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A CRITICAL REVIEW OF THE SCHEME OF COMPASSIONATE APPOINTMENT IN INDIA*

ABSTRACT

Recruitments to Public posts and to the Public Sector Undertakings is carried out according to the Indian Constitutional scheme of Public employment which has Equality (Art.14) as well as Equality in Public employment (Art. 16 ,Clause.1) as its hallmarks. Nevertheless, looking to the economic disparities amongst the employed class and keeping in consonance with the tenets of the Directive Principles of State Policies (Art.38), an exception was made while introducing the scheme of Compassionate Appointment in Public employment. The Indian legal system and the Indian Governments have managed to implement this scheme while ensuring that the rights of its citizens regarding Public employment remain unharmed. But then this process has resulted in a situation where merit and suitability are sacrificed on the altar of Compassionate Appointments depriving many people an opportunity to participate in the process of gaining Public employment. Furthermore, the number of people seeking compassionate appointments has escalated to such an extent that it has augured a system of competitive examination for selecting the right candidate to be offered such appointments! How equitable a treatment of all the citizens this is resulting in social welfare, forms the basis of this research paper.

INTRODUCTION

The Concise Oxford Dictionary defines the word 'Compassion' as 'Sympathetic: pitying' or feeling for the suffering of another and this feeling is accompanied by the feeling of wanting to show mercy or being merciful towards that another. The word 'Appointment' means 'the act of placing in a job or position'. Thus, Compassionate Appointment can be understood as the

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placement granted out of mercy towards the condition of another. According to legal terminology, Compassionate Appointment is that mode of recruiting people into public services, in which the normal rules of appointment are not followed. Thus, it means that there is a deviation from the regular manner of selecting people for employment and this deviation is in the form of a concession¹ while applying the rules (of selection to a public office) to a particular category of people. And that particular category of people consists of members whose suitability to appointment to public post is their pitiableness. This pitiable plight is because of the loss of the bread winner employee of the family due to death, or, due to medical invalidation of the breadwinner employee. But in either of these two situations the decision for granting Compassionate appointment to the dependent family member of the employee is a matter of policy² regulated by the scheme of Compassionate Appointment.

By policy matter is meant that it is in the nature of a social welfare measure³, which enables an entire group of dependents on an employee, sustenance, and to recoup from sudden irremediable loss of the breadwinner, or for providing means to the dependents to secure monetary assistance to prevent privation and rationing. This measure became necessary when dependents of employees were found to suffer a violent change in living conditions shortly after the sole bread earner died or became medically incapacitated. Though any kind of financial deprivation results in discomfort it is the loss of future benefits which one had reckoned on that results in distraughtness. Hence, in order that the dependents of the deceased or invalid (as the case maybe) cope with the loss or in order to relieve them from the excessive pressure of medical costs the employer can, at the least, procure to them a decent even if modest means of livelihood so that they can carry on their lives with dignity.

OBJECT OF THE POLICY

Therefore, it can be seen from the above that Compassionate Appointment is a policy decision. And this policy decision maybe in the form of a scheme, a set of executive instructions, Rules, etc., which is/are framed by the Employer. And the object of the scheme is to provide immediate relief from destitution to the family which has lost its sole breadwinner. The rationale be-

¹ Steel Authority of India Ltd. vs. Madhusudhan Das (2008) 15 SCC 560

² Board of control for cricket in India vs. Cricket Association of Bihar and Others. (2015) 3 SCC 251

³ Director General of Posts vs. K. Chandrashekharao (2013) 3 SCC 310, Hon'ble Supreme Court of India has held that, object of compassionate appointment is to render social justice.

hind this policy decision has been explained by the Hon'ble Supreme Court of India, in, Haryana State Electricity Board vs. Hakim Singh⁴ in the following words:

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

NATURE OF THE POLICY:

