Tripura High Court
The State Of Tripura vs Smt. Kamalabati Gour on 16 March, 2022

HIGH COURT OF TRIPURA
AGARTALA

WA No. 228 of 2021

1. The State of Tripura,
Represented by the Secretary to the Govt. of Tripura in the General Administration (Personnel and Training) Department, having his office at New Capital Complex, Lichubagan, P.O. Kunjaban, Agartala, and District-West Tripura.
2. The Under Secretary to the Govt of Tripura,
In the General Administration (Personnel and Training) Department, having his office at New Capital Complex, Lichubagan, P.O. Kunjaban, Agartala, and District-West Tripura.

----- Appellant(s

Versus

Smt. Kamalabati Gour,
Wife of Late Sukha Gour, resident of Durjoynagar, Mohanpur Block, Bamutia, P.O. Airport, Agartala, District-West Tripura.

-----Respondent(s)

WP(C) No. 686 of 2020

Sri Swinton Jamatia,
Son of Late Shyamal Kumar Jamatia, Resident of village-Hadrai, P.S-Teliamura, Khowai Tripura.

----- Petitioner(s)

Versus

1. The State of Tripura,
(To be represented by the Secretary, Directorate of Health Services, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, PIN:799010.
2. The Principal Secretary,
General Administration (Personnel & Training) Department, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S-New Capital Complex, Agartala, West Tripura, PIN:799010
3. The Director,
Directorate of Health Services, O/o the Directorate of Health Services, Govt. of Tripura, PN Complex, Agartala, West Tripura, PIN-799006.
4. The Chief Medical Officer,
O/o the CMO, Govt. of Tripura, Khowai, Tripura
5. The Sub Divisional Medical Officer,
Teliamura Sub Divisional Hospital, Govt. of Tripura, Teliamura, Khowai Tripura.
6. The Sub Divisional Magistrate, Teliamura,
O/O the SDM, Teliamura, Khowai, Tripura

-----Respondent(s)

For Appellant(s) [in WA No.228 of 2021]	:	Mr. D. Sharma, Addl. GA.
For Respondent(s)	:	Mr. T.D. Majumder, Sr. Adv. Mr. S. Roy, Adv. Mr. T. Halam, Adv.
For Petitioner(s) [in WP(C) No.686 of 2020]	:	Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv. Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. D. Sharma, Addl. GA.
Date of Hearing	:	14th February, 2022.
Date of Pronouncement	:	16th March, 2022.
Whether fit for reporting	:	YES

B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

The instant writ appeal arises from the judgment and order dated 08.03.2021 passed by the learned Single Judge in WP(C) No.502 of 2020 whereby the learned Single Judge directed the appellants (respondents in the writ petition) to consider the case of respondent Kamalabati Gour [petitioner in WP(C) No.502 of 2020] for compassionate appointment under die-in-harness scheme within a period of three months from the date of the judgment.

[2] In WP(C) No.686 of 2020, another learned Single Judge of this Court while dwelling on the same issue in similar factual context had taken a different view and referred the matter to the Chief Justice to constitute appropriate bench for resolving the conflicting views. In WP(C) No.686 of 2020, the learned Single Judge has observed as under:

> "[37] However, since I have taken a different view of the matter than that of the view of my learned brother Judge of this Court in the case of Kamalabati Gour(supra) on the same subject in issue, I refer the matter to Honble the Chief Justice of the High

Court of Tripura requesting him for reconciliation of the conflict views by constituting an appropriate Bench."

[3] Therefore, both the matters are taken up together for disposal by a common judgment.

[4] Factual background of the cases are as under:

Facts

in WA No.228 of 2021 Sukha Gour, who was an employee in Group-D in the GA(P & T) Department in the Civil Secretariat, Government of Tripura died on 18.01.2019 at the age of 52 while he was in service. He was survived by his wife Radhamani Gour, two daughters namely Padmabati Gour and Kamalabati Gour (petitioner) and son Subrata Gour. Among them, Padmabati Gour was married and son Subrata Gour was a minor and wife Radhamani Gour was ineligible to apply for job on compassionate ground. Therefore, Kamalabati Gour (petitioner) submitted an application to the Under Secretary, GA(SA) Department in the Civil Secretariat on 21.09.2019 seeking appointment on compassionate ground under the die-in- harness scheme of the State Government. Her application was received in the department on the same day under the seal of the department. Along with her application, she also provided the required particulars of her candidature in a prescribed proforma (Annexure-1 to the writ petition). Under communication No.F.1(13)-GA(SA)/Estt./2015(P)/9111 dated 01.07.2020, the Under Secretary to the GA (SA) Department informed her that since her father expired after attaining the age of 50, her case would be dealt with under the revised policy and she would be entitled to a special pension under the revised die-in-harness policy and no other benefit would be available to her.

