

A. F. R.

"Reserved"

Case :- SPECIAL APPEAL No. - 1343 of 2011

Petitioner :- Km. Shehnaj Begum

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Manish Kumar Nigam, Pawan Kumar Srivastava

Respondent Counsel :- C.S.C., Dr. Y. K. Srivastava, S.C

CONNECTED WITH

Case :- SPECIAL APPEAL No. - 1401 of 2011

Petitioner :- State Of U.P. Thru' Spl. Secry., Rajaswa Anubhag And
Others

Respondent :- Hodil Singh

Petitioner Counsel :- M.S. Pipersenia, Dr. Y. K. Srivastava, S.C.

Respondent Counsel :- K.M. Singh

Hon'ble Laxmi Kanta Mohapatra, J.

Hon'ble Krishna Murari, J.

Hon'ble Mrs. Sunita Agarwal, J.

(Delivered by Hon'ble Krishna Murari, J.)

Noticing conflict in the view taken by two coordinate Benches in the case of *State of U. P. & others Vs. Rajendra Kumar 2000 (1) AWC – 155* and *Basic Shiksha Adhikari, Hardoi Vs. Madhu Mishra and others 2009 (27), Lucknow Civil Decision- 995*, a third coordinate Bench has referred the following question for decision by a Larger Bench:

"Whether the definition of 'family' in rule 2 (c) of U. P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974 is inclusive or exhaustive."

U. P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974 (herein after referred as 1974 Rules) has been framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India providing for recruitment of dependants of deceased Government Servant to public services and posts in connection with the affairs of the State of U. P. except the post, which are within the purview of the U. P. Public Service Commission, in relaxation of the normal rules of recruitment applicable to such public services and posts.. The appointment made under the provisions of 1974 Rules in common parlance is known as appointment on compassionate ground.

In accordance with rule 5 of 1974 Rules, a member of the family of the Government servant dying-in-harness can be given suitable appointment in Government service on a post which is outside the purview of the U. P. Public Service Commission in relaxation of the normal recruitment rules subject to the condition that spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government and he fulfils the educational qualification prescribed for the post and is otherwise qualified for Government service. Consideration for such appointment is subject to an application being made in this regard within five years from the date of death of the Government servant though State Government is vested with the power to relax time limit on being satisfied that such time limit causes undue hardship in any particular case. The word 'family' used in rule 5 has been defined in Rule 2 (c). At the time of incorporation of the Rules 1974 only wife or husband, sons, unmarried and widowed daughters were included in the definition of family. The definition has been subject matter of amendment from time to time and the definition as it stands now is quoted here under:

“(c) “family” shall include the following relations of the deceased Government servant;

- (i) wife or husband;
- (ii) sons/adopted sons;
- (iii) unmarried daughters, unmarried adopted daughters, widowed

daughters and widowed daughters-in-law

- (iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;
- (v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court; provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include grandsons and the unmarried grand daughters of the deceased Government servant dependent on him."

Thus, the members of the family of a deceased Government servant who can be considered for granting compassionate appointment have been specified in the rules. Apart from other conditions enumerated in the rules for consideration of compassionate appointment, such member of the family should also be a dependent on the deceased Government servant.

A Division Bench of this Court in the case of *State of U. P. & others Vs. Rajendra Kumar (supra)* while considering the claim of a grandson of the deceased Government servant, even though grandson was not included in the definition of the family as it then stood, held that definition was inclusive and a grand son is entitled to be extended the benefit of the Rules.

However, another Division Bench in the case of *Basic Shiksha Adhikari, Hardoi Vs. Madhu Mishra (supra)* while considering the case of a widowed daughter-in-law for being considered for compassionate appointment held that inclusive definition is often used in the definition clause in order to enlarge the meaning of the word but the said principle does not contemplate inclusion of such persons who have no nexus with description of relations mentioned in the Rules, and adding widowed daughter-in-law would mean holding something in the Rule which the Rule making authority did not intend to include. Though the Bench did not categorically observed that definition is exhaustive but in effect meant the

same. It is relevant to point out that when the aforesaid decision was rendered in April, 2009 widowed daughter-in-law was not included in the definition of family. It was subsequently added by way of 9th amendment Rules 2011 notified vide Gazette Notification dated 22.12.2011.