Though the policy of Compassionate Appointment has been in vogue for awhile, the precise theory of Compassionate Appointment was not given in any Judgment. The Courts proceeded on a case to case basis guided by sympathy and sentiment as opposed to any legal principle, therefore, this type of appointment is recognized as an exception to the general rules of Public Employment. In Director of Education (Secondary) vs Pushpendra Kumar⁵, the Supreme Court of India has held that ‘.....it is purely on humanitarian consideration and having regard to the fact that if no livelihood is provided the family of the deceased would not be able to make both ends meet, that a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions’. In this case a three Judge bench has explained the purpose of compassionate appointment, pointed out its exceptional nature and also pointed out the need to take care that the rights of others who are eligible to seek public employment are not affected by applying this policy.

⁴ 1997 (8) SCC 85.

⁵ 1998 (5) SCC 192.

AN EXCEPTION TO AN EXCEPTION

Albeit, the fact that the object of the policy necessitates considering members of only those families for appointment that have come under the grip of a sudden financial crisis; there are certain other aspects of the scheme which are reviewable. One interesting case offering an extreme example of Compassionate appointment is that of Chief Engineer, Central Zone, Andhra Pradesh State Electricity Board vs. Naga Hema⁶. In this case the Petitioner was granted Compassionate Appointment 7 years after the disappearance of her husband, upon the legal presumption of him being dead by the Hon'ble High Court of Andhra Pradesh. Here the rationale behind the Hon'ble Court's Decision had been that the Respondent Board had failed to enquire into the misconduct (namely unaccounted absence from work for a long period of time) of the employee and terminate his services upon finding them proved. Appointing his wife (the petitioner) would not cause any prejudice to the Electricity Board since if the employee would have returned to work he would have to be granted all the work related benefits. What merits notice in this decision is that the Hon'ble court had chosen to do equity to the petitioner by taking the view that the Respondent is not prejudiced in any manner by giving Compassionate appointment to the petitioner. But it would be worthwhile to speculate whether equity has been done to the millions who could have benefitted from securing a placement in any public employment by following the constitutional scheme of public employment. In other words whether or not some qualified unemployed person has lost the opportunity to compete and secure public employment. Besides there had been the intervening years in which the petitioner has had to fend for herself, during which period there had been no financial assistance. So had the compassionate appointment been in order to remedy the mistake of the respondent in as much as it had been to do equity to the petitioner?

WORKING PRINCIPLES OF THE POLICY:

Even more gripping is the fact that implementation of this scheme has always required the legal institutions to clarify whether a given context classifies as falling under this policy and whether compassionate appointment should be granted to the affected under a given context. One of the consequences of which has been that it's the Courts which have enumerated the working principles or guidelines for implementing this policy. Furthermore in case of absence

⁶ 1996-I-LLJ-1121.

of any scheme the Courts have returned the cases to the employers asking them to reconsider giving compassionate employment⁷.

One fails to understand the need for such a scheme when it is observed that the courts have had to look into each case of compassionate appointment distinctly using a rationale that is in consonance with the Articles 14 and 16 of the constitution of India and simultaneously with the object and purpose of the scheme. Because, this reveals the scope of the scheme, to be unlimited. But then it can be argued that since it is a policy decision without any statutory basis or any other legislation as basis it is up to the employer to incorporate the conditions which according to the employer are relevant to the scheme. So the scope of the scheme is determinable by the employer if and when the employer makes allowance for such a policy in his scheme of affairs. Accordingly the employers may:

- A) adopt the Central or State Government's policy
- B) make their own policy of compassionate appointment,
- C) do away with the policy entirely.

And since being in the nature of public policy⁸ the scheme is to be strictly followed the courts do not deviate from the instructions contained in the scheme in order to resolve a scheme related dispute. For, the Courts cannot interfere with any policy unless there is gross violation of laws.

Hence, it follows from the above, that if there are any specifications in the scheme with respect to time limits or qualifications of the applicants for compassionate appointments or concerning the relationship of the dependents to whom appointment is to be granted or on what grounds the applicant may apply to the employer for compassionate appointment, these are at the discretion of the employer.