[5] Aggrieved thereby, Kamalabati Gour filed WP(C) No.502 of 2020 seeking a direction to the State respondents (appellants herein) to consider her WA No.228 of 2021 WP(C)No.686 of 2020 Page - 4 of 19 case for compassionate appointment under the die-in-harness scheme on the following grounds:

(i) As an eligible dependent family member of her deceased father Sukha Gour, she was entitled to compassionate appointment under die-in-harness scheme which was formulated under notification No.F.1(2)-GA(P&T)/15 dated 26.12.2015 (Annexure-6 to the writ petition).

(ii) The said notification was in force when her father died in-harness on 18.01.2019.

(iii) As an eligible dependent family member of her father, she acquired a vested right to apply for compassionate appointment under die-in- harness scheme and accordingly she applied for such appointment within one year of the death of her father.

(iv) Notification No.F1(1)-GA(P&T)/18 dated 02.03.2019, whereby the State Government revised the die-in-harness scheme of 2015 with retrospective effect would not apply to her case because the said notification was issued after the death of her father and by giving retrospective effect to the said

notification, the State Government cannot deny her right to compassionate appointment which has been acquired by her under the notification of 2015. [6] In their counter affidavit filed in WP(C) No.502 of 2020, the State respondents (appellants herein) asserted that the revised die-in-harness scheme was notified by the State Government on 02.03.2019 with retrospective operation from 21.11.2018 pursuant to a decision of Council of Ministers taken on 21.11.2018. The petitioner (respondent herein) filed her application on 21.09.2019 when the revised die-in-harness scheme was in force. It was asserted by the State respondents (appellants herein) that case of the petitioner (respondent herein) WA No.228 of 2021 WP(C)No.686 of 2020 Page - 5 of 19 would be governed under the revised die-in-harness scheme of 2019 and as such her application for compassionate appointment was rejected and she was given the benefit of pension under the revised scheme which was also communicated to her by the communication dated 01.07.2020.

[7] By the impugned judgment dated 08.03.2021 in WP(C) No.502 of 2020, the learned Single Judge allowed the petition of Smt. Kamalabati Gour viewing that death of her father took place on 18.01.2019 when the previous notification dated 26.12.2015 with regard to die-in-harness scheme was supposed to be in operation. Court held that scrapping of this notification dated 26.12.2015 with retrospective effect from 21.11.2018 by a notification dated 02.03.2019 was inoperative because no executive order could be given retrospective operation. Learned Single Judge held that in the scheme of 2015, it was categorically observed that eligibility of the petitioner would be determined as on the date of death of the Government servant and as such petitioner Kamalabati Gour was eligible in all respect in terms of the notification of 2015. The State respondents (appellants herein) did not indicate any other embargo in considering her case for compassionate appointment. The learned Single Judge, therefore, directed the respondents (appellants herein) to consider her case for compassionate appointment under die-in-harness scheme in terms of the notification dated 26.12.2015.

[8] This decision of the learned Single Judge is in challenge before us in the writ appeal.

[9] Facts in WP(C) No.686 of 2020 Shri Shyamal Kumar Jamatia, who was serving as General Duty Attendant (GDA) at the Health Dispensary in ONGC compound at Baramura under WA No.228 of 2021 WP(C)No.686 of 2020 Page - 6 of 19 the Health Department of the State Government died in-harness on 17.01.2019. He was survived by his wife Biswa Rani Jamatia, 34 years old married daughter Mariam Jamatia and 27 years old son Swinton Jamatia (petitioner). Therefore, as an eligible dependent family member of the deceased Government servant, Swinton Jamatia submitted an application to the Chief Medical Officer on 02.06.2020 seeking appointment on compassionate ground under die-in-harness scheme due to the death of his father in-harness. The Chief Medical Officer by his letter dated 02.06.2020 forwarded his application to the Director of Health Services, Government of Tripura (Annexure-3 to the writ petition). Thereafter, the Director of Health Services, Government of Tripura under his communication No.F.2(1050)-MS/Estt-III/84 dated 03.09.2020 (Annexure-6 to the writ petition) informed the Sub-Divisional Medical Officer, Teliamura under whom the deceased Government servant was working at the time of his death that petitioner Swinton Jamatia, son of the deceased was entitled to avail the benefit of special pension under Support Category-I under the revised die-in-harness scheme dated 02.03.2019 and the Sub-Divisional Medical Officer was asked to inform the petitioner accordingly. Copy of the said

written communication was also given to the petitioner.