This conflict was taken note of by another Division Bench in Special Appeal No. 1026 of 2003, U. P. Power Corporation Vs. Smt. Urmila Devi. In this case claim of widowed daughter-in-law for compassionate appointment was allowed by a learned single Judge holding that widowed daughter-in-law though not included but nevertheless fall within the definition of the family. U. P. Power Corporation went up in special appeal. Division Bench hearing the special appeal, noticing conflict in decisions referred the matter for decision by a larger Bench by making following observation :

“In a similar way, in the present context, it is our opinion that the word 'include', although usually prefixing an illustrative category, here prefixes an exclusive one. As such, the matter is referred to the Hon'ble Chief Justice for constitution of a larger Bench.....”

Full Bench constituted for the purpose finding that decision of learned single Judge in the case of *Smt. Urmila Devi Vs. U. P. Power Corporation and others, 2003 (4) AWC 3205* having been over ruled in the case of *Basic Shiksha Adhikari Vs. Madhu Mishra (supra)*, no longer subsists held that reference was not maintainable.

The conflict in the ratio of the decisions in the case of *Rajendra Kumar (supra)* and *Madhu Mishra (supra)* by coordinate Benches thus remained unresolved and was again noted by another Division Bench which referred the question again for decision by a larger Bench and that is how the reference is before us.

Though we are required only to answer the reference but the same cannot be done in abstract therefore, it becomes necessary to refer to the relevant facts of the case.

Facts of Special Appeal No. 1343 of 2011

Father of the appellant-petitioner who was holding a permanent post of Pashudhan Prasad Adhikari under the State Government died in harness on 19.01.2001. Petitioner being his divorced daughter applied for

compassionate appointment claiming to be dependent upon him. When no decision was taken, she approached this Court by filing Writ Petition no. 77174 of 2005 which was disposed of on 02.11.2006 with the direction to 'The Director Pashu Palan Vibhag' to decide her claim. Vide order dated 28.03.2007 Director rejected the claim on the ground that divorced daughter is not included in the definition of the family under 1974 Rules. She again filed a writ petition. Learned single Judge dismissed the writ petition against which the special appeal was preferred wherein the question has been referred for decision by a larger Bench.

Facts of Special Appeal no. 1401 of 2011

Respondent-writ petitioner was son of predeceased son of one Karan Singh holding permanent post of Collection Peon, who died in harness on 20.11.1976. Wife of the deceased employee made an application for providing compassionate appointment to the petitioner. When no decision was taken, he invoked the jurisdiction of this Court by filing writ petition no. 21725 of 2000. A learned single Judge disposed of the writ petition vide order dated 25.05.2007 directing the State Government to take a decision which was rejected on the ground that application was made with considerable delay after 10 years of death of the employee. Petitioner again approached this Court by filing writ petition no. 40668 of 2007. Learned single Judge relying upon the decision rendered in the case of ***Rajendra Kumar (supra)*** vide judgment and order dated 04.09.2008 allowed the writ petition. State of U. P. preferred the special appeal. This special appeal was connected with Special Appeal no. 1343 of 2011 and thus has been placed before us.

We have heard Sri Manish Kumar Nigam, learned counsel for the petitioner-appellant and Dr. Y. K. Srivastava, learned Standing Counsel.

Sri Manish Kumar Nigam has submitted that 1974 Rules have been framed keeping in view the social welfare as the object is to redeem the family from financial distress caused on account of sudden death of bread earner of the family and thus should be interpreted in the manner which sub serves the object. Relying upon the observations made in the case of ***Rajendra Kumar (supra)*** it is contended that in order to promote the purpose of Rules, the definition should be held to be inclusive and not exhaustive. In support of the contention he has also placed reliance upon

the decision of the Hon'ble Apex Court in the case of *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation (1985) 4 SCC 71, Hindustan Liver Ltd. Vs. Ashok Vishnu Kate & others (1995) 6 SCC 326, Regional Provident Fund Commissioner Vs. Hooghly Mills Company Ltd. (2012) 2 SCC 489*. It has next been submitted that word "include" used in the definition clause reflects the intention of the Rule framers that they wanted to give extensive and enlarged meaning to the relations described therein and the definition is inclusive and not exhaustive. Reliance has been placed upon the decision of the Hon'ble Supreme Court rendered in *Regional Director, Employees State Insurance Corporation Vs. High Land Coffee, Works (1991) 3 SCC - 617, Karnataka Power Transmission Corporation and another Vs. Ashok Iron Works Pvt. Ltd. (2009) 3 SCC - 240 and Oswal Fats & Oils Ltd. Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly & others (2010) 4 SCC - 726*.