Each of these conditions is being considered below one by one.

- (i) Time Limit: In case time limits are prescribed by the scheme they have to be strictly adhered to. There are two limitations of time prescribed,

⁷ Common Cause vs. Union of India (2015) 7 SCC 1

⁸ Census Commissioner vs R. Krishnamurthy (2015) 2 SCC 796

(b) one is the time limit within which to make the application for compassionate appointment and

(c) the other the time limit within which the application is to be considered and the appointment granted.

Initially the time period within which the appointment had to be granted had been 1 year, but now it is 3 years. This is on the basis of the principle of ‘inherent urgency⁹’ of the situation which is the cause as well as the reason for the destitution of the dependents of the deceased. The other reason for increasing the time period is that the employer has to be satisfied that there is indeed a situation of financial emergency in the family of the deceased. These conditions vest with the employer the discretionary power to find out after enquiry and then decide:

A) whether a given applicant falls within the category of a dependent who can claim compassionate appointment and if so on what grounds and

B) whether the applicant can be described as living in destitution. For, the mere demise of the employee does not entitle the dependents of the employee for compassionate appointment¹⁰.

At the same time it cannot be denied to the dependent of the deceased because the dependents are in receipt of service benefits of the deceased and apparently do not subscribe to the phrase ‘living in penury’¹¹. This process actually defeats the purpose of providing immediate relief since granting employment under such circumstances would depend on the time taken by the employer to complete enquiry or if such consideration is under dispute then the decision of the courts which decision may take a long time coming. In *Sushma Gosain vs. Union of India*¹², the Supreme Court had held that it is improper to keep applications made for compassionate appointment pending for years, and if necessary the employer has to create supernu-

⁹ *Union of India vs Shashank Goswami*: (2012)11 SCC 307

¹⁰ *Union of India vs.M.T. Lathees*: (2006) 7 SCC 350

¹¹ [Umesh Kumar Nagpal v. State of Haryana](#), (1994) 4 SCC 138

¹² (1989) 4 SCC 468

merary post in order to accommodate the applicant. It would be an apt observation that applications for compassionate appointment if kept pending for longer time defeat the purpose for which the policy was framed. Since with the progress in time there would be many more candidates who could apply for the same post and unwittingly the employer would be keeping both, the latest eligible candidates as well as the previous beneficiaries of the compassionate appointment scheme from working on that post. In case occurs some untowardly circumstance such as there being imposed a ban upon any category of persons from applying for the said vacancy (as had happened in Sushma Gosain's case, wherein women were banned from working on a particular post) the purpose of the scheme is not only defeated but also the discretionary power that is vested with the employer for granting concession is not utilized. Therefore, one aspect of Compassionate Appointment that is highlighted is that of the issue of not using the jurisdiction that is vested with the employer, which in the given instance was creation of supernumerary post to accommodate the applicant. Unfortunately in this case the applicant had to move the courts in order for that the employer used the power already vested in him, i.e. create a supernumerary post and then accommodate her.

- (ii) **Qualifications and eligibility of the applicants to compassionate appointment:** One of the working principles enumerated by the courts is that mere death of the employee does not entitle his dependent family member to compassionate appointment¹³. Rather the employer has to ascertain whether the applicant satisfies the eligibility criteria prescribed for the vacancy meant to be filled by candidates appointed on grounds of compassion and possesses the requisite qualifications as prescribed by the scheme. Therefore, ineligibility, unsuitability or incapacity of the person seeking compassionate appointment are relevant considerations to be looked into by the employer before granting employment¹⁴. But if on account of ineligibility the applicant is not granted a higher post and he accepts a lower post offered then

¹³ Census Commissioner vs R. Krishnamurthy (2015) 2 SCC 796

¹⁴ I.G. (Karmic) vs Prahlad Mani Tripathi (2007) 6 SCC 162, State Of UP vs Pankaj Kumar Vishnoi (2013) 11 SCC 178,

he cannot later stake a claim to the higher post by challenging another's appointment to the higher post¹⁵.