[10] Aggrieved thereby, the petitioner filed WP(C) No.686 of 2020 seeking direction to the State respondents to consider his case for compassionate appointment under die-in-harness scheme mainly on the following grounds:

(i) His father was a government employee who died in-harness leaving behind the petitioner, a married daughter and wife. As a dependent family member, petitioner was eligible in all respect for compassionate appointment. But the State Government most arbitrarily and illegally denied the benefit to him. WA No.228 of 2021 WP(C)No.686 of 2020 Page - 7 of 19

(ii) The die-in-harness scheme dated 26.12.2015 was in force on 17.01.2019 when his father died in-harness. Said notification dated 26.12.2015 was superseded with retrospective effect from 21.11.2018 by a subsequent notification dated 02.03.2019 which was completely illegal because the petitioner already acquired a right to compassionate appointment under the previous notification. Therefore, subsequent notification dated 02.03.2019 with retrospective operation was mala fide.

(iii) Since he was eligible for compassionate appointment on the date of death of his father, the respondents should have provided compassionate appointment to him in terms of the scheme dated 26.12.2015. [11] The State respondents filed counter affidavit contending that deceased was 55 years old at the time of his death and therefore the petitioner was entitled to special pension in lieu of appointment under the revised die-in- harness policy dated 02.03.2019 which was given retrospective operation w.e.f. 21.11.2018. On the date of death of the father of the petitioner, new (revised) die-in-harness scheme was in operation and as such the petitioner cannot claim benefit of compassionate appointment under the scheme dated 26.12.2015 which was superseded by the State Government by the revised scheme dated 02.03.2019. It was further asserted by the State respondents that the decision of the State Government was communicated to the petitioner by the Director of Health Services, Government of Tripura under his communication dated 03.09.2020.

[12] In the course of hearing, counsel of the petitioner in WP(C) No.686 of 2020 relied on the judgment rendered by the Single Judge of this Court in Kamalabati Gour (Supra) and submitted before the Court that same facts WA No.228 of 2021 WP(C)No.686 of 2020 Page - 8 of 19 and issues were considered in the case of Kamalabati Gour (Supra) and therefore the petitioner would be entitled to same benefit. The learned Single Judge in WP(C) No.686 of 2020 discussed the judgments which were relied on by the counsel of the parties in the case of Kamalabati Gour (Supra) and on appreciation of arguments and the facts and circumstances of the case held that there was no wrong in giving retrospective effect to the revised scheme dated 02.03.2019 and as such the learned Single Judge viewed that case of the petitioner would be governed under the revised scheme dated 02.03.2019. Since the learned Single Judge differed with the judgment of a coordinate bench rendered in WP(C) No.502 of 2020, the matter was referred to the Chief Justice for constituting appropriate bench for reconciliation of the conflicting views. [13] We have heard Mr. D. Sharma, learned Addl. GA appearing for the appellants in WA No.228 of 2021. Also heard Mr. T.D. Majumder, learned Senior Advocate appearing along with Mr. K. Debbarma, advocate for the respondents in the writ appeal.

[14] We have also heard Mr. P Roy Barman, learned senior advocate appearing for the petitioner along with Mr. S. Bhattacharjee, learned advocate in WP(C) No.686 of 2020. Mr. D. Sharma, learned Addl. GA represents the State respondents in case No. WP(C) No.686 of 2020.