He further submitted that it is well settled principle of statutory interpretation that provisions should be interpreted in manner which effectuate the purpose, and should not be given a literal or restrictive meaning. To support the contention he has relied upon the judgments in the case of *Tirath Singh Vs. Bachittar Singh, AIR 1954 PEPSU - 118, A. A. Haja Muniuddin Vs. Indian Railways, AIR 1993 SC - 361* and *Directorate of Enforcement Vs. Deepak Mahajan, AIR 1994 SC 1175*.

Refuting the contentions Dr. Y. K. Srivastava appearing for the State-respondents submitted that appointment on compassionate grounds since are granted with a view to relieve the family of the economic distress being faced on account of sudden death of the bread earner and is an exception to the principles of equality of opportunity in public appointment guaranteed by Articles 14 and 16 of the Constitution of India, no further exception to the same can be created and the Rules are to be strictly construed. He further submitted that compassionate appointment is not a right but a concession and thus is to be made strictly in accordance with the Rules, Policy or Scheme framed by the employer. He has relied upon

the decisions of Supreme Court in the case of *Umesh Kumar Nagpal Vs. State of Haryana and others (1994) 4 SCC 138*, *National Institute of Technology and others Vs. Neeraj Kumar Singh, (2007) 2 SCC – 481*, *State Bank of India Vs. Somvir Singh (2007) 4 SCC – 778*, *General Manager, State Bank of India Vs. Anju Jain (2008) 8 SCC – 475*, *V. Sivamurthy Vs. State of Andhra Pradesh and others (2008) 13 SCC – 730*, *I. G. (Karmik) Vs. Prahalad Mani Tripathi (2007) 6 SCC – 172*, and *General Manager, Uttaranchal Jal Sansthan Vs. Luxmi Devi (2009) 7 SCC – 205*.

He further submitted that term “include” used in the definition is liable to be attributed a meaning in context it has been used and the term is not always used to make the definition extensive and not exhaustive. In reference to the context the word “include” is also used to connote a specific meaning i. e. 'means and includes' or 'comprises' or 'consists'. To drive home the point he has relied upon the decisions in the case of *South Gujarat Roofing Tiles Manufactures Association Vs. State of Gujarat (1976) 4 SCC – 601*, *Reserve Bank of India Vs. Peerless Company (1987) 1 SCC – 424* and *N. D. P. Namboodripad Vs. Union of India (2007) 4 SCC – 502*.

We have given our anxious consideration to the rival contentions and also perused the records as well as the various decisions cited at the Bar.

It cannot be disputed that object of the 1974 Rules is to enable the family to tide over the sudden financial crisis on account of sudden death of sole bread earner of the family. It also cannot be disputed that in various pronouncements relied upon by Sri Manish Kumar Nigam, it has been held that social welfare enactments should be interpreted in the manner which promotes the object. Reference may be made to the decision rendered in the case of *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation (supra)* wherein considering the question whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which employee “actually worked” under the “employer” for the purpose of Section 25-F read with section 25-B of the Industrial Disputes Act, the Hon'ble Apex

Court in paragraph 4 of the reports observed as under :

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."

The aforesaid view has been reaffirmed by the Hon'ble Apex Court in the case of *Hindustan Liver Ltd. Vs. Ashok Vishnu Kate and others (supra)*.

Again in the case of *Regional Provident Fund Commissioner Vs. Hooghly Mills Company Limited and others (supra)* while considering the expression "so far as may be" used in Section 17 (1-A) (a) of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it has been reiterated that social welfare or remedial statute should receive liberal construction guided by social perspective and should be informed by values of Directive Principles of the Constitution and in case of any doubt, same should be resolved in favour of the class of persons for whose benefit statute is enacted.