The employer should also satisfy himself whether the family has been reduced to penury or not before grant of compassionate appointment. Even otherwise what could possibly be the justification for granting compassionate appointment to the dependents of senior officers? Their families are not reduced to penury upon the death of the breadwinner. If both the spouses in a family are employed then compassionate appointment need not be granted to any dependent upon the death of the spouse whose death entails compassionate appointment benefits. In *State of Rajasthan v Dharmendra Parth*¹⁶ it was held by the Hon,ble High Court of Rajasthan that it is not only monetary distress but also the sudden loss of status that occurs due to the demise of the employee in public employment that form the basis of the concept behind framing this policy. The family of the deceased has to cope with the sudden change in their living conditions as well. And in order that there is some financial inflow without letting the family survive entirely on the benefits of service which may not be sufficient to keep up with the changing times sometimes dependents do not hesitate to accept a compassionate appointment. Nevertheless the Posts to which the scheme applies are the Group III and Group IV posts and compassionate appointments cannot be made upon higher posts¹⁷. Service benefits accrued due to length of service may not be sufficient for the sustenance of the employee's family. This reiterates another humanitarian consideration which forms the rationale behind the scheme, that, merely because service benefits are granted to the bereaved family compassionate appointment cannot be refused either. This is because 'Compassionate appointment is granted over and above what is admissible to the legal representatives of the deceased employee as benefit of service which one gets on the death of the employee. Therefore Compassionate appointment cannot be refused on the ground that any member of the family received amounts admissible under

¹⁵ State OF Rajasthan v.Umrao Singh,(1994) 6 SCC 560

¹⁶ RLW 2005 (2) Raj 795

¹⁷ Bhawani Prasad Sonkar vs Union of India (2011)4 SCC 209 Haryana State Electricity Board v Naresh Tanwar(1996)8 SCC 23

the rules¹⁸. Here it can be argued, as to what could possibly be the justification for granting compassionate appointment to the dependents of senior officers? Their families are not reduced to penury upon the death of the breadwinner. Besides the benefits of service acquired by them are sufficient for them to sustain them till they could reclaim their status since if they require benefits of compassion then what about the millions of destitute unemployed who lack these acquired benefits of service. Also, if both the spouses in a family are employed then compassionate appointment need not be granted to any dependent upon the death of the spouse whose death entails compassionate appointment benefits. But in many cases compassionate appointment is applied for as a matter of right. But the courts have made it clear that it is not a vested right¹⁹ and in case any right exists at all it has to be in consonance with scheme in order to be considered.

The Supreme Court has also held that..... 'showing compassion cannot be endless'²⁰. It has to be limited to the purpose it seeks to achieve, meaning that in order to grant Compassionate appointment the requisite qualifications or eligibility criteria need not be compromised. Rather if the candidate is capable of some other work for which he/she is overqualified but is under qualified for the post he/she has applied for then he/she can be selected for the post for which he/she is overqualified. This enables the employer to select the rightfully suitable candidate for the post which requires a higher qualification. At the same time the applicant is given employment with the purpose of tidying over his/her pressing circumstance.

- (iii) Dependents of the deceased to whom employment can be granted: The dependents of the deceased to whom employment can be granted are the immediate family members of the deceased such as the spouse, daughter or son (including adopted sons and daughters). The intention of the policy is to provide employment to the family member who is dependent upon the deceased. It does not include the brothers or sisters of the deceased unless the policy says so. Therefore the policy should

¹⁸ Govind Prakash Verma vs Life Insurance Corporation of India (2005) 10 SCC 289, Steel Authority of India Ltd. vs. Madhusudhan Das (2008) 8 SCC 475,

¹⁹ State of Gujrat vs Arvind Kumar T. Tiwari (2012) 9 SCC 545

²⁰ State Of UP vs Pankaj Kumar Vishnoi (2013) 11 SCC 178 State of Rajasthan vs. Umrao Singh (1994) 6 SCC 560

clearly name the people who can seek compassionate appointment. Any member of the family of the deceased cannot seek for compassionate appointment if the relation is not named in the policy.

