

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**LPA No. 77 of 2013 alongwith LPA Nos, 85, 99, 107, 108, 117, 119, 120, 121, 128, 130, and 131 of 2013.**

**Judgment reserved on 24.7.2013**

**Date of decision: 17.9.2013.**

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**1. LPA No. 77 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Sanjay Kumar

Respondent.

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**2. LPA No. 85 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Chain Singh

Respondent.

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**3. LPA No. 99 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Jaimal deen

Respondent.

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**4. LPA No. 107 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Mohinder Kumar

Respondent.

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**5. LPA No.108 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Nek Mohammed

Respondent.

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**6. LPA No. 117 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Rajinder Kumar

Respondent.

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**7. LPA No. 119 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Rachhpal Singh

Respondent.

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**8. LPA No. 120 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Megh Raj

Respondent.

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**9. LPA No. 121 of 2013**

State of H.P. & Ors.

Appellants.

Vs.

Sanjeev Kumar

Respondent.

**10. LPA No. 128 of 2013**

State of H.P. &amp; Ors.

Appellants.

Vs.

Jeevan Kumar

Respondent.

**11. LPA No. 130 of 2013**

State of H.P. &amp; Ors.

Appellants.

Vs.

Ganesh Kumar

Respondent.

**12. LPA No. 131 of 2013**

State of H.P. &amp; Ors.

Appellants.

Vs.

Tilak Raj

Respondent.

***Coram******The Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice******The Hon'ble Mr. Justice Kuldip Singh, Judge.******Whether approved for reporting?<sup>1</sup> Yes*****For the Appellants :****Mr. Shrawan Dogra, Advocate General with  
Mr. Romesh Verma, Addl. Advocate General,  
and Mr. J.K. Verma, and Ms. Parul Negi,  
Deputy Advocate Generals.  
( in all the petitions)****For the Respondent (s) :****Mr. Sanjay Jaswal, Advocate.  
( in all the petitions.)****Kuldip Singh, J**

This judgment shall dispose of LPA Nos.77, 85, 99, 107, 108, 117, 119, 120, 121, 128, 130 and 131 of 2013 as common question of law is involved in all the appeals.

**LPA No.77 of 2013**

2. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7031 of 2012 has been assailed in the appeal. As per the case of the respondent his father Kanshi Ram had joined the department of appellant No.5 as daily waged beldar in the year 1974, he was regularized as beldar in the year 1995. The father of the respondent died on 11.12.2002 while serving as regular beldar. The

***Whether the reporters of the local papers may be allowed to see the Judgment?***

respondent applied for compassionate appointment in June, 2004. The appellant No.3 vide office order dated 24.10.2005 appointed respondent as daily wages beldar on compassionate ground. The respondent joined as such on 18.11.2005 in Sub Division, Badukhar. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.85 of 2013**

3. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7086 of 2012 has been assailed in the appeal. As per the case of the respondent his father Parkash Chand had joined the department of appellant No.5 as regular beldar in the year 1971. The father of the respondent died on 2.11.2001 while serving as regular beldar. The respondent applied for compassionate appointment in March, 2003. The appellant No.3 vide office order dated 24.10.2005 appointed respondent as daily wages beldar on compassionate ground. The respondent joined as such on 18.11.2005 in Sub Division, Badukhar. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.99 of 2013**

4. The judgment dated 4.7.2011 of the learned Single Judge in CWP(T) No.16006 of 2008 has been assailed in the appeal. As per the case of the respondent his father Nasir Mohammad had initially joined the department of appellant No.4 as daily waged beldar in the year 1984, he was regularized in the year 1995. The father of the respondent died on 15.2.2001 while serving as regular beldar. The respondent applied for compassionate appointment in June, 2001. The

appellant No.3 vide office order dated 31.10.2005 appointed respondent as daily waged beldar on compassionate ground. The respondent joined as such on 7.11.2005 in Sub Division, Kotla. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits.

The appellants contended that department O.M. dated 18.1.1990 has been amended vide DPO No.Per(AP-II)F(4)-4/89 dated 16.8.2005 giving employment on daily waged basis. Accordingly, the case of the respondent was considered by Superintending Engineer 9<sup>th</sup> Circle, HP PWD , Nurpur and he was appointed vide office order dated 24.10.2005. It has been contended that respondent has been rightly appointed as daily waged beldar on compassionate ground. The learned Single Judge has allowed the petition of respondent.