The purpose of framing 1974 Rules is to relieve the family of a deceased Government servant from immediate financial distress but for this objective, the same would not have withstood the test of Articles 14 and 16 of the Constitution of India guaranteeing equal opportunities in the matter of public employment. Claim of compassionate appointment is not a right of a person and thus cannot be claimed as a matter of right. It is an exception to general rule of equality and cannot be treated as an independent and parallel source of employment. It is in effect concession in favour of dependent of deceased employee by statutory rules framed with sole purpose and object to redeem the family of the deceased Government servant from penurious cause on account of sudden death. The benefit extended by the rules is limited to the family of the deceased Government

employee only. In the case laws relied upon by Mr. Nigam the benefit was being extended to a particular class, as a whole. However under 1974 Rules the beneficial treatment is extended only to dependent family member of a deceased Government employee, by giving compassionate appointment on a public post, to the exclusion of others, who but for the said Rules, would also have been entitled for consideration, in case there was a open general competition.

In this connection, it may be relevant to quote following observation made by Hon'ble Apex Court in the case of *Umesh Kumar Nagpal Vs. State of Haryana (supra)*.

“The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution..... It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned”

Looking to the object and purpose underlying the provision for grant of compassionate appointment which is in the nature of an exception to general provisions, the Apex Court has observed in the case of *Director of Education (Secondary) Vs. Pushpendra Kumar (1998) 5 SCC 192* that care has to be taken while enforcing such provision so that it does not unduly interfere with right of other persons to whom the post would have been otherwise available.

In paragraph 8 of the reports, it has been observed as follows :

“Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which

would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee”.

The Apex Court in catena of decisions while approving the general principles of interpretation that beneficial legislations should be liberally construed but in case of compassionate appointment the same being an exception to Articles 14 and 16 held that it should receive a strict construction. Reference may be made to the decision in the case of ***General Manager, Uttranchal Jal Sansthan Vs. Laxmi Devi (2009) 7 SCC – 205*** wherein it has been observed as under :

“The provision of law which ex-facie violates the equality clause and permits appointment through side door being unconstitutional must be held to be impermissible and in any extent required strict interpretation.”

In the case of ***State of Jharkhand Vs. Shiv Karanpal Sahu 2009 (11) SCC – 453***, while considering the scheme for grant of appointment on compassionate grounds to the dependants of those killed in terrorist attack, it was held as under :

“Appointment on compassionate grounds, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such scheme cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate grounds must, therefore, receive a strict construction.”

Strict construction of Rules/Schemes for compassionate appointment has been re-emphasised by the Supreme Court in ***Bhawani Prasad Sonkar Vs. Union of India (2011) 4 SCC – 209*** by making following observation :

“Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter

of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.”

The above authorities of the Hon'ble Supreme Court being directly in respect of Rules/Scheme providing compassionate appointment there is hardly any occasion to apply the general principles laid down for interpretation of a beneficial or social welfare legislation.

Much emphasis has been laid by Sri Manish Kumar Nigam that use of word 'include' in definition clause in relation to the family reflects intention of the Rule Framers that they intended to give extensive and enlarged meaning to the relations specified in the clause and it should not be given restrictive meaning and the relations mentioned were only inclusive and not exhaustive. However, the case laws relied upon by learned counsel for the petitioner in support of this contention is mis founded as in none of the decision, it has been laid down as rule that use of word 'include' in legislation is always indicative of the intention of the legislature that it wanted to give extensive and enlarged meaning. On the contrary, what has been laid down is that interpretation of the word or expression must depend on the text and context. In paragraph 17 in the case of ***Karnataka Power Transmission Corporation and another Vs. Ashok Iron Works Private Limited (supra)*** , it has been observed as under :

“It goes without saying that interpretation of a word or expression must depend on the text and the context.

The resort to the word "includes" by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word "includes" may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment".

Again in the case of *Oswal Fats & Oils Ltd. Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly & others (supra)*, the Hon'ble Apex Court while considering the question whether the word 'person' appearing in Section 154 (1) of U. P. Zamindari Abolition and Land Reforms Act would include any company or association or body of individuals, whether incorporated or not observed as under :

"The word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. The word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expressions"

In the case of *South Gujarat Roofing Tiles Manufactures Association Vs. State of Gujarat (supra)*, the Hon'ble Apex Court while interpreting the word "includes" used in the explanation for the purpose of entry 22 to Part-I of the Schedule to the Minimum Wages Act

specifying nine articles of potteries held as under :

“3.The question turns on a true construction of the explanation to entry 22 which says that for the purpose of this entry potteries industry “includes” the manufacture of the nine “articles of pottery” specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the respondent, State of Gujarat, contends that the explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring to the well-known use of the word 'include' in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the explanation, when it says that potteries industry 'includes' the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to the often quoted observation of Lord Watson in *Dilworth Vs. Commissioner of Stamps*, that when the word 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

Thus where 'includes' has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the explanation to entry 22 has that extending force. The explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine “articles of pottery” specified in the explanation. If the objects specified

are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way."