An interesting case that has arisen because of this distinction is that whether a married daughter can be considered for compassionate appointment. The courts had until a few years ago taken a view that married daughters do not come under the definition of immediate family since they cease to be dependent on the employee after marriage. There has been a change in the view taken by the courts over the entire length of the country regarding this aspect of compassionate appointment. Since recent past few years the courts have started viewing it as discrimination based on gender seeking to know the rationale behind discriminating against married daughters when married sons can be given compassionate appointment. Since, there is no guarantee that a married son would look after the surviving parent and his siblings upon being granted compassionate appointment, the courts have sought that the employers verify whether the son is willing to shoulder the responsibility of the dependents of the deceased employee. Then again the scheme should not end up as a means of securing employment for a married son.

One such case 'Purnima Das Vs. The State of West Bengal & Ors.' In which the Court had sought to know the rationale behind the discrimination of married daughters while granting compassionate appointment is produced below:

"A rather unique issue, which falls for consideration in the facts and circumstances of the instant case, is whether a prayer for compassionate appointment can be rejected by the concerned respondent authority, solely on the ground that the applicant happens to be a "married daughter".

In the instant case, the petitioner, being a "married daughter", applied for compassionate appointment under the 'died-in-harness' category. Her prayer was rejected solely on the ground that she, being a "married daughter", was not eligible for compassionate appointment, as per memo no. 433/PN/O/III/2E-70/07 (Pt-1) dated 3rd February, 2009. This memo, which contains the relevant notification that seeks to exclude "married daughters" from being considered as eli-

gible for compassionate appointment, is now sought to be challenged by the petitioner in the instant matter.

Earlier, this Court had directed the State to file an affidavit stating therein specifically the rationale or logic behind exclusion of a "married daughter" from being considered eligible for compassionate appointment under the 'died-in-harness' category, notwithstanding the fact that financial hardship of the surviving family members being the most important criteria for such eligibility. The State was further directed to state in the affidavit as to whether a financially dependent daughter suddenly and automatically becomes financially independent, the moment she gets married and whether, likewise, such rationale or logic applies in case of a financially dependent son, upon his marriage. The question, however, in the instant case is whether there is any rationale or logic behind exclusion of a "married daughter" from being considered eligible for compassionate appointment under the 'died-in-harness' category, notwithstanding the fact that financial hardship of the surviving family members being the most important criteria for such eligibility. The State, in its affidavit, has merely stated that the Panchayats and Rural Development Department had issued the memo dated 3rd February, 2009, in pursuance of two notifications dated 6th June, 2005 and 2nd April, 2008, both issued by the Chief Secretary of Government of West Bengal in Labour Department, which were binding at the material point of time when the memo dated 3rd February, 2009, was issued. So far as the notification dated 6th June, 2005, is concerned, its relevant portion is quoted herein below:

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" ...For the purpose of appointment on compassionate ground in terms of this notification, a dependant shall mean spouse, a son or an unmarried daughter who was solely dependant on the earnings of the deceased or the retired employee."

Relevant portion of the notification dated 2nd April, 2008, is also quoted herein below: -

"... For the purpose of appointment on compassionate ground, a dependant of a Government employee shall mean wife/husband/son/unmarried

daughter of the employee, who is/was solely dependent on the Government employee."

No rationale or logic as to why the State seeks to exclude a "married daughter" from being considered eligible for compassionate appointment under the 'died-in-harness' category is, however, revealed from a plain reading of the above. It is also noticed that the State has adopted a queer view while discriminating daughters of deceased employees vis-a-vis their sons. In case of a son, it does not matter to the State whether he is married at the time of making a prayer for compassionate appointment. However, in the case of a daughter, the State makes an unreasonable discrimination by excluding a married daughter from seeking appointment on compassionate ground.