#### **LPA No.107 of 2013**

5. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7087 of 2012 has been assailed in the appeal. As per the case of the respondent his father Om Parkash had initially joined the department as daily waged beldar in the year 1986, he was regularized in the year 1996. The father of the respondent died on 16.12.2000 while serving as regular beldar. The respondent applied for compassionate appointment in the year 2001. The appellant No.3 vide office order dated 24.10.2005 appointed the respondent as daily waged beldar on compassionate ground. The respondent joined as such on 2.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.108 of 2013**

6. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7052 of 2012 has been assailed in the appeal. As per the case of the respondent his father Chirag Deen had initially joined the department as daily waged beldar in the year 1985, he was regularized as beldar in the year 1995. The father of the respondent died on 31.8.2003 while serving as regular beldar. The respondent applied for compassionate appointment in the year 2004. The appellant No.3 vide office order dated 24.10.2005 appointed the respondent as daily waged beldar on compassionate ground. The respondent joined as such on 2.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.117 of 2013**

7. The judgment dated 16.8.2012 of the learned Single Judge in CWP No.2800 of 2012 has been assailed in the appeal. As per the case of the respondent his father Mukhtyar Singh was regular as beldar in the year 1998. The father of the respondent died on 21.11.2002 while serving as regular beldar. The respondent applied for compassionate appointment in December, 2002. The appellant No.3 vide office order dated 26.10.2005 appointed the respondent as daily waged beldar on compassionate ground, he joined as such on 1.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.119 of 2013**

8. The judgment dated 16.8.2012 of the learned Single Judge in CWP No.2797 of 2012 has been assailed in the appeal. As

per the case of the respondent his father Shankar Dass was regular as beldar in the year 1998. The father of the respondent died on 27.2.2004 while serving as regular beldar. The respondent applied for compassionate appointment in May, 2004. The appellant No.3 vide office order dated 26.10.2005 appointed the respondent as daily waged beldar on compassionate ground, he joined as such on 1.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.120 of 2013**

9. The judgment dated 16.8.2012 of the learned Single Judge in CWP No.2689 of 2012 has been assailed in the appeal. As per the case of the respondent his father Punjab Singh had initially joined the department as daily waged beldar, he was regularized as beldar in the year 1996. The father of the respondent died on 7.3.2004 while serving as regular beldar. The respondent applied for compassionate appointment in April, 2004. The appellant No.3 vide office order dated 24.10.2005 appointed the respondent as daily waged beldar on compassionate ground, he joined as such on 1.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.121 of 2013**

10. The judgment dated 24.8.2012 of the learned Single Judge in CWP No.2796 of 2012 has been assailed in the appeal. As per the case of the respondent his father Des Raj was regular as beldar in the year 1989. The father of the respondent died on 21.6.2001 while serving as regular beldar. The respondent applied for compassionate

appointment in July, 2001. The appellant No.3 vide office order dated 26.10.2005 appointed the respondent as daily waged beldar on compassionate ground, he joined as such on 1.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.128 of 2013**

11. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7056 of 2012 has been assailed in the appeal. As per the case of the respondent his father Purshotam Chand had initially joined the department as daily waged beldar in the year 1986, he was regularized as beldar in the year 1994. The father of the respondent died on 1.3.2004 while serving as regular beldar. The respondent applied for compassionate appointment in April, 2004. The appellant No.3 vide office order dated 24.10.2005 appointed the respondent as daily waged beldar on compassionate ground, he joined as such on 2.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.130 of 2013**

12. The judgment dated 14.9.2012 of the learned Single Judge in CWP No.7063 of 2012 has been assailed in the appeal. As per the case of the respondent his father Fauja Singh had initially joined the department as daily waged beldar in the year 1986, he was regularized as beldar in the year 1996. The father of the respondent died on 24.9.2003 while serving as regular beldar. The respondent applied for compassionate appointment in December, 2003. The appellant No.3 vide office order dated 26.10.2005 appointed the

respondent as daily waged beldar on compassionate ground, he joined as such on 2.11.2005. The respondent claimed appointment on compassionate ground on regular basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