[15] Similar points have been raised by the counsel appearing for the respondent in WA No.228 of 2021 and petitioner in WP(C) No.686 of 2020. Counsel contend that in both the cases the petitioners were eligible dependent family members of the deceased Government employee who died in-harness when the previous die-in-harness scheme of 26.12.2015 was supposed to be in operation. It is contended that in both the cases the petitioners submitted their WA No.228 of 2021 WP(C)No.686 of 2020 Page - 9 of 19 applications seeking compassionate appointment within the time prescribed under that scheme. Counsel contend that under the scheme of 2015, they were entitled to compassionate appointment. Therefore, their right to compassionate appointment accrued under the old scheme. To defeat their claim, the State Government with a mala fide intention repealed the scheme of 2015 by introducing the revised scheme of 2019 with retrospective effect from 02.03.2019 which was illegal, arbitrary and violative of the right to equality guaranteed under the Constitution. Counsel contend that the ratio decided by the learned Single Judge in Kamalabati Gour (Supra) derives support from a catena of decisions of the Apex Court and therefore it does not call for any interference in appeal. Counsel further contend that facts and law involved in WP(C) No.686 of 2020 being identical, the case is squarely covered under the decision of Kamalabati Gour (Supra). Counsel, therefore, contend that the writ appeal preferred by the State should be dismissed and the reference made by the learned Single Judge should be resolved in terms of the decision rendered by this Court in Kamalabati Gour (Supra). Counsel have relied on the same judgments which were referred before the learned Single Judge.

[16] Appearing for the State, Mr. D. Sharma, learned Addl. GA contends that law has been correctly interpreted in WP(C)No.686 of 2020. The State is not precluded from giving retrospective operation to administrative orders or executive instructions if the circumstances so demand. Learned Addl. GA contends that in both the cases, the Government servants died during operation of the revised scheme. They also filed their applications for compassionate appointment after the revised scheme was introduced. Therefore, the petitioners would be entitled only to the benefits provided under the revised scheme of 2019. WA No.228 of 2021 WP(C)No.686 of 2020 Page - 10 of 19 Counsel, therefore, urges the Court to allow the writ appeal and uphold the judgment rendered by learned Single Judge in WP(C) No.686 of 2020. [17] By the impugned judgment in WP(C)No.502 of 2020 against which the writ appeal has been preferred, the learned Single Judge held that the Apex Court in State Bank of India & Ors. v. Jaspal Kaur, reported in (2007) 9 SCC 571 observed that no executive order can be given retrospective operation and the ratio was followed by the Apex Court in the subsequent decision in State Bank of India & Anr. v. Raj Kumar, reported in (2010) 11 SCC 661. The learned Single Judge, therefore, held that notification dated 02.03.2019 cannot be given retrospective operation from 21.11.2018 because whatever right has arisen in favour of the petitioner under the old scheme that arose on 18.01.2019 on which his father died in-harness. Learned Single Judge was of the view that since in the notification of 2015 it was categorically stated that eligibility in all respects would be determined as on the date of the death of the concerned employee, right of the petitioner to compassionate appointment emerged under the old scheme of 2015 which cannot be taken away by the revised scheme by retrospective repeal of 2015 scheme w.e.f. 21.11.2018.

Observing thus, the learned Single Judge issued direction to the State to consider the case of the petitioner for compassionate appointment. It would be appropriate to reproduce the relevant paragraph from the said judgment of the learned Single Judge which is as under:

> "17. The solitary question which is of paramount importance to the controversy is that whether the provision repealing the former scheme of 2015 w.e.f. 21.11.2018 can be sustained or not? By the subsequent decision of the apex court in Raj Kumar (supra) it has been quite categorically stated apparently, following the law as enunciated in Jaspal Kaur (supra) that no executive order can be given retrospective operation. As such, in the considered view WA No.228 of 2021 WP(C)No.686 of 2020 Page - 11 of 19 of this Court even though the said notification dated 02.03.2019 has not been challenged by the petitioner, the said notification cannot be given retrospective operation, from 21.11.2018 inasmuch as, whatever right has arisen in favour of the petitioner that arose on 18.01.2019 from the death of Sukha Gaur, her father. In the Scheme of 2015 it has been categorically observed that eligibility in all respects shall be determined as on the date of the death of the concerned employee. The respondents have not indicated to any other embargo in considering the petitioner for compassionate appointment for death of her father. Those rights in favour of the petitioner emerged prior to 02.03.2019, the day of notification of the new scheme as referred above. Those rights cannot be taken away by retrospective repeal w.e.f. 21.11.2018, in view of the law as espoused by the apex court. Hence, this Court is inclined to direct the respondents to consider the case of the petitioner for compassionate appointment under the die-in-harness scheme as notified on 26.12.2015 (Annexure-6 to the writ petition) within a period of three months from the day, when a copy of this order will be made available by the petitioner....."