As discussed hereinbefore, it is quite well settled in law that a sudden financial hardship/crisis engulfing dependent family members of a deceased employee is the most important criteria for consideration of a proposal for compassionate appointment. However, how a marital status of a dependant daughter could be a reason for her exclusion from seeking compassionate appointment, has not been spelt out, either in the notifications dated 6th June, 2005 and 2nd April, 2008, or in the affidavit filed on behalf of the State.

At this juncture, therefore, it is necessary to test the rationale or logic of such exclusion by way of an illustration.

Let us suppose that a male employee of the State dies today leaving behind an illiterate widow and two daughters, one of whom is a minor and the other, an educated adult, who is 21 years old and has just got married. If the intention of the State is to help the family of the deceased employee tide over the immediate financial crisis that has suddenly fallen on them upon death of the sole bread winner, it will have no option to engage either the illiterate widow or the minor daughter of the deceased employee. That leaves behind the adult elder daughter of the deceased employee who may have the requisite educational qualification. However, her only disadvantage would be that of her marital status. In such a factual scenario, if the concerned State authorities rely on the two notifications

dated 6th June, 2005 and 2nd April, 2008, issued by the Labour Department, Employment Cell, Government of West Bengal, the very purpose for introduction of the scheme for compassionate appointment will get defeated. The only way out in such a factual scenario would be to give compassionate appointment to the married daughter of the deceased employee, who, upon being provided such compassionate employment, can easily look after her minor sister and her widowed mother.

It is also rather strange to take notice of the fact that while both the notifications dated 6th June, 2005 and 2nd April, 2008, seek to exclude a married daughter of a Government employee from being considered eligible to apply for appointment on compassionate ground, in case of a son, his marital status has been made inconsequential. In today's world, this is not only a chauvinistic and archaic approach towards the issue, it is also indicative of a gender insensitive and inflexibly myopic mindset of the draftsmen of the two notifications dated 6th June, 2005 and 2nd April, 2008. There is simply no rationale or logic for applying such dual standards. It is as if it has been taken for granted that only a son, irrespective of his marital status, can look after his parental family. That a married daughter can contribute in equal measure, if not more, to support her parental family, has simply been ignored or forgotten.

As such, there is an immediate need to revisit the issue, as sought to be highlighted above.

The writ petition is, therefore, disposed of with a direction upon the Chief Secretary, Government of West Bengal, to revisit the matter, in the light of the observations made here in above and issue an appropriate notification, which shall ensure to the benefit of married daughters of deceased employees of the State - such as the writ petitioner - so that they can also be considered eligible to apply as dependant of a deceased employee, provided, of course, they fulfill all other eligibility criteria, as laid down.”

Perhaps the above mentioned case law gives the most convincing arguments for not excluding married daughters from being considered for compassionate appointment on account of their married status while allowing male children to be considered

regardless of their marital status. As also without considering whether any of the eligible dependents of the deceased or invalidated or incapacitated employee, are unemployed or employed on the date of applying for compassionate appointment, as a matter of policy, appointment is generally granted, on the basis of the scheme to the dependents of the deceased/invalid. Therefore, when the fundamental object of the scheme for obtaining financial succor to the bereaved family does not specify whether employed dependents should be prevented from seeking employment under the scheme or not, then how can the fact that a married daughter's presumed financial independence come in the way of granting her compassionate appointment?

