that they should be on merit and through open invitation, but *there are a few exceptions to the said rule which have been evolved to meet certain contingencies*. The use of the words "few exceptions" and "to meet certain contingencies", in the above decisions, make it clear that the exceptions to the general rule (that employment should be by open invitation and on merit) by way of compassionate appointment is not restricted to only one contingency of death in harness. The decisions make it clear that exceptions to the rule, may relate to several contingencies, one of which is employee dying in harness. There can be exceptions in other extreme cases of sudden deprivation of means of livelihood. If the intention was to restrict compassionate appointments only to cases of death in harness, these two decisions would have obviously used the words 'exception' and 'contingency' instead of 'exceptions' and 'contingencies'. Further in *Yogendra Pal Singh* (supra), this Court made it clear that while appointment only on the criterion of descent would be unconstitutional, *appointment of a dependant is permissible both when the government servant dies in service or is incapacitated while rendering service.* We may also notice that this Court dealt with provisions relating to compassionate appointments on medical invalidation in several cases, but did not hold that such appointments were violative of Article 16. Reference may be made to *W.B. State Electricity Board vs. Samir K. Sarkar* – 1999 (7) B C D E F G H

A SCC 672, and *Food Corporation of India vs. Ram Kesh Yadav* – 2007 (9) SCC 531. Be that as it may. The assumption by the High Court, that this Court had held that compassionate appointments can be only in death-in-harness cases and not in retirement on medical invalidation cases, is not sound.

B

13. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is C compassionate appointment in case of medical invalidation cannot be equated with death in harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical invalidation is not as serious as death in harness, exception can be made only in cases D of employees dying in harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the E ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences on his family, may be much more serious than the consequences of an employee dying in harness. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stop- F page of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way G of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact far more than the consequences of death in harness. Though generally death H stands on a higher footing than sickness, it cannot be gainsaid

that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc. A

14. Another observation made by the High Court in support of its conclusion is that "while considering the cases of sick employees, the court cannot lose sight of cases of sick unemployed." What the High Court apparently means is that if an exception is made for compassionate appointments in the case of an employee medically invalidated, it may account to hostile discrimination, as compassionate appointment is not extended in the case others who are equally sick but are not employees of the government. But the same logic is applicable to death in harness cases also. It can equally be said that "while considering the cases of death of employees in service, the court cannot lose sight of cases of death of other unemployed poor". Members of the family of a deceased are thrown into penury and hardship not only where the deceased is a government servant, but also where they belong to weaker or poorer sections of the society. In fact in the case of death of government servants, there is at least family pension and terminal benefits. But in the case of death of anyone belonging to poor and weaker sections, there is nothing at all to support their families. Should compassionate appointments be therefore stopped even in death in harness case also? The issue is complex. Comparison with non-employed is neither logical nor sound. B C D E F

15. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy G H

A of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.

C

16. There are of course safeguards to be taken to ensure the scheme is not misused. One is to ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for purposes of compassionate appointment. A government servant should totally cease to be employable and become a *burden* on his family, to warrant compassionate appointment to a member of his family. Another is barring compassionate appointments to dependants of an employee who seeks voluntary retirement on medical grounds on the verge of superannuation. This Court observed in *Ram Kesh Yadav* (supra) as follows :

> "But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on medical grounds and thereby virtually creating employment by "succession". It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory."

We find that in this case stringent safeguards were in fact built into the scheme on both counts by GMs dated 4.7.1985 and 9.6.1998.

Re : Question No. (ii) :

17. The learned counsel for appellants submitted that rational classification is not prohibited by either Article 14 and 16 and that unless someone is aggrieved by a classification, and challenges it on the ground of hostile discrimination or denial of equal opportunity, there is no occasion for a court to suo motu consider whether a policy relating to an affirmative action is valid or not. Reliance was placed on observations of this Court in *M.Purandara v. Mahadesh S.* [2005 (6) SCC 791] and *Som Mittal v. State of Karnataka* [2008 (2) Scale 717]. In *Purandara*, this Court observed that where an issue was not before the court and none had raised the question, adjudication on such issue is not proper; and that issues in question alone, and not matters at large, could be considered. In *Som Mittal,* this Court observed that while rendering judgments, courts should only deal with the subject matter of the case and the issues involved therein, and courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject matter of the case.