**LPA No.131 of 2013**

13. The judgment dated 16.8.2012 of the learned Single Judge in CWP No.2646 of 2012-E has been assailed in the appeal. As per the case of the respondent his father Budhi Singh had initially joined the department as peon on 5.2.1981. The father of the respondent died on 7.4.2002 while serving as regular peon. The respondent applied for compassionate appointment in July, 2002. The appellant No.3 vide office order dated 10.10.2007 appointed the respondent as Clerk on contract basis on compassionate ground, he joined as such on 17.10.2007 in the office of Superintending Engineer 9<sup>th</sup> Circle HP. PWD, Nurpur. The respondent claimed appointment on compassionate ground on regular basis instead of contract basis with all consequential benefits. The learned Single Judge has allowed the petition of respondent.

14. We have heard the learned Advocate General for the appellants and Mr. Sanjay Jaswal, learned counsel for the respondents in all the appeals and have also gone through the written submissions of respondents, the appellants have not submitted written submissions despite opportunity given. Learned Advocate General has submitted that the respondents had no vested right for appointments under the policy of compassionate appointment of the State after the deaths of their fathers. The policy in force when the applications were actually considered and not the policy when applications were made will be applicable. At the time of consideration of the cases of the



respondents for compassionate appointments, the policy had been amended, the respondents were rightly appointed on daily waged basis which appointments were accepted by the respondents. The learned Single Judge has misconstrued, misinterpreted the law on compassionate appointment while giving direction to consider the cases of respondents for regular appointments from the initial dates of appointments. The learned Advocate General has relied **State Bank of India and another vs. Raj Kumar (2010) 11 SCC 661** in support of his submissions.

15. Mr. Sanjay Jaswal, Advocate has submitted that policy when the respondents applied for compassionate appointments would apply and not the amended policy at the time of consideration of the cases of the respondents for compassionate appointments. He has submitted that in the amended policy there is no provision that cases for compassionate appointment would be considered under the new policy even though applicants had applied under the unamended policy. He has relied **Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others (1997) 6 SCC 623, Bhawani Prasad Sonkar vs. Union of India and others (2011) 4 SCC 209, Krishna Kumari vs. State of Haryana and others 2012(4) SLR 481 (Pb. & Hry.)**.

16. The H.P. Government Department of Personnel O.M.No. Per.(AP-II)F(4)-4/89 dated 18.1.1990 provides compassionate appointment policy as given in Handbook of Personnel Matters Vol-I (Second Edition), Government of Himachal Pradesh, Department of

Personnel, relevant part thereof is as follows:

**“Subject: Appointment of sons/daughters/near relations of a Government servant who dies in harness leaving his family in immediate need of assistance.**

The undersigned is directed to say that the question of revising the policy for providing employment assistance to dependents of Govt. servants who die while in Government service, leaving their families in indigent circumstances was under consideration of the Govt. for some time past. After thorough consideration and in supersession of all previous orders in this respect it has now been decided to adopt the following new policy for grant of employment on compassionate grounds to the dependents of deceased Govt. servants in future:-

**1. Policy:**

The employment on compassionate grounds to the dependents of Govt. servants who die while in service is not to be provided as a matter of right. It should be given only in deserving cases where the family of deceased Govt. servant is left in indigent circumstances requiring immediate means of subsistence. The concerned Administrative Departments would satisfy themselves about the indigent circumstances of the family before appointment on compassionate grounds is made.

**2. To whom the policy is applicable:**

The employment assistance on compassionate grounds will be allowed in order of priority only to widow or son or unmarried daughter (in case of unmarried Govt. servant to father, mother, brother and unmarried sister) of:

- (a) a Govt. servant who dies while in service (including by suicide) leaving his family in immediate need of assistance.
- (b) A daily wage employee who dies while in service after having rendered atleast 5 years service with not less than 240 days on daily wage basis in a year (to be computed as an average of the number of days served in the preceding three years) leaving his family in immediate need of assistance. In such cases compassionate employment would be on daily wages only.
- (c) A Government servant who has been missing for more than two years and the family needs the immediate assistance.
- (d) A Government servant (Class-III and IV only) who retires on medical grounds under rule 38 of the C.C.S. (Pension) Rules, 1972. Provided the employee so retiring has not crossed the age of 53 years and 55 years in case of Class III and IV respectively.
- (e) A Govt. servant who dies during the period of extension in service but not re-employment, leaving his family in immediate need of assistance.