- (iv) Categories of employees whose dependents are considered for compassionate appointment: The policy of Compassionate appointment envisages granting appointment to the dependents of only three categories of persons; which categories are as below:
- (a) Employees who have died-in-harness.
 - (b) Employees who are medically invalidated
 - (c) Employees incapacitated while rendering service

Since compassionate appointment is an exception to the general rule of appointment to public employment, the persons to whom employment is granted should be such that their need for financial assistance and succor should be clearly visible from the circumstances under which the applicant's are surviving and the modes of their sustenance. It is not only in cases where the sustenance demands have suddenly cropped up but also the cases where the demands of sustenance have increased manifold that the candidates should be considered worthy of compassionate appointment. In the case of, 'V.Sivamurthy vs. State of Andhra Pradesh', the Supreme court has held, 'Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness etc., because not only the income stops, but at the same time there is additional expenditure by way of medical treatment and a constant attendant to look after the sick employee'.

Another aspect that was brought to the attention of the court had been whether granting Compassionate appointment to the descendants of medically incapacitated persons would be constitutionally valid? In the same case the hon'ble Supreme Court had formulated a question as under:

Whether the compassionate appointment of sons/daughters/spouses of Government servants who retire on medical invalidation is unconstitutional and invalid? While answering this question in favour of the aggrieved the Court had observed that if any service Rules or scheme provides that whenever a servant retires on grounds of medical invalidation one of his dependents will have a preference in employment, this will go absolutely against Art.16 of the constitution.²¹ This is so because, Art.16 of the Constitution mentions descent as one of the prohibited grounds of discrimination. Therefore if any policy provides for compassionate appointment of dependents upon retirement of an employee who is medically invalidated then such a provision is based on a classification which is not only on the ground of descent but also on grounds of death in harness/ retirement due to medical invalidation because of which the employee's dependents can seek compassionate appointment. This means that in cases of compassionate appointment, policy offering appointment to dependents is valid only if the grounds are sympathy or compassion. The employer cannot and does not prefer the dependent of the medically invalid employee over any other contender for the post for compassionate appointment rather the employer has to decide on the basis of whether the policy makes allowance for grant of compassionate employment to dependents of the retired medically invalid employee by following the criteria prescribed in the policy itself. This also means that such a scheme of compassionate appointment has a different basis from the basis upon which a preferential right to appointment is conferred upon a family member of a Government servant. A good example of such a preferential treatment is the concession granted in public employment to descendants of freedom fighters or martyrs. If their descendants are granted preference in public appointment it would be on the basis of respect for public servant or freedom fighter who had sacrificed for the

²¹ Yogender Pal Singh vs Union of India (1987)SCC 631,V.Sivamurthy vs State of Andhra Pradesh(2008)13 SCC 730,Gazula Dasaratha Rama Rao vsState of Andhra Pradesh AIR 1961 SC 564

sake of the citizens of our country. Though preferential such a deviant basis for conferring public appointment is considered constitutionally valid.

Interestingly in the light of this decision, it can be asked whether any policy discriminating against married daughters for being granted compassionate appointment would be valid since Art.16 prohibits discrimination based on gender also. And whether or not a policy that is claimed to be an exception to the general rule of recruitment affords to discriminate against dependents on the basis of their gender claiming under the cover of it being framed with specifications whereby a particular category of dependents is specifically excluded from claiming appointment notwithstanding any reason assigned for such an exclusion? In other words simply because the policy of compassionate appointment is an exception to the general rule can it violate the fundamental rights of individuals?

Even though the answer is 'No' to the above question, appointment under the scheme of compassionate appointment cannot be challenged under the grounds of violation of principles of natural justice or fundamental rights. This is because the scheme was propounded under humanitarian considerations and not under the consideration of a right²².

DIFFERENCES BETWEEN COMPASSIONATE APPOINTMENT AND APPOINTMENT TO PUBLIC POSTS UNDER THE CONSTITUTION.

The following major differences between Appointment to public office under the Constitution of India and Compassionate appointment can be enumerated on the basis of the above discussion:

1. It is the policy of Compassionate appointment that determines whether selection process has to be carried out, whereas it is the Constitutional scheme of appointment that governs normal recruitment to public employment.
2. While following the Constitutional scheme of appointment the selection process is through open advertisement according to the provisions of Art.309 of the Constitution of India. Whereas process for Compassionate appointment comes alive when

²² Director of Education (n3)

reasons prescribed in the policy for compassionate appointment framed by the employer come into existence. It does not have a statutory basis. .