"4. We are also unable to agree with Mr. Patel that the articles specified in the explanation may have been mentioned out of abundant caution to emphasize the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractories or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well-recognised articles of pottery makes it plain that the explanation was added to the entry not by way of abundant caution"

"5. The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of explanation. To this Mr. Patel's reply is that it is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes', and that if the intention was to make the list exhaustive, the legislature would not have used the word 'includes' only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context."

In the case of *Reserve Bank of India Vs. Peerless Company (supra)*, while considering the import of the word 'includes' it was held

that interpretation may depend on the text and context. In the said case, the word 'includes' occurring in Section 2 (a) of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, in the context, was interpreted not to so expand the meaning of prize chit so as to take in every scheme involving subscribing and refunding of money. It has again been laid down that interpretation must depend upon text and the context.

It is thus clear that use of word 'include' by the legislature is not always indicative of its intention to give extensive and enlarged meaning but depending upon the context and object of enactment and other surrounding circumstances 'include' may be equivalent to 'mean and include' or 'means'.

Apex Court having held that Rules/Schemes of compassionate appointments are to be strictly construed, use of word "include" in 1974 Rules cannot be taken as aid to expand the scope of family by adding any other relation to the one already specified as the same would be directly in contrast to law laid down in State of *Jharkhand Vs. Shiv Karan Pal Sahu (supra) and Bhawani Prasad Sonkar (supra)*.

The question can be considered from another angle. Word 'Family' is not capable of any precise definition. According to Concise Oxford English Dictionary 'family' means a group consisting of two parents and their children living together as a unit; a group of people related by blood or marriage; the children of a person or couple; all descendants of a common ancestor.

Black's Law Dictionary defines 'family' as (i) A group of persons connected by blood, by affinity or by law especially within two or three generations (ii) A group consisting of parents and their children (iii) A group of persons who live together and have a shared commitment to a domestic relationship.

According to Law Lexicon term 'family' may be said to have a well defined, broad and comprehensive meaning in general, it is one of great flexibility and is capable of many different meaning according to the connection in which it is used. Thus, it may be 'children', 'wife and children', 'blood relations' or the 'members of the domestic circle'. According to context, it may be of narrow or broad meaning as intention of the parties using the word, or as the intention of law using it, may be

made to appear.

In its ordinary and primary sense the word 'family' signifies the collective body of persons living in one house or under one head or manager or one domestic government. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong. Word 'family' has a different meaning under Hindu Law and Muslim Law. Family can be immediate family, expanded family and also blended family. Joint Hindu Family is a concept well recognized under Hindu Law whereas there is no such concept under Muslim Law. Word 'family' has been assigned different meaning under the different enactments depending upon the context. It has been defined differently under various Rent Acts, Land Ceiling Act and Land Reforms Act. The word has been subject matter of judicial interpretation in various pronouncements.

In *Devki Nandan Vs. Murlidar 1957 SC 133*, it has been held that 'family' in its popular sense means 'children'.

In *Ram Chauvan Vs. Girija Nandini 1966 SC 323*, it has been held that word 'family' does not mean only a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute.

Patna High Court in the case of *Aliv Kassar Vs. Torrab Hussain AIR 1958 232* where the property was originally purchased by two sisters has held the expression 'family' includes a sister's son.

Under the Mussalman Waqf Validating Act, 1930, the term 'family' has been held to include both agnates and cognates and relations by blood or marriage. The nephews of the settler of Waqf were held to be the members of the family. In *Ismail Haji Vs. Umar Abdulla, AIR 1942 (Bombay)*, *Md. Azam Khan Vs. Hamid Shah, AIR 1947 (Allahabad) 137*, *Rahmanul Hasan Vs. Zahurul Hasan, AIR 1947 (All) 281*, the son of a half-brother or of a half-sister have been held to be included in the term 'family'.

According to Law Lexicon 'family' may include even domestic servants and some times persons who are merely boarders.