[18] Taking a different view in WP(C) No.686 of 2020, the learned Single Judge held that since compassionate appointment under die-in-harness scheme does not create any vested right on the successor of the deceased Government employee, it should be considered only within the framework of the scheme or the policy decision taken by the State Government and therefore, the Government may at its discretion amend such scheme with retrospective operation and moreover the application shall be considered under the scheme which is in force at the time of consideration of such application and not under the scheme which existed on the date of death of the Government employee. The learned Single Judge came to this conclusion after considering the judgments rendered by the Apex Court in the case of N. C. Santhosh v. State of Karnataka and Ors., reported in (2020) 7 SCC 617, Canara Bank & Anr. v. M. Mahesh Kumar, reported in (2015) 7 SCC 412, MGB Gramin Bank v. Chakrawarti Singh, reported in (2014) 13 SCC 583 and Raj Kumar (Supra). WA No.228 of 2021 WP(C)No.686 of 2020 Page - 12 of 19 The relevant extract of the judgment of the learned Single Judge is reproduced hereunder:

> "[31] After considering the decision of the larger Bench of the Apex Court in N.C. Santhosh, I can safely hold that the view taken by Division Bench of the Apex Court in Mahesh Kumar (supra) has been reconciled with the contrary view of the

> coordinate Bench in the cases of Raj Kumar (supra) and Chakrawarti (supra). Thus, the case of Mahesh Kumar (supra) has been diluted by the larger Bench of the Apex Court. [32] What has been culled out from the above discussions, in my opinion, the scheme for compassionate appointment does not give or create any vested rights upon any successors or dependents of a Government employee, and it is a right to be considered within the framework of the scheme or policy decision of the Government. Since there is no vested right for claiming compassionate appointment, the Government may at its discretion make a scheme on the subject giving its effect from an anterior date i.e. retrospectively. Furthermore, the application of the dependents/applicants shall be considered on the basis of the scheme or policy decision prevalent on the date of consideration of such application, and not the scheme existed on the date of death of the government employee.
>
> (emphasis supplied) [33] Another interesting feature, I have noticed in the Scheme of 2019 that, though the notification was issued on 02.03.2019, but its enforcement was given w.e.f. 21.11.2018 for the reason that the decision in regard to the Scheme of 2019 was taken in the meeting of the Council of Ministers on 21.11.2018 as it is emanated in the body of the scheme itself. Taking note of this, I find reasonable nexus and rationale in fixing the cut-off date of the applicability of the Scheme of 2019. Furthermore, the Scheme of 2019 was notified in the name of the Governor, which is not under challenge.

[34] In the case in hand, the Government employee i.e. the father of the petitioner died on 17.01.2019 and the application of the petitioner for providing him a suitable job under Compassionate Appointment Scheme was considered on 21.08.2020 i.e. after the introduction of the Scheme of 2019 w.e.f. 21.11.2018. As such, on the date of consideration of the application of the petitioner, the Scheme of 2019 was already in force, and the case of the petitioner, in my opinion, was covered within the parameters of the said Scheme of 2019, since the petitioner did not acquire any vested or accrued right to get appointed under the terms of the Scheme of 2015. On the date of consideration of the eligibility of WA No.228 of 2021 WP(C)No.686 of 2020 Page - 13 of 19 the petitioner for compassionate appointment the effective date of the Scheme of 2019 already came into force w.e.f. 21.11.2018, as the Scheme of 2015 was expressly repealed from the said date by operation of the subsequent Scheme of 2019.

[35] Situation would have been otherwise, if the case of the petitioner was considered on a date when the Scheme of 2015 was existed, or the petitioner was already appointed under Scheme of 2015. In the considered view of this Court, in that eventuality, the petitioner would have acquired a vested right and the right thus accrued under the Scheme of 2015 could not be taken away by retrospective operation of the subsequent scheme. [36] In my ultimate analysis and for the above reasons, I do not find any infirmity or irrationality in the Scheme of 2019 giving its effect from an anterior dated i.e. 21.11.2018 prior to the date of its notification on 02.03.2020 i.e. the date of policy decision regarding the Scheme of 2019.

[37] However, since I have taken a different view of the matter than that of the view of my learned brother Judge of this Court in the case of Kamalabati Gour(supra) on the same subject in issue, I refer the matter to Honble the Chief Justice of the High Court of Tripura requesting him for reconciliation of the conflicting views by constituting an appropriate Bench."

[19] In view of the above, three pertinent questions which arise for our consideration are as follows:

(i) Whether right to compassionate appointment under die-in-harness policy is a vested right.