**3. xx xx xx**

**4. Posts to which such appointments can be made:**

The appointment on compassionate grounds can be made only to the lowest rung of Class IV and Class III posts carrying the pay scale of Rs.300-430 (now revised to Rs.750-1350) and 400-600 or 400-660 (now revised to Rs.950-1800) respectively. Class III jobs would include all equivalent jobs including technical posts and teachers (Class-III in the scale of Rs.950-1800 only.)

5. to 12:           xx   xx   xx

17.           The policy dated 18.1.1990 has been amended vide Memorandum No.Per (AP-II)F(4)-4/89-V dated 16<sup>th</sup> August, 2005 from Pr. Secy (Pars) to the Govt. of H.P. Shimla-2 endorsed to All Heads of Department in H.P. and others, which is as follows:

**“Subject:           Appointment of sons/daughters/near relations of a Government servant who dies in harness leaving his family in immediate need of assistance-modification thereof.**

The policy of providing employment assistance to the dependent of Government servant who die while in Government service leaving their family in indigent circumstances was circulated vide this Department office memorandum of even number dated the 18 January, 1990. According to para-2(b) of the policy a daily waged employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily wages only with a view to further I moral of the policy, it has been decided by the Government that if a work charged Beldar on daily wages with 7 years continuous service dies in harness one of his dependents be appointed on daily wages. In such cases appointments will be done by Deputy Commissioners, Superintending Engineers of Public Works Department, Irrigation & Public Health Department, H.P.S.E.B. Conservators of Forest, Chief Medical Officers, Deputy Director of Horticultures/Agriculture Department and other equivalent Regional/District level officers as the case may be.

Accordingly, para-2(b) of this Department O.M. of even number dated 18.1.1990 may be deemed to have been amended as under:-

**“2(b) (i)           A daily waged employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily wages.**

**2(b)(ii)           A work Charged Beldar on daily waged with 7 year continuous service who dies in harness, one dependent may be appointed on daily wages. Appointment will be done by Deputy Commissioner, Superintending Engineers of Public Works Department, Irrigation & Public Health Department, H.P.S.E.B., Conservators of Forest, Chief Medical Officers, Deputy Director of Horticulture/Agriculture Department and other equivalent Regional/District level officers as the case may be.**

**These instructions will come into force with immediate effect.”**

18.           The question involved in the appeals is whether policy of

compassionate appointment in vogue at the time of application will apply or the policy in force at the time of consideration of the cases of the respondents for appointments on compassionate ground will apply. In all appeals, the respondents had applied for compassionate appointments between 2001 to 2004 when the compassionate appointment policy dated 18.1.1990 was in force. This policy was amended on 16.8.2005. The respondents, except in LPA No.131 of 2013, were appointed as daily waged beldars on compassionate ground on or after 24.10.2005 after the amendment of policy dated 18.1.1990 vide memorandum No.Per(AP-II)F(4)-4/89-V dated 16.8.2005 which provides; (i) a daily waged employee who dies while in service leaving his family in immediate need of assistance may be given compassionate employment on daily wages (ii) a work charged beldar on daily waged with 7 year continuous service who dies in harness, one dependent may be appointed on daily wages. The respondent in LPA No.131 of 2013 was appointed as clerk on contract on compassionate ground.

19. The learned Advocate General has contended that respondents had no vested right for appointment on compassionate ground, therefore, the policy applicable at the time of consideration of the case on compassionate ground would apply and not any earlier policy. In **State Bank of India and another vs. Raj Kumar** (supra), the Supreme Court has held as follows:-

**“12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, upto the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.**

**13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. 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.”

“15. We may also refer to the decision of this Court in *Kuldeep Singh v. Govt. of NCT of Delhi* which considered the question of grant of liquor vend licences. This Court held that where the applications required processing and verification the policy which should be applicable is the one which is prevalent on the date of grant and not the one which was prevalent when the application was filed. This Court clarified that the exception to the said rule is where a right had already accrued or vested in the applicant, before the change of policy.”