3. While following the Constitutional scheme of appointment the selection process has to be in consonance with the Art.14 and Art.16 of the Constitution i.e., the scheme only prescribes criteria and methods of selecting the candidates. In Compassionate appointment it is the policy that determines who is the next of kin who is dependent upon the deceased employee and who may be granted employment.
4. It can be seen that Public employment cannot be given on the basis of direct descent because the employer cannot prefer one citizen over another irrespective of the basis for such preference. Though exceptions exist for this rule, even when a particular class of individuals is given preference on the basis of descent they have to undergo the process of recruitment until they are selected for the post. Thus, in spite of any concession granted to any particular class of citizens, every citizen who fulfills the eligibility criteria for selection to public employment is required to and is allowed the opportunity to compete with other eligible candidates in order to be selected for public employment with the purpose of serving in a Government institution. Whereas an appointment made on compassionate grounds should be with the purpose of arranging financial assistance for the dependent family of members of the deceased or invalid. In *National Institute of Technology vs .Niraj Kumar Singh*²³ this court has stated the law in following terms:”.....No appointment can be granted on compassionate grounds to a person other than for whose benefit the exception has been carved out. Other family members of the deceased would not derive any benefit there under”. Here the family member of the deceased is a beneficiary of the scheme of Compassionate Appointment and he/she is the sole person who is eligible for appointment, since, it is these dependents who would be suffering the biggest loss of lack of financial support and loss of status in addition to the traumatic experience of bereavement or nursing the invalid/incapacitated. Therefore in order that the benefit of the scheme reaches the dependent of the deceased/invalid, the employer has to specifically mention the dependents who would be eligible to apply for compassionate appointment.

²³ (2007)2 SCC 481

5. In public employment it is the vacancy that determines whether the selection process for recruitment of candidates has to be undertaken or not. Vacancies cannot be created at the instance of the employer. Whereas the employer is already vested with the power to decide whether or not he should create a vacancy in order to accommodate an applicant under the scheme of compassionate appointment,(in deserving cases of course)
6. Even though an exception to the general mode of recruitment, as in the general mode of recruitment, which has to satisfy the provisions of art.309 of the Constitution of India, this policy should also be within the constitutional framework i.e the policy should be constitutionally valid and must not affect the rights of others for appointment.

CONCLUSION:

Where the Compassionate appointments are denied rightly or wrongly, the applicants readily approach the court spending a fortune. The courts too are moved by the plight of the litigants and issue a writ to consider their case. Every organization with good intentions of helping the poor dependents formulates the scheme of compassionate appointment to cover all their present and future regular employees. Since the appointment is offered on the death or medical invalidation of an employee it does not distinguish or differentiate between a well paid or lowly paid employee because death and chronic illness come without notice to both equally without discrimination. The employers have a lame excuse to their refrain from differentiating between one and another employee - it amounts to discrimination prohibited by the equality clause enshrined in Art.14 of the Constitution. This raises the question as to how far the writ of compassion should run due to inequities in granting immediate relief. This is because ,in spite of the object of the noble scheme being to reach immediate relief to the stricken family it does not cover the daily rate, casual, ad-hoc, or contingency employees as if on their death their family needs no compassion at all. Their dependents are most vulnerable section of the society in need of such compassion more than anybody else, but are conveniently forgotten and kept out of the race in almost all the departments and organizations defeating the very purpose of showing compassion.

The implementation of the scheme is in itself fraught with so many intricacies that the courts and tribunals have to be approached to resolve the discrepancies' in appointment. Perhaps the fact that it can be entirely done away with at the instance of the employer is the sole reason for which its validity has remained unquestioned over the years. Hopefully, these aspects will be considered in the forthcoming years and this concept will be given a facelift which will make it a truly Social Welfare scheme.