(ii) Whether the revised notification dated 02.03.2019 superseding the die-in-harness scheme of 2015 with retrospective operation from 21.11.2018 is valid.

(iii) Whether the norms prevailing on the date of death of the deceased employee or the norms prevailing on the date of consideration of the application would apply for considering a claim under die-in-harness policy. [20] Undisputedly, the die-in-harness scheme of 2015 stands superseded by the revised scheme which has been notified on 02.03.2019 with WA No.228 of 2021 WP(C)No.686 of 2020 Page - 14 of 19 retrospective operation from 21.11.2018 to provide special pension in lieu of compassionate appointment to the successor of the deceased Government employee who dies in-harness after obtaining 50 years of age and above. It is a settled proposition of law that compassionate appointment cannot be treated as a vested right. Dwelling on the question of vested right, the Apex Court in the case of MGB Gramin Bank v. Chakrawarti Singh (Supra) held that vested right is a right independent of any contingency and it cannot be taken away without the consent of the person concerned. Vested right can arise from contract, statute or by operation of law.

(Italics supplied) [21] In this context, we may also usefully refer to paragraph 15 of the said judgment which is as under:

> "15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme....."

[22] Similarly, in Indian Bank & Ors. vs. Promila & Anr. reported in (2020) 2 SCC 729, the Apex Court viewed that compassionate appointment is not an alternative method of public appointment. Such benefit can be claimed only in terms of the relevant scheme. It is, therefore, clear that one cannot claim compassionate appointment as a vested right. The dependent family member of a deceased employee can only demand consideration of his/her application for the benefit accruing from a scheme framed in this regard. [23] With regard to the validity of the revised scheme of 2019 with retrospective operation, the learned Single Judge in the impugned judgment in WA No.228 of 2021 WP(C)No.686 of 2020 Page - 15 of 19 WP(C) No.502 of 2020 in paragraph 17 has held that in view of the law enunciated in Jaspal Kaur (Supra) followed by Raj Kumar (Supra), no executive order can be given retrospective operation. Learned Single Judge, therefore, held that the revised

notification dated 02.03.2019 cannot be given retrospective operation from 21.11.2018 inasmuch as the right of the petitioner for compassionate appointment arose on the date of death of her father on 18.01.2019.

[24] We have gone through the judgments rendered by the Apex Court in the case of Jaspal Kaur (Supra) as well as in the case of Raj Kumar (Supra). In State Bank of India & Ors. vs. Jaspal Kaur (Supra), the Apex Court dwelt on a completely different issue in a different context. It appears from the context of the case that Shri Sukhbir Inder Singh, a record assistant in the cash and accounts section of the bank died on 01.08.1999. His widow applied for compassionate appointment on 05.02.2000. The appellant bank declined compassionate appointment to her after taking into consideration the financial condition of the family in terms of the prevailing scheme. High Court interfered with the order and by substituting its view with the findings of the appellant bank held that the family income of the applicant widow was not sufficient for the bare maintenance of the family. The Apex Court allowed the appeal filed by the bank and set aside the order of the High Court viewing that a major criterion for compassionate appointment should be the financial condition of the family left by the deceased and unless the financial condition is found to be penurious, such appointment cannot be made. The Apex Court viewed that the applicant widow was already paid sufficient terminal benefits from the appellant bank owing to the death of her husband and the competent fact finding authority on the basis of the WA No.228 of 2021 WP(C)No.686 of 2020 Page - 16 of 19 financial details had arrived at the conclusion that the financial condition of the family was not penurious and therefore she was declined compassionate appointment. In this context of the case, the Apex Court did not feel it necessary to interfere with the order of the appellant bank.