18. We are however of the view that the appellants' grievance is unwarranted. It is true that the State Government had challenged the orders of the Tribunal only with reference to the interpretation of a provision of an existing scheme, as to the date of commencement of the five year left over period prior to superannuation. But if during hearing, the question about the validity of the scheme was raised and therefore the matter was placed before a Full Bench having regard to the importance of the issue, the appellants cannot have any grievance so long as they were heard. We find that the Full Bench has noted the reason as to why the issue was examined thus: "Although the question of vires of the Scheme was not specifically raised in the writ petitions, but having regard to the importance thereof, *the said question was permitted to be raised* by the learned Counsel appearing for the parties. In this regard, we have heard the learned Counsel for the parties in great detail." The issue con-

A sidered was not wholly unconnected to the subject matter of the writ petitions. We therefore reject the contention that the decision of the High Court should be interfered, on the ground that it was a decision on a non-issue.

B *Re : Point No. (iii) :*

19. The 'five year left over period' is capable of being commenced with reference to any one of the following dates : (i) the date of application by the Government servant for medical invalidation; (ii) the date of report of the Medical Board certifying C that the Government servant required to be medically invalidated; (iii) the date of recommendation by the State/District Level Committee in regard to medical invalidation; and (iv) the date of issue of orders of retirement on medical invalidation.

D 20. The contention of the appellants is that once an application is made by a government servant at a point of time when the left over period of service is more than five years, the medical examination by the Medical Board, recommending process by the District/State Level Committees and consideration and E decision by the state government, are not in the hands of the Government servant and therefore neither he nor his dependant should be punished by denying compassionate appointment on account of delays on the part of the authorities. The appellants therefore contend that the eligibility should be deter- F mined with reference to date of application and not with reference to date of sanction. But the terms of the scheme are clear. The benefit of compassionate appointment is available to a son/daughter/spouse of a government servant *who retires from service on medical invalidation five years before attaining the* G *age of superannuation*. Under the scheme therefore, the five year cut off period commences from the date of retirement from service on medical invalidation and not from the date of application by the government servant for retirement on medical invalidation. This was also clarified in the G.M dated 25.6.1999 H which forms part of the scheme. The issue is not what is most

advantageous to the government servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the Government servant should be adopted. The question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference merely because the court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a government servant may lose the benefit of the scheme, is no ground to relax the terms of the scheme. If in a particular case the processing of an application is deliberately delayed to deny the benefit to the government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to process the application (through medical Board, local/State level Committee and the government) is reasonable, the government servant cannot contend that relief should be extended, even if the left over period is less than five years. Let us give an example. If an application for compassionate appointment on the ground of medical invalidation is given five years and one week before the date of superannuation, obviously the Government servant cannot expect the entire process of scrutiny, medication examination, recommendation and consideration at three levels should be completed in one week. He cannot contend that when he had made the application the left over period was more than five years and therefore his dependant is entitled to appointment. As stated above these are matters of policy and courts will not interfere with the terms of a policy, unless it is opposed to any constitu-

A tional or statutory provision or suffers from manifest arbitrariness and unreasonableness.

Conclusion

21. We therefore allow these appeals, set aside the judgB ment of the High Court. We also set aside the orders of the Tribunal though on different grounds. We uphold the validity of the compassionate appointment scheme (contained in the GO dated 30.7.1980, 4.7.1985 and 9.6.1998 as clarified by Memo dated 25.6.1999) providing that the period of five years of 'left C over service' should be reckoned from the date of issue of the order of retirement on medical invalidation and not from the date of application for retirement on medical invalidation.

22. As the scheme was withdrawn by GM dated 27.4.2002 D to give effect to the impugned decision of the High Court, the state government is at liberty to revive the scheme with or without modifications.

B.B.B. Appeals allowed.