The term 'family' being capable of such wide and varying meaning

and having been subject matter of such wide interpretation, the use of this word in 1974 Rules cannot be left to be assigned a meaning in its general terms or as it is understood in popular sense by different sections of society nor it can be left to be assigned a meaning as it is understood in different religions or according to socio-religious custom prevalent in different communities for that would lead to a chaotic situation. Thus, the word has to be interpreted in reference to the context it has been used keeping in view the object and purpose of the Rules balancing with the mandate of equality enshrined under Articles 14 and 16 of the Constitution.

It is well settled principle of interpretation of Statutes that a statutory provision should not be construed in a manner which would lead to manifest absurdity, futility, or anomaly or chaos. Reference may be made to the decision of Apex Court in *H. S. Vankani & Ors. Vs. State of Gujarat & Ors. AIR 2010 SC – 1714*.

By specifying the relations in reference to family the intention appears to be to make the definition exhaustive. If it had been the intention to bring within the ambit of word 'family' all the relations, it was unnecessary to specify some of them. It seems to us that word "includes" has been used in the rules in the sense of "means" and according to us, this is the only construction, the word 'include' can bear in the context of the rules. If the intention of the legislature was not to make the list exhaustive, there was hardly any necessity to have described dependent relations of being included in the definition of family. It also does not appear to us that relations specified in the Rules have been described ex. abundanti cautela i. e. in abundant caution for the simple reason that in case the definition of word family was left to ones imagination without specifying the relations to which it intended to extent the benefit would have resulted into totally chaotic situation leaving it open to all and sundry who could even remotely demonstrate to be a member of the family, in view of the varied definition and interpretation of the word, to claim the benefit destroying the very purpose and object of the rules much less advancing the same.

Our view is fortified by the decision of the Hon'ble Apex Court in the case of *Auditor General of India and others Vs. G. Ananta Rajeswara Rao, AIR 1994 SC – 1521* wherein while considering a OM

providing for compassionate appointment not only to son, daughter or widow of a Government servant dying-in-harness but also extending the benefit to 'near relative' which was left vague and undefined upheld the provision in respect of son, daughter and widow wife while the other part in respect of near relative was held to be hit by Article 16(2) of the Constitution. In paragraph 5 of the report, it has been observed as under :

“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 by compassionate grounds. Articles 16 (3) to 16 (5) provided exceptions. Further exception 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 Art. 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 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. But in other cases it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in Para 1 of the memorandum is upheld and that appointment on

compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Govt. employee is valid. It is not on the ground descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment in the memorandum limiting to relieve the members of the deceased employee who died in harness, from economic distress. In other respects Art. 16 (2) clearly attracted.”

Whatever may be the fathom of our compassion for the bereaved family of a deceased employee, howsoever high may be our anxiety to help such family to get out of penury, we cannot over step being bound by dictates of law, the mandate of the constitution and the law declared by the Hon'ble Apex Court.

In view of the above discussions, the irresistible conclusion is that word 'include' used in the definition clause has been used by the Rules Framers in the sense of 'means' and the definition, as it stands, is exhaustive. It is, however, always open to the appropriate Government to amend the definition of the family so as to include any other relations of the deceased Government servant which it thinks fit to be included for fulfilment of the purpose and object of the Rules.

Thus, our answer to the reference is that definition of the family in rule 2 (c) of U. P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974 is exhaustive.

The last argument advanced by Mr. Nigam that a divorced daughter attains the status of unmarried daughter and thus the claim of the petitioner Km. Shehnaj Begum has wrongly been rejected and she deserves for being considered for granting compassionate appointment is not worthy of consideration by us.

We are only required to answer the reference made to us. Thus, it is not necessary to return any finding on this issue. We leave it open to be raised and adjudicated by the Division Bench in Special Appeal no. 1343 of 2011.

In so far as Special Appeal no. 1401 of 2011 is concerned, a perusal of the facts, stated above, go to show that question referred to us did not arise in the said case and it appears that the same has wrongly been tagged along with reference. Accordingly, Special Appeal no. 1401 of 2011 is disconnected and may be placed before appropriate Division Bench for hearing and adjudication on its own facts and merits.

(Mrs. Sunita Agarwal, J.) (Krishna Murari, J.) (Laxmi Kanta Mohapatra, J.)

Date : May 1st, 2013.

Dcs.