20. The learned counsel for the respondents has relied paragraphs 20, 24 of the report in **Chairman, Railway Board vs. C.R. Rangadhamaiah** (supra) which are as follows:-

“20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.”

“24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* (AIR 1967 SC 1889) ; *B. S. Yadav* (AIR 1969 SC 118) and *Raman Lal Keshav Lal Soni* (AIR (1983) 2 SCC 33).”

21. The learned counsel for respondents has relied **Bhawani Prasad Sonkar vs. Union of India** (supra) in which the Supreme Court has held as follows:-

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

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

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

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

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

"24. In light of the fact that the Circular dated 29.11.2001 was not applicable in the case of the appellant's father, inasmuch as the benefit of the 29.4.1999 Circular was not extended to him, and he was made to retire from service, we are of the opinion that the earlier circular dated 22.9.1995 is applicable in the instant case. Consequently, the appellant would be entitled to employment on compassionate ground as the said Circular contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being de-categorized, the appellant's father had opted for voluntary retirement."

22. In **Krishna Kumari vs. State of Haryana** (supra), the full Bench of Punjab and Haryana High Court has held as follows:-

"In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognized by the apex court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly."

23. In **State Bank of India and another vs. Raj Kumar** (supra) in the context of compassionate appointment, it has been held that there can be no immediate or automatic appointment merely on an application. None of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that

was in force earlier when the application was made, will be applicable. In that case in the new scheme, it was also provided that all pending applications will be considered only in terms of the new scheme. It has been held that compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time.

24. In **Bhawani Prasad Sonkar vs. Union of India** (supra) the Supreme Court has held that an application for compassionate employment has to be considered within a reasonable period of time. The compassionate employment cannot be granted as a matter of course. On facts in that case it was held that Circular dated 29.11.2001 was not applicable as the benefit of the Circular dated 29.4.1999 was not extended and the father of the appellant was made to retire. It was held that earlier Circular dated 22.9.1995 was applicable. The Supreme Court has not held that as a matter of principle in every case policy/scheme for compassionate appointment which was prevalent at the time of application for compassionate appointment will apply as against the policy/scheme in force at the time of consideration of the application for compassionate appointment.

25. In **State of Tamil Nadu vs. M/s. Hind Stone and others** (1981) 2 SCC 205, the High Court held that all applications to be disposed of without reference to Rule 8-C. It was observed that even if Rule 8-C was valid it applied only to the grant of fresh leases and not to renewals. It was not open to the Government to keep the application pending for a long time and then to dispose them of on the basis of a rule which had came into force later on. The Supreme Court held:-

“13.....The submission was that it was not open to the government to keep applications for the grant of lease and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an

application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in any one, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.”

26. The compassionate appointment is a concession and not a right, the employer has right to modify the policy/scheme at any time. Once compassionate appointment is not a right, therefore, there is no question of accruing of vested right in favour of the applicant merely on moving application for compassionate appointment. We are unable to persuade ourselves to concur with the view taken in **Krishna Kumari vs. State of Haryana** (supra) that rules applicable on the date of death/incapacitation of an employee need to be followed. In all the appeals at the time of consideration of applications of respondents for compassionate appointments, policy dated 18.1.1990 had amended vide amendment dated 16.8.2005 which did not provide regular appointments, in case of death of work charged employee who had worked upto seven years on daily wages. The learned Single Judge has not considered whether vested rights had accrued or not in favour of the respondents under the policy dated 18.1.1990 on the deaths of their fathers. The learned Single Judge has erred in allowing the petitions merely on the ground that respondents had applied for compassionate appointments before 16.8.2005 when the policy dated 18.1.1990 was amended. The respondents were appointed on different dates after 16.8.2005 and it is not their case that their applications were considered before 16.8.2005. Therefore, no fault can be found when the respondents were given appointments under policy dated 18.1.1990 read with amendment dated 16.8.2005. The impugned judgment in each appeal is not sustainable.



27. In view of above, all appeals being LPA Nos.77, 85, 99, 107, 108, 117, 119, 120, 121, 128, 130 and 131 of 2013 are allowed, impugned judgment in each appeal is set aside.

(A.M. Khanwilkar),  
Chief Justice.

(Kuldip Singh),  
Judge.

**September 17, 2013**  
(sks)