[25] Similarly, in the case of State Bank of India & Anr. vs. Raj Kumar (Supra), the context of the case as well as the law enunciated by the Apex Court is also completely distinguishable. The employee who died was a messenger in the appellant bank. He died on 01.10.2004. Wife of the deceased made an application on 06.06.2005 followed by another application dated 14.06.2005 seeking compassionate appointment for her son Raj Kumar. During processing of the applications, the scheme for compassionate appointment was substituted by the "SBI Scheme for payment of ex gratia lump sum amount" with prospective effect from 04.08.2005. Since the old scheme was abolished and new scheme came into force, the appellant bank advised the family of the deceased to make fresh application under the new scheme for ex gratia payment. Aggrieved respondent filed a petition before the High Court. The High Court in single bench directed the State Bank to reconsider the applications of Raj Kumar since he applied under the old scheme and the new scheme was given prospective operation. Order was affirmed by the High Court in Division Bench. Challenging the order of the High Court, the appellant bank brought the matter before the Apex Court. The Apex Court held that as the applicant under the scheme had no vested right, the scheme that was in force when the application was actually considered and not the scheme which was in force earlier when the application was made would be applicable. Moreover, the new scheme specifically provided that all pending applications would be considered in terms of the new scheme. WA No.228 of 2021 WP(C)No.686 of 2020 Page - 17 of 19 Therefore, the new scheme would apply in the case. The Apex Court further held that as compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial

capacity and availability of posts. Finally, the Apex Court allowed the appeal of the bank in part setting aside the order of the learned Single Judge as well as of the Division Bench of the High Court directing the respondent to file fresh application under the new scheme and the appellant bank was also directed to process such application under the new scheme if and when made and pay the benefits in terms of the new scheme to the respondent. [26] In view of the above, we are unable to agree with the findings of the learned Single Judge in WP(C) No.502 of 2020 (Smt. Kamalabati Gour vs. The State of Tripura & Anr.) that the Apex Court in Raj Kumar (Supra) quiet categorically stated apparently following the law enunciated in Jaspal Kaur (Supra) that no executive order can be given retrospective operation.(Italics supplied). We are of the view that the State Government is entitled to modify or change its die-in-harness scheme even with retrospective effect at any time depending upon its financial capacity, availability of posts and changes in policy. It cannot be held as general rule that an administrative order/circular cannot be given retrospective effect. Their retrospectivity can be challenged if in any case a tangible benefit already granted or availed of is recalled by retrospective operation of such order or circular. As discussed, the die-in-harness scheme does not create any right of appointment. Even under the old scheme, eligible defendant family member of the deceased employee was only entitled to apply for consideration of his/her appointment depending on various factors like financial condition of the family and fulfilment of the various other eligibility criteria as per the scheme. Said WA No.228 of 2021 WP(C)No.686 of 2020 Page - 18 of 19 scheme stood replaced by a new policy dated 02.03.2019 which provided pension in lieu of compassionate appointment for the dependent family members of those who died in-harness after attaining 50 years of age and above. The said scheme has been given retrospective operation by an express provision. Moreover, it does not affect any benefit already given to the petitioners or availed of by them. There is, therefore, no ground to challenge its retrospectivity. [27] The next question which arose for our consideration was whether the application would be considered under the norms prevailing on the date of death or under the norms prevailing at the time of consideration of the application. Such issue was dealt with by a larger bench of the Apex Court in N.C. Santhosh vs. State of Karnataka & Ors. (Supra) wherein the Apex Court held that norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. Observation of the Apex Court is as under:

> "19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

[28] In the given context, as noted, the petitioners father in WP(C) No.502 of 2020 died on 18.01.2019. Petitioner Kamalabati Gour filed her application seeking compassionate appointment on 21.09.2019. The revised policy was notified on prior date on 02.03.2019 with retrospective effect from 21.11.2018. Similarly, in WP(C) No.686 of 2020, petitioners father died on WA No.228 of 2021 WP(C)No.686 of 2020 Page - 19 of 19 17.01.2019 and application for compassionate appointment

was filed by the petitioner on 02.06.2020. The revised scheme, as stated above, was notified on a prior date on 02.03.2019 with retrospective effect from 21.11.2018. It is thus obvious that in both the cases, the petitions were filed and considered after the revised scheme came into operation. Situated thus, the respondent in WA No.228 of 2021 as well as the petitioner in WP(C) No.686 of 2020 are not entitled to be considered for compassionate appointment under the old scheme. Both of them are entitled to be considered for the benefits available to them under the revised scheme dated 02.03.2019.

[29] For the forgoing reasons, the judgment of the learned Single Judge in WP(C) No.502 of 2020 is set aside and resultantly WA No.228 of 2021 stands allowed and the reference made by the learned Single Judge in WP(C) No.686 of 2020 is answered accordingly in view of our decision rendered in WA No.228 of 2021.

[30] In terms of the above, the matters stand disposed of. Pending application(s), if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J (INDRAJIT MAHANTY), CJ

Rudradeep

WA No.228 of 2021
WP(C)No.686 of